

The State, the People, and Their Mediators: The Struggle over Agrarian Law Reform in Post-New Order Indonesia

Author(s): Anton Lucas and Carol Warren

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# THE STATE, THE PEOPLE, AND THEIR MEDIATORS: THE STRUGGLE OVER AGRARIAN LAW REFORM IN POST-NEW ORDER INDONESIA

Anton Lucas and Carol Warren<sup>1</sup>

“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 parliament 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 realise it or not, they are the vanguard of a social revolution.”<sup>2</sup>

Pramoedya Ananta Toer

## People's Actions

Since the *Era Reformasi* began, there has been a dramatic resurgence of agrarian protest across Indonesia. In actions reminiscent of the peasant unilateral occupations of the early 1960s, dispossessed farmers involved in land disputes, some running for

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<sup>2</sup> Interview with Pramoedya Ananta Toer, [www.time.com/time/asia/news/magazine](http://www.time.com/time/asia/news/magazine), August 6, 2001.

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decades, have taken direct action to rectify their grievances. These “reclaiming” actions included occupation of plantation estates,<sup>3</sup> golf courses,<sup>4</sup> and neglected “sleeping land”<sup>5</sup> acquired by investors for speculative purposes. In East Java alone, according to Legal Aid Foundation sources, there were more than fifty actions by dispossessed farmers reclaiming disputed lands.<sup>6</sup> At Situbondo, thousands of coffee and cacao

<sup>3</sup> For background to these reclaiming actions and the strategies adopted from the point of view of Legal Aid and local activist groups involved, see Boedi Wijardjo and Herlambang Perdana, *Reclaiming Kedaulatan Rakyat* (Jakarta: YLBHI & RACA Institute, 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 in 1991. See Anton Lucas, “Land Disputes in Indonesia: Some Current Perspectives,” *Indonesia* 53 (1992): 79–80. With the support of a Bogor Legal Aid group, Ampera, action was taken by former landholders living in the village of Cibedug on the edge of Suharto’s Tapos ranch, who moved onto land and began cultivating it within days of his removal from office. Their parents had been dispossessed in 1973 when the then governor of West Java handed over two leases covering 753 hectares to President Suharto. For a detailed history of the two cases, see Dianto Bachriadi and Anton Lucas, *Merampas Tanah Rakyat: Kasus Tapos dan Cimacan* (Jakarta: Kepustakaan Populer Gramedia, 2001).

<sup>4</sup> A recent publication of the Indonesian Golf Association (PGI, Persatuan Golf Indonesia) shows a total of 119 golf courses located in twenty-two provinces in Indonesia. Twenty-nine percent of these are in the Greater Jakarta (JABOTEK) region and another 9 per cent in West Java, including the Cibodas golf resort in Cimacan village (see previous footnote on this case). One course of eighteen holes in Citeureup in West Java occupies 700 ha., compared with an eighteen hole course at the hill resort of Kaliurang (Yogyakarta Special Region) which uses sixty ha. (Indonesian Golf Association, *Golf Map*, Jakarta, 4<sup>th</sup> edition, 2000–2001.) 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 crops even in this time of food crisis, citing legal and technical problems. He proposed instead that intensification of existing agricultural land and temporary conversion of the large amount of “sleeping lands” intended for industrial and residential development would solve the problem. “Belum dipikirkan, mengubah fungsi lapangan golf,” *Kompas On Line*, June 24, 1998. Nevertheless, at Cimacan, on the edge of the Puncak resort area south of Jakarta, farmers had already occupied the course and inscribed “this is the people’s land” with their hoes (“Ratusan petani tanami lapangan golf Cimacan,” *Kompas On Line*, June 15, 1998); in neighboring Lakasantri, villagers did the same, claiming that the land was part of 9.1 ha. of communal land (*tanah ganjaran*), sold off to PT Citra Raya by the village head without agreement of the community (“Lapangan golf Citra Raya dipatok,” *Kompas*, July 18, 1998). At Serangan Island, Bali, reoccupation of land taken for a resort by military and Suharto family interests took place in 2001, long after fishing grounds and sea grass beds had been destroyed by dredging to expand the island. See “Pemasangan patok di areal BTID disetujui atasnamakan Warga Adat Serangan” *Bali Post*, January 12, 2001.

<sup>5</sup> To 1998 the National Land Agency (BPN, Badan Pertanahan Nasional) had issued location permits (*izin lokasi*) for an area of over three million hectares covering four categories of projects in the housing, industry, tourism, and plantation sectors, but only a small amount (481,448 hectares or 16 per cent) had actually been utilized. See Lucas and Warren, “Agrarian Reform in the Era of Reformasi,” table 14.3. (This figure has recently been revised to 26 percent. See Table 12, “Land Left Unused by Location Permit Holders in Indonesia in 1998,” in Dianto Bachriadi and Gunawan Wiradi, “Land tenure problems in Indonesia—the need for reform,” in *Land for the People*, ed. A. Lucas and C. Warren [Forthcoming]). According to the Basic Agrarian Law, property rights are cancelled when land is abandoned (*terlantar*) (UUPA 5/60 §27 and explanatory notes). As described in the explanatory notes 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 recent regulations concerning neglected land (PP No 36/1998) see “Tanah terlantar dikuasai Negara,” *Antara Warta Perundang-Undang* No. 1733 /Th XII, April 9, 1998.

<sup>6</sup> Herlambang Perdana, personal communication to author, December 11, 2001. Long-running disputes over lands leased to plantations in East Java include those at Tegalrejo and Ringinkembar in Sumbermanjing Wetan, Malang; Cepoko and Geduro in Ngawi, and Banongan in Pasuruan. See “Karakter dan alternatif solusi konflik tanah perkebunan,” *Surabaya Post On Line*, September 17, 1996.

plants were destroyed and replanted with corn and soybean crops by local farmers on the land they said had been seized (*dijarah*) from them by the State.<sup>7</sup> At Jenggawah, where a former Dutch plantation covering more than three thousand hectares had been taken over by a state tobacco plantation company under Hak Guna Usaha (HGU)<sup>8</sup> lease, local people occupied the estate, after a decades-long struggle.<sup>9</sup> In North Sumatra, two thousand farmers demanded the return of 100,000 hectares of plantation land controlled by a state company. Looting or destruction of plantation crops, such as coffee in West Java, or cacao and sugar cane in East Java, often accompanied protests. Looting of fourteen state-owned plantations whose operations covered some two million hectares of land caused losses totaling billions of rupiah. Such popular actions were also related to meeting daily subsistence needs during the economic crisis.<sup>10</sup> Other protests were aimed at obtaining additional payments for land previously expropriated at unjust rates of compensation.<sup>11</sup>

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 (*tuan tanah*),<sup>12</sup> of protesting women taking off their clothes in front of bulldozers about

<sup>7</sup> "Ratusan warga Sukorejo cabuti tanaman tebu di lahan sengketa," *Republika*, December 12, 1998.

<sup>8</sup> HGU (Hak Guna Usaha, Commercial Use Right) leases under the Basic Agrarian Law (UUPA 5/1960: §28-34) involved rights issued by the government on so-called "state lands" to plantation, fishery, or livestock businesses for periods of twenty-five to thirty-five years renewable. Most of the conflicts with smallholder farmers in Java and Sumatra involved HGU leases. In forest zones the issuance of concession rights for timber exploitation (HPH, Hak Penguasaan Hutan) and for timber plantations (HTI, Hutan Tanaman Industri) under the Forestry Act UU 5/1967 were also vehicles for disenfranchising local people from their traditional lands, mainly in the outer islands.

<sup>9</sup> In 1995, long before there were any signs of an end to the Suharto regime, several hundred farmers in Jember who had worked the land for twenty-five years showed their anger at the government decision to issue an HGU lease to the state plantation company PTP XXVII, by setting fire to nineteen tobacco sheds, administrative offices, and company vehicles. See "Warisan konflik yang tidak kunjung usai," *Kompas*, September 25, 2000; see also *Tempo*, June 12, 2001. It would be a mistake therefore to assume, as Pramoedya's remarks might be taken to suggest, that there was no popular resistance to dispossession under the New Order. For examples of other New Order cases of resistance, one of the most notorious at Kedung Ombo and another in the early 1990s at Tanah Lot, see the chapters by George Aditjondro and Carol Warren in *The Politics of Environment in Southeast Asia*, ed. P. Hirsch and C. Warren (London: Routledge, 1998). See also *Pembangunan Berbuah Sengketa: Kumpulan Kasus-Kasus Sengketa Tanah Pertanahan Sepanjang Orde Baru* (Medan, Yayasan Sintesa and Serikat Petani Sumatera Utara [SPSU], 1998), discussed below.

<sup>10</sup> See *Indonesian Observer*, May 24, 2000 and *Surya*, September 9, 1998. In some cases, looting was also opportunistic. In one case, thousands of armed villagers looted shrimp from fishponds in broad daylight reportedly not because they wished to dispute ownership of the ponds, but because the price of tiger prawns (*udang windu*) jumped from Rp. 25,000/kg. before the financial crisis to Rp. 150,000/kg (the price of a small goat or twenty fowls). One person could get between Rp.150,000-200,000 in a single one of these actions. See "Ribuan orang menjarak tambak udang," *Kompas*, July 15, 1998, quoted in Tim Fisipol UGM, "Beberapa kasus yang mengarah ke anarki setelah 21 May 1998," paper given to the seminar, Dies Fisipol UGM 1998, Anarki, Represi, dan Demokrasi: Reformasi Politik Indonesia Pasca Suharto, Yogyakarta, September 19, 1998. See also PerMenAgraria 3/1998 concerning the use of neglected land for growing food crops during the monetary crisis in Boedi Harsono, *Hukum Agraria Indonesia: Himpunan Peraturan-Peraturan Hukum Tanah* (Jakarta: Penerbit Djambatan, 2000), pp. 481-84.

<sup>11</sup> See for example, "Dana 'pangjuejuh' Rp. 200/m<sup>2</sup> tidak manusiawi: petani Carolina minta tambahan ganti rugi," *Pelita Rakyat*, June 26, 1998.

<sup>12</sup> "Ratusan warga serang tuan tanah: satu tewas, dua luka, tiga hilang," *Republika*, December 12, 1998.

to raze their homes,<sup>13</sup> of demands for the return of land stolen by the Suharto family.<sup>14</sup> Authorities sometimes resorted to violence<sup>15</sup> in response to incidents of direct popular action. But in the new climate of political freedom, the sympathy of the media and the public was clearly with the protesters.<sup>16</sup> While many occupations took place without interference from the state apparatus, developers often tried to prevent them by using hired henchman (*preman*).<sup>17</sup>

In the outer islands, where customary *adat* lands had been taken without acknowledgement of traditional rights for timber and mining concessions, local responses have included occupations, blockades, and destruction of company assets, all widely reported, with profound 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 due to political insecurity and lack of legal certainty.<sup>18</sup> 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.<sup>19</sup> In the forest areas of the outer islands, which had been declared "state lands" under the 1967 Forest Law, reclamation sometimes took the form of intensified "wild logging."<sup>20</sup> Dozens of timber

<sup>13</sup> "Sambil buka baju, dua ibu hadang bulldozer," *Kompas*, April 22, 1998.

<sup>14</sup> "Petani Jawa Barat menggugat 'kembalikan tanah yang dirampas Tutut,'" *Merdeka*, September 24, 1998.

<sup>15</sup> "Kekerasan pada petani akibat landreform tak dijalankan," *Tempo Interaktif*, November 23, 2001; "Kami nuntut hak tetapi mengapa ditembak," *Surya*, September 1, 1998. In this case involving a cocoa plantation at Kalibakar south of Malang in East Java, popular action was being taken against a state-owned plantation company; several people were injured in that action. See Sukardi, "Land for the People," *Inside Indonesia* (January-March 2002): pp. 16-17. In another case in East Java, a farmer involved in the reoccupation of former plantation lands in Wongsorejo was beaten up and shot in the back by police apparently acting with company security forces. "Senjata pun turut bicara," *Prisma*, No. 7, August 2001, pp. 27-28. At Blangguan, one protesting farmer was killed by Perhutani security forces (personal communication, Herlambang Perdana, December 2001). The farmers' union in West Java claimed to have evidence of 660 cases in which force was used against farmers since Suharto stepped down. See "Ribuan Petani Dihadang Polisi Cacalengka," *Republika*, September 15, 2001; See also "Petani unjuk Rasa Tuntut Kembali Reformasi Agraria," *Kompas*, September 25, 2001).

<sup>16</sup> This picture became somewhat clouded by the subsequent involvement in occupations of groups without legitimate prior rights, sometimes funded by elites who use them to stake claims from which they could profit.

<sup>17</sup> "Petani menduduki areal kebun kelapa sawit di Seikepayang," *Waspada*, July 7, 1998. While at Gili Trawangan and Cimacan, state security officers stood by without intervening, the golf course developer at Cimacan hired thugs (*preman*) to prevent farmers from continuing to cultivate the land they had occupied. Interviews at Gili Trawangan, Lombok, September 1999 and October 2000; and at Cimacan, West Java, February-March 1999.

<sup>18</sup> See "Masa sulit perusahaan pertambangan," *Republika*, June 26, 2000.

<sup>19</sup> "Illegal mining has reached unprecedented levels, harming legitimate companies and putting the economy and environment at risk," *Far Eastern Economic Review*, July 13, 2000; "Grief from glitter: Amid the political chaos of Indonesia, a new kind of horror is spawned in Sulawesi's gold rush," *Time*, May 28, 2001; "Unrest forces gold mine sale," *Indonesian Observer*, February 17, 2001; "Indonesia's wasted opportunity," *Far Eastern Economic Review*, July 18, 2002.

<sup>20</sup> See Arild Angelsen and Daju Pradnja Resosudarmo, *Krismon, Farmers and Forests: The Effects of the Economic Crisis on Farmers' Livelihood* (Bogor: Center for International Forestry, 1999). See also John F. McCarthy, "Wild Logging": *The Rise and Fall of Logging Networks and Biodiversity Conservation Projects on Sumatra's Rainforest Frontier* (Bogor: Center for International Forestry Research, 2000), pp. 11-15.

companies were reported to have stopped operations due to conflicts with local communities.<sup>21</sup>

In some cases, compensation demands for land forcibly acquired by plantation, mining, and other companies, which were documented by non-government organizations, led to official responses proffering negotiations toward compensation, distribution of shares, and/or co-management of plantations, national parks, and production forest zones.<sup>22</sup> The State Forestry Corporation, Perhutani,<sup>23</sup> was charged with responsibility to include communities in the management and income benefits arising from logging the country's forests, and to pay compensation for damage to state-managed forests.<sup>24</sup> At the grassroots level, where protest was fierce, officials were sometimes forced to revoke unpopular decisions or were 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*<sup>25</sup>) to a developer and to issue a public statement in which he apologized "for lying, for giving up this land without the agreement of residents, and for forging signatures."<sup>26</sup>

What has been achieved by these popular actions over land and resource rights in the so-called "Reform Era?" In two of the most publicized cases, at Jenggawah and Cimacan, there have been some concrete results. Five thousand cultivators at Jenggawah finally obtained title to plantation lands covering 3,117 hectares in seven villages, ending a thirty-year struggle in the face of state repression and intimidation. Only a fortnight after Suharto's resignation, on June 8, 1998, the Bupati of Jember endorsed the Jenggawah farmers' claim for land rights in a written recommendation to the National Land Agency. A subsequent cooperative agreement moderated by the East Java Brawijaya military chief of staff was signed by farmers' representatives with the government, in a negotiated settlement on October 1, 1998.<sup>27</sup> In Cimacan, twenty-

<sup>21</sup> "Indonesian timber firms halt work due to conflicts with locals," *Jakarta Post*, March 4, 2000. For similar reports from the regional press, see also: *Bali Post*, February 8, 2000; *Suara Kaltim*, March 22, 2000; *Suara Merdeka*, May 2, 2000.

<sup>22</sup> See "Plantation firms told to pay compensation," *Indonesian Observer*, May 24, 2000. In one NGO-initiated community-based conservation program in Gunung Leuser National Park in South Aceh, a new forum was created to give anti-logging traditional leaders a means of controlling illegal logging. They are attempting to use *adat* rules to draft new community regulations for managing the forests sustainably.

<sup>23</sup> After a Supreme Court ruling against its conversion to a public company three years ago, Perhutani has again become a state-owned corporation.

<sup>24</sup> See "Mengelola hutan bersama masyarakat," *Suara Merdeka*, May 2, 2000.

<sup>25</sup> *Tanah ganjaran* (from *ganjar*, reward), also called *tanah lungguh* (*lungguh* referring to a local official position) is the term used in urban Surabaya for what elsewhere in Java is termed *tanah bengkok*, land originally provided to officials in lieu of salary. Since headmen and officials of urban communities designated as *kelurahan* by the Village Government Law (UU #5 1979) are now salaried by the government, *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, selling *tanah ganjaran* has become a serious problem. Arief Djati, personal communication, February 17, 2002. Although technically the subdistrict (*kecamatan*) is responsible for sale of the land, without the headman's approval the transfer of rights to the land cannot be completed. Residents of Babatan therefore assumed that the subdistrict was in collusion with the village head (*lurah*) in this instance.

<sup>26</sup> "Lurah Babatan Batalan Lepas Tanah Ganjaran," *Surya*, July 11, 1998.

<sup>27</sup> One of East Java's longest-running disputes between farmers and a state tobacco plantation took place in Jenggawah, near Jember. This agreement revoked the plantation's HGU lease rights on 3,117 ha. of land. In

eight cultivators dispossessed by collusion between the village head and a developer in 1987 received only part of the Rp. 600 million compensation allegedly paid out by the developer in 1999.<sup>28</sup> On March 7, 2003, the Cimacan Village Council (Badan Perwakilan Desa, BPD) and the village administration successfully negotiated a compensation payment of Rp. 2.5 billion (or Rp. 8000/m<sup>2</sup>) for 231 remaining families who had lost their cultivation rights seventeen years previously. Still being negotiated is a land swap (*ruislag*) to compensate for the loss of thirty-one hectares of village land (*tanah kas desa*) to the original golf course developer, and a contribution to the village budget.<sup>29</sup>

The vast majority of successful occupations have not, to date, achieved legal resolution through either renegotiation of compensation claims or the issuance of legal title to the people who carried out these reclaiming actions. Of the 753 hectares at Tapos, claimants had only succeeded in occupying and cultivating thirty-six hectares at the time they joined the Jakarta student protests. At the same time, they attempted to obtain titles from the National Land Agency for the land they have occupied, while maintaining a claim on a further seventy-three hectares of land formerly cultivated by Cibedug villagers before Suharto seized it in 1973. More recently, small-scale cultivators have begun to sell, lease, or abandon their plots of occupied land for a variety of reasons (families are no longer capable or motivated to work as peasant farmers, income from the plots is too small to provide a livelihood from agriculture, or they can find work in the informal sectors of the nearest towns and cities which have started to grow again<sup>30</sup>). Other claimants to the Tapos land are the Bogor Agricultural Institute, which wants to turn it into a research center, and the Bogor district

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return, farmers agreed to rent back their land to the plantation for one tobacco crop in three (seven out of twenty-one months). Farmers agreed to pay taxes, to guarantee access to BPN surveyor teams so that land certification could proceed, and agreed not to sell their land to outside interests. A Forum for Community Cooperation was established consisting of the *bupati*, the plantation company, and farmers' representatives to manage the agreement. See Jos Hafid, *Perlawanan Petani Kasus Tanah Jenggawah* (Bogor: Pustaka Latin [Lembaga Alam Tropika Indonesia], 2001), pp. 137-47, 156-64.

<sup>28</sup> "Kasus Padang Golf Cimacan Cianjur Berakhir: Para Petani Eks Penggarap Sepakat Menerima Rp. 600 Juta," *Pikiran Rakyat*, September 6, 1999. The golf course developer PT BAM claim they paid Rp. 600 million to three farmers' representatives. According to a local NGO source (AMUK, Aliansi Masyarakat untuk Keadilan, Community Alliance For Justice, a group of first- and second-generation Cimacan activists dispossessed by the golf course), the developer gave the money to the *kabupaten* administration. They claim farmers' representatives only received Rp. 300 million, not directly from PT BAM, but via the head of the Village Government Section in the Cianjur District (*kabupaten*) administration. AMUK leaders say that out of this 300 million, only between Rp. 70–100 million was distributed to farmers, and they believe that two of their leaders absconded with at least Rp. 70 million. Interview with H. Mamad, in Rarahan, August 24, 2001.

<sup>29</sup> To prevent a repeat of events described above, the BPD asked the new developer to pay the compensation money directly into farmers' bank accounts specially opened for the purpose. On signing a formal release of cultivation rights (*pelepasan hak garap*), farmers received a bankbook with the compensation payment already deposited in their account. Eight cultivators refused the compensation on the grounds it was too little. See Anton Lucas, "Regional autonomy and village governance issues in a West Java village: The Cimacan village council (BPD) in Cianjur *kabupaten* in the era of *reformasi*," in paper presented to the Fourth International Yayasan Percik-Ford Foundation Seminar, *Dinamika Politik Lokal di Indonesia: Partisipasi dan Demokratisasi*, Salatiga, July 14-18, 2003.

<sup>30</sup> By the beginning of 2003, roughly two-thirds of the farmers who had occupied thirty-six hectares of Tapos in 1998 had left the area. Dianto Bachriadi, personal communication, July 31, 2003.

government, which says that Tapos is a “state-owned asset which must be kept” (by implication: kept for the financial benefit of the district government).<sup>31</sup> On the north coast of Central Java, farmers occupied three plantations with mixed results.<sup>32</sup> 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,<sup>33</sup> and in Central Sulawesi local villagers took over five plantations, in all cases without legal resolution to date.<sup>34</sup> In Bali and Lombok, reclaiming actions took place in relation to several high-profile resort development cases, leading to still inconclusive negotiations.<sup>35</sup>

<sup>31</sup> A recent protest by farmers to the national Human Rights Commission accompanied by two farmers groups, SPJB (Serikat Petani Jawa Barat, West Java Farmers’ Union) and the Bogor-based STI (Sarekat Tani Indonesia), was aimed at putting pressure on BPN to recognize their claim, so far with no tangible result, although the National Land Agency (BPN) apparently refused the Suharto family company PT Rejo Sari Bumi’s application for an extension of the HGU lease. Interview with Imral Gusti in Garut on April 24, 2002. When a group of three farmers met with President Abdurrahman Wahid to ask his opinion about the Tapos dispute, he advised them to form a farmers’ cooperative to gain control of the land. Personal communication from Mohamad Sobari, May 1, 2001.

<sup>32</sup> In *Kabupaten* Batang, east of Pekalongan, the NGO FPPB (Forum Perjuangan Petani Batang, The Batang Farmers’ Struggle Forum) has supported the takeover of an eighty-seven-hectare former rubber plantation by 1,500 families and a hundred-hectare clove plantation now run by 1,700 families. In the first case, each family received 700m<sup>2</sup>, and has asked the local Batang Land Agency to issue ownership certificates. In the second case, one hundred hectares is being cultivated collectively, and the eighty million rupiah in income already received from the sale of cloves has been used to build a prayer house and to sponsor other protest actions. Farmers have not succeeded in reclaiming 113 ha. leased since 1966 under HGU by a company (PT Pagilaran) run by a Gadjah Mada University-controlled foundation. Protesters were beaten up by three hundred Mobile Brigade (Brimob) trucks in from neighboring districts after they had reclaimed this land. See Siti Rahma Mary Herwati et al., *Atas Nama Pendidikan Terkuburnya Hak-Hak Petani Pagilaran Atas Tanah* (LBH Semarang and PMGK [Paguyuban Masyarakat Gunung Kamulyan], 2003). In all of the above cases, the land is held by HGU leases, which are due to expire in the next two years. Interview with Rudi, FPPB activist in Garut, on April 26, 2002; Surat Pernyataan, Badan Pertanahan Nasional Kantor Wilayah Propinsi Jawa Tengah, July 3, 2001.

<sup>33</sup> The North Sumatran land conflicts (which began in the early 1990s) involved occupation of both state (including military) and privately owned palm oil plantations. These actions have been part of an ongoing agrarian reform campaign implemented by the SPSU (Serikat Petani Sumatra Utara, The North Sumatran Peasants’ Union), a member of the FSPI (Federasi Serikat Petani Indonesia, the Indonesian Federation of Farmers’ Unions). Since the reform era began new groups such as Agresu (Aliansi Gerakan Reformasi Sumatra Utara, the Reform Movement Alliance of North Sumatra) and Gerag (Gerakan Rakyat Reforma Agrarian, People’s Movement for Agrarian Reform) have also been involved in agrarian reform actions. For an overview of agrarian protests in the context of local (Melayu), as opposed to immigrant, protest activities on state-owned plantation land in North Sumatra, see Budi Agustono, “Orang Melayu versus pendatang: sengketa tanah di Sumatera Utara,” Paper presented to the Third International Symposium of the Journal *Antropologi Indonesia*, Denpasar, July 16-18, 2002.

<sup>34</sup> In Central Sulawesi, five plantations totaling 23,000 ha. in Banggai, Donggala, and Bual *kabupaten* have been reclaimed by 7,900 families with support from the local Yayasan Tanah Merdeka. None has yet been recognized by the government, and NGO activists say this is unlikely to happen. A more controversial reclaiming action involved the resettlement of land within the 229,000 hectare Lore Lindu National Park. While the Toro and Katu indigenous people have been allowed to remain in the park (*Tempo*, April 28, 2002), the local government has allowed a further 1,030 landless families to move onto four thousand hectares within the park, planting food crops on a communal basis, while waiting for legal recognition from the Forestry Department, which has jurisdiction over the national park. Local NGO activists support this action, saying, “People are more important than trees.” Interview with Lahmudin Koto, Garut, April 27, 2002. KPA supports landless farmers occupying land in national parks, as long as the park as a whole is not damaged and the people can be involved in sustainable management. The problem is limiting the



Beyond those complainants involved in a select few among the “big name” cases, protesting farmers have as yet no assurance of fair additional compensation or recognition of their rights to 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.<sup>36</sup> Even in the cases where success in the form of title or renegotiated compensation claims has resulted, the fact that extra-legal means was required to achieve these outcomes says nothing for future security or legal certainty in the “*negara hukum*.”<sup>37</sup>

### The Land and the Law: Legacies of the Old and New Orders

Since these people’s actions reclaiming land and resources have become more widespread, the focus of attention for their NGO supporters has shifted to consolidating gains and bolstering the position of Indonesia’s agrarian population through revision and revitalization of the Basic Agrarian Law. Arguably the most important piece of legislation after the Constitution, the Basic Agrarian Law (UUPA,

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snowball impact of migrants who, seeing that farmers have been able to cultivate the land, move in to join the original group. Joan Hardjono, personal communication to author, April 27, 2002. This situation, exacerbated by high unemployment levels since the monetary crisis, has contributed to the high levels of illegal logging across the country.

<sup>35</sup> At Gili Trawangan in West Lombok, the *bupati* promised certification of reclaimed land, and the BPN measured out plots in 2002, which some villagers took as an indication that resolution of the dispute was near. At Serangan, Sendang Pasir, and Sumber Kelampok in Bali, negotiations have taken place between district officials and villagers, but no satisfactory agreements have yet been struck. All these cases involved land expropriated for tourist complexes. Regional governments have continued to press for excision or retention of some or all of the land claimed for resort developments that would provide money for regional government budgets.

<sup>36</sup> 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 socially and environmentally sustainable outcomes has meant these groups prefer land be returned to the farmers where that is feasible. Activists frequently commented on the difficulty of persuading recipients not to sell off their land to buy consumer goods, such as motorbikes and television sets. The point that farmers involved in reclaiming actions often preferred receiving fair compensation to the return of their lands was made by a number of NGO participants in the *Antropologi Indonesia* symposium, “Rebuilding Indonesia: A Nation of Diversity in Unity,” Udayana University, Denpasar, July 16-19, 2002. See also Wijardjo and Perdana, *Reclaiming Kedaulatan Rakyat*, pp. 173-76. The very low prices received for agricultural commodities and the poor bargaining position of smallholders in the global market needs to be taken into account when assessing the rationality of such choices. Another issue is that new landholders often do not seek official certificates of title because of the cost (Rp. 120–200,000 per certificate) and because of the tax obligation on certified land. Interviews with Swaldi and Jansen, at Garut, April 26, 2002.

<sup>37</sup> A KPA inventory shows that to December 2001, no more than seventy-nine of the 1,475 cases covered in their data base had reached the courts; only seventeen of these have yet been brought to conclusion, eight of which favored farmers. Fifty-nine cases had been successfully won by local people outside the court system. But more than 1,300 cases were still unsettled or of uncertain outcome. See below for background on the KPA database. Because of the costs of litigation and past experiences with the corruption of the judicial system, farmers and NGOs were calling for a new judicial body to deal with all land issues. See Dianto Bachriadi, *Sengketa Agraria dan Perlunya Menegakkan Lembaga Peradilan Agraria yang Independen*, Kertas Posisi KPA No. 002/1998, “Petani unjuk rasa tuntutan kembali reformasi agraria,” *Kompas*, September 25, 2001; “Dicari: Pengadilan Agraria yang memihak rakyat,” *Forum Keadilan*, October 7, 2001.

Undang-Undang Pokok Agraria)<sup>38</sup> has been so intimately connected with nationalist, socialist, and populist revolutionary constructions of the Indonesian nation that it acquired almost sacrosanct status from its inception. Its promulgation on September 24, 1960 is still annually celebrated as “Hari Tani” (National Peasants’ Day) and is accompanied by public awards, seminars, and editorials in the national papers. Of late, Hari Tani is routinely marked by demonstrations protesting the failure of successive “reform” governments to address the nation’s commitment to its farmers, who remain the quintessential representation of the Indonesian “*rakyat*” (people) in popular discourse and political cartoons, as well as in government rhetoric. The fate of the Basic Agrarian Law in the post-Suharto Era will be one of the litmus tests of reform.

Paradoxically, this same piece of legislation resulted in diametrically opposite policies of the Old and New Orders. Proclaimed in the last phase of the Sukarno Era, after a decade of debate and political struggle, it asserted the “social function” of land and resources, 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. When the New Order government of Suharto came to power, it reoriented the “national interest” proviso of the Basic Agrarian Law equating the people’s well-being with the State. Perverting the basic intent of UUPA in order to deliver land and resources to private interests, the New Order’s policy orientation is well described as “reverse land reform.”<sup>39</sup> Where the Basic Agrarian Law proved inconvenient for the New Order regime, it was ignored, reinterpreted, or circumvented. A whole body of sectoral legislation on natural resource extraction<sup>40</sup> undermined the integral relationship of land and resources that the concept “*agraria*” in the Basic Agrarian Law had been intended to convey. Most notably the Basic Forestry Act of 1967 (replaced by the subsequent Forestry Act 41/1999) came to exclude some 70 percent of Indonesia’s land area classified as forest from the provisions of the Basic Agrarian Law, legally disenfranchising whole populations from land and resources to which they had customary claims.

But it is worthy of note that the Basic Agrarian Law was never repealed under the New Order: surprisingly, because of its overtly socialist premises and the association

<sup>38</sup> Undang-Undang Pokok Agraria No. 5, 1960, tentang Peraturan Dasar Pokok-pokok Agraria. Closely connected with UUPA are the implementing laws related to land reform: Undang-Undang No. 56, 1960, tentang Penetapan Luas Tanah Pertanian and Peraturan Pemerintah No. 224, 1961, tentang Pelaksanaan Pembagian Tanah dan Pemberian Ganti Kerugian and Keputusan Presiden No. 131, 1961, tentang Organisasi Penyelenggaraan Landreform, published in *UUPA dan Landreform—Beberapa Undang-undang dan Peraturan Hukum Tanah* (Surabaya: Karya Bhakti, 1984).

<sup>39</sup> We have borrowed the term from Jeffrey Campbell, who uses it in reference to the expropriation of forest land belonging to *adat* communities for timber concessions. See Jeffrey Campbell, “Hutan Untuk Rakyat, Masyarakat *Adat*, atau Koperasi? Plural Perspectives in the Policy Debate for Community Forestry in Indonesia,” Paper presented to the seminar on Legal Complexity, Natural Resource Management and Social (In) Security in Indonesia, Padang, September 6-9, 1999. It is a useful description of the broad range of policy changes which facilitated land concentration in the hands of well connected political-business interests during the New Order.

<sup>40</sup> UU Pokok Kehutanan 5/1967 (Basic Forestry Law, revised by UU Kehutanan 41/1999); UU Pokok Pertambangan 11/1967 (Basic Mining Law); UU Perikanan 9/1985 (Basic Fisheries Law).

of the land reform issue with the dramatic rise of the Communist Party of Indonesia (PKI, Partai Komunis Indonesia) in the early 1960s; not surprisingly at the same time, because those socialist and populist causes have been so intimately identified with Indonesian nationalism from its inception and proved at least rhetorically necessary to the legitimacy of even the military-based Suharto government.<sup>41</sup> It was the remolding of the State's role in its prosecution of a different construction of the "national interest" and particularly 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. State lands offered vast tracts to the voracious mega-development projects for which the last ten years of the Suharto Era became notorious. Plantations on state lands, many of which were former Dutch estates occupied by peasant cultivators for more than four decades, were attractive sites for residential developments, tourist resorts, and other large-scale development projects of the 1990s. Where plantation workers and peasant farmers did not hold formal title, compensation claims were more easily discounted, although various government regulations theoretically gave farmers occupying plantation lands under long-term (HGU) occupation rights to that land as long as these rights did not conflict with land-use regulations, or development projects.<sup>42</sup>

These regulations, all legally derived from the Basic Agrarian Law (and earlier legislation), should have given some legal protection to long-term occupants of plantation land. Particularly where those lands had been occupied since the Revolution, the expectation had been that land reform would lead to recognition of smallholder title. By the Late New Order, the demands of "development," virtually equated by the state to "national interest," invariably gave priority to investors over

<sup>41</sup> Suharto rose to power on the back of a failed, allegedly Communist (PKI) coup. The counter-coup he led wiped out the PKI and resulted in the slaughter of an estimated 500,000 people who were supposed to have been associated with the PKI, or its mass organizations, including the Indonesian Peasants Union (BTI, Barisan Tani Indonesia). See Robert Cribb, *The Indonesian Killings 1965-1966: Studies from Java and Bali* (Clayton, Victoria: Monash University Centre for Southeast Asian Studies, 1990). 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 over the New Order period.

<sup>42</sup> UU No. 51/PRP 1960 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 of Agriculture advised that state lands that would not be used by government or other authorized interests should in principle become agricultural land and be redistributed to the people. Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, 7<sup>th</sup> ed., rev. (Jakarta: Penerbit Djambatan, 1996), pp. 110-16. A decree issued by Suharto (Kepres 32/1979) stated that "HGU lands converted from former Western [i.e. the old colonial *erfpacht*] 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 Ministerial decisions such as Mendagri 3/1979 also indicated that such redistribution is only "so long as they are not needed for public interest projects," and does not indicate the right to full private property title (*hak milik*). See Presidential Decree 32/1979, article 2, 4, and Minister for Home Affairs Decision 3/1979, article 10 in Boedi Harsono, *Hukum Agraria Indonesia: Himpunan* (1996), pp. 208, 213. In reality, the above legislation is a weak basis for claiming unused or neglected leasehold plantation land, and does not give strong legal rights to farmers, whose claims to land went back to the land reform campaigns of the 1960s. President Abdurrahman Wahid recognized the seriousness of the unresolved issue of plantation lands when he suggested at a national conference on natural resources on May 23, 2000 that the government should distribute 40 percent of state land under HGU to cultivators. KPA press release, August 11, 2000.

these “illegal” occupants. The number of disputes on former plantation lands that persist into the present is a legacy of this unfulfilled promise of land reform, particularly with respect to the claims of smallholder peasants and farm laborers to former Dutch plantation lands, converted under the New Order to HGU leases.<sup>43</sup>

By 1992 large plantation estate leases covered 3.8 million hectares,<sup>44</sup> held by 1,206 foreign and domestic companies with an average holding of over three thousand hectares each. This compared with the average-size family holding of less than 0.8 ha. of agricultural land.<sup>45</sup> This figure for land accumulation in the plantation sector has risen to over five million hectares with recent conversions of large tracts of forest to oil palm plantations.<sup>46</sup> Between 1982 and 1999, a total of four million hectares of Indonesia’s forests were converted to plantations, according to Ministry of Forestry and Crop Estates statistics. The Salim conglomerate alone, with its close connections to Suharto, was able to obtain in-principle permits for conversion of 1.2 million hectares of forest to oil palm estates in this period.<sup>47</sup>

But even farmers outside the plantation sector with legally certified title were often unable to hold onto it in the face of the onslaught from corrupt local officials acting in the name of “development” and backed by the New Order’s state security apparatus. To give some indication of the scale of land speculation associated with plantation,

<sup>43</sup> Of the thirty-three land disputes processed by the Bandung Legal Aid Institute (LBH, Lembaga Bantuan Hukum) since the mid-1980s (LBH Bandung, case file data), one-third were in relation to HGU (Hak Guna Usaha) or commercial use-right leases. Calls for revision of HGU provisions of the Basic Agrarian Law relate to ceilings on size of holdings allocated to plantation estates, and the protection of rights of smallholder cultivators and farm laborers working on areas under HGU leases. See Andik Hardiyanto, “HGU Harus Dibatasi: Revisi Pasal-pasal Hak Guna Usaha dalam UUPA untuk Keadilan dan Kemakmuran Kaum Tani Miskin,” in *Usulan Revisi Undang-Undang Pokok Agraria: Menuju Penegakan Hak-Hak Rakyat Atas Sumber-Sumber Agraria* (Jakarta and Bandung: Konsorsium Reformasi Hukum Nasional dan Konsorsium Pembaruan Agraria, 1998), pp. 160-71.

<sup>44</sup> HGU leases were divided among forty-eight foreign owned companies, 709 domestically owned private companies, 388 national-level and forty local-level state-owned companies, and twenty-one cooperatives. Privately owned plantations had been established through issuing new HGU leases on state land to large conglomerates in the 1980s and 1990s. 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 products. See Dianto Bachriadi, “Situasi Perkebunan di Indonesia Kontemporer,” in Dianto Bachriadi, Erpan Faryadi Faryadi, and Bonnie Setiawan, *Reformasi Agraria: Perubahan Politik, Sengketa dan Agenda Pembaruan Agraria di Indonesia* (Jakarta: KPA and Lembaga Penelitian Ekonomi Universitas Indonesia, 1997), p. 128. Most were leases converted to HGU from the original Dutch plantation leases (*erfpacht*), but there were some new HGU leases on state land; for example, the Nucleus Estate Smallholder leases in the Sukabumi region of West Java.

<sup>45</sup> See Table 10, “Agricultural Land Control 1963-1993,” in Dianto Bachriadi and Gunawan Wiradi, “Land tenure problems in Indonesia—The need for reform,” in *Land for the People*, ed. A. Lucas and C. Warren (Forthcoming).

<sup>46</sup> More than one million hectares of fragile peat swamp forest in Central Kalimantan were inappropriately converted to agriculture with the stroke of a pen when the disastrous PLG (Proyek Lahan Gambut) project was approved by Presidential fiat in 1996 for a transmigrant rice cultivation scheme. Following poor harvests and devastating forest fires in 1997-98, the ravaged area is now slated for conversion to oil palm plantations. New leases were being negotiated while original claims for compensation had still not been dealt with. See “Pengusaha Swiss dan Malaysia Lirik Eks PLG,” *Banjarmasin Post*, October 18, 2001.

<sup>47</sup> A. Casson, *The Hesitant Boom: Indonesia’s Oil Palm Sub-Sector in an Era of Economic and Political Change*. Center for International Forestry Research, Occasional Paper No. 29 (Bogor Indonesia: CIFOR, 2000), pp. 24, 48.

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 Agency records show that between 1993 and 1998 it had issued location permits<sup>48</sup> 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 developers, but only 26 percent of that land had actually been developed, leaving large tracts of “sleeping lands” (*tanah tidur*) at the time of the collapse of the Suharto regime.<sup>49</sup> The issue of neglected plantation land remained a problem throughout Suharto’s New Order.<sup>50</sup> It was thousands of hectares of these lands that became objects of reclaiming actions. Plantation crops were removed and food crops planted during the euphoric first months of the reform movement. Resolution of these cases remains today one of the most intractable issues facing the Indonesian government in the Reform Era.

The Consortium for Agrarian Reform (KPA, *Konsorsium Pembaruan Agraria*), an umbrella organization established by and for NGOs working on land and agrarian issues, which has for the last decade coordinated some hundred local groups working on those issues, compiled an inventory of structural land conflicts since 1970.<sup>51</sup> As of

<sup>48</sup> Under PerMenAg/BPN No2/1993 (which regulates procedures for companies to obtain location permits and land for investors) the National Land Agency (BPN) can issue location permits to companies seeking land for development. Under this regulation, the company with a location permit could evict landholders (even if they have full ownership [*hak milik*] rights), circumventing the usually drawn-out negotiations via land procurement committees in order to determine compensation, with government involvement, as stipulated in KepPres 55/1993, which regulates the procurement of land for public projects by government in the public interest. See Boedi Harsono, *Hukum Agraria Indonesia*, rev. ed. 1996, pp. 635-44. In practical terms, PerMenAg 2/93 made it easier for private investors to obtain land under Building Use-Right leases (HGB, *Hak Guna Bangunan*) because it allowed the company to negotiate directly with landholders once the location permits had been issued. This circumvented the process of having to work through cumbersome (for investors) land clearance committees (*panitya pembebasan tanah*) as required for both public and private projects under earlier legislation. (Permendagri 2/1976. See Endang Suhendar and Ifdal Kasim, *Tanah Sebagai Komoditas: Kajian Kritis atas Kebijakan Pertanahan Order Baru* [Jakarta: ELSAM, 1996], pp. 58-59). However, coercion in private land release process often occurred and speculation was widespread. Thiesenhusen et al., 1997, pp. 21, 23. Ironically, the regulation sets the latest expiry date of HGB as September 24 (Hari Tani and the date on which UUPA was promulgated) of the thirtieth year since issuance of the location permits. Boedi Harsono, *Hukum Agraria Indonesia* (1996), p. 555.

<sup>49</sup> “Kebijakan Pertanahan Orde Reformasi,” *Informasi*, no. 224, Tahun XVIII (October 1998): 4.

<sup>50</sup> The Basic Agrarian Law provides that HGU leases which are neglected be cancelled (§ 34). SK Menteri Pertanian No 167/1990 in articles 3, 4, and 5 specifies what the Minister can do if HGU is not used for the original purpose as stated in the HGU lease. The HGU lease on Suharto’s Tapos ranch stated the land was to be used for a plantation, so its conversion to a cattle ranch was technically in breach of the law. Dianto Bachriadi and Anton Lucas, *Merampas Tanah Rakyat: Kasus Tapos dan Cimacan* (Jakarta: Kepustakaan Populer Gramedia, 2001), pp. 5-6.

<sup>51</sup> The KPA data base on Agrarian Conflicts was initiated in collaboration with the authors as part of a research project funded by the Australian Research Council. 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 incomplete, biased by media interest and accessibility of activist organizations to conflict sites, and must be interpreted carefully for that reason. The preponderance of cases recorded in the database is for provinces in Java (58 percent) and Sumatra (26 percent). This is partly accounted for by the intensity of the investment push in these provinces. But the low visibility of conflicts in remote locations means that they are most certainly under-represented in KPA statistics.

2001, they had documented 1,475 cases in 2,277 villages, covering 2.5 million hectares of land and affecting almost two million people. These “structural” cases, which were a systematic consequence of state policy, involved disputes between local people and one or a combination of these parties—government departments (42 percent), private (45 percent) and state (10 percent) corporations, or the military (3 percent)—as the principal antagonist. Direct military involvement in these disputes is reported in 7 percent of the cases covered.

### NGO-Popular Alliances in Emerging Civil Society

When Suharto was finally forced to step down in 1998, in the wake of an intractable economic crisis, the political constellation altered dramatically. The crisis period was characterized by the emergence of ad hoc alignments of activist students, NGOs, and newly formed or revived community groups which began to take on the mantle of long-repressed civil society. Government departments and international agencies now found themselves in roundtable discussions with groups they formerly ignored or treated with suspicion.

The role of non-government organizations and student activist groups in resistance to compulsory expropriation had become increasingly important in the later years of the Suharto regime. By the mid 1980s, student groups, Legal Aid, and other NGO advocacy organizations in Java and Sumatra acted as negotiators, supporters, and sometimes coordinators of protest actions for land rights. By the 1990s, this movement had broadened to include outer island regions, linking local NGOs with international movements under the banner of environmental sustainability, and, after 1993 (The year of Indigenous Peoples), indigenous people’s rights. NGO involvement in these grassroots struggles became increasingly tied to broader political agendas for democratization, regional autonomy, and good government. Discourses on human rights and environmental protection thus became part of the framework within which local struggles were being articulated well before Suharto’s downfall, and they attracted substantial support from international donors such as NOVIB and Oxfam, and later the Ford Foundation, USAID, AusAID, and other bilateral and multilateral agencies which underwrote large conferences bringing together mass organizations from far-flung provinces. While the language of the movement for “civil society” may have been little more than jargon for some farmers, many local groups actively joined in the students’ struggle for political reform in Jakarta in early 1998 and incorporated many of the issues associated with the global NGO movement into their platforms.<sup>52</sup>

Grassroots organizations sprang up everywhere, linking with existing networks and forming new ones. *Adat* community groups, representing some of the people most

<sup>52</sup> Demonstrations on Hari Tani (National Peasants’ Day) 2001 directly linked local agrarian issues to the worldwide anti-globalization campaign. In West Java, Surabaya, Yogyakarta, and Palu, protesters called for a halt to liberalizing the importation of agricultural commodities (in 2001, Rp. 12 trillion worth of agricultural products were imported into Indonesia) and to the introduction of genetically modified crops, alongside demands for the return of farmers’ stolen lands. In Jakarta, protesters carried placards calling on leaders to “Stop WTO” as well as to pass legislation on agrarian reform and resolve the numerous cases where the people’s agrarian rights had been abused. See “Petani Unjuk Rasa Tuntut Kembali Reformasi Agraria,” and “Jangan Serahkan Pertanian ke Mekanisme Pasar,” *Kompas*, September 25, 2001; “Menyambut Hari Tani: Petani Yogya Tolak Benih Rekayasa Genetika,” *Koran Tempo*, September 25, 2001.

disadvantaged by the politics of development during the New Order, joined together in 1999 to establish the Alliance of *Adat* Communities of the Archipelago (AMAN) in an effort to transcend the long history of marginalization experienced by “indigenous”<sup>53</sup> minorities under the Indonesian State. The systematic confiscation of land and resources and the displacement and denigration of minority cultures undermined the natural resource base and customary governance regimes of *adat* communities, sowing the seeds of separatist movements and ethnic conflicts from Papua to Aceh. The formation of AMAN (Aliansi Masyarakat *Adat* Nusantara, Alliance of the *Adat* Peoples of the Archipelago) at a national congress whose theme was “Challenging the Position of Indigenous Peoples vis-à-vis the State” marked a significant turning point in at least the discursive position of indigenous minorities, and one with far-reaching political potential. The Congress was attended by 208 delegates from 121 *adat* groups in twenty-three provinces, and was facilitated by thirteen agrarian environmental and human rights NGO networks.<sup>54</sup>

The Declaration produced at the AMAN Congress accuses the Indonesian State of “systematic destruction” of *adat* communities through legislation, which effectively negated *adat* rights, and through lack of respect for community beliefs and values in government policy. The legal machinery of expropriation—the Basic Agrarian (1960), Forestry (1967), Mining (1967), and Transmigration (1972) Laws, and the 1974 and 1979 Regional and Village Government Laws—were the tools the state wielded for “freeing up” land (*pembebasan tanah*)<sup>55</sup> for development. The declaration put forward by AMAN Conference delegates places heavy store in the powers of law, which is somewhat surprising given *adat* minorities’ experiences with the legal system over the decades since independence. It calls for the repeal or revision of all legislation in which the concept of national control over resources was used to disenfranchise *adat* communities, and for a new law guaranteeing full recognition of the sovereignty of *adat* peoples. It also demands the participation of *adat* peoples in the drafting of new legislation and in policy making generally (§ 3, 4, 5). Finally, the Declaration calls on the Indonesian government to become a signatory to the International Labour

<sup>53</sup> The use of the term “indigenous” is another example of the interaction with international movements. The term was regarded as unacceptable by the Indonesian government because of its politically awkward connotations in international law and because all but the small percentage of mainly ethnic Chinese Indonesians could be regarded as “indigenous.” “Indigenous minorities” is nevertheless an appropriate means of distinguishing these marginalized groups from the largest Javanese ethnic group that has dominated Indonesia’s political and cultural landscape since independence. As indigenous rights became a global human rights issue, this discourse was imported and increasingly began to influence representations of the cultural minorities referred to collectively as the *adat* peoples (*masyarakat adat*) of Indonesia. See Tania Murray Li, “Articulating indigenous identity in Indonesia: Resource politics and the tribal slot,” *Comparative Studies in Society and History* 4,1 (2000): 149-79; and Greg Acciaioli, “Grounds of Conflict, Idioms of Harmony: Custom, Religion, and Nationalism in Violence Avoidance at the Lindu Plain, Central Sulawesi,” *Indonesia* 72 (October 2001): 81-114.

<sup>54</sup> AMAN, *Menggugat Posisi Masyarakat Adat terhadap Negara* (Jakarta: Kongres Masyarakat Adat Nusantara and Lembaga Studi Pers & Pembangunan, 1999); International Work Group on Indigenous Affairs, “Update on Indonesia: The indigenous world, 1998-1999” (Copenhagen: IWGIA, 1999), pp. 209-11).

<sup>55</sup> The term provides a legal gloss to what in most cases amounted to theft. “*Perampasan*” was the word used in the sympathetic article in *Suara Pembaruan* reporting the AMAN conference, “Trilogi pembangunan hancurkan hak masyarakat,” *Suara Pembaruan*, March 16, 1999.

Organization Convention No. 169 and to the Draft UN Declaration on Indigenous Peoples (§10).<sup>56</sup>

The first steps towards the revival of an independent farmers movement had begun with an Interregional Workshop on Advocacy for Land Cases in Bandung in 1993, which brought together seventy NGOs and farmers' organizations, the most prominent of which at the time was the North Sumatran Farmers' Union (SPSU, Serikat Petani Sumatra Utara).<sup>57</sup> The 1993 Workshop was important because this was the first time farmers who were victims of the New Order development policies got together to tell their stories and talk about their interests. It was also the first time some of these farmers' organizations were exposed to (middle-class) NGOs and to leftist ideas concerning the structural importance of building strong peasants' organizations that could challenge the hegemony of farmers' groups controlled by the New Order.<sup>58</sup> After the 1993 Workshop came two important further meetings. The first in 1995 in Bandung saw the founding of the Consortium for Agrarian Reform (KPA). The second meeting in July 1998 founded the Indonesian Federation of Farmers' Unions (FSPI, Federasi Serikat Petani Indonesia). The FSPI was founded partly because farmers' groups felt that the 1995 formation of KPA did not fully reflect the interests of farmers' organizations.<sup>59</sup> While some regarded this as a split, KPA's view was that it reflected a

<sup>56</sup> AMAN, *Mengugat Posisi Masyarakat Adat*, pp. 3-5 and 25-30.

<sup>57</sup> The SPSU, founded in the early 1990s by ex-student activists based in North Sumatra (and also involved in the rural development NGO, Yayasan Sintesa), works for agrarian reform and the rights of peasant farmers. The five NGO organizers of this first interregional workshop were the Yayasan Sintesa, LBH Pos Bandar Lampung, LP3 (Lembaga Pendidikan dan Pengembangan Pedesaan—Bandung), LEKHAT (Lembaga Kajian Hak-Hak Masyarakat—Yogyakarta), and Manikaya Kauci—Bali. The key leaders initiating this meeting included Noer Fauzi and Boy Fidro (LP3), Dede Marwardi (LBH Pos Bandar Lampung), M. Yamin (LEKHAT), and Henry Saragi (Yayasan Sintesa). All of the aforementioned became founders of KPA, except Henry Saragi, who became the driving force behind the formation of FSPI and is still its Secretary General. The 1993 workshop produced twenty-nine papers analyzing the work of NGOs with farmers' organizations in dealing with land cases, and two important publications. The first was the collection of case studies, published twice: Boy Firdro and Noer Fauzi, eds., *Pembangunan Berbuah Sengketa: 29 Tulisan Pengalaman Advokasi Tanah* (Yayasan Sintesa-Kisaran, Post Yayasan LBH Indonesia-Lampung, LP3-Bandung, and LEKHAT-Yogyakarta, 1995) and *Pembangunan Berbuah Sengketa: Kumpulan Kasus-Kasus Sengketa Pertanahan Sepanjang Orde Baru* ([Medan:] Yayasan Sintesa and Serikat Petani Sumatera Utara [SPSU], 1998). The second publication was a collection of papers from the same Workshop by dissident social science academics and political activists analyzing farmers' opposition movements and land disputes during the New Order: *Perlawanan Kaum Tani: Analisis Terhadap Gerakan Petani Indonesia Sepanjang Orde Baru* ([Medan:] Yayasan Sintesa and Serikat Petani Sumatera Utara [SPSU], 1998).

<sup>58</sup> As mentioned earlier, the organizations (NGOs or farmers' unions) involved in the land cases were all from Java, Bali, or Sumatra. Cases in other regions were more involved with environmental issues (e.g. deforestation and illegal logging in Kalimantan and West Papua) and policy issues advocated by Jakarta-based NGOs, such as the Indonesian Environmental Forum (Walhi). At that time Walhi's main focus was policy-making in Jakarta and its application outside Java. Walhi was not yet involved in advocacy for local people's movements.

<sup>59</sup> This was because there were sixty-five NGOs at the KPA formation meeting, but only five farmers' organizations attended. These were the West Java Farmers' Union (SPJB), the SPSU, the Medan-based BPRPI (Badan Perjuangan Rakyat Penunggu Indonesia), the Lampung-based PITL (Perhimpunan Insan Tani Lampung), and the Central Java based HPMJT (Himpunan Petani Mandiri Jawa Tengah). At the July 1998 meeting which formed the FSPI, the key players were the SPSU, SPJB, and twelve other farmers' unions, including the Indonesian Farmer's Association for Integrated Pest Management (IPPHTI, Ikatan Petani Pemberantasan Hama Terpadu Indonesia) which started as an FAO project in the early 1990s, but had begun to support political issues by 1996.



difference in choice of strategy, with KPA concentrating more on advocacy for policy reform and FSPI concentrating on strengthening farmer's organizations at the grassroots level. Certainly some of the differences that emerge in later debates over legislative change discussed below can be traced to this period. Henry Saragi, one of the founders of both SPSU and FSPI and now in his second term as its secretary general, is one of key opponents to the TapMPR Policy Decision promoted by the NGO consortium including KPA. A third important agrarian conference held at the Gadjah Mada University's Center for Rural and Regional Studies in December 1998 produced an important Declaration on Agrarian Reform.<sup>60</sup> Finally, in 2001, came the farmers' conference in Cibubur in West Java, which included as the main organizers the FSPI and ten other NGOs and farmers' groups.<sup>61</sup> At this conference, farmers' organizations began to take up political issues associated with farmers' rights. The event was another major achievement along the road to broadening the popular organizational base needed to assert the interests of this increasingly marginalized sector of the nation's economy. Attended by 110 representatives of more than thirty farmers' unions (excluding HKTI [Himpunan Kerukunan Tani Indonesia], the New Order-controlled official farmers' union<sup>62</sup>) and forty activists from non-government organizations, the conference produced a Declaration on the Human Rights of Farmers (the *Deklarasi Hak-Hak Asasi Petani*), extending human rights claims beyond the conventional focus on political and civil rights to social, cultural, and economic rights.

The Declaration, which contains sixty-seven points, states that farmers had been betrayed by the government's failure to implement the Basic Agrarian Law and its pursuit of policies and legislation in conflict with its popular social commitments. Appealing to the rubric of international human rights, the Declaration claims farmers' rights to livelihood, land, access to natural resources, as well as rights to organize and to free expression.<sup>63</sup> The Conference also passed resolutions calling for a serious

<sup>60</sup> This conference was co-sponsored by KPA, Bina Desa, ELSAM, and LATIN, and hosted by the NGO Forum of the Special Region of Yogyakarta. The venue was significant: the conference was held at Gadjah Mada University's Center for Rural and Regional Studies (PPSPK), with rural sociologist Lukman Soetrisno supporting efforts to bring discussion of agrarian issues back into the Indonesian academy. Of the 120 organizations which attended this conference, between thirty and forty were farmers' organizations. For the Declaration on Agrarian Reform issued at that conference (the embryo of KPA's first draft of the Tap IX on agrarian reform-see below), see KSPA, Pokja PSDA, and KPA, *Meneguhkan Komitmen Mendorong Perubahan: Argumen-argumen dan Usulan Ketetapan MPR-RI tentang Pelaksanaan Pembaruan Agraria dan Pengelolaan Sumberdaya Alam yang Adil dan Berkelanjutan* (Bandung: 2001), pp. 35-41.

<sup>61</sup> These organizations were KomnasHAM (Komisi Nasional Hak Asasi Manusia), Bina Desa, ELSPAT (Lembaga Studi Pedesaan dan Pertanian Terpadu), CAPS (Center for Agricultural Policy Studies), CNDS (Center for National Democratic Studies), TRK [not identified], IPPHTI (Ikatan Petani Untuk Pemberantasan Hama Terpadu Indonesia), FAO/IPM (Food and Agricultural Project on Integrated Pest Management), KPA (Konsorsium Pembaruan Agrarian), and INFID (International NGO Forum on Indonesian Development). KSPA et al., *Meneguhkan Komitmen Mendorong Perubahan*, pp. 55-56.

<sup>62</sup> HKTI was a mass organization set up to replace radical farmers unions of the pre-1965 period and was totally under government control during the Suharto era. Not to be left out, HKTI organized its own national seminar in October 2001 on "Agrarian Policy and Reforma Agraria." Gunawan Wiradi, personal communication, October 1, 2001.

<sup>63</sup> "Deklarasi Hak-Hak Asasi Petani Indonesia," issued at the National Conference on Agrarian Reform for the Protection and Fulfillment of Farmers' Rights, Cibubur, Jakarta, April 17-20, 2001, in KSPA et al., *Meneguhkan Komitmen Mendorong Perubahan*, pp. 63-73. The nine resolutions of the conference include support for agrarian courts, an end to arbitrary arrests of farmers by police, opposition to liberalization of

commitment from the government to the priority of Agrarian Reform as mandated under the Convention on Economic, Social, and Cultural Rights of the United Nations. In pursuit of this goal, it resolved to pressure the People's Consultative Council (MPR, Majelis Permusyawaratan Rakyat) to formulate a Policy Decision (*Ketetapan* or TapMPR) as the basis of new legislation on agrarian reform.<sup>64</sup>

Each of the above meetings represented major steps toward integrating and strengthening the agrarian movement in Indonesia. Land and resource conflicts under the New Order had precipitated the formation of numerous local organizations to resist state appropriations.<sup>65</sup> But these were sporadically coordinated and lacked extensive networks and national political representation as a result of the long history of repression of all forms of local political activity since the obliteration of the Communist Party in 1965. Nevertheless, despite repression of all forms of local political activity since the obliteration of the PKI, the evidence on twenty-eight ongoing land conflicts presented at the 1993 conference shows that at the local level farmers had been resisting New Order policies for decades. The localized character of these disputes, however, meant that most of the farmers' organizations which were formed in the course of the struggle to occupy or reclaim land did not have the opportunity to develop a long-term set of principles toward a broader reform of agrarian policies. They tended to read "land reform" as limited to recognition of their rights of occupation and ownership. These farmers' organizations reflected rural people's immediate concerns—namely their need for land, infrastructure, input, and price supports, including import tariffs and agricultural inputs at prices which make locally grown rice more competitive with imports. The long period in which state policies prevented organization and political activism at the grassroots level has resulted in a tendency to advocate short-term, non-structural perspectives on the land and resource problems that, compounded by class and cultural differences, occasionally places local groups at odds with the NGO and student activists campaigning for their cause.

NGOs have had an ambivalent place in the popular reform process as locally active, but also metropolitan-oriented organizations with middle-class leaderships commonly from outside the regions in which they operate. They are usually dependent upon external sources of funding which require that their activities be defined in terms compatible with human rights, governance, and sustainability criteria set by parent agencies and their private and public donor agencies. In this way, discourses on human rights, indigenous people, gender, and environmental protection became part of the

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agriculture, opposition to genetic engineering, and opposition to revisions to the UUPA proposed by the BPN.

<sup>64</sup> "Resolusi Konferensi Pembaruan Agraria untuk Perlindungan dan Pemenuhan Hak Asasi Petani untuk Panitia Ad Hoc II- Badan Pekerja MPR RI mengenai Desakan Pembuatan Ketetapan MPR RI Tentang Pembaruan Agrarian," in KSPA et al., *Meneguhkan Komitmen Mendorong Perubahan*, pp. 54-56. While Indonesia is a signatory to the 1966 UN Covenant on Political and Civil Rights, it has not signed the Convention on Economic, Social, and Cultural Rights. Article 11 (2) obliges all signatories of this convention to implement agrarian reform.

<sup>65</sup> Among these, the Kedungombo Dam case involving resistance to resettlement by villagers in five communities in Central Java was the most high profile. Kedungombo was an important catalyst in the development of student and NGO involvement with farmers' issues, eventually leading to the 1993 and subsequent conferences. See G. Aditjondro, "Large Dam Victims and Their Defenders," in *The Politics of Environment in Southeast Asia*, ed. P. Hirsch and C. Warren (London: Routledge, 1998).

framework within which local struggles are being acted out, and the documents produced by these peoples' organizations reflect those discourses, although not always without challenge.<sup>66</sup> Although NGOs have been actively engaged in coordinating the organization and funding of these newly institutionalized people's forums, and certainly have influenced the framing of their platforms, they could hardly be said to be driving popular actions. One of the executives of the Consortium for Agrarian Reform commented, "Local groups are springing up everywhere—and not at the behest of NGOs. In fact we have the opposite problem compared to the situation before [*reformasi*—how to keep up with the explosion of these groups and keep them working together so they don't dissipate their efforts or lose momentum."<sup>67</sup>

### The Struggle for Law Reform—TapMPR IX/2001

Since 1998, NGO and grassroots activists' struggles to get legal reform on agrarian issues onto the national policy agenda have met with limited success. Political parties have been reluctant to commit themselves on this issue other than in the most vague and rhetorical of terms.<sup>68</sup> To date, the most far-reaching legislative gestures remain those initiated under the Habibie interim government. Prior to what were hailed as the first democratic elections since independence, Habibie was under intense pressure to demonstrate his reform credentials. A series of new laws and Policy Decisions were issued, proclaimed to be the basis for sweeping changes in the relationship between the State and the People. In particular, the Regional Government and Revenue Allocation Acts (UU 22/1999 & UU 25/1999) offered to the regions the prospect of more local autonomy and a larger share of the income from resources that had previously been appropriated to Jakarta. The regional autonomy legislation offered the prospect of returning governance and greater resource management to the local domain.

With respect to land and resources, a number of initiatives<sup>69</sup> signaled potentially significant changes in policy direction. Both the Presidential Decree (KepPres 48/1999)

<sup>66</sup> See the IWGIA report on the AMAN Congress ("Indonesia Update," pp. 213-19), which suggests NGO conference organizers influenced the agenda and outcome of the congress on at least two fronts which were contested by some of the delegates: Firstly, by channeling the separatist sentiments that were openly expressed by many of the groups represented, in favor of a more politically acceptable demand for local autonomy and full recognition of the precedence of *adat* rights; Secondly, in the high-profile focus on gender issues which confronted not only the disenfranchisement of women through state policy, but also some of the customary institutions and practices of indigenous minority cultures themselves. Women's issues were among the five parts of the program of action AMAN set for itself over the next three years, and a male and female representative from each province were to make up the Council which would steer the organization between triennial Congresses. AMAN, *Menggugat Posisi Masyarakat Adat*, p. 21.

<sup>67</sup> Dianto Bachriadi, personal communication, September 15, 1999. The number of organizations attending KPA national congresses rose from sixty-five in 1995, to ninety-one in 1998, and 117 in 2002 (KPA data), despite some groups hiving off into new peak bodies such as AMAN over that period.

<sup>68</sup> See the summaries of political party platforms published in *Partai-Partai Politik Indonesia: Ideologi, Strategi, dan Program* (Jakarta: Kompas, 1999). A speaker at the East Java Farmers' Congress in 2001 asserted: ". . . clearly the stalling of land reform is a result of the fact that not even one of the political parties has seriously taken up the fate of farmers . . . who represent 60 percent of the voting population." "Kekerasan Petani akibat Landreform tak dijanjikan," *Tempo Interaktif*, February 23, 2001.

<sup>69</sup> A new regulation on forest utilisation (PP 6/1999) granted communities the right to take forest products for their daily needs within concession areas. Under a ministerial decision (KepMen 677/Kpts-II/1998),

establishing a study team to review policy and law with respect to implementation of land reform,<sup>70</sup> and a Ministerial Regulation (PerMenAgraria 5/1999) setting out guidelines for resolving the problem of the territorial rights (*hak ulayat*) of customary (*adat*) communities, explicitly recognize that implementation of the Basic Agrarian Law had, in the words of the Presidential decree, “not been consistent with the values of populism [*nilai-nilai kerakyatan*] and the norms of social justice . . . .”<sup>71</sup> Neither of these regulations was implemented, however, as Habibie lost control of the government, and political struggles between 1999 and 2001<sup>72</sup> left virtually all urgent policy issues in limbo. Nonetheless, the media coverage given to the most high-profile land cases and pressure mounted by repeated demonstrations involving farmers’ groups, students, and NGOs could not help but exert some influence on the political parties which now have to compete at the ballot box.

Through this period of political infighting, NGOs concentrated their efforts on getting the MPR<sup>73</sup> to pass a Policy Decision on agrarian reform to be acted upon by the parliament (DPR, Dewan Perwakilan Rakyat, People’s Representative Assembly) and the President. The vagaries of political action and the complexity of the negotiation processes in which they have been engaged indicate the difficulties of pressing reform in the “Transitional” Era—as NGOs now prefer to label it<sup>74</sup>—and the absolute

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communities could gain officially recognized rights to manage areas of forest. The Ministry would permit community groups to form cooperatives which could apply for “community forestry leases” over production and protection forests as well as in specific conservation zones. The decree allows for community rights to harvest timber and to utilize traditional forest management systems as long as they do not impact negatively on “forest sustainability.” *Suara Pembaruan*, November 3, 1998 and November 14, 1998.

<sup>70</sup> The study team never met, or produced a report, suggesting that agrarian reform to meet grassroots concerns was merely paid lip service by the Habibie government.

<sup>71</sup> KepPres 48/1999 Menimbang: b.

<sup>72</sup> Abdurrahman Wahid was elected president as a compromise candidate following the 1999 general election, but was forced to step down only a year later, when Megawati Sukarnoputri took over the presidency. The daughter of founding nationalist President Sukarno, Megawati was not comfortable with the implications of decentralization for the authority of the nation-state, and initiated revisions in the legislation, which have so far been thwarted by regional interests. See “Indonesia develops clear sign of recentralization,” *Koran Tempo*, February 7, 2002.

<sup>73</sup> The MPR consisted of three hundred delegates appointed by Indonesia’s thirty provinces (*utusan daerah*) and representatives from farmers, workers, fishermen, intellectuals, and other social groups (*utusan golongan*), thirty appointed members from the military, in addition to the 470 elected members of the parliament (DPR). Under the New Order, the MPR met once every five years, mainly to produce the policy outline (GBHN, Garis Besar Haluan Negara), the basis of Indonesia’s Five Year Plans, and to re-elect the President for another five years. In that period, the powerful executive (the Cabinet Secretariat) made all the key policy decisions, and the President was only required to make a single accountability speech at the end of each five-year term. In general, the New Order avoided working through people’s institutions, in favor of asserting executive authority through presidential and ministerial decisions and instructions. In an effort to assert a stronger political role after the demise of the Suharto regime, the MPR decided to meet annually. This means that the current Indonesian president has to give an annual policy and accountability speech, and that the legislature has far more influence over policy and the exercise of executive authority. Recent constitutional amendments have abolished military seats in the parliament, and created a new upper house (DPD, Dewan Pemerintah Daerah, Regional Government Assembly) consisting of two elected members from each of Indonesia’s thirty-two provinces. This new body, together with the DPR, will henceforth constitute the MPR.

<sup>74</sup> “*Masa Transisi*” or “*Masa Peralihan*” (transition period) are now more frequently heard than “*Era Reformasi*” to describe the post-Suharto period. The changing terminology underscores frustration with the

prerequisite for organized and broadly based alliances between grassroots organizations, NGOs, and the media to insist that parliamentary institutions be placed at their disposal. The experience of activist groups also points to the heavy weight of persisting practices of corruption and intimidation inherited from previous regimes, and the deflective emphasis on rhetoric in lieu of serious commitment to the development of effective policy and law.

Initial efforts to put agrarian reform on the MPR's policy agenda at the 1999 and 2000 annual sessions were unsuccessful. The KPA had been working with student and farmers' groups in organizing mass actions involving community protests at regional parliaments across the country. It also initiated a "Million Signatures for Agrarian Reform" campaign addressed to political parties and the national parliamentary secretariat in Jakarta. Despite initially responsive gestures, the MPR's Ad Hoc Committee (PAH) II,<sup>75</sup> responsible for drafting Policy Decisions, suddenly dropped it from the list of items to be dealt with by the MPR the first year, claiming that agrarian reform was "not necessary and not realistic."<sup>76</sup> While agrarian reform activists blame lobbying and inducements from the plantation and mining company associations for this decision, KPA leaders admit in retrospect that there had not been enough groundwork done with members of the MPR Ad Hoc Committee in 1999.

After the early tactical defeat, KPA revised its approach before once again attempting to get the matter onto the agenda for the 2001 MPR session. They felt it necessary to "socialize"<sup>77</sup> the issue of agrarian reform with the members of the MPR

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legal and political continuities of the new regime with New Order practices, and reflects the more qualified, but still optimistic, views on Indonesia's changing political constellation.

<sup>75</sup> MPR Badan Pekerja Panitia Ad Hoc II deals with Policy Decisions of a non-constitutional nature, while Panitia Ad Hoc I now deals with amendments to the Indonesian constitution. Andrew Ellis and Etsi Yudhini, "Indonesia's New State Institutions: the Constitution Completed, Now for the Detail . . . the MPR Annual Session in 2002: A Commentary," Jakarta: National Democratic Institute for International Affairs, November 2002.

<sup>76</sup> Related by Dianto Bachriadi, personal communication, March 3, 2000. In response to the removal of agrarian reform from the MPR agenda in that year, KPA members conducted a hunger strike at the parliament building in Jakarta, resulting in the arrest of seven protesters (KPA Press Release October 13, 1999). In 2000, a Draft Decision (RanTap) on agrarian reform did get onto the Committee agenda, but was not among the seven RanTap, all relating to national institutional and governance policy (*ketatanegaraan*), that finally went to the full MPR session. Once again agrarian reform lost out in the priority stakes and, along with other RanTap, was held over until 2001 (KPA Press Releases on July 4, 7, and 13, 2000). As a result, communications between KPA and the parliamentary drafting group broke down. On August 14 controversy erupted surrounding the kidnapping of four KPA activists who had staged another hunger strike at the parliament building protesting the new government's lack of action on agrarian reform. "Koalisi Ornop dan AMAN Tuduh Polisi," *Tempo*, August 18, 2000; "Polda Metro Jaya Tetap Panggil Empat Aktivistis," *Kompas*, September 2, 2000.

<sup>77</sup> Dianto Bachriadi, personal communication, January 23, 2001. The term "sosialisasikan" entered New Order discourse in the latter phase of Suharto's rule, when developmentalist policies were increasingly coming under public scrutiny as a result of the critical attentions of a somewhat liberalized mass media, and when the government could no longer rely on implicit public support for its programs. While suggesting efforts at persuasion through the provision of information, New Order usage was largely aimed at manufacturing consent to its hegemonic program. The term seems to have taken on a somewhat more interactive meaning as part of a process of popularizing issues and engaging support in the new dispensation, but remains part of a rhetorical litany carried over from the New Order that deserves critical scrutiny.

who they believed had little appreciation of the extent of the problem. KPA joined with a coalition of academics and NGOs, through the Kelompok Studi Pembaruan Agraria (KSPA, Agrarian Reform Study Group)<sup>78</sup> in discussions aimed at negotiation with the MPR's Legislative Committee and with the National Land Agency (BPN, Badan Pertanahan Nasional).<sup>79</sup> This "socialization" process began in May 2001, when the newly formed KSPA presented a discussion paper on agrarian reform issues to members of MPR Ad Hoc Committee II.<sup>80</sup> Further consultations and two public seminars produced a number of alternative draft Policy Decisions (*RanTap*, *Rencana Ketetapan*) on agrarian reform which were under discussion in the months leading up to the November 2001 MPR session. The expanded NGO network, including groups focused on environmental issues allied with concerned academics<sup>81</sup> through KSPA, this

<sup>78</sup> KSPA was formed on the initiative of a group committed to agrarian reform in Indonesia, including Professor of Law and Director of the Center for Agrarian Law Studies (Pusat Studi Hukum Agraria) at Gadjah Mada University, Maria S. W. Sumardjono, who became its Coordinator and is now a deputy head of the National Land Agency (BPN). KSPA brought together influential academics and NGO leaders in an effort to impress upon the parliament the urgency of dealing with the agrarian reform issue. KSPA members were: Professor Sediono Tjondronegoro (Institut Pertanian Bogor), Gunawan Wiradi (Akatiga Bandung), Nur Hasan (Center for Agrarian Law Studies, Faculty of Law, UGM), Ifdhal Kasim (ELSAM), Sandra Moniaga (ELSAM), Dadang Juliantara (Yayasan Lapera Indonesia), Noer Fauzi and Dianto Bachriadi (KPA), Achmad Sodiki (Faculty of Law, Brawijaya University Malang), and Endang Suhendar (Akatiga). It presented a draft Policy Decision to the Panitia Ad Hoc II Badan Pekerja MPR-RI on May 21, 2001 with a background document outlining the extent of the problem: "Ketetapan MPR RI tentang pembaruan agraria: sebuah komitmen negara menggerakkan perubahan menuju Indonesia yang lebih baik." KSPA, unpublished background paper, 2001.

<sup>79</sup> The Badan Pertanahan Nasional (BPN) is responsible for issuing land titles and location permits. It acquired a reputation as one of the most corrupt and ineffective arms of the bureaucracy and was under threat from reformists. Hasan Basri Durin, however, proved to be an active Agrarian Minister in Habibie's transitional cabinet, and he was responsible for the new regulation promising more serious recognition of *adat* land rights (PerMenAgraria 5/1999). One of the more accessible of high-profile figures in the transitional administration, he circulated a number of drafts of revisions to the Basic Agrarian Law and accepted invitations to attend NGO Symposia to debate government proposals. It was Durin who was held hostage by students on the campus of the Padang Teachers Training Institute (IKIP, Institut Keguruan Ilmu Pendidikan), not for his role as Head of the BPN, but on charges of corruption during his ten-year term as Governor of West Sumatra. The BPN had been slated by President Abdurrahman Wahid for abolition in 1999 because land was to be managed by the *kabupaten* (districts) under the new regional autonomy laws. BPN officials mounted a campaign with the theme "land for the people," promoting the need for agrarian reform and using the same language as activists. The change in BPN discourse was partly because they were under threat, and partly because there was an internal fight for the ideas of agrarian reform within the National Land Agency. In any event, the president did not push through the change, and the BPN survived, but no longer with the status of an independent ministry. Instead it now comes under the Ministry of Home Affairs, with that Minister as ex officio head of BPN. The deputy head, currently Dr. Lutfi Nasoetion, is in charge of the day-to-day running of the National Land Agency, which now supports revision of the UUPA. Dianto Bachriadi, personal communication, January 23, 2001. See contributions by Hasan Basri Durin and Lutfi Ibrahim Nasoetion in BPN/STPN, *Reformasi Pertanahan, Pemberdayaan Hak-hak atas Tanah* (Bandung: Penerbit Mandar Maju, 2002), pp. 66-98. Although BPN supported a range of measures for resolving agrarian problems, it did not believe that land reform in the 1960s sense of land redistribution would solve the problem of poverty because there was not enough land to distribute.

<sup>80</sup> "Ketetapan MPR RI tentang Pembaruan Agraria sebagai Komitmen Negara Menggerakkan Perubahan menuju Indonesia yang Lebih Baik: Masukan Pemikiran dari Kelompok Studi Pembaruan Agraria" submitted to Panitia Ad Hoc II Badan Pekerja MPR-RI, May 21, 2001.

<sup>81</sup> Gunawan Wiradi and Sediono Tjondronegoro are among the few in academic circles who continued to press the issue of agrarian reform throughout the New Order period. Both have worked actively with

time succeeded in forcing parliamentary action. The MPR's Ad Hoc Committee II appointed two Working Parties (*Tim Perumus*) with responsibility for drawing up a draft policy decree on natural resource management and agrarian reform which Committee II could then submit to the annual MPR assembly meeting in early November.<sup>82</sup>

The coalition consisting of KPA and KSPA then recruited representatives of another group of NGOs concerned with environmental and natural resource management issues, Pokja PSDA (The Working Group on Natural Resources Management, Kelompok Kerja Pengelolaan Sumber Daya Alam<sup>83</sup>). They faced the problem of how to integrate the two elements of sustainable resource management and agrarian reform within what KPA and KSPA insisted should be one draft Policy Decision. This was an issue within the NGO coalition as well as between it and the Parliamentary Working Parties. The KPA-KSPA position emphasized a structural approach to agrarian reform, with primary attention to the needs of the mass of rural farmers,<sup>84</sup> while the environmental NGO-Pokja PSDA group emphasized the

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student groups and NGOs as advisors and patrons, encouraging a substantial amount of research and publication on agrarian matters. Their involvement gave additional weight to the output of the peak organization KPA and the research consulting group Akatiga, two groups which became widely sought after by funding agencies and whose spokespersons were in turn frequently quoted in the press. See Felix Sitorus and Gunawan Wiradi, eds., *Sediono M.P Tjondronegoro: Sosiologi Agraria Kumpulan Tulisan Terpilih* (Bandung: Yayasan Akatiga, 1999); and Noer Fauzi, ed., *Gunawan Wiradi: Reforma Agraria Perjalanan yang Belum Berakhir* (Yogyakarta: INSIST press, 2000).

<sup>82</sup> The two Working Parties of MPR Committee II consisted of the thirteen-member Working Party on Agrarian Reform, chaired by Hamim Thohari (a member of the MPR *utusan golongan*) and the twelve-member Working Party on Natural Resources, chaired by Vincent Radja (a member of Kesatuan Kedaulatan Indonesia, or KKI). Membership of these two Working Parties overlapped, with six people sitting on both. Party affiliations on the two committees were: PDI-P (five), Golkar (four), PPP (two), PKB (two), Partai Reformasi (one), PBB (one), KKI (one), military (one) and two members from the delegated sectoral groups (*Utusan Golongan*), Mohammad Iqbal (from DEKOPIN) and Hamim Thohari (from the Islamic group). The six drafts in circulation before submission of the final document to the 2001 sitting of the MPR included drafts by KPA, KSPA, Professor Tjondronegoro, two drafts produced by the MPR Committee II working parties separately treating agrarian reform and natural resource management, and one produced by the FSPI (Federation of Indonesian Farmers' Unions). The first five versions were combined into one *RanTap* by a joint team (*tim gabungan*) formed after the first Bandung Conference, before being submitted to Committee II, while the Farmers' Federation version went directly to the Committee in mid-October 2001. (See Proceedings of Unpad/ITB and MPR PAH II Semiloka Nasional). All the drafts are also published in KSPA et al., *Meneguhkan Komitmen Mendorong Perubahan*, pp. 57-123.

<sup>83</sup> As of April 2002, the seventeen NGOs involved in Pokja PSDA (the Work Group on Natural Resources Management) were: ICEL (Indonesian Center for Environmental Law), Walhi (Indonesian Environmental Forum), WWF (World Wide Fund for Nature), LATIN (Lembaga Alam Tropika Indonesia), ELSAM (Lembaga Studi dan Advokasi Masyarakat), AMAN, HUMA (Hukum dan Masyarakat, Law and Community), JATAM (Jaringan Advokasi Tambang Indonesia), FWI (Forest Watch Indonesia), Jaringan PELA (Jaringan Pesisir dan Kelautan), JKPP (Jaringan Kerja Pemetaan Partisipatif), IMA (Indonesian Marine Alliance), KPSHK (Konsorsium Pendukung Sistem Hutan Kerakyatan), LEI (Lembaga Ekolabel Indonesia), RMI (Rimbawan Muda Indonesia), Sawit Watch, and Telapak Indonesia. From interview with Rina Kusuma from Pokja PSDA sekretariat, Garut, April 25, 2002. These NGOs were working on sustainable management of natural resources, including forestry and mining industries, linked in the case of groups such as AMAN to concerns with the rights of local indigenous communities.

<sup>84</sup> KPA from the outset had called for a "system of social welfare and social security for village people that makes maximal use of natural resources for the well-being of the people." KPA, *Deklarasi Pembaruan Agraria*, 1998, § 9 & 10.

sustainable management of resources, which some among them felt might be compromised if the proposed TapMPR subordinated sustainability to agrarian issues, as their all-encompassing understanding of the term “agrarian” was intended to imply. Some of the environmental NGOs belonging to Pokja PSDA do not accept this broad concept, which derives from the Basic Agrarian Law, as an appropriate framework for dealing with environmental issues. Not all members of the coalition were comfortable either with the mass-mobilization strategies for confronting land tenure cases that had characterized KPA’s approach to the struggle for reform.<sup>85</sup>

The environmental NGOs eventually agreed to support a single coherent Policy Decision to avoid the kind of “sectoral law”—separating agrarian law from that for forests, mining, etc.—that would provide the opening for a continuation of New Order practice. Although ultimately persuaded to commit to one Tap, KPA-KSPA and Pokja PSDA remained two differently oriented groups, engaged in a somewhat uneasy alliance. Nevertheless, an effective working relationship was able to formulate a draft Tap that combined aspirations of the environmental NGOs (Pokja PSDA) and the agrarian reform KPA-KSPA group.<sup>86</sup> They jointly formed a Tap Advocacy Team which was involved in public hearings and assisted Committee II in drafting successive revisions of the final Tap.<sup>87</sup> This Advocacy Team then had to contend with the separate Working Parties of the MPR Committee II (one for agrarian reform and one for natural resources management), where the issue of separate Policy Decisions for the two areas of concern arose for a different reason.

<sup>85</sup> Interview with Wiwiek Awiati, Director of ICEL, September 26, 2002; Dianto Bachriadi, personal communication, August 26 and September 24, 2001.

<sup>86</sup> The KPA-KSPA-Pokja PSDA team that was involved in producing the penultimate Tap draft for Committee II consisted of members from Pokja PSDA, Hariadi Kartodiharjo (a forestry lecturer from ITB and fourth deputy to the Environmental Minister), Myrna Safitri (an anthropologist and researcher in the P3AE-UI), Ricardo and Sandra Moniaga from HUMA (formerly ELSAM), Nina Dwisasanti (WWF), Asep Suntana (LEI), and four from KPA-KSPA (Usep Setiawan, Yudi Bachriectora, Erpan Faryadi, and Noer Fauzi). The chair was Dianto Bachriadi (also KPA). The combined draft submitted to Committee II argues that: (1) Agrarian reform and sustainable and just management of natural resources are inseparable; (2) Agrarian and natural resources conflicts between 1967-2001 have social and human rights dimensions as well as ecological dimensions; (3) Agrarian reform involves changing social structures to give rights over resources to the people; (4) The people must be involved in management of natural resources; (5) Implementation of agrarian reform depends upon resolving conflicts, reforming unequal agrarian social structures, and reforming unsustainable natural resource management practices. Other articles in the NGO-proposed RanTap reaffirmed equal access for all to natural resources, with recognition of *adat* communities—“those who first worked the land” (*pembuka pertama tanah*) and other local communities as managers and controllers of local natural resources, and payment of proper compensation to those affected by agrarian reform. The president and the DPR are given the task of revising or revoking all laws which do not adhere to these principles set out in the Tap MPR. See “Usulan Rancangan Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia tentang Pelaksanaan Pembaruan Agraria dan Pengelolaan Sumberdaya Alam yang Adil dan Berkelanjutan,” in *Semiloka Nasional*, Sept 2001 (unpublished); and KSPA et al., *Meneguhkan Komitmen Mendorong Perubahan*, pp. 26-32.

<sup>87</sup> Activists in the Tap Advocacy Team involved in negotiations with PAH II from KPA-KSPA were: Dianto Bachriadi, Noer Fauzi, Yudi Bachriectora, Usep, and Erpan, while the Pokja PSDA group included Ismid Hadad (Yayasan Kehati), Hariadi Kartodihardjo (IPB), Mubariq Ahmad (NRM, the USAID-funded National Resource Management Project), Chalid (JATAM), Abdon Nababan (AMAN), Mas A. Santosa and Wiwiek Awiati (ICEL), Asep Suntana (LEI), Agus Purnomo (WWF), Dewi Suralaga (WWF), Nur Amalia (WWF), Maftua Sirait (ICRAF), Emmy Hafidz (Walhi), and Sandra Moniaga (HUMA). Interview with Rina Kusuma from Pokja PSDA Sekretariat, April 25, 2002.



From the beginning and throughout the course of negotiations, the Chair of the Working Party on Natural Resources, Vincent Radja, pressed hard to keep Policy Decrees on agrarian reform and management of natural resources separate.<sup>88</sup> NGO participants believed Radja, speaking for the mining industry lobby, attempted to use the second Bandung conference to sabotage the agrarian reform Policy Decision once again. Academics with mining and energy backgrounds were invited to participate and dominated the proceedings, while scholars such as Sayogyo and Herman Suwardi who had expertise in agrarian reform were not invited to attend, and little time was left to debate the issues.<sup>89</sup> Radja is said to have objected strongly to the input of “external [NGO] forces” in the final Tap draft.<sup>90</sup> Although he eventually acceded to the general consensus on a single Tap, his compromise—“*satu TAP dua substansi*” (two substances in one Tap)—prevailed in the final document, and indicates the extent of vested interest influence on the legislative process. The separate section on natural resources, promoting “optimal exploitation” (§5/2b) in the final Policy Decision, is expressed in much more developmentalist language than the agrarian reform section and continues to beg questions about the relationship between reform in the two spheres.

This time the Policy Decision on agrarian reform and natural resources management remained on the agenda and made its way to the 2001 MPR general session. By this time, the more broadly based coalition pressing for reform had achieved more credibility than the campaign run by KPA alone in 1999-2000.<sup>91</sup> The wider KPA-KSPA-Pokja PSDA alliance had begun “socializing” the issue of agrarian reform among parliamentarians well before the MPR session. Combined with pressure mounted by an increasingly organized and articulate farmers’ movement, this deliberate strategy to broaden the base of the campaign by bringing in environmental NGOs and to channel much of the debate through academic forums paid off. By the final stages, the campaign for a single Tap had support from within MPR Committee II

<sup>88</sup> Committee II eventually came to the conclusion that a consensus had to be reached on one MPR Policy Decision, but Radja held out for two Taps up until the general MPR Session. The Committee II decided that the Working Parties had to reach a consensual agreement rather than majority vote if they wanted to have the RanTap put forward to the MPR general session, so the matter could not be easily resolved.

<sup>89</sup> Gunawan Wiradi, personal communication, October 1, 2001.

<sup>90</sup> Based on interviews with various NGO and academic figures in 2001 and 2002, including Dianto Bachriadi, Maria Ruwastuti, Noer Fauzi, Ismid Hadad, Sediono Tjondronegoro, and Gunawan Wiradi.

<sup>91</sup> This earlier campaign became controversial when four KPA activists who had been on a hunger strike at the parliament building in Jakarta to publicize the case for agrarian reform and gain support from the MPR were kidnapped and “disappeared” for thirteen days, the places of their detention unknown (“Mogok makan, lalu hilang,” *Tempo*, September 3, 2000). The four returned to Jakarta unharmed but shaken (“Penculikan tanpa jejak,” *Tempo*, September 10, 2000). As in other student disappearances that took place during protests leading up to Suharto’s downfall, KPA suspected that large plantation interests and the military were behind the kidnappings, in an attempt to divide and discredit the agrarian reform movement (“Pesan penguasa tanah lewat penculikan,” *Forum Keadilan*, September 10, 2000). Rumors (reinforced by police comments and media allegations) surfaced that the hunger strikers, who showed no evidence of physical violence, had orchestrated the alleged kidnappings themselves to draw public attention to the agrarian issues for which they were campaigning. These allegations soured relations between KPA and the YLBHI-affiliated Kontras, the NGO concerned with political disappearances since 1997, when the latter group also questioned the hunger strikers’ version of events (“Misteri aktivis menculik aktivis,” *Tempo*, September 24, 2000). KPA refuted the allegations in press interviews (“Ketua KPA: Kontras melangkah tak proporsional,” *Kompas*, September 14, 2001; “Dianto Bachriadi: Kontras terjebak teori polisi,” *Tempo*, September 24, 2001) and in a press release (“KPA Korban Trial by the Press,” September 22, 2000).

itself, notably from Muslim party and special interest group (*utusan golongan*) members of the MPR Committee, some of whom had NGO backgrounds.

Not to be under-rated in a critical assessment of the strategic process for reviving parliamentary interest in agrarian affairs was the coordinated political pressure mounted by newly organized farmers' groups. Thousands of farmers from the Aliansi Petani Indonesia (API)<sup>92</sup> were prevented by security forces from entering the city of Bandung to carry their protest to the September Bandung Conference. Led by the popular Secretary General of the Pasunden Farmers Union (SPP, Serikat Petani Pasunden), Agustiana,<sup>93</sup> they succeeded in stopping traffic along the main thoroughfare into Bandung for seven hours and in forcing five of the parliamentary working party participants to leave the conference to engage in a dialogue with them on the outskirts of the city. They called for the MPR Committee to ensure that the Tap on agrarian reform be put forward to the MPR 2001 session, and to commit itself to side with the people by protecting the rights of farmers, fishers, and *adat* communities. They insisted that the MPR clarify that state land (*tanah negara*) is only managed and not owned by the government through a change in the legislation which would read explicitly "the land belongs to the People" (*Tanah adalah milik Rakyat*).<sup>94</sup>

Agustiana asserted that the large-scale demonstration that choked traffic into Bandung for much of the day was necessary because no attention was being paid to them by the parliament. In what was described as a heated statement, a farmer from

<sup>92</sup> Aliansi Petani Indonesia (Indonesian Farmers' Alliance, API), a breakaway group of the FSPI, was formed after the April 2001 farmers' conference because of an alleged link between FSPI funding and the World Bank. API included twenty-three local farmers' organizations from Java and South Sumatra. Allegedly for security reasons, police prevented the thousands of farmers mobilized for the occasion from entering the city of Bandung to take their protest to the provincial-level BPN and to the seminar venue (*Pikiran Rakyat*, September 15, 2001). The chair of the Committee II was then taken by NGO activists to speak to the protesting farmers.

<sup>93</sup> Agustiana, chairperson of the Serikat Petani Pesunden (SPP), and Coordinator of the API, estimated that 1,700 farmers and their supporters (mainly from Garut, Tasikmalaya, and Ciamis) travelled in several hundred vehicles to Bandung. The farmers' union leader said they were able to "exploit the police fear" that the demonstration would get out of control, the reason the convoy was not permitted to enter the city. Police instead allowed MPR members to meet the farmers' representatives on the blocked road at the entrance to Bandung; this was, in the end, a more sensational media event. Agustiana recalls, "We had a meeting with MPR members on the main road [in Bandung], and they agreed that what was proposed by the Farmers' Alliance was rational, and not inconsistent with legal principles. Sutisna, an MPR member who was a regional delegate (*utusan daerah*) from West Java, and a member of HIPMI (Himpunan Pengusaha Muda Indonesia, Indonesian Association of Young Entrepreneurs) also spoke in support of the draft Tap MPR. Interview with Agustiana, at Garut, West Java, April 26, 2001.

<sup>94</sup> "Parakan Muncang Lumpuh 7 Jam - Belasan Ribu Petani Tertahan," *Metro*, September 15, 2001; "Raja Petani dari Jawa Barat," *Metro*, September 15, 2001. The protesting farmers formally demanded that the proposed TapMPR incorporate seven principles, namely, to (1) implement the spirit (*roh*) of the UUPA and persuade the government to revive land reform, particularly on state land, and that the government should stop acting as if state land (*tanah negara*) belongs to it instead of the people; (2) resolve land dispute cases in a humanitarian and just way; (3) revise existing laws and regulations so there is no conflict with the UUPA; (4) stop the use of force and the "criminalization" of farmers engaged in struggles for rights to land; (5) stop giving state-owned enterprises a monopoly over natural resources via commercial use rights leases (HGU); (6) reevaluate all commercial use rights leases (HGU) and forestry exploitation rights (HPH). Those obtained by companies through KKN (collusion, corruption, nepotism) should be revoked and the land returned to the people; (7) ensure agrarian development will in the future be based on the three principles of sustainability, democracy, and justice.

Garut further demanded an end to extensions of plantation leases, and that certificates of title be issued to local people for *adat* land at Garut which had been taken for plantations in the Dutch period. Otherwise, he threatened, the cocoa and rubber trees planted on the land “*akan habis dijarah.*”<sup>95</sup> During that dialogue, the chair of MPR Committee II, Rambe Kamaruzaman (from Golkar) admitted that the land problem was a fundamental question of justice. He committed himself to “battle” to satisfy the farmers’ demands, promising that if he failed he would resign from his position as Committee head.<sup>96</sup> Members of the MPR Committee attending the second Bandung Conference agreed to put forward a single Tap incorporating agrarian reform and natural resource management under the same “large umbrella.”<sup>97</sup> The farmers’ action appears to have been decisive in shifting the position of the delegates to the second Bandung Conference, which in the view of NGO participants had been stacked in favor of mining and plantation interests in a last-minute bid to sideline their efforts.

After meeting with the protesting farmers, MPR Committee II members attending this crucial conference, who intended to finalize the Committee’s position in the lead-up to the MPR session, produced a statement “defending the interests of Indonesian farmers.” Parliamentary Committee participants were apparently startled at the extent of the active support from farmers’ groups demonstrating at the protest and agreed to the SPP/API demands presented to them. In language that could have been written by the farmers and NGOs themselves, the statement acknowledges that the oppression of farmers should be of concern to all. Their statement promised to support farmers in their struggle for justice and welfare under the umbrella of a new MPR Policy Decision.<sup>98</sup>

Given previous experience with the Byzantine parliamentary processes and its “somersault politics” (*politik jungkir balik*)<sup>99</sup>—spectacular reversals of political position symptomatic of the Era Transisi—there was some doubt whether any of the commitments expressed by members of Committee II in their Statement would be reflected in the final Tap. But the persistence of the loose alliance of farmers,

<sup>95</sup> Literally, “will be looted to the finish.” “Ribuan Petani Gagal ke Bandung,” *Pikiran Rakyat*, September 15, 2001.

<sup>96</sup> “Ribuan Petani Dihadang Polisi Cicalengak,” *Republika*, September 15, 2001; “Ribuan Petani Gagal Masuk Bandung,” *Kompas*, September 15, 2001.

<sup>97</sup> “Undang Undang—Payung Besar Antisengketa,” *Forum Keadilan*, October 7, 2001. The government sponsored farmers’ union, the HKTI, had pressed for separate Tap on land and resources, arguing that agrarian laws had always leaned toward supporting the people’s economy, while resource laws had tended to support the interests of business. “HKTI minta ada ketetapan reformasi agraria yang dibuat terpisah,” October 31, 2001, [www.bisik.com](http://www.bisik.com), accessed December 18, 2001. They had organized their own seminar to push this line. Activists would agree, but argue that segregation of these laws under the New Order allowed sectoral interests to ignore agrarian law, and clearly were used to benefit powerful business interests.

<sup>98</sup> “Pernyataan Anggota Panitia Ad Hoc II Badan Pekerja MPR-RI ‘Untuk Membela Kepentingan Kaum Tani Indonesia,’” Bandung, September 14, 2001, signed by nineteen members of the Working Party.

<sup>99</sup> There was every opportunity for “somersault politics” to occur because of the bureaucratic process the draft Policy Decision (RanTap) had to negotiate. Firstly it had to go from the Working Party, to the PAH II’s Agrarian Team, then to the plenary meeting of Committee II, then to the MPR Commission dealing with social affairs, before finally the RanTap went to the MPR plenary session. This made the whole process, already characterized by intense negotiations among different interest groups, unpredictable. Dianto Bachriadi, personal communication, September 28, 2001; Gunawan Wiradi, personal communication, October 1, 2001.

academics, and NGOs, for all their differences, undoubtedly affected the outcome of Committee deliberations. Certainly the statement issued by parliamentary members of Committee II was a significant departure from earlier assertions that agrarian reform was “neither necessary nor realistic.”

In the event, the new Policy Decree (Tap MPR IX/2001)<sup>100</sup> on Agrarian Reform and Management of Natural Resources was passed by the MPR on November 9, 2001. It recognizes that the management of natural and agricultural resources to date have caused poverty, structural inequalities, social conflict, and environmental degradation; that existing legislation is overlapping and contradictory; and that the MPR has constitutional responsibility to resolve these problems. Certainly reference is made to most of the issues—human rights, sustainability, resource justice (including gender equity), legal supremacy, transparency, and public participation—on which non-government organizations have campaigned, and a considerable proportion of the document takes its wording from the draft Tap they put forward. It confronts the two critical issues associated with land conflicts in the New Order period, customary (*adat*) rights, and the stalled land reform program. Article 4(j) sets out the principle of “recognition, respect and protection of the rights of *adat* law communities, and the association between cultural diversity and agrarian/natural resources.” Article 5(1b) resuscitates land reform, stipulating a restructuring of land tenure and use that promises justice through attention to ownership of “land for the people.” It requires review of former acts and regulations, thoroughgoing inventory and registration of land ownership and use, the implementation of land reform, and resolution of disputes.

Most of the NGOs were pleased that the fundamental reform issues they had fought to bring back into the legislative domain were included in the final MPR Policy Decision. Many are troubled, however, that the “*dua substansi*” split between agrarian and natural resource management issues in the text is a weakness that will continue to haunt agrarian reform. Certainly the prominent reiteration (in the first paragraph) that natural resources represent “national wealth” that must be “optimized”<sup>101</sup>, and the obligatory primacy given to national integrity and unity—the first on the list of principles upon which land reform and environmental management shall be carried out (§4/a)—were cause for concern. These phrases conjure associations with the state-centrist developmentalism of the New Order that had subsumed earlier populist and socialist commitments with greater legal authority and rhetorical power.

<sup>100</sup> Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia Nomor IX/MPR/2001 tentang Pembaruan Agraria dan Pengelolaan Sumber Daya Alam, November 9, 2001. Hereafter referred to as TapMPR IX.

<sup>101</sup> The NGO drafting team proposed replacing “*optimal*” with “*lestari*” to place the emphasis on “preserving” rather than maximizing exploitation of resources. It also attempted unsuccessfully to reword the prefatory statement referring to agrarian and natural resources as “bestowed” (*rahmat*) by God on the Indonesian nation; it recommended using “*titipan*” (entrusted) in lieu of the unconditional *rahmat*. Although there are several references in the Tap to sustainability and protection of resources for future generations, the natural resource NGOs involved in the drafting negotiations expressed concern that there is no recognition of the need to limit exploitation and extraction of natural resources, or to revise policies which have caused degradation of ecosystems. Nor does it address the implications of Indonesia’s archipelagic geography, which involves different bioregions that may require different approaches to restore ecosystems. Letter to Badan Pekerja MPR RI, from Kelompok Kerja Pengelolaan Sumber Daya Alam, Jakarta, October 19, 2001.

More serious for the future prosecution of the agrarian reform movement and its implications for democracy and equity in the post-Suharto Era are divisions that have emerged within the farmers' movement and between it and NGO supporters over TapMPR IX. Agustiana's SPP<sup>102</sup> and API are very much in support of Tap IX, believing that now farmers have a legal basis for negotiating their claims with local government, and that farmers' alliance activities have finally been legitimized by the new Policy Decision.<sup>103</sup> Other farmers' groups, most vocally the FSPI and SPJB (Serikat Petani Jawa Barat, West Java Farmers' Union), do not support TapMPR IX. Excluded from

<sup>102</sup> Agustiana was born in the *kabupaten* town of Tasikmalaya, his father was a high-level bureaucrat in the BPN office in neighboring Garut. After university study (which he didn't complete) in Jakarta (where he learned useful informal leadership skills through involvement with several *preman* gangs), Agustiana returned to Garut in the early 1990s to found a youth organization, the FPPMG (Forum Pemuda, Pelajar, dan Mahasiswa Garut, Forum for the Youth, High School Students, and University Students of Garut). After leadership training (facilitated by Bandung NGO activists), Agustiana and FPPMG went to North Garut to assist villagers of Cisewu who were fighting State Forestry Corporation (Perhutani) attempts to appropriate their land for a social forestry project (Aktivis Serikat Petani Jawa Barat, "Perjuangan rakyat petani Cisewu merebut tanah dan ladangnya yang diklaim Perum Perhutani Unit III Jawa Barat untuk areal proyek Perhutanan Sosial," in *Pembangunan Berbuah Sengketa: Kumpulan Kasus-Kasus*, pp. 127-134). This case gained him a reputation as one of the top peasant organizers in southern West Java. In 1997, he was sentenced to eight years' jail by the Tasikmalaya district court that (wrongly) judged him to be a mastermind of the riots that had rocked that city. He was released as a result of the amnesty President Habibie granted to all political prisoners in 1998, with his reputation, if anything, enhanced. In February 2003, he gave a speech at the Third World Social Forum in Porto Allegre, Brazil. Agustiana is also knowledgeable about the *sunnah* (Islamic teaching); he uses Qu'ranic quotations and shows respect for local *ulama* by adopting their discourse in his speeches. Although SPP members are sometimes excluded from local communities—on the grounds they "oppose the government" or are "land grabbers" (*penjarah*)—Agustiana's relationship with small *pesantren* (Islamic schools; leaders of the smaller schools are not coopted by the State, unlike those of the large *pesantren*), in a part of West Java where Islamic norms are embedded in political and cultural life, is important. Even though he has a good knowledge of socialism, Agustiana takes care to translate these concepts into Islamic idioms in his speeches. Dianto Bachriadi, personal communication, July 11 and August 23, 2003. SPP's Institute for People's Learning recently took the initiative to establish an Islamic school (*madrasah*). According to its leader, SPP's uniqueness is firstly its organization (each district is autonomous), secondly its members' militancy and total commitment to their organization, and thirdly the solidarity among members and between SPP groups. SPP is not just focused on land issues, but also discusses broader social changes which need to follow land occupations, including local government reforms. Their Institute for Village Leadership Empowerment has already run two courses for local leaders, including members of the new village councils (BPD), many of which are controlled by SPP, so SPP policies on agrarian reform have become village council policies in many areas. Interview with Agustiana, Ciamis, July 10, 2003. Agustiana has close ties with KPA. He has been a member of the KPA Council for some years and now chairs the Council.

<sup>103</sup> A member of the Ciamis branch of SPP comments: "Before Tap IX we were considered to be an irregular organization [*organisasi liar*]. Now our existence is recognized from the grassroots level to the Bupati [of Ciamis]. The Bupati was pleased with the new Tap IX because it clearly sided with the poor [*keberpihakan jelas sekali terhadap rakyat kecil*] in resolving local land cases. Every OTL [*organisasi tani lokal*, local farmers' group] has a brochure about the Tap, and we also gave it to local government." Interview with Nonang Junaidi, Southern Region Coordinator of Ciamis branch of SPP, Garut, April 26, 2002. Another SPP activist said that Tap IX was "a big help." There is now less suppression of SPP activities by local officials, whereas before SPP members were accused of being either ex-PKI members or "looters" (*penjarah*). In short, before the Tap there were many obstacles to land protest and reclaiming actions, especially from the military and police. Interview with Agus Aceng, Garut, April 21, 2002. SPP members and their supporters—claimed to be as many as 400,000—have taken control of 36,000 hectares in Garut, Tasikmalaya, and Ciamis *kabupaten* since *reformasi* began in 1998 (60 percent of the reclaimed land is forest controlled by Perhutani, while 40 percent is plantation land under HGU lease).

the consultation process that produced the NGO drafts, FSPI had submitted its own draft Tap directly to the MPR Committee.<sup>104</sup> They believe that the version of the TapMPR IX eventually passed threatens the existence of the Basic Agrarian Law (UUPA), which they see as central to protection of their rights.<sup>105</sup> They are particularly concerned that the new MPR Policy Decision would displace the symbolic centrality of UUPA and the nation's farmers, as well as potentially opening the door to a neo-liberal approach to agricultural policy.<sup>106</sup> Given the ambiguities in the final document and its circumvention of the symbolic capital that the UUPA represents, critics

<sup>104</sup> The FSPI draft Tap demands the repeal of all legislation incompatible with the commitment of UUPA to agrarian justice and the well-being of the Indonesian people, and specifically rejects deliberations toward a new Land Law being drafted by the National Land Agency. It calls for the establishment of land reform courts; for legal recognition of ownership of land meant to be subject to land reform and of other lands in disputed possession of farmers; and for the restoration of the rights of victims of land conflicts, either through restoration of their lands or through compensation, taking account of the feelings of the local people affected. It also demands prosecution, in the Human Rights court, of those who were directly or indirectly responsible for violation of agrarian law, and finally requires the government to ensure the participation of independent farmers' organizations in the planning, implementation, and evaluation of agrarian affairs. This draft is published along with the five other draft submissions in KSPA et al., *Meneguhkan Komitmen Mendorong Perubahan*, pp. 119-23. The "Draft Tap on Agrarian Reform" produced by the FSPI is on several points more explicit than those produced by the NGO alliance (KPA, KSPA, and KPA-KSPA-Pokja PSDA). Of the five draft Policy Decisions, the second (KSPA's) is more academic, while the third emphasizes natural resource management. Professor Tjondronegoro's draft emphasized agrarian reform and refers to the UUPA (Basic Agrarian Law) of 1961, while the FSPI draft emphasizes land reform and independent farmers' organizations, and refers to the UUPA. The first two NGO drafts do not refer to UUPA, but to land disputes, unequal distribution of land, and sectoralism in agrarian administration. When KPA proposed their draft Tap, and when KSPA put forward the second draft, they were still supported by the farmers' groups. However, when Pokja PSDA added "natural resources management," farmers' organizations withdrew their support. For farmers' groups the term "natural resource management" was associated with capitalist exploitation at the expense of the "little people's" interest in controlling the land. They believe that natural resource management originates from Jakarta- or Bogor-based NGOs who have little experience in "people's organizations," and that policy issues promoted by these NGOs are too Jakarta based. Dianto Bachriadi, personal communication, July 22, 2003.

<sup>105</sup> Under Indonesian constitutional law (*hukum tata negara*), Tap MPR have ambiguous standing. While these Policy Decisions set out principles which should eventually be represented in DPR legislation, as well as in presidential decrees, their implementation is not regarded as binding on the DPR or the president. Acts promulgated by the DPR refer to the constitution, not to TapMPR, for their legal authority, hence the NGO focus on the need for a presidential decree to set up a national committee to formulate a policy on the implementation of the TapMPR IX Policy Decision on agrarian reform.

<sup>106</sup> There have been long-standing concerns about the objectives of the currently side-lined World Bank Land Administration Project for titling because of its twin objectives of strengthening farmers' legal rights and providing legal certainty that would facilitate development of the land market. USAID has also been interested in exploring the possibilities of agrarian reform (not necessarily market based) since 1996. See W. Thiesenhusen, T. Hanstad, R. Mitchell, E. Rajagukguk, "Land Tenure Issues in Indonesia," unpublished report prepared for the United States Agency for International Development, Jakarta [by] AGRIDEC Agricultural Development Consultants Inc., 1997. While nothing came of the original report, a more recent joint project with the US-based Institute for Rural Development proposed a new land reform project to BPN which would not interfere with market-based land reform (i.e., land reform on plantation land) because it would focus, instead, on the redistribution of dry fields (*ladang*) and house gardens (*pekarangan*), which would be treated separately from neglected plantation land. This project was reputedly to have a budget of US\$7 million. The aim was to distribute dry fields and house gardens to poor farmers. But the project has now been dropped for lack of support within BPN. Personal communications with Erpan Faryadi, July 27, 2002; and with Gunawan Wiradi, July 29, 2002.

regarded this studied avoidance of reference to the law as a serious miscalculation by the activist groups who had campaigned for this legislative route to reform.

### UUPA—Of Strategies and Symbols

Significant sectors of the reform movement were disturbed by the outcome of the long deliberations leading up to the passage of Tap MPR IX, and by its failure to address the question of the Basic Agrarian Law. In a piece published in *Kompas*, Idham Samudra Bey, Executive Secretary of the Center for Agricultural Policy Studies (CAPS),<sup>107</sup> points to the central significance of the ideological relationship between UUPA, with its popular-socialist grounding, and Indonesia's "peasant"<sup>108</sup> class who were the quintessential *Rakyat*, the pivotal focus of policy and law in the period from the revolution to 1965. He insists that TapMPR IX shows no signs of "fulfilling the hopes and dreams of Indonesia's farming people."<sup>109</sup> However satisfying the flowery language of human rights and sustainability liberally peppered throughout the document may appear, he asserts, it does not position farmers (*tani*) or the people (*rakyat*) at the center of state policy in the unequivocal way that the Basic Agrarian Law had done. Concerns expressed in Idham's letter that the Policy Decision would become the wedge with which to overturn the UUPA—which TapMPR IX does not even mention<sup>110</sup>—are echoed in the response of the SPJB statement<sup>111</sup> rejecting the MPR Policy Decision. Theirs is an explicitly class-situated position:

<sup>107</sup> CAPS was not a member of KSPA or Pokja PSDA. Idham Samudra Bey, a lecturer at Muhammadiyah University in Solo, staged a walkout at the first Bandung Conference in August 2001. At the time he was concerned by the use of the term "natural resources management" (see Note 104, above). Idham Samudra Bey is a student of Sritua Arief, a well-known leftwing economist, who was one of the first social scientists to use dependency theory in Indonesia.

<sup>108</sup> The Indonesian word *tani* can be translated either as "peasant" (implying traditional village ties and subsistence orientation) or, with the more "modern" commercially orientated connotations of the term, "farmer." After the green revolution, it has been widely argued that it is not possible to speak of a "peasantry" any longer, although the extent to which traditional social ties and subsistence principles operate in rural communities are still subjects of considerable debate. The English-language word "peasant," however, conveys a sense of intimacy and solidarity that is not captured by reference to "farmer" in discussions of rural social organization.

<sup>109</sup> Idham Samudera Bey, "Lonceng Kematian UUPA 1960 Berdentang Kembali—Menyoal TAP MPR No IX/MPR/2001," *Kompas*, January 10, 2002.

<sup>110</sup> The KSPA-Pokja PSDA and MPR Committee Working Party drafts reaffirmed the basic UUPA principle that agrarian law has a primarily "social function," stressing the integrity between land and resources and the people's right to them, but these drafts significantly do not mention the Basic Agrarian Law explicitly. Only the submissions by Professor Tjondronegoro and the Farmers' Federation refer directly to UUPA in their draft Policy Decision. Tjondronegoro's draft emphasised reordering (*menertibkan kembali*) the agrarian system to assist in the transformation from an agrarian to an industrial society, guaranteeing justice and equality (*pemerataan*) of access to natural resources, and reactivating the Basic Agrarian Law as the main source for revision of natural resource legislation to bring it again under the jurisdiction of UUPA. The Indonesian Farmers' Federation draft insists that implementation of agrarian reform must be based on UUPA, but that parliament must rectify the interpretation of the much abused State right of control (*hak menguasai negara*) and national interest (*kepentingan negara*) provisions of the UUPA. They also include the radical demand to identify officials and businessmen who have caused agrarian conflict and bring them to a human rights court. See KSPA et al., *Meneguhkan Komitmen Mendorong Perubahan*, pp. 119-23.

The passage of Policy Decision No IX . . . will severely hurt the peasant class . . . . [It] restricts the meaning of the concept *agraria* to the matter of land, which opens the door as widely as possible for the entry of big capital in the exploitation of natural resources. We have to remember that the politics and economy of Indonesia continue to be piloted by and dependent on the IMF, which is patently capitalist. In all likelihood, the outcome of the Tap MPR on Agrarian Reform and Natural Resource Management will be laws and regulations coming from the parliament [DPR] that will pave the way for the entry of foreign capital. We all know the composition and interests of the parliamentary members who in no way reflect the interests of the people.

The agrarian problems faced by the people are already great. The birth of this Policy Decision will only cause more irregularity in the law on agrarian matters, stir up existing conflicts, and provoke new ones. Until now, UUPA No. 5 1960 has been the basis of agrarian law. With the proclamation of this Policy Decision, all regulations that currently exist will be changed in accordance with it. It is now no longer possible to implement the vision contained in UUPA No. 5 1960 because the vision contained in the new Policy Decision is fundamentally different . . . .

SPJB was one of the founders of KPA in the mid-1990s. Mia Wastuti, one of the two SPJB delegates to the third National KPA Congress in 2002, said that TapMPR IX did not represent farmers' interests. Neither the peasant class nor the UUPA receive mention in the 2001 Policy Decision, an omission that is highly symbolic for SPJB. There was little consideration of the need to strengthen farmers' organizations in any of the Tap debates. There is no trace either of the proposals put forward earlier by the second KPA Congress for an agrarian court. This proposal harks back to the 1960s mechanism for settling disputes and implementing land reform through special courts that included representatives of farmers' groups as well as legal specialists. None of the agrarian reform principles in TapMPR IX suggest that this level of direct participation in the legal process would be made possible for Indonesia's marginalized farmers. For critics among the farmers' groups, TapMPR IX offers nothing new that was not already promised by UUPA, and it threatens to jettison all of the Basic Agrarian Law's symbolic capital in the process. In their view, the new Policy Decision largely served to provide a vehicle for NGO discourses and interests which they argue are not really about redressing the lot of the farming class (SPJB Statement, February 15, 2002).

The possibility that TapMPR IX would effectively circumvent the Basic Agrarian Law was more than a technical legal question for these critics. The historical context and symbolism of the Basic Agrarian Law carry as much weight as its wording—however much it proved to have contradictory implications for the "People" it was supposed to protect. In his stinging critique, Idham argued that replacement of the Basic Agrarian Law will prove the final nail in the coffin of the people's interests it once represented, interests which were "castrated" by New Order policy and the resource legislation it spawned. TapMPR IX prepares the way for liberalization toward the "market friendly" land policy advocated by the National Land Agency (BPN) as

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<sup>111</sup> Kusnadi Candrawiguna, Ketua Umum, SPJB, "Serikat Petani Jawa Barat Menolak TAP IX/MPRRI/2001 mengenai Pembaruan Agraria dan Pengelolaan Sumber Daya Alam," Press Release, February 15, 2002.



more compatible with globalizing trends. The continued conflict between the interests of resource developers and farmers, and the question regarding mechanisms for resolving existing conflicts, are not broached in the Policy Decision. In Idham's words, the Tap "strikes the death knell for the Basic Agrarian Law" and "signifies the return of dark clouds over the future of Indonesia's farming people."<sup>112</sup>

In a response to the criticisms leveled by Idham, also published in *Kompas* (January 11, 2002), Dianto Bachriadi, representing the KPA, argues that the agrarian situation inherited from the New Order regime had so evidently departed from any commitment to the needs of the popular majority that a Policy Decision imposing a mandate from the people on the new government was an urgent necessity.

. . . The heart of Idham's concern . . . regarding the effect of Tap MPR IX on the fate of the country's farmers lies in its failure to invoke or to clarify the position of UUPA 1960, and the lack of any clear instrument that would be used to carry out the land reform mentioned in the Policy Decision. One point that must be clearly situated in relation to this disagreement is that the MPR Policy Decision was the optimal result from the political process that could be achieved, with the greatest potential to bring about change that we have at the moment. If we take account of all the [ambiguous and contradictory] potential of these changes—the evidence of people's and farmers' organizations, the strength of middle class ideology represented by NGOs, the weak attention and commitment from intellectuals and academics, the constellation of the political parties and parliament, the system of constitutional law, the pressure of international interests, alongside the changes in the political conjunctures within Indonesia itself, then the promulgation of MPR Policy Decision No. IX/MPR/2001 must be welcomed . . . If we look at the process of change that must take place in this country from a transitional perspective, that is, leaving behind all the political, economic, and cultural practices of the past in order to begin life as a people and a nation that is based on new principles, then this Directive can become an instrument to push the transitional process along political and legal lines.<sup>113</sup>

In practice, Bachriadi argues, the Basic Agrarian Law has already been emasculated (*dikerdilkan*) and disabled. He points to the Land Reform Law (UU 56/1961) which is based on UUPA, and which, while never revoked, has had no appreciable effect on the lives of Indonesia's rural population since the New Order came to power. The "national interest" proviso in UUPA had been the grounds for plantation leases and timber concessions that were the source of most of the land conflicts plaguing the country. For the "*adat* communities" of outer-island Indonesia there was no positive association with land redistribution tied to the Basic Agrarian Law, only the experience of land alienation. In any case, the exclusion of forests and other resources from the effective jurisdiction of the Basic Agrarian Law by the New

<sup>112</sup> Idham Samudera Bey, "Lonceng Kematian UUPA 1960 Berdentang Kembali."

<sup>113</sup> Dianto Bachriadi, "Lonceng Kematian atau Tembakan Tanda Start? Kontroversi seputar Ketetapan MPR RI No. IX/MPR/2001—Komentar untuk Idham Samudra Bey," *Kompas*, January 11, 2002. See also the statement by Noer Fauzi, then executive chairman of KPA, "Pembaruan Agraria dan Hak Asasi Petani" in *Wacana HAM*, no. 4, Tahun II, November 14, 2001, arguing the TapMPR will be "an additional tool in the efforts to pressure for the realization of national commitments to respect, protect, and fulfill the human rights of the nation's farmers."

Order sectoral laws on resources made the revision of all land and resource legislation urgent. If necessary, KPA was prepared to jettison the Basic Agrarian Law, seeing its contribution to the people's welfare as ambiguous at best. "If political calculation dictates that a better outcome would result from a new law that was comprehensive—at least as comprehensive as UUPA 1960—but isn't named 'UUPA,' in the framework of translating the mandate to progress agrarian reform, there need be no tears shed if UUPA 1960 has to be displaced [*tergusur*]."<sup>114</sup>

The academic Gunawan Wiradi acknowledges that parts of Tap IX are piecemeal, especially article 2, which leaves open the possibility that other legislation, even the UUPA, may be revised in contradiction to the spirit of the Policy Decision in a manner that would weaken rather than strengthen its core concerns. But Wiradi took the view that the passage of TapMPR IX could be interpreted as showing the government's intention to do something about agrarian problems. The new Policy Decision had its own strategic and symbolic significance. "It is no longer possible for farmers to be accused of communist actions, since land reform is back on the national agenda. Before by just talking about land you could be accused of being communist" (Gunawan Wiradi, personal communication, April 29, 2002). The NGO view is that TapMPR IX renews the mandate for land reform, but that it is only the first step toward making agrarian reform a pivotal part of the state's commitment to the people.<sup>115</sup>

For the optimists, the question now is how to put teeth into TapMPR IX via legislation.<sup>116</sup> They stress that the DPR and the President must undertake a review in order to revoke all laws that are in conflict with TapMPR IX. Implementation requires that the President set up an autonomous and independent body (*badan pelaksana*)<sup>117</sup> to

<sup>114</sup> Bachriadi elaborated on his views in an interview: "In some regions outside Java, local government bureaucracy and local BPN officials are using UUPA to neglect customary land rights. In UUPA, customary rights are recognized *as long as* they do not conflict with national interest and the State [UUPA article 5]. So local bureaucrats justify plantation leases using UUPA article 5, saying that commercial-use rights [HGU leases] are in the national interest. This is tying up large tracts of land which could be used by *adat* communities . . . . Few people today in Indonesia have seen any concrete results of UUPA, so there are very few supporters. How can the spirit of UUPA be kept without alienating people? We have to throw out the bath water, fully aware that we might also be throwing out the baby. If we only accept the symbolic significance of UUPA, then we are in danger of romanticizing it." Interview with Dianto Bachriadi, Bandung, April 21, 2001). On the official KPA position, see *Usulan Revisi Undang-Undang Pokok Agraria*. For a summary of the arguments for revision of UUPA, see Noer Fauzi, "Sesat Pikir yang dapat melanggenkan ketidakadilan agraria: kritik terhadap naskah revisi UUPA versi BPN," and "Berbagai versi alasan merevisi UPA," both in "[Background Papers for] Seminar dan Lokakarya, Arah Kebijakan Nasional mengenai Tanah dan Sumberdaya Alam Lainnya," Bandung, August 20–23, 2001.

<sup>115</sup> See also Gunawan Wiradi, "Tantangan gerakan pembaruan agraria 'posta' TapMPR No. IX/2001," makala narasumber (resource paper) to the Musawarah Nasional III Konsorsium Pembaruan Agraria, Garut, April 23–28, 2002.

<sup>116</sup> Noer Fauzi, personal communication, April 23, 2002. See also "Pembaruan setengah hati: TapMPR tentang pembaruan agraria dan pengelolaan sumber daya alam dinilai kurang memuaskan. Masih perlu dibentuk lembaga lagi?" *Forum*, November 26, 2001.

<sup>117</sup> In January 2002, a meeting was held at Cipayung to write a draft Keppres (Presidential Decree) to be sent to President Megawati Sukarnoputri, recommending the establishment of a national body to draft legislation to implement Tap IX ("Usulan Pembuatan Komisi Nasional Pembaruan Agraria dan Pengelolaan Sumberdaya Alam sebagai Implementasi Ketetapan MPR RI No. IX/MPR/2001," Cipayung, January 20, 2001). Participants were still divided between those who wished to focus on management/exploitation of natural resources and those who focused on agrarian reform; the agrarian reform group was concerned

carry out this task, as well as a special Agrarian Disputes Board. The latter is necessary because the Administrative Courts (PTUN, Pengadilan Tata Usaha Negara) cannot process appeals where court decisions on cases are more than ninety days old. As a consequence, decisions to extend HPH forest concessions and HGU plantation leases from the 1980s and 1990s cannot be appealed in the current legal situation. Also the narrow meaning of “land reform” in TapMPR IX remains problematic, since it only applies to rural agricultural land and urban land. The implication in Tap IX is that land reform does not include *kawasan hutan negara* (forestry areas administered by Department of Forestry), mining regions (managed by the Department of Mines), or coastal regions and the sea (administered by Marine and Fisheries Department.) This would mean that land reform would only be possible on 30 percent of Indonesia’s landmass. Meanwhile, the significance attached to common policy on land and natural resources notwithstanding, Pokja PSDA is proceeding to negotiate with the Ministry of Environment on a new sustainable resource management law, and KPA began discussions with BPN on the setting up of a national agrarian reform committee (KNPA, Komite Nasional Pembaruan Agraria). The exigencies of the inherited governmental framework and the need to achieve concrete outcomes appear to be driving current strategies. NGO actors indicated that despite these separate processes, the intent remains to integrate the legal regime in the long term.<sup>118</sup>

The effect of the “two substance, one Tap” formula for dealing with resource and agrarian reform issues, and the exclusion of any reference to UUPA in TapMPR IX, leave many of the concerns which originally motivated the drive for passage of the MPR Policy Decision unanswered. The different orientations of the two sections on agrarian reform and natural resource management in TapMPR IX derive ultimately from two preceding bodies of legislation. They are creatures of two regimes with two different conceptions of how social justice for Indonesia’s people is to be achieved. Five years into the Reform Era, the key issues affecting Indonesia’s agrarian population remain to be dealt with.

Ultimately the devil will be in the details. The MPR Policy Decision was partly able to placate competing interests by deferring substantive reform issues to subsequent legislation yet to be enacted by the DPR. The “Big Questions” remain to be answered: Will the Basic Agrarian Law, particularly its emphasis on the social function of and state control over land (*hak menguasai negara*) be revised or jettisoned? Will prior rights of occupants of “state lands” be recognized through official transfer of title on state plantations; and will concessions located on the traditional lands (*hak ulayat*) of *adat* communities be rescinded or renegotiated? Will restrictions on land speculation and land concentration for large development projects be introduced? And will effective mechanisms for actually enforcing old and new legislation be established? Little in

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that, without legislative reform, government departments would still be able to act on their own to implement different regulations relating to natural resources and land, repeating the old “sectoralism” problem. After this meeting, the KPA-KSPA-Pokja PSDA-led movement to implement the Tap seemed to lose momentum. The proposal for the formation of a national commission was not sent to President Megawati in time for inclusion in her 2002 accountability speech to the MPR (where government policies are outlined). As at other pivotal points in the struggle for agrarian law reform, factional disagreements among NGOs and between them and farmers’ groups appear to have dissipated the limited time and resources of the reform coalition. Gunawan Wiradi, personal communication, July 22, 2002.

<sup>118</sup> Interview with Wiwiek Awiati, Director of ICEL and member of Pokja PSDA, September 26, 2002.

TapMPR IX indicates how the justice it once again promises for the Indonesian people is finally to be achieved.<sup>119</sup>

Much will depend upon the continued capacity to mobilize political pressure to ensure forward movement. The fragility of the alliances among and between NGO and farmers' groups, and the failure to maintain the backing of significant factions among the very subjects of the agrarian reform movement, or to involve them at critical points in the negotiation process, threatens to derail the momentum that surrounded the TapMPR struggle.<sup>120</sup> NGO groups, although generally regarding the resuscitation of land reform and inclusion of both natural resources and land policy issues in the parliamentary directive as a victory, nevertheless expressed concern at the "halfhearted" commitment to integration of land and resource matters in the Tap and its failure to address past grievances with concrete steps toward resolution.<sup>121</sup>

Insofar as NGOs claim success in their effort to get the Tap through the MPR, it has been as much on the grounds of building process as on achieving outcome. Despite differences of position within the NGO movement, and between NGOs and the local groups they attempt to represent; despite general disappointment with the inadequacy of governance structures carried over from the Suharto regime; and despite the continued efforts of bureaucratic and business interests to frustrate reform efforts, debate and negotiation, strategic alliances and political pressure achieved what some activists regard as a reasonably accommodating foothold on which to mount the next

<sup>119</sup> The day before the TapIX was passed through the MPR, seven hundred farmers representing SPP, AMAN, API, and the FSPI demonstrated at the Parliament building against the failure of the Tap to mandate the rescission of all existing legislation that adversely affects farmers, and to require cancellation of permits and leases to forest, mining, tourist, and agribusiness ventures on land stolen from them. To their protest that the Policy Decision showed no serious intent to eliminate the causes of the suffering of rural farmers, a delegation from the MPR Committee responded with a familiar and vacuous claim: "For a full year we have travelled throughout Indonesia and have taken in all the aspirations that have been coming forth from the people." Aisyah Amini, quoted in "Ratusan petani berunjuk rasa di gedung DPR/MPR," *Kompas*, November 7, 2001. For KPA's proposal to implement the TapMPR, see *Komite Nasional untuk Pembaruan Agraria (KNPA): Usulan Konsorsium Pembaruan Agraria (KPA) kepada Presiden Republik Indonesia* (Bandung: KPA, 2002).

<sup>120</sup> Significantly, in the light of the subsequent opposition to TapMPR IX from most of the farmers' unions, there was no farmers' organization representative on the NGO Tap Advocacy Team (see note 85). Later justification of this by KPA was that farmers' organizations needed to exert direct influence through rallies and demonstrations outside the parliament building. Gunawan Wiradi holds the view that while the Cibubur Agreement produced at the April 2001 national farmers' conference on agrarian reform spelt out farmers' rights (see "Deklarasi Hak-Hak Petani Indonesia," in KSPA et al., *Meneguhkan Komitmen Mendorong Perubahan*, pp. 42-53), this Declaration and the draft RanTap it produced were not given much attention in NGO deliberations. In Wiradi's opinion, the NGOs' representatives appeared to have been too busy trying to sort out differences between themselves. Gunawan Wiradi, personal communication, July 22, 2002. Perhaps the FSPI viewpoint was unintentionally neglected because the Bandung-based KPA had closer relations with other farmers groups and their leaders, namely Agustiana and his West Java-based API and SPP, whose views did not represent the farmers' movement as a whole. More likely, it had to do with a conflict between those who primarily committed to ideology (who were convinced that farmers, rather than urban-educated middle-class NGO activists, should lead the agrarian reform movement) and those more interested in strategy (who argued that, for tactical reasons, a broad NGO coalition was needed to organize the campaign for the Tap MPR). Dianto Bachriadi, personal communication, August 23, 2003).

<sup>121</sup> "Koalisi Ornop Kritik RanTap MPR," *Kompas*, November 2, 2001.

stage of their struggle. NGOs have taken the passage of the Tap MPR IX as a sign of political commitment and an instrument that can be used to achieve concrete change.

## Conclusion

Paradoxically, the long hiatus in which land law was given little official notice by New Order authorities resulted as much from the perceived dangers of tampering with a body of principles that continue to hold such importance for ordinary Indonesians, as it did from official perceptions that agrarian issues were outdated and obstructive given new development objectives.<sup>122</sup> The Asian Economic Crisis, which precipitated Indonesia's political upheavals, demonstrated the importance of reconsidering the place of the agrarian sector—upon which all others are ultimately predicated—in the wider scheme of national development policy and political reform. One legacy of the Basic Agrarian Law has been that it kept alive recognition of the relationship between popular sovereignty and resource rights. The Basic Agrarian Law implicitly treated equitable access to land and resources as a civil right and the ultimate *raison d'être* of the nation state. Real reform requires a reconciliation of rhetoric, policy, and practice. Only the sustained engagement of organized activist non-government organizations and local groups with the media and the parliamentary process<sup>123</sup> could ultimately accomplish this.

Pramoedya Ananta Toer spoke optimistically of the fundamental changes taking place in rural areas across Indonesia—a remarkable activism among some of the people most widely silenced under the New Order, whose capacity to articulate their demands with changes in law will determine the shape of Indonesian civil society. Whether Pramoedya's remarks regarding the grassroots activism of the last few years prove prophetic, or merely the wishful thinking of a socialist conscience from a bygone era, will depend upon whether these mass movements are able to find genuine institutional expression in the new Indonesia, or whether, through a combination of competing interests and factionalism in the face of official corruption and the resurgence of military power, farmers are once again "robbed of their voices."

<sup>122</sup> Despite declining incomes for agricultural produce and the acceleration of industrial production since the mid-1980s, the total number of households dependent upon agriculture rose marginally between the 1983 and 1993 agricultural censuses, while the amount of land devoted to agriculture dropped from eleven million to ten million hectares. The magazine *Prima* concludes its article on the "Fate of Indonesia's Farmers" with the reproach: "Three years into the reform program, the government's attention to the agrarian community still shows no signs of improving." "Nasib Petani Siapa Peduli?" *Prima* 3, 7 (August 2001): 21-24.

<sup>123</sup> Among the most disturbing developments in the Reform Era has been the extension of corruption and money politics to the most routine activities within two of the institutions vital to the democratization process. Not only are parliamentarians' votes routinely bought, but also the press is influenced by money inducements that help determine what is and is not published. In one case reported during interviews, a legal aid lawyer and dispossessed farmers' representative who were still pursuing an unresolved case of illegal land expropriation bitterly complained that the head of the DPR committee they addressed demanded several million rupiah, allegedly to pay journalists to cover the hearing. Interviews September 2001, October 2002.

## Postscript

The awaited Presidential Decree concerning national policy on land matters, KepPres No.34,<sup>124</sup> was issued on May 23, 2003; it promised the completion of a draft law for “refining” (*penyempurnaan*) the Basic Agrarian Law and related legislation by August 2004. This is doubtless meant to appeal to rural voters in the lead-up to the coming election, and the implied retention of the Basic Agrarian Law may placate some of the farmers’ groups alienated by TapMPR IX. The Decree does mention implementation of land reform, but controversially in the context of the “development of a land management and information system,” it will apparently focus on extending the survey and registration of land holdings accelerated by the World Bank-funded Land Administration Project (LAP). Also controversial is the devolution of administrative authority for implementing specified aspects of land policy to the district level. The most important of these regional government responsibilities now include: issuing of location permits and processing of land procurement for development projects, resolving land disputes and compensation settlements, determining what land is available and who is eligible for land redistribution, dealing with the issue of “neglected” lands (that is land with HGU or commercial use rights which has been left undeveloped), and granting permits to open/develop new land. Implementation of the new Presidential Decision at the *kabupaten* level awaits Guidelines (*Pedoman*) to be published by BPN on August 1, 2003.

Apart from the “instrumentalist” nature of the new KepPres, there are a variety of views on what its impact will be. KPA is concerned that KepPres 34/2003 in several aspects has not implemented Tap MPR 1X/2001 as intended. Firstly, the review of the Basic Agrarian Law required by KepPres 34/2003 does not overcome the exclusion of mining, forest, and coastal areas from the provisions of land law. Secondly, it promotes land reform in the context of land registration, which KPA has consistently opposed, at least where it is oriented toward privatizing land, and it relies on market mechanisms for redistribution. Finally, the relegation of land conflict resolution to district level will not be likely to advantage the vast majority of Indonesia’s *kabupaten* that do not have local NGO or farmers’ organizations (such as SPP) to work on agrarian reform issues with local administrations and to provide advocacy for farmers in land disputes.<sup>125</sup> On the other hand, KepPres 34/2003 does give *kabupaten* administrations the opportunity to engage in agrarian reform, and places resolution of conflicts closer to the source.<sup>126</sup> In the words of SPP leader, Agustiana, “the KepPres is

<sup>124</sup> KepPres nomor 34 tahun 2003 tentang Kebijakan Nasional di Bidang Pertanahan

<sup>125</sup> Even in West Java, SPP has a strong presence in only three *kabupaten*, namely Ciamis, Tasikmalaya, and Garut.

<sup>126</sup> Under the new Presidential Decree, *kabupaten* will now be able to set up their own agrarian reform committees or agrarian dispute resolution committees. Noer Fauzi (a founder and former executive chairman of KPA) proposes that the latter committees use “six phases of work” in resolving agrarian disputes. These are: mapping the scale and type of land disputes; establishing a neutral process for hearing complaints from farmers; initiating a process of clarification and proof; proper implementation of dispute settlement; effective control and monitoring; and public accountability. A dispute resolution committee should be run by collective leadership and its members should have experience in dealing with agrarian problems (preferable to a formal education). Recruitment of committee members should be open and transparent (but should not include members of political parties). One or two members should be from central government bodies, including the National Land Agency and the Department of Forestry. Presumably, the dispute resolution

the moment we have been waiting for to sit down and talk with district government about agrarian issues."<sup>127</sup>

### Glossary of Acronyms

AGRESU	Aliansi Gerakan Reformasi Sumatra Utara, Reform Movement Alliance of North Sumatra
AMAN	Aliansi Masyarakat Adat Nusantara, Alliance of <i>Adat</i> Peoples of the Archipelago
AMUK	Aliansi Masyarakat untuk Keadilan, Community Alliance for Justice
API	Aliansi Petani Indonesia, Alliance of Indonesian Farmers
BTID	Bali Turtle Island Development
BPD	Badan Perwakilan Desa, reform era Village Councils
BPN	Badan Pertanahan Negara, National Land Agency
BPRPI	Badan Perjuangan Rakyat Penunggu Indonesia, Struggle Front of the Penunggu People of Indonesia
BTI	Barisan Tani Indonesia, Indonesian Peasants' Union
CAPS	Center for Agricultural Policy Studies
CNDS	Center for National Democratic Studies
DEKOPIN	Dewan Koperasi Indonesia, Council for Indonesian Cooperatives
DPD	Dewan Pemerintah Daerah, Regional Government Assembly
DPR	Dewan Perwakilan Rakyat, People's Representative Assembly
ELSAM	Lembaga Studi dan Advokasi Masyarakat, Institute for Community Research and Advocacy
ELSPPAT	Lembaga Studi Pedesaan dan Petanian Terpadu, Institute for Integrated Rural Studies
FAO/IPM	Food and Agricultural Project on Integrated Pest Management
FPPB	Forum Perjuangan Petani Batang, The Batang Farmers' Struggle Forum
FPPMG	Forum Pemuda, Pelajar, dan Mahasiswa Garut, Garut Youth and Students' Forum
FSPI	Federasi Serikat Petani Indonesia, Indonesian Federation of Farmers' Unions
FWI	Forest Watch Indonesia
HGB	Hak Guna Bangunan, Building Use Right Leases
HGU	Hak Guna Usaha, Commercial Use Right Leases

committee would also include members of the local assemblies, NGOs, and farmers' groups. Noer Fauzi, "Penyelesaian sengketa agraria di kabupaten: usulan awal pembentukan badan penyelesaian sengketa," Paper presented at a discussion on "Keputusan Presiden No 34/2003 tentang Kebijakan Nasional di Bidang Pertanahan," Ciamis, July 10, 2003.

<sup>127</sup> Interview with Augustiana in Ciamis, July 10, 2003. In his view, the act of devolving authority for some land administration functions does not necessarily weaken the authority of the central BPN in Jakarta. The fact that *kabupaten* have to deal with land disputes and their resolution (via local BPN offices) should give the central BPN more accurate data on land cases. As an example, the central BPN office in Jakarta has data on only one HGU case in Ciamis, while the SPP has recorded fourteen HGU disputes in that *kabupaten*.

HIPMI	Himpunan Pengusaha Muda Indonesia, Indonesian Association of Young Entrepreneurs
HKTI	Himpunan Kerukunan Tani Indonesia, Farmers' Solidarity Association
HPH	Hak Penguasaan Hutan, Forestry Exploitation Rights
HPMJT	Himpunan Petani Mandiri Jawa Tengah, The Independent Farmers' Association of Central Java
HTI	Hutan Tanaman Industri, Industrial Forestry
HUMA	Hukum dan Masyarakat, Law and Community
ICEL	Indonesian Center for Environmental Law
ICRAF	International Center for Research in Agroforestry
IMA	Indonesian Marine Alliance
INFID	International NGO Forum on Indonesian Development
INSIST	Institute for Social Transformation
IPB	Institut Pertanian Bogor, Bogor Agricultural Institute
IPPHTI	Ikatan Petani Pemberantasan Hama Terpadu Indonesia, Indonesian Farmers' Association for Integrated Pest Management
IKIP	Institut Keguruan dan Ilmu Pendidikan, Padang Teachers Training Institute
JABOTEK	Jakarta, Bogor, Tangerang, Bekasi, the Greater Jakarta Region
Jaringan PELA	Jaringan Pesisir dan Kelautan, Marine and Coastal Network
JATAM	Jaringan Advokasi Tambang Indonesia, Indonesian Mining Advocacy Network
JKPP	Jaringan Kerja Permetaan Partisipatif, Community Mapping Networking Group
KKI	Kesatuan Kedaulatan Indonesia, Indonesian Sovereignty Association
KKN	kolusi, korupsi, nepotisme, collusion, corruption, nepotism
KNPA	Komite Nasional Pembaruan Agraria, National Agrarian Reform Committee
KomnasHAM	Komisi Nasional Hak Asasi Manusia, National Human Rights Commission
KPA	Konsorsium Pembaruan Agrarian, Consortium for Agrarian Reform
KPSHK	Konsorsium Pendukung Sistem Hutan Kerakyatan, Consortium for Supporting Peoples' Forestry
KSPA	Kelompok Studi Pembaruan Agrarian, Agrarian Reform Study Group
LATIN	Lembaga Alam Tropika Indonesia, Indonesian Tropical Environment Institute
LBH	Lembaga Bantuan Hukum, Legal Aid Institute
LEKHAT	Lembaga Kajian Hak-Hak Masyarakat, Institute for the Study of Community Rights
LP3	Lembaga Pendidikan dan Pengembangan Pedesaan, Institute for Rural Education and Community Development
LEI	Lembaga Ekolabel Indonesia, Indonesian Ecolabeling Institute
MPR	Majelis Permusyawaratan Rakyat, People's Consultative Assembly
NRM	National Resource Management
OTL	organisasi tani local, local farmers' organization



P3AE—UI	Program Pengkajian dan Pengembangan Antropologi Ekologi Universitas Indonesia, Program for Research and Development of Ecological Anthropology—University of Indonesia
PAH	Panitya Ad Hoc, Ad Hoc Committee
PBB	Partai Bulan Bintang, Moon and Star Party
PDI-P	Partai Demokrasi Indonesia-Perjuangan, Indonesian Democratic Party-Struggle
PGI	Persatuan Golf Indonesia, Indonesian Golf Association
PITL	Perhimpunan Insan Tani Lampung, Lampung Model Farmers' Association
PKB	Partai Kebangkitan Bangsa, National Awakening Party
PKI	Partai Komunis Indonesia, Communist Party of Indonesia
PLG	Proyek Lahan Gambut, Peat Swamp [Redevelopment] Project
PMGK	Paguyuban Masyarakat Gunung Kamulyan, Gunung Kamulyan Community Organisation
PPP	Partai Persatuan Pembangunan, United Development Party
Pokja PSDA	Kelompok Kerja Pengelolaan Sumber Daya Alam, Working Group on Natural Resource Management
PPSPK	Pusat Penelitian dan Studi Pedesaan dan Kawasan, Research Center for Rural and Regional Studies
PT BAM	Peseroan Terbatas Bandung Asri Mulia, BAM Pty. Ltd.
PTUN	Pengadilan Tata Usaha Negara, State Administrative Court
RMI	Rimbawan Muda Indonesia, Indonesian Forestry Youth Movement
SPI	Serikat Petani Indonesia, Indonesian Farmers' Union
SPJB	Serikat Petani Jawa Barat, West Java Farmers' Union
SPP	Serikat Petani Pasunden, Pasunden Farmers' Union
SPSU	Serikat Petani Sumatra Utara, North Sumatran Farmers Union
STPN	Sekolah Tinggi Pertanahan Nasional, National Land Training School
Upad/ITB	Universitas Pajajaran/Institut Teknologi Bandung, Pajajaran University, Bandung Institute of Technology
UUPA	Undang-Undang Pokok Agraria, Basic Agrarian Law of 1960
UU	Undang Undang, [National] Laws
Walhi	Wahana Lingkungan Hidup Indonesia, Indonesian Environmental Network
WWF	World Wildlife Fund (now Worldwide Fund for Nature)
Yayasan Kehati (Keanekaragaman Hayati)	Indonesian Biodiversity Foundation