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LEGAL VIEW OF OPPORTUNITIES FOR ACCELERATION OF
LAND REGISTRATION IN THE RURAL AREAS OF
INDONESIA.

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PREFACE

My initial assumption that the preparation for this report would be interesting but difficult proved to be accurate. The assignment calls for a review of the legal aspects of the Indonesian land registration system with the view of producing suggestions for the acceleration of the registration process in rural area. The principal difficulty is in the formulation of suggestions with any probability that they have not already been considered within Agraria.

This is not a situation in which considerable assistance might be given to inexperienced personnel dealing with the introduction or formative stage of a registration system. Indonesian experience with land registration began in the nineteenth century and the present system began with the Basic Agrarian Law of 1960. Furthermore it is not a situation in which features of other registration systems can be readily adopted in the Indonesian system. It is the nature of registration systems that they must be tailored to the special circumstances found in each country.

The procedures implementing the Indonesian laws and regulations on land registration have been shaped, used and reshaped on the basis of practical application. The officials involved in this process have a knowledge of the complex circumstances in which the procedures must be applied that cannot be matched by outsiders.

My associate from the Philippine land registration system comes to this task with an intimate knowledge of his system and the experiences encountered in its application. These can usefully be compared in detail with the Indonesian procedures and their application. However, an American attorney whose knowledge of land registration is limited and academic in nature can only offer a different perspective on a subject better known to prospective readers of this report. Much of this perspective is based upon what might be termed "impressions" rather than "observations" because of the limited time and facilities for examination.

The original assignment given included a review of the law and regulations for the purpose of evaluation. However, during the period of research the assignment was altered indicating there should be no evaluation of the law and regulations. The suggested area of study covered the policies, procedures and documents employed in Agraria although many details of these are governed by the law. On the basis of an understanding with my better equipped Philippine associate, the evaluation of procedures and documents was largely left to him while the writer directed his attention to matters of policy.

The rather broad approach to some of the subject matter may appear presumptuous. However, it should be noted that, under the circumstances, it is equally presumptuous for the writer to offer suggestions on detailed phases of the registration system to those long engaged in the process.

Some of the comments on broad aspects of the system may be useful to my American colleagues if not to our Indonesian associates. They may help in reconciling some project expectation in the legal area with what has proved possible. In particular I have tried to explain why the principal limitations on acceleration of the registration process lie in circumstances outside of the control of Agraria.

It is sometimes said that when we have been preoccupied with the details of our work or special phases of it, we "cannot see the forest for the trees". I hope an outsider's look at the "forest" will be of value to some as an additional perspective. The suggestions offered for acceleration of the land registration process in rural areas are based on this perspective and their validity must be determined by those with a better understanding of all the circumstances involved.

Section I:

LAND REGISTRATION SYSTEMS IN GENERAL

A land registration system is a device for determining and maintaining a public record of private rights in lands. Unlike the recording system or the system of registration of deeds it is not merely a repository for or a record of documents made independently of the system and evidencing conveyances and other land transactions. Rather, the record consists principally of the documentation of investigations and determinations as to ownership rights in specific parcels of land made or approved by authorized officials of the government. Frequently the documentation consists of certificates stating the determinations as to title and maps indicating determinations as to boundaries. These are the features common to most land registration systems.

Aside from these common features, the character of land registration systems differ widely. In some systems the documented conclusions in the form of certificates and maps become independent evidence of ownership to be weighed by courts against contrary evidence from other sources. If they are not considered to be strong evidence by the courts, the registration system is a failure at least as to the function of providing security of title. In other systems the documented conclusions as to title and boundaries are, with certain exceptions, made conclusive by law. Although the semantics may be questioned, it has been said, that in these systems the documented conclusion as to title is the title and not evidence of it and the boundary

line shown on the map is the legal boundary and not evidence of it. In this type of system, revision of the registration record on the basis of other evidence and a new determination seldom occurs. More often, the individual who incurs damages by reason of an erroneous record is compensated in money.

In some systems registration of lands is voluntary. In others, it is made compulsory, frequently by laws providing for a forfeiture of ownership upon failure to register or providing that other evidence of ownership not be considered by the courts.

The terms "negative" and "positive" are sometimes used in characterizing a registration system. The term "negative" usually denotes a system in which the registration records are accepted by the courts as some evidence as to ownership and boundaries as contrasted to the use of the term "positive" to indicate their acceptance as conclusive evidence.

The term "negative" is also used at times to denote a voluntary system of registration in contrast to a compulsory or "positive" system. The latter application of these terms probably arises from the fact that compulsory registration systems are usually those in which the records, with limited exceptions, are considered conclusive evidence.

As a device for determining and maintaining a record of ownership rights in specific parcels of land, land registration is basically a legal institution. As such it adds to the certainty of title in order to minimize disputes and provides a convenient basis for credit based on land ownership. In many cases it decreases the costs of land transactions, particularly where it lessens the need for participation by the legal profession. If the system is voluntary it is dependent upon these benefits to motivate the landowners to use it.

Registration may be used to serve public purposes as well as serving the individual landowners. Many systems originated as a tax collecting, "cadastre", mechanism. In some places where the land area is very limited, the system is needed to control land use. However, generally, public or social purposes, such as land reform should be viewed as functions superimposed on the basic function of record keeping. Ultimately, registration systems are or will be needed to serve the interests of the landowners and are not dependent upon the public functions to justify their existence.

Section II

LAND REGISTRATION IN INDONESIA

Many of Indonesian legal problems relating to land have been solved to a great extent by the Basic Agrarian Law of 1960. Most of the remnants of colonialism have been disposed

of. The overlapping problems of land laws applying to two types of land "Western" and "Adat" and land laws applying in both types of land to classes of citizenship based on ancestry have been cured for the most part by abolishing most of the western land law and making adat law applicable to the western lands and by abolishing the classification of citizens as it is related to rights in land.

The Basic Land Law and its implementing acts and regulations also changed the concept of land ownership in adat lands. To a great degree it freed the owner of restrictions as to use and disposal formerly applied by his community and at the same time substituted restrictions, active or potential, of the National Government.

It gave recognition to adat land law but at the same time limited its application where it controverted the letter or spirit of national law and policy.

It expressed policy and goals to be implemented in the future by Acts and Regulations but left flexibility in the timing and means of implementation.

This flexibility is evidenced in those provisions of the Basic Land Law and its implementing act No. 10 of 1961 upon which the present system of land registration is based. It is indicated that all lands will be registered but no time is set for accomplishment of that goal. By inference, a positive and compulsory system of registration is therefor indicated, but the necessary initial development of a negative system is not inconsistent with the law.

Evaluation of the Basic Land Law and its implementing acts and regulations is outside of the scope of this project, but the general impression is one of a well conceived approach to a difficult situation.

For what appear to be good reasons, the land registration system has been superimposed on the preexisting systems rather than substituted for them in a clearcut but disruptive action. While necessary under the circumstances, this has made voluntary entrance into the land registration system a slow process since the eventual value over the preexisting system is often not yet evident.

However, as explained in sections IV and VIII of this report, the great obstacle to acceleration of land registration is not in the composition of the present phase of development of the system or within the reach of Agraria or higher echelons of government. It is in the number and nature of the ownerships to be registered. Only time and, hopefully, advances in the sciences involved will solve the problem.

Section III:

THE CASE FOR INSTITUTING A DE FACTO POSITIVE
REGISTRATION SYSTEM IN THE TRANSMIGRATION AREAS
AND IN OTHER GOVERNMENT GRANTED LANDS

For the reasons enumerated below, the transmigration program offers a special opportunity for the beginning of a much stronger land registration system.

1. The elements which make the negative systems as to title desirable at this time in other rural areas are not present here. The preexisting chain of title being absent, conversion is unnecessary.
2. The absence of preexisting boundaries leaves little possibility for challenging the boundaries established by the government.
3. Since the ownerships are new, no existing rights are taken or restricted.
4. A positive system would facilitate the enforcement of special controls which are exerted over transmigration lands; ex the prohibition on sale for a five year period.
5. Assuming that a more positive system is an eventual goal for all of the registration program, it is a backward step to permit these lands to develop a non-registered history after initial registration.
6. A de facto positive system applied to these lands can provide a model and experience for the eventual strengthening of the remainder of the land registration system.
7. The variation from the approach used on adat lands should not be seen as inconsistency but as desirable flexibility.
8. Instituting a de facto positive system can be accomplished without the need for a change in the basic laws or regulations. A statement in the certificate of title that the grantee agrees on behalf of himself, his heirs and assignees that any subsequent attempted transfer outside of the registration will be deemed void would serve the purpose.

The following is intended as support for or elaboration of each of the eight arguments set forth above.

1. Title

To explain the adviseability of instituting a de facto positive land registration system on transmigration lands and other government owned lands granted to new owners, it may be useful to explain why the same action is not desirable for the other rural lands. The authors of the Basic Agrarian Law and its implementing act and regulations saw fit not to impose on the people a sudden disruptive change in the pre-existing system of adat law which would have resulted from the immediate establishment of a positive registration system. To do otherwise might have worked financial hardships on some individuals for benefits which often would not be understood because often the value over the existing system would not be immediately evident. The need for the registration system will not rise uniformly with respect to all rural lands.

Most importantly, the immediate transition from the preexisting evidence of title history to evidence based on registration might have been beyond the resources of the government unless an unfair burden of proof and penalty of forfeiture were imposed on the landowners. Having said this with reference to other rural lands, it should be pointed out that new transmigration ownerships do not relate to a previous history of title (at least as far as the new owner is concerned). The government grant creates a new ownership and brings to an end the previous chain of title, if any. The new owner has no burden of establishing preexisting rights. He has not in any previous transaction placed reliance on the continuance of an adat rule of law or custom. He loses nothing, if his lands are from the beginning made subject to the positive system of registration. Nor does the government undertake any substantial additional burden. It is not required to investigate title history and make a determination with respect to the issuance of an individual title certificate.

2. Boundaries

What is said in "1" of title, is largely true also of boundaries. There is no burden on either landowner or government to investigate pre-existing boundaries on the ground and identify them with surveys and maps. There can be no conflict between pre-existing boundaries on the ground and Agraria maps. The survey lines shown on the maps made by Agraria or adopted by it are the only evidence of boundary locations. It is assumed that the government will bear any risk involved with respect to ownership boundaries which constitute part of the exterior boundaries of a transmigration area.

With regard to the assumption made immediately above and also with regard to any infirmities in the governments title to transmigration lands, it may be useful to consider the

relationship of expropriation to the protection of grantees titles and boundaries.

Under the provisions of Article 18 of the Basic Agrarian Law and Law No. 20 of 1961, the Indonesian Government may expropriate privately owned land if it is needed for a public purpose and if negotiations for its acquisition have failed. As the law might apply to transmigration lands granted to new owners, possession may not pass until compensation has been paid to the owner in accordance with prescribed procedures. The completed expropriation results in the extinguishment of the old title and a new title is created. In general, if not in detail, the authority and procedure are similar to that in the United States. One aspect of expropriation in the United States relevant to situations analogous to the transmigration program is what is termed "inverse condemnation". I have been unable to find materials indicating the presence or absence of similar laws in Indonesia. In the United States where land has been used by or under the authority of the government under the erroneous belief that the government owned it, the new occupants cannot be removed and the land cannot be recovered by the former owner. The government's use of the land, although under a mistake as to title, is deemed to be a taking (expropriation) without the prescribed procedures. The former true owner is limited to a right to compensation with interest from the date of taking (i.e. date of use). This concept would protect the new transmigration owners from a delayed claim of a previous owner and strengthen the "positive" aspect of the land registration.

3. No loss of rights

The government-grantee landowner, since his ownership is initially registered anyway, will suffer no restrictions except the limitations already placed upon his use and disposal of the land by existing regulations.

4. Regulation Enforcement

Those restrictions on use and disposal of the transmigrants land could be more closely monitored and controlled, if all transactions authorized to be noted in the registration records were required to be so registered. It is noted that sales contrary to regulations have already been complained of. Laws dealing with fragmentation and absentee ownership could also be better enforced.

5. Lost Opportunity

If land transactions subsequent to initial registration are not also required to be registered, the registration record will become mere evidence subject to being disputed by those claiming to have acquired rights in unregistered transactions.

6. Model

This point does not seem to need support or elaboration if a positive system for all lands is the ultimate goal.

7. Inconsistency

Much of the Basic Agrarian Law appears to express policy and goals, intentionally leaving flexibility as to the manner and timing of their implementation. To a lesser extent, the same may be said of the regulations leaving to Agraria some specifics of implementation. The variety of situation which is a special characteristic of Indonesia applies to the susceptibility and needs of different areas of the rural lands with respect to the land registration process. Maximum progress will be made by fitting progress in registration to the several dominant classifications which may include urban and rural; transmigration and other new ownerships and established adat ownerships; sawah and dry lands; kampung and farm lands. Efforts to maintain a uniform approach to advances in registration may be self-defeating.

8. Procedural Means

Consideration should be given to the implementation of a de facto positive system by including in the certificate of title an agreement approximately as follows:

"The owners named in this certificate will signify by acceptance of his certificate copy and by his subsequent occupancy of the certified lands, that he agrees, on behalf of himself, his heirs and his assignees including but not limited to purchasers and mortgagees that any subsequent attempted transfer of the land or any interest in it which may be registered under the law shall be void unless and until the transfer has been registered."

If such provisions were uniformly included in all transmigration title certificates, the tendency of the Indonesian courts to favor an equitable solution in individual circumstances over the letter of agreements might turn to enforcement of the agreement. Such an agreement would add strength to an existing situation in new government grants which is more "positive" by reason of the initial registration record being the only initial evidence of title and boundaries. Eventually it may be re-enforced by additions to the regulations.

Section IV

THE CASE FOR TEMPORARY CERTIFICATES ON RURAL LANDS
EXCEPT TRANSMIGRATION
AND OTHER GOVERNMENT GRANTS OF NEW TITLES.

For the following reasons , later elaborated upon, it appears that there is an inescapable need to proceed with titling and temporary certificates on the basis of location maps, leaving boundary surveys and mapping to the future:

1. The numerical magnitude of rural ownership parcels of land makes ground surveys of boundaries for the completion of the land registration goal with permanent certificates not merely difficult but absolutely impossible in the foreseeable future.
2. Complete boundary surveys of all rural land ownerships using aerial photography or a combination of aerial photography and ground surveys, while theoretically a basis for completing the goal of registration with permanent certificates within a shorter time, would be:
 - A. Too slow to meet an anticipated need for land titling.
 - b. Require the expenditure of financial resources in an amount which, if theoretically available, would impair the cost/value ratio of the undertaking.
 - c. Require technical equipment and highly skilled personnel in numbers not likely to be produced.
3. Under the negative system of land registration, ground surveys, however, accurately made, do not produce legally indisputable boundaries but only strong evidence of their location.
4. The irregular boundaries of sawah rice lands cannot be surveyed with great accuracy by ground methods, even if the most advanced technology is employed. Accurate depiction of small or non-symmetrical curves is not practical.
5. Much of the ground survey equipment and skilled personnel presently used in the rural areas could serve a more urgent need in the urban and transmigration areas where accurate ground surveys and mapping is a necessity.
6. Although the basic law and regulations call for survey of ownership boundaries and the issuance of permanent

certificates, they also provide for temporary certificates where boundary surveys and mapping may be intended in the future.

7. Temporary certificates carry the same weight as to titling as do permanent certificates. They would serve the purpose of producing documentary evidence of title in cases where little or no such evidence now exists. Since land transactions involving sales and loans on unregistered lands have been and continue to be carried out without any survey of the boundaries, it cannot be logically argued that there is presently an urgent need for them. Documentary evidence of title, on the other hand, would greatly facilitate such transactions. The impression has been gained that loan institutions have greater interest in title than in boundaries and exact areas.
8. Land titling without boundary surveys is usefully employed in certain other countries.
9. The principal problem in titling without surveying boundaries in Indonesia would appear to be the availability of the necessary location maps. This problem can be met for the most part by the use of IPEDA maps and land identification records. In their absence, aerial photography or the establishment by ground survey of the minimum number of property corners oriented to fixed points in the desa or smaller areas could be utilized. The location maps need be no more accurate than is necessary to find the ownership on the ground. The natural tendency of professional surveyors to do the best work possible for the purpose of location maps should be resisted.
10. A change in emphasis from permanent certificates with boundary surveys to temporary certificates would not eliminate the availability of the former where a special need for it exists, either for public purposes or the purpose of an individual land owner prepared to pay for the service.
11. The reduced cost of land registration resulting from the elimination of boundary surveys should, over a period of time, motivate many landowners to participate in the land registration process and result in substantial acceleration of the program.

The reasons for the present emphasis on boundary surveys and permanent certificates are not known to the writer. Admittedly there may be strong reasons which either have not occurred to him or are outside the scope of the examination. It is tempting,

however, to surmise that the concept of the need for boundary surveys came in part from earlier registration experience in Indonesia and from their use in many other countries where, in both cases, the problems of the pre-existing sawah boundaries and the great number of parcels did not exist. It also seems not unlikely, that, because a large part of any registration program involves surveyors and personnel with related skills, they may predominate in a system which is basically a legal institution. This is not to suggest that a conscious effort to emphasize their skills may exist, but rather that it is a natural tendency to view problems from the point of view which preoccupies us. The legal perspective attempted in this report may be an example.

For the purpose of elaboration below, the numbers previously used to identify reasons for de-emphasizing boundary surveys are used again.

1. Ground Surveys

Estimates of the time required to survey all of the rural lands in Indonesia by terrestrial methods have varied from 50 to 200 years. The smaller figure appears to be based upon theoretical conditions not likely to be found. The larger one is probably subject to considerable diminution by an increase in trained personnel if financial resources are available.

2. Aerial Surveys

Aerial photography while highly desirable is limited not only by the equipment and personnel needed but also by costs. The latter may make principal dependence upon it impractical. In any event, equipment and personnel available in the foreseeable future would require a time period comparable to that of ground surveys.

3. Survey Legality

In the Indonesian negative system of land registration, the mapping and the documentation used to support the survey become evidence, often referred to as strong evidence, of the location of the boundaries. The product of the survey and mapping process is a depiction, an image, of the legal boundaries which continue to exist on the ground. This survey evidence is always subject to the possibility that a boundary location may be disputed and a court may find other contrary evidence to be superior. For the purpose of characterizing, legally, the survey product is not relevant and this may seldom occur. The fact remains that it is only evidence which may be challenged on the basis of other evidence. As noted elsewhere in this report, in a positive registration system, de jure or de facto, with certain exceptions, the boundary lines shown on the registration map are the legal boundaries rather than evidence of boundaries on the ground.

4. Technical Limitations

Although the impression noted in this item was arrived at independently, it is supported by the following observation set out in a report designated "National Seminar on Land Problems and Policies in Thailand" held at F.A.O. Regional Office, Bangkok, Thailand 9-13, February 1970:

"In areas of rice cultivation, irrigation requirements demand the construction of bunds enclosing the rice fields and these bunds form the boundaries of units of use, operation and ownership. Where such bunds are permanent and readily identifiable, it would seem that precise surveys of the Torrens type are unnecessary and a general boundaries policy should be adopted"

If it is deemed necessary to map boundaries of the sawah parcels, maps traced from aerial photography are obviously superior in detail to the product of a ground survey. When the standard corrections have been made, such a map would furnish a faithful depiction of the bund boundaries. In some cases where the sawah boundary is relatively straight, the line without width produced by the surveyor may be more precise. However, even if it is usually supported by a time-consuming agreement of adjoining land owners, it would often be a new boundary that never existed as precisely on the ground.

5. Misplaced Resources

The need for accurate surveys where new ownership parcels are created by government grant is discussed elsewhere. It is assumed, that in the case of valuable urban property, accurate surveys are desirable, although there may be situations where land owners may prefer to deal with the certainty of identifying objects on the site as described in deeds and other legal documents.

6. Legal Basis

It is my understanding that the course of issuing temporarily certificates without boundary mapping was frequently followed prior to 1970. It does not appear that the change in emphasis was mandated by any change in the law or regulation. It is one of the admirable qualities of agrarian law and regulations that there is flexibility left for their application. Consideration should be given to the question as to whether discretion in this matter was intended.

7. Usefulness

For the reasons given, complete registration including

boundary surveys will require a great length of time. The need to originate or improve documentary evidence of title will not wait for completion of the survey process. In the intervening years, reliable witnesses and old records may disappear from the scene. The difference in needs for titling and surveying may not be evident now, but as social changes take place the demand for title documents will indicate a substantial disparity. The fact that the surveys and mapping that go with permanent certificates are useful and desirable does not make them necessary at this time. It would seem reasonable to leave the bulk of the rural surveys to a future date with the hope that technical advances in aerial photography will reduce the cost and time involved. It is also possible that at some time in the future, the government may consider the advisability of using the "English" or "general boundary" system instead of boundary surveys for some part of the rural lands.

8. Precedent

In addition to England, the general boundary system has been used in Ontario, Canada, Ireland and Nigeria.

9. Location Maps

Location maps should be made without measurement of boundaries. If measurements exist on IPEDA maps they could be included but only necessary points should be surveyed to connect the parcel with control points in the desa. Boundaries should be sketched by the surveyor on the basis of visual observation to show only approximate shapes, sizes, and location. This should suffice to locate parcels on the ground and determine obvious diversions from legal maximum and minimum areas.

10. Costs

No changes in the regulations or procedures are suggested except for the methods of preparing location maps where neither IPEDA materials or aerial photography are available.

In addition to cost reductions resulting from the elimination of boundary surveys, the elimination of area data would serve to lessen any tendency of the public to identify the registration process with tax collection.

Section V:

OPTION TO TRANSFER LAND OWNERSHIP THROUGH
REGISTRATION PROCEDURES ONLY

One of the values generally expected as a motivating factor in registration systems is a reduced cost in land transactions. In some cases, the reduced participation of the middlemen, the legal profession, has accomplished this. Any such reductions are usually opposed vigorously by the profession in the United States. It must be supposed that land deed officials in Indonesia would not greet a loss in source of income with enthusiasm.

Nevertheless, it is suggested that a start in reduction of land transaction costs be made. For this purpose it is proposed that in the case of simple sales of land, the option be given to the seller and buyer to dispense with the customary land deed, to incorporate their agreement in an application for transfer of a title certificate covering registered lands and to give recognition to Agraria's transfer action as constituting the conveyance. The form set forth below is intended to suggest how that might be accomplished. It will be noted that in this form an attempt has been made to eliminate a description of the land since it is adequately described in the letter of measurement attached to the certificate on file in the registration office and in the copy in the possession of the seller. It also is intended to eliminate what seems to be irrelevant information regarding the seller and everything contained in the prescribed land deed which does not seem essential to a simple land sale. The form anticipates that the sale price will be paid after approval of the application and before the transfer of certificate. It assumes that approval of the application can be accomplished rapidly. The inclusion in legal and government documents of statements and information which may be a minor convenience but not of great value, increases the chances of error as well as increasing the burden on the parties preparing the document and those who must review it. This form model will contain errors and imperfections but is intended to illustrate the concept:

Section VI:

MISCELLANEOUS

1. Survey of buildings

The practice of surveying buildings at the time boundaries are surveyed in the rural areas seems to be a gross misdirection of limited resources. While the surveyed location of building on registration maps may be a convenience, it is not important to the establishment of boundaries. Although article 4 of Act No. 10, 1961 indicates that building should be shown on registration maps "if possible", it does not say that they should be surveyed. The words "if possible" would suggest that where surveying resources are limited, the exact location of buildings or even rough sketches can be dispensed with.

2. Proliferation of records.

It was noted that one of letter of decision forms provided for the distribution of some twenty copies to designated government offices. Without knowing the function of these copies, it is not possible to recommend the elimination of any. However, it does bring to mind what has been a considerable problem in late years in United States government offices, the proliferation of records. Lawyers have been among the chief offenders in this matter, having a tendency to keep excess old records in the belief that they may someday be needed for information in a dispute. It has been necessary for the government to issue regulations limiting the amount of file space that offices may use, requiring the disposal of records and microfilming material in the various Federal Records Centers. The cost of maintaining old records and particularly duplicates of records has been recognized as a major problem. It is suggested that an official in Agraria be given the responsibility of monitoring the retention of excess records in all Agraria offices for the purpose of suggesting and enforcing regulations to stem the rising tide of paper that may be anticipated.

3. Interagency coordination

Acceleration of the registration program might be enhanced if the cooperation of other agencies of the government were mandated in specific terms. This, of course is not within the power of Agraria and may be difficult to accomplish. Interagency coordination presents problems in the United States as each agency is preoccupied with its own mission and the expenditure of budgeted funds in aid of another agency present problems. However, given the

technical and financial limitations faced by Agraria, the cooperation of the Public Works Ministry in mapping would seem very desirable. It is assumed that difficulties in marketing agricultural products will increasingly pressure the need for vehicle roads to replace the narrow paths now found in the desas. Such roads would probably be Government owned and their boundaries would form one boundary of adjacent private lands. Maps of these roads would in the future prove invaluable for the location drawings used with temporary certificates. Where adjacent lands had already been surveyed and mapped by Agraria, changes in the registration boundaries would be required to furnish land for the roads. If the roads are surveyed by Public Works, changes in the registration drawing could be accomplished by office procedures. It would also seem that in the future, when more rapid changes in the population composition of desas occur, it will be difficult for a local official to identify the recipient of letters. The Postal Service will then find it convenient to identify persons by addresses which include rural roads designated by name or numbers and the designation of a specific residential ownership by assigning numbers. Agraria, making use of its registration survey maps or its location drawings can play a major role in this endeavor.

Cooperation might enable registration offices to obtain from IPEDA a complete copy of all tax records relevant to potential registration in the registration area. This would remove the burden on applicants of furnishing receipts and would provide a useful record of ownership for agraria purposes.

4. Inventory of State Owned Land

It would seem useful for Agrarias' functions as well as for other government agencies for each registration office to maintain a record of State owned lands within its area of jurisdiction. Accurate surveys would provide already determined boundary lines for contiguous private lands. Since the custody of State owned lands is primarily vested in the Ministry of Home Affairs, Agraria is the logical agency to provide this important record keeping function.

5. Insurance

The strengthening of security by a system of insurance has been used successfully in some registration systems and has been suggested for use in Indonesia. The negative character of the Indonesian system makes insurance impracticable. Its use is generally intended to compensate, with money, a person damaged by reason of errors in the information upon which the registration is based, rather than to change the record in a positive system. The aggrieved person loses his rightful claim to ownership but receives money in its place.

6. Power of Attorney

The increased use of powers of attorney for registering lands might, to some extent, lessen the problems present in the case of illiterate landowners and those who by reason of distance from the registration office are deterred by the time and costs involved. Strict enforcement of existing penalties for falsification of power of attorney documents should aid in this respect.

7. Relative strength of ground surveys and aerial photography as evidence in court cases.

Aerial photography used as a tool for the presentation of oral evidence of members of a community familiar with boundaries on the ground would be very effective. In effect, it would be "bringing the land into court". It would be most useful in the case of sawah or other areas where boundaries relate closely to physical features visible on the ground. Its weakness would be in cases where ground boundaries are obscured by vegetation. Even in such cases, it would assist oral evidence.

Maps and the survey materials they are based upon would have substantial weaknesses as evidence if strongly challenged by oral testimony. Their strongest support might be the presumption of regularity which a court might attribute to government survey and mapping and the signatures obtained by the surveyor from neighbors attesting to the information on which the survey was based. Both of these points might be overcome by oral evidence that the surveyor misunderstood the information he was given. This use in connection with oral evidence is more limited than photography since witnesses would have difficulty relating lines on a map to physical features of the land.

8. Attitude of Agraria personnel

Experience with American agencies serving the public indicates that the attitude and demeanor of employees is a factor in public use of facilities. Contact with Indonesian Agraria personnel was extremely favorable but limited for the most part to higher echelons and persons not in direct contact with the public. It is obvious that a passive attitude in assisting the public or an attitude suggesting that benefits are being conferred by Agraria employees instead of assistance in obtaining rights given to the public by the Indonesian government would be counterproductive in promoting voluntary registration procedures. Negative attitudes are a problem in all government agencies dealing with the public and it must be assumed that they are found in Agraria registration offices

and in representatives in the field. Attention to education of employees in these matters is important.

9. Areas.

There seems to be a reluctance to use the words "more or less" or "approximately" in stating areas on maps or documents. The use of these words protects the validity of the more important boundary survey lines where the area, as in generally the case, cannot be ascertained with the same preciseness. The symbol + suffices for this purpose in some American maps.

10. Mobil Offices

Although it is not technically within the scope of a legal examination of the registration system, it seems useful to lend support to a concept of a colleague. The aggressiveness demonstrated by Agraria in its PRONA project could be supplemented on a smaller scale by "mobil" offices. A truck or van which could be driven into or near a rural desa could serve several purposes: dissemination of information regarding the registration program; furnishing and explaining application forms; collecting and giving initial "on the spot review" to completed applications. The procedure would require advance notice of the arrival of the mobil office. It would be manned by an individual who understands the program, the application forms and their requirements.

One mobil office would serve for testing purposes, two or three in a province might produce a substantial number of applications. Rural Indonesia presents a special need to take the registration program to the people because of difficulties in traveling, the insulated nature of the desas, and the prevalence of illiteracy in the rural adult population.

11. Recording service

The registration system does not in general afford a repository for land documents. At some time Agraria would be the logical agency to fill this void through its registration offices. Fees for recording documents could support such a system if its' use became widespread. This would provide a safe and convenient repository for records which are not part of the registration record. Agreements on land pledges come to mind, because their substance and confusion over which type of pledge was intended have been a troublesome matter.

Section VII

THE COURTS

Efforts were made to ascertain the nature and weight of the courts influence on land matters relevant to registration. The Agraria attorney, made available for assistance, was helpful in this matter. Other sources of information were the following: "An introduction to Indonesian Law: Unity in Diversity (2nd edition 1976) attributed to Sudargo Gautama and Robert N. Hornick; Law in Indonesia 3rd edition 1982 by R. Subekti; Adat Law in Modern Indonesia, 1978 by M.B. Hooker; and Indonesia's Formal Legal System, and Introduction, Reprinted from the American Journal of Comparative Law vol. 20 No. 3 1972 attributed to Eddy Damein S.H. and Robert N. Hornick J.D. A discouraging characterization of the legal system appears in the last paragraph of the last mentioned publication.

"An attempt has been made to describe in very general terms the legal system which has emerged in Indonesia since the change of Constitutions in 1959. The stress has been entirely on formal institutions, on the way the law says things are supposed to be, and the method of presentation has been descriptive rather than analytic. Accordingly, although occasional references are made to "reality" as in the last section - we have deliberately avoided any discussion of the 'way things are'. Very little is to be learned, e.g. ----- or about the remarkable extent to which practice deviates from even the most explicit provisions of the formal law"

Putting the best view on this rather cynical appraisal, it may represent the tendency of the courts to achieve "justice" in individual cases, applying what in the United States would be termed principles of equity rather than law. Moreover, other sources indicate that generally the courts put aside the adat approach when it conflicts with national law. In passing, it may be noted that the characterization of the registration certificate as strong evidence attributed to the courts is in fact set forth in the formal explanation on the act of government No. 10, 1961.

As in most other countries, the validity of specific determinations and actions of an administrative agency, in this case Agraria, will be measured by the weight given to them by the courts. Where the applicable law is very specific, the courts may have a narrow choice in some matters, but the weighing of evidence and particularly oral evidence can seldom be made subject to rules of law. Accordingly until a positive system of registration is achieved, the validity of Agraria determinations can only be measured on a case by case basis in the courts.

Section VIII

GENERAL IMPRESSIONS: THE ROLE OF LAND REGISTRATION IN THE RURAL AREA

The single great fact in Indonesia which confronts anyone concerned with the subject of this report, is the immensity of the population of Java and certain other parts of the country in relation to the amount of agricultural lands in these areas. This appears to be Indonesia's greatest problem, and the only obvious substantial solutions to it in the near-future are migration to other parts of the country where potential agriculture land remains undeveloped and the promotion of birth control. Both of these efforts are underway. It should be evident to well-meaning Americans that support for whatever social reforms are undertaken by the Indonesian Government beyond those already accomplished might be useful, but will have little impact on the central problem: too little land in areas of too many people. It would be misleading to promote the impression that solutions other than those mentioned and possibly intense industrialization in the far future will have more than marginal effects. Great mischief has been caused in the past by spreading the false impression that somehow the size of the multitude of small ownerships or their number could be appreciably increased by social schemes.

While the ultimate solutions are underway it is of course important that the most should be made of what is available for agriculture. Registration of lands in the rural areas is consistent with this view. Like the Basic Agrarian Law itself, it should be seen as addressing the future as well as the present. Land Registration today in the rural areas of Indonesia should be viewed as one phase in a time-frame of unknown but certainly lengthy development. Two factors are chiefly relevant to this time-frame: the technical problems of dealing with a tremendous number of ownerships not related to an existing survey system or a road system and frequently not documented as to title; and the ameliorative fact that the pressing need for registration will increase only gradually.

It may be assumed on the basis of experience in other countries that the gradually increasing mobility of the population, availability of more distant markets for agricultural products and modern business practices, particularly, as they relate to agriculture, will result in changing the social fabric. The continuity of family ownerships, the continuity of neighbors and the social pressures of engrained customs in the small communities all of which serve or supplement the adat security of land ownership will certainly weaken as time goes on. Closed communities such as the old *desas* make inequitable dealings with neighbors difficult. Mobility and the weakening of community social pressures has had adverse effects in many ways in other countries. Unfortunately

this must be expected as part of Indonesia's future. The need for the security of a land registration system will increase in proportion to the weakening of the old system.

Section IX

SUMMATION

Three suggestions are considered important enough to merit careful consideration:

1. Taking advantage of the special opportunity presented by the transmigration areas to make registration a de facto positive system as to these lands.
2. Discontinuance of the emphasis on surveys in other rural areas and the promotion of temporary certificates without surveys to best serve the immediate or forthcoming needs of landowners.
3. Start using registration as a substitute for, instead of an addition to, existing land transaction systems by accomodating simple land sales through the use of registration procedures only.

The laws, regulations and forms of the Indonesian registration system are appalling to an American on first visual contact. This impression has given way to one of considerable respect after consideration has been given to the difficulties of translation, the fact that they are based on a different European legal system and the fact that what initially appears to be improvident ommissions of precise implementation features later appear to be deliberate and logical ommissions leaving flexibility for later implementation.

The absence of more constructive suggestions reflects, in part, limitations in scope of my part of this project, and efforts to avoid rote review and restating work previously done by others; but it also reflects the conclusion that, in general, legal adjustments of the system would not be as productive as policy changes.

BIBLIOGRAPHY AND ACKNOWLEDGEMENTS

Most useful in preparing the foregoing report were the following publications:

Survey of Indonesian Economic Law - Agrarian Law

- Padjadjaran University Law School. Report by Sudargo Gautama and Budi Harsono, 1972.
This report contains the most comprehensive history, review and analysis of Basic Agrarian Laws which has come to say attention.
- Land Registration Socio-Economic - Benefits and Priorities in Rural Indonesia.
Report by Donald D. Waite, Land Economist/Program Analyst, United States Bureau of Land Management.
This report was particularly relied upon for its analysis of the reaction of rural landowners to the registration system and its discussion of credit as it relates to the system.
- Land Law and Registration by S. Rowton Simpson, Cambridge University Press 1976.
This book describes features of land registration in many countries and details some of the procedures
- Planning and Development Transmigration Schemes - Land Tenure prepared by R.S. Ratnatunga 1975.

This document was useful in reviewing the history and nature of pre-registration land rights.

In addition to the materials referred to in Section VII the following were reviewed in preparing the report:

Agrarian Exhibition, Indonesian Governors/Regents/
Majors/District Heads Conference Feb. 19-24, 1979 issued
by Directorate General of Agraria

Land Deed Official Instructions (Guidance) for
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The Legal Insecurity of Rural Property in Columbia: A case study of the Notarial and Registry Systems, by Luis Arevelo-Salazar, Wisconsin University 1972.

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Land Mapping, Titling and Registration in Indonesia - Report August 1982. Land Mapping, Titling and Registration Team.

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