

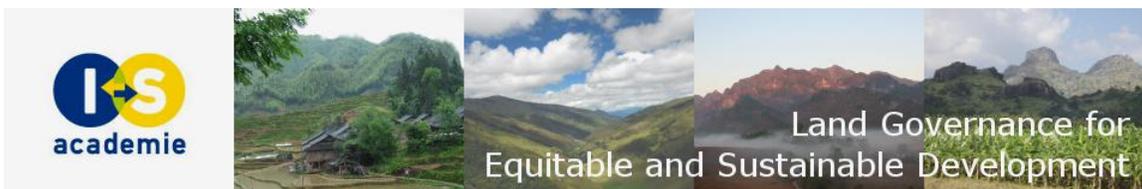
INDONESIA

FOOD SECURITY AND LAND GOVERNANCE FACTSHEET

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ABSTRACT

In Indonesia, food security is closely related to access to land and tenure security. Landlessness is another constraint for many. Few owners have managed to register their land rights; insecurity affects investments in food production. Registration of rights is complex and expensive, which further weakens the development of a functioning land market. This situation is the result of a very intricate legal pluralistic system. The superposition of ill-defined rights and institutional arrangements pose important challenges of enforcement and provides an environment that is conducive to the emergence of conflicts. Conflict between communities, the state and economic operators are increasing and hold back rural development and food security. Land and water governance in Indonesia involves looking also at forest tenure – which cover 70% of the area – as well as the management of communal lands. The speed of deforestation is very high. Large-scale land acquisitions are also threatening forests and livelihoods of indigenous people.





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About IS Academy on Land Governance for Equitable and Sustainable Development

LANDac, the IS Academy on Land Governance for Equitable and Sustainable Development, aims at bringing together researchers, policy makers and practitioners in the field of land governance and development. It is a partnership between several Dutch organisations and their Southern partners involved in development-related research, policy and practice. LANDac is one of the IS Academies for International Cooperation sponsored by the Netherlands Ministry of Foreign Affairs.

About KIT

The Royal Tropical Institute (KIT) in Amsterdam is an independent centre of knowledge and expertise in the areas of international and intercultural cooperation, operating at the interface between theory and practice and between policy and implementation. The Institute contributes to sustainable development, poverty alleviation and cultural preservation and exchange.

Country expert contribution:

We acknowledge and thank Mrs. Evelien van den Broek (IUCN) for her insights and comments on the latest development impacting land governance in Indonesia.

1 POLICY AND LEGISLATION

1.1 Regulatory land governance framework

Indonesian land policy is derived from existing legislation as well as memos providing technical guidance for policy implementation. The land policy covers 30% of the area; the other part is under forest tenure. A highly sectoral and compartmentalized approach that differentiates between land administration, land use management and state forest land management (the latter not covered under the previous categories) results in ongoing, inconsistencies in policy. *Adat* or customary land interests are largely ignored in practice (World Bank, 2010).

The most important legislation governing land rights continues to be the Basic Agrarian Law (*Undang-Undang Pokok Agraria* or UUPA), Law No. 5 of 1960. was passed under Indonesia’s first president, Sukarno. Two key purposes of the law were to create a single land law applicable to all citizens of Indonesia, thereby abolishing the dual system (Dutch and Indonesian) of agrarian rights and secondly, to promote land reform by imposing a ceiling on private landholdings. Many of the regulations required to make the law operational have still not been prepared or promulgated, implying that mechanisms to enforce granted rights are missing. For example, as no regulation for the recognition of group rights has been written, the BAL allows only for the recognition of individual rights. Some pieces of legislation, like the MPR Decree No. IX of 2001 on Agrarian Reform and Natural Resources Management, have also not been implemented (Thorburn 2004).

Although Suharto’s New Order regime (1966-1998) never changed UUPA, this law was circumvented in practice with the Basic Forestry Act of 1967, which classified 70 percent of Indonesia’s land area as state forest land¹, not subject to agrarian law. The state and its forestry institutions became the single largest landlord.

Law	Content
Basic Agrarian Law (BAL or UUPA), Law No. 5 of 1960	<p>Defines the fundamental types of rights that may be held by private individuals and entities</p> <p>Describes the role of the state with regard to its direct use of land as well as its regulation of private rights and private uses of land</p> <p>Article 5 of the BAL states that that Indonesia’s agrarian law is <i>adat</i> law, or Indonesian customary law, as long as it does not conflict with national interests or other regulations set out in the BAL</p> <p>Ultimately directed at the individualization of land tenure in Indonesia</p>
MPR Decree No. IX of 2001 on Agrarian Reform and Natural Resources Management	Instructs the highest house of the legislature (the MPR, <i>Majelis Permusyawaratan Rakyat</i>) instructs the main house (House of Representatives, <i>Dewan Perwakilan Rakyat</i>), and the president to harmonize laws related to use of land and natural resources to promote equity, human rights and sustainable development
Spatial Planning Law (Law No. 24) in October 1992	defined spatial planning and provided the guidelines of plan-making processes, plan implementation and development control for national, provincial and local levels

¹ In 1967 these lands were managed by the Ministry of Agriculture. The Directorate General Forestry used to be under the Ministry of Agriculture and only in 1982 the Ministry of Forestry was established. This move of declaring 70% of the territory as forest land and state owned, resulted in dispossession and land grabbing by the a range of actors, including military and state institutions, and enterprises (source- Agriterra).

Spatial Planning Law (Law No. 26 of 2007)	Amendment of the 1992 law (see above) Links with the decentralization laws and stipulates explicitly the authority of provincial governments (<i>pemerintah propinsi</i>) and of district governments (<i>pemerintah kabupaten and pemerintah kota</i>) in spatial planning Also takes covers rapid urbanization occurring in Indonesia, particularly in the Greater Jakarta Area.
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(Mitchell et al. 2004; Fitzpatrick 1997; Lindsey 1998; Rukama 2008)

1.2 Land tenure forms

Tenure forms	Description
Hak milik	right of ownership; Unlimited in time and capable of being transferred and mortgaged
Hak pakai	Rights of use and usufruct; rights that are not permanent
Hak guna usaha	agricultural commercial lease
Hak guna bangunan	rights to construct and use building
Domein	Basic element of land law going back to the Dutch colonial period that determines conditions for registration of unregistered rights based on individual adat claims
hak ulayat	communal tenure. Exists on land administered by the National Land Agency (Badan Pertanahan. Nasional - BPN) and on forest land administered by the Ministry of Forestry, and other sectoral agencies (including mines and energy). These agencies may issue concessions or permits over such land.
'village forest' (hutan desa) or a "customary forest" (hutan adat) licence.	(forest law) exclusive licences which give the community the right to manage the forest. The licences are time-limited (20 years, extendable), forest remains under government control, but it gives the community management rights for the period of the licence
Leasing or licensing	Mostly applied to state forest and regulated by Forestry Law No 41/1999

(ROI 1960; Mitchell et al. 2004, Lindsey 1998; Fitzpatrick 1997, Roth 2006, Contreras-Hermosillo and Fay 2005).

The BAL recognizes private ownership and vests control of all unregistered land in the state, which holds in essence title to all land in Indonesia. The scope of the BAL is limited to approximately 30% of the country's land area, which is not classified as forest land.

Customary land: Customary land law is known as *adat*, which governs Indonesia's traditional communal land tenure system. It is essentially a communal approach to regulating land rights and varies widely across the large archipelago. Legal pluralism is the norm in rural areas, i.e. the coexistence of the national state law with customary laws (*adat*).

Article 5 of the BAL states that Indonesia's agrarian law is *adat* law, but also considers these customary laws incompatible with economic development. *Adat* is expected to gradually adapt to national law or replaced by it. *Adat* land can only be registered and certified, after having been rendered into one of seven private law land rights recognized in Article 16 of the BAL (Bakker 2008). Also, there is recognition for community right and customary right in Law No 5/1967 article 17 as by Law No 41/1999 article 34 (forest management with special objective for community, education, research, social, and religion) and article 37 (*adat forest*)².

² Pers. Com. Ari Susanti (Utrecht University 2011).

Communal tenure: The Indonesian state has for several decades been hostile to the continued existence of communal tenure or *hak ulayat*; a legal term connoting communal rights of an (ethnic) community to land based on that community's *adat*.

State land: All land designated as state forest is state land and it is controlled by central government (c.q. Ministry of forestry). The information about this land is available at the ministry of forestry (<http://www.dephut.go.id/>). There are also forestry agency offices at provincial and district levels, which used to report to the Ministry of Forestry, but since the decentralization they have different arrangement of coordination, responsibility, and authority. District and municipal governments as well as other government services may lack data on the amount of state land placed under their control. The way in which the state currently plans land use or manages state does not prevent either large-scale underutilization of valuable land or speculative accumulation in non-productive land holdings (World Bank, 2010).

1.3 Institutional land governance framework

Land administration is about determining the status of land, allocating, registering and regulating all land classified as non-forest. This is the responsibility of the National Land Agency BPN. BPN also has offices at province and district levels. Bakosurtanal is the National Coordinating Agency for Surveying and Mapping³. The Ministry of Agriculture, and the Ministry of Forestry and Plantations also plays a role in land management. Services are fragmented as agencies have large overlaps in mandate. Coordination between sector agencies is limited. The lack of clear assignment of judicial authority and sectoral approaches to land management and administration result in inconsistent and discretionary application of policy, especially as regards the administration of right to forest land. (World Bank, 2010).

The formerly centralized system was decentralized in 1999. Significant powers were devolved to the 33 provinces, districts and municipalities. Land affairs are among the responsibilities devolved to the regional government (Law No. 22 of 1999). Provincial and district governments demanded more authority in determining land policy within their respective jurisdictions (except for forest land which remains centrally managed). The role of customary authorities in village land affairs was weakened during the New Order regime (1965–1998). The decentralization laws have restored the possibility for customary authorities to take charge of village affairs (Thorburn 2004).

The exact weight of roles and functions of provincial governments are not clearly elaborated in the decentralization laws. While the revised Law on Local Government in 2004 gave local governments more autonomy to develop local laws and regulations, but which may be in contradiction with national laws, making citizens' rights even less clear (Sitomorang 2010; Bakker 2008). Currently, a highly complex mix of a hierarchical and top down system of development and spatial planning exists, with the central government retaining the authority to override locally made spatial plans for special areas, when deemed strategic and of national importance (Bakker 2008).

1.4 Gender

Indonesia's Civil Code stipulates that men and women have equal ownership rights. Women have full rights concerning access to land. Customary frameworks have different impacts on women's land rights. Some societies favour women in terms of land inheritance (e.g. West Sumatera – a matriarchy system where Minangkabau women control land inheritance and husbands move into the households of their wives). On Java, women can own land, which may be registered in the woman's name. In other regions women are customarily not entitled to own land (Brown 2003).

³ see <http://www.bakosurtanal.go.id/bakosurtanal/tugas-dan-fungsi/>

Though the 1974 Marriage Law provides that property purchased during marriage shall be co-owned by husband and wife, regional differences abound. Similarly the Islamic law governing inheritance in the case of Muslims and the Civil Code governs in the case of non-Muslims are effective by regional differences. In some areas polygamy greatly complicates inheritance (Brown 2003; Nielsen and Safik 2004).

While the BAL is neutral regarding gender, the amount of land registered in women's name remains limited. Improving the share of land held by women and gender awareness is not yet a key part of contemporary discussions on land administration and policies (World Bank, 2010).

1.5 Foreign direct investment

The tenure rights described above are not available to foreigners, although some foreigners enter into contracts with Indonesians or establish Indonesian companies to hold land rights (Lindsey 1998; Fitzpatrick 1997). The exception is Bali (and recently in Lombok), where foreigners can buy lands and houses (see PP no 41/1996).

For sale or mortgaging land, government approval is not necessary. Even if the buyer is an Indonesian citizen, no approval is necessary. Most private development projects involve the Indonesian government. The government grants long-term use rights for state land to the legal entity that will develop the land (Thiesenhusen et al. 1997).

Large-scale land acquisitions are common in Indonesia and include areas of more than 1 million ha (West Papua). The conversion of forests to palm oil plantations has increased exponentially since the early 1990's. Large scale land acquisitions are happening in most of the big islands of Indonesia. Sumatera was the first, then Kalimantan, Sulawesi and recently Papua. It started with licensing for forest concessionaries, then leasing for industrial forest plantation and also oil palm plantation⁴.

According to the ILC Land Matrix (International land Coalition, 2012), 23 large land transactions have been made over 7,527,760 ha in the past years, mostly for agriculture purposes.

2 INTEGRATED WATER RESOURCE MANAGEMENT

2.1 Policy framework around Integrated Water Resource Management

All waters in the country are controlled by the state according to article 33 of the Constitution. The use of water is regulated by the Law on Water Resources (Law No. 7 of 2004). Article 6 of the Law affirms the state's control over all water resources. The Law gives primary consideration to the use of water for daily basic needs, followed by the irrigation needs of farmers within an existing irrigation system. Licenses are not required for irrigation, but the Law prohibits the trade of water rights. Article 6 of the Law provides that traditional communal rights to use water may be recognized by regional regulations, but the law makes no mention of customary *adat* (Ma 2007).

The 2002 Indonesian Water Vision, addressing water resource problems and structural deficiencies, outlines three major considerations for reform of water resources management: sustainability of water quality and quantity; the need for achieving food security and sustainable irrigation; and improvement of institutional capacity.

⁴ Pers. Com. Ari Susanti (Utrecht University).

Reform objectives include the establishment of a national framework for coordinating water resources and irrigation management; adoption and implementation of a national water policy; establishment of institutions and procedures for involving stakeholders and water resources service beneficiaries; and the introduction of a water rights system for water allocation (UN 2004; ROI 2003).

The 1967 Basic Forestry Law declared all forest land the property of the state and eliminated *adat* rights for forests. Essential legislation around forests are the Forestry Law (Law No. 41 of 1999), the law on Conservation of Biodiversity and Ecosystems (Law No. 5 of 1990), on Management of the Environment" (Law No. 23 of 1997), On Spatial Use Management (Law 24 of 1992), and MPR Decree No. IX of 2001 "On Agrarian Reform and Natural Resources Management" (Rhee et. al 2004).

Indonesia has the world's third-largest area of tropical forests (after Brazil and the DRC), which cover approximately 48% of the nation and are important for watershed management. Deforestation and forest degradation is a concern. Indonesia is a major player in the international climate talks, particularly in those centering of Reduced Emissions from Deforestation and Degradation (REDD).

2.2 Institutional framework around Integrated Water Resource Management

The Directorate General of Water Resources Development of the Ministry of Public Works managed water resources; it has four primary missions: (1) to help the nation maintain self-sufficiency in rice production; (2) to meet increasing demands for drinking water and water for industry; (3) to alleviate floods and manage rivers; and (4) to develop, conserve and manage water resources (FAO 1999). The development and management of government agencies responsible for water management at the central and regional levels are among the main challenges (Hirsch et al. 2006).

Land classified as forest land (including land without tree cover) is administered by the Ministry of Forestry. This formally designated forest land' represents almost 70% of the total land in Indonesia, although large parts are degraded and no longer carry trees. Since on such lands only temporal concessions but no tenure rights can be obtained, communities who may have been living on such land for a long time often find themselves with no legally recognized rights to such land. The difficulty of achieving formal recognition of communal property rights on forest land perpetuates tenure insecurity (World Bank 2010). Within state forests the Ministry of Forestry has consistently ruled that the interests of the state trump the interests of *adat* communities, freely granting concessions to companies to harvest trees or establish plantations of oil palm or other commercial crops. (Lindsey 1998; Contreras-Hermosilla and Fay 2005).

Provincial governments have increasingly been demanding a greater stake in managing forests within their regions. The decentralization of government authority from the central government to the district (*kabupaten*) governments also created more space for *adat* communities to assert rights to at least receive compensation for the removal of trees from their land (Contreras-Hermosillo and Fay 2005; Jakarta Post 2010b).

Recent legislation has clarified authority over forests and could enable more rational and sustainable management, with participation of stakeholders (World Bank 2006b). Several organizations (e.g. IUCN, Both ends and others) are exploring the potential of this new legislation for better securing community rights and improving management of natural resources in combination with 'village forest' (*hutan desa*) or a "customary forest' (*hutan adat*) licences.

The village and customary forest licence allow exploitation of non-timber products, and in some cases timber, through a proper forest management planning process. The licence holder is obliged to manage the forest according to the agreed plan, and to protect the forest from

outside destruction. When securing the *hutan desa* licence (a) the government can no longer give out the forest in concession to a company for logging or oil palm development; b) the community has the right to apply customary rules protecting forest and stop people coming in from outside to do illegal logging. Clarifying the roles of different authorities while integrating and supporting customary forms of land governance seems a necessary step to avert further deforestation and ensure more harmonious relations. The ongoing decentralization of central government functions could be an opportune time to work with district (*kabupaten*) governments on various land tenure and natural resource property issues.

3 REALITIES ON THE GROUND

Many Indonesians practice *hak ulayat* and other forms of *adat*; yet while this may be observed as binding within communities, it is not recognized by the state (Lindsey 1998; Bakker 2008). The **selective interpretation** of legislation and policy suiting the state needs ahead of smallholders is a major issue. Often referred to as "sectoral laws," the Laws on Forestry and the 1967 Law on Mining eliminated even the weak protections contained in the BAL as regards **land rights of customary law** (*adat*) communities living in forested areas or on lands granted by the state to mining corporations (Rhee et al. 2004)

Forest-dwelling *adat* communities and timber companies and others who want to harvest trees are often in, sometimes violent, conflicts. Factors that motivate and sustain forest-related conflicts are: (1) direct and indirect involvement of the Indonesian formal security and military forces in timber conflict; (2) fragmentation of natural resource management authority due to rapid devolution of political power from the central government to *kabupaten* authorities; (3) *kabupatens'* abuse of their newly evolved political powers; (4) selective and inconsistent law enforcement; and (5) ambiguous land and resource tenure (ARD 2004).

The multiplicity of ill-defined rights and institutional responsibilities means that different types of rights are frequently super-imposed on top of each other, which poses challenges for their enforcement, and provides an environment that is conducive to the emergence of conflicts. In Indonesia **disputes over land** are widespread, it has been estimated that at least 1500 major land conflicts remain unsettled. Clashes between communities of farmers on one side and either the Ministry of Forestry or private plantation companies on the other are common (Thorburn 2004). The effects of future **REDD** policies, notably the securing of international funding for forests, could actually increase competition for control over Indonesia's forests.

Both formal and informal arrangements are in place in Indonesia to address land related conflicts. Four different institutions possess parallel and overlapping competences to handle land related conflicts: the civil court; the criminal court; the administrative courts; and a dispute settlement forum established by BPN to handle disputes relating to land mis-administration and errors in land registration or titling. These available tools to manage and resolve land conflict appear to treat the symptoms rather than causes such as the lack of coordination among between agencies and policies. As the formal dispute resolution system favors government agencies, dispute resolution mechanisms are even less effective in settling disputes with the state, particularly the Ministry of Forestry regarding forest planning and land use. The absence of a consistent or legitimate civil process means at present land **disputes tend to be resolved politically**. The legal system has not resolved such disputes and the inadequacy of the current system has prompted calls for the creation of a Land Court (Lindsey 1998; Fitzpatrick 1997).

Addressing these issues requires changes in the legal framework and at the level of institutions. Examples are changes around land rights recognition (legal recognition to possession, communal land rights; forest land ownership), and the resolving of ambiguities between customary (*adat*) and formal land laws. A reorganization of the institutional structure may reduce overlapping responsibilities. The capacity of land administration can be expanded through local land capacity building at the *kabupaten* level. Overall, service delivery should become more transparent. There is also a need to improve spatial planning (ensuring that land

use planning is more transparent, public, and conducted at local level) also at the urban level. Better planning also requires more quality of land information. Given the large number of landless people, measures are needed to expand land access for landless people, or build alternative non-land based livelihoods.

The “Land governance Assessment Framework” was applied recently in Indonesia. It concluded that Indonesia faces challenges with land management issues regarding its significant forest and natural resources, and the problems associated with legal pluralism. In this context, there are many opportunities for Indonesia to overcome obstacles that currently prevent economic actors from gaining more secure rights to land and thus for society to fully benefit from the advantages of land as a safety net and respond to incentives for sustainable management and investment.

The National Land Agency (BPN) has long resisted reforms. Some district governments may be more amenable to reforms that they see as responsive to the needs of their communities. This could also be an opportune time to engage with civil-society organizations that have an interest in agrarian, natural resource and legal aid matters, but which may not have sufficient technical capacity to design and promote specific legislative reforms (USAID, 2010).

Finally, after the fall of Suharto in 1998, agrarian reform and resistance movements started emerging of farmers and landless people demanding access to land and other resources. There was pressure to decentralize state authority, while simultaneously, occupations of land controlled by the state and to a lesser extent corporations took place all over Indonesia (estimated in 2000 at 118,830 hectares of national estate land and 48,051 hectares of private estate lands). Presidential decrees on land reform were passed in 2001 and 2003 (Keputusan Presiden) which led to the opportunity of farmers’ movements to talk directly to district (kabupaten) administrations about agrarian issues. These decrees have become legal tools, which helped to legitimize the idea of land and agrarian reform but were resisted by part of government like the Ministry of Forestry) have obstructed efforts to implement the decree. There is growing attention of the government to land reform and the opinion of farmer movements⁶.

4 RESOURCES AND OTHER INFORMATION

4.1 Related country profiles

- USAID: <http://usaidlandtenure.net/usaidltpproducts/country-profiles/indonesia/>
- <http://www.fao.org/countryprofiles/index.asp?lang=en&ISO3=IDN>
- FAO/Gender: <http://www.fao.org/gender/landrights/report/en/>
- IMF: <http://www.imf.org/external/country/IDN/index.htm>
- World Bank: <http://www.worldbank.org/en/country/indonesia>

4.2 Laws, policy and regulations search engines

- FAO Lex (Land & NR search engine): <http://faolex.fao.org/faolex/index.htm>
- Water Lex (Water laws search engine): <http://faolex.fao.org/faolex/waterlex.htm>

4.3 Maps and databases

- Land and soils databases/information systems: <http://www.fao.org/nr/land/databasesinformation-systems/en/>
- Water database/information systems: http://www.fao.org/nr/water/infores_databases.html
- Land and water maps and graphs: <http://www.fao.org/nr/solaw/maps-and-graphs/en/>
http://www.fao.org/nr/water/infores_maps.html

⁵The NGO-network KPA played a critical role in processes that led to the proclamation of the 2001 Presidential Decree on Agrarian Reform (Suraya Afiff et al.).

⁶ Source: agriterra

4.4 Portals and other resources

- http://landportal.info/search/apachesolr_search/indonesia
- <http://www.landesia.org/search/?q=indonesia>

4.5 Donor support programs

- The World Bank is supporting the BPN to develop the registration system and roll out systematic registration. The land governance assessment framework (LGAF) has been piloted in Indonesia (2010).
- The USAID Environmental Services Project; the World Bank's Water Resources and Irrigation Sector Management Program, the Asian Development Bank, the Japan Bank for International Cooperation and the Netherlands work on water resources,
- USAID, the Center for International Forestry Research (CIFOR), The European Union (on FLEGT), Australia (on REDD) and DFID support forest policy in Indonesia (World Bank 2006).

4.6 Civil society organizations working on land governance

Members of International Land Coalition from Indonesia:

- Jaringan Kerja Pemetaan Partisipatif – (participatory mapping learning groups). Bogor, <http://www.ikpp.org/>
- Indonesian Institute for Forest & Environment - Rimbaun Muda Indonesia (RMI) rmibogor@indo.net.id
- Consortium for Agrarian Reform/Konsorsium Pembaruan Agraria - iwan_selamat@yahoo.com; kpa@kpa.or.id
- Sajogyo Institute, <http://www.pustaka-agraria.org/>

Farmer organisations

- API (Alliansi Petani Indonesia) www.api.or.id
- SPI: national farmers organisation
- STN: National Peasants Union.
- Agra: Agrarian Reform Movement Alliance, member of Asian Peasant Coalition. A network with focus on West-Java.

Members Landwatch Asia

- [BINA DESA / IndHRRRA binadesa@indo.net.id](mailto:binadesa@indo.net.id)
- [Bina Swadaya - binaswadaya@binaswadaya.org](mailto:binaswadaya@binaswadaya.org)

Other CSOs

Indonesian civil society groups have provided essential services, with respect to land, active civil-society groups including JATAM-Mining Advocacy Network, Jaringan Advokasi Tambag, and KPA-Consortium for Agrarian Reform Konsorsium Pembaruan Agraria.

- Consortium for Agrarian Reform/Konsorsium Pembaruan Agraria - KPA is an NGO-network focusing on advocacy on agrarian reform since 1994. KPA is also member of the international land coalition <http://www.kpa.or.id/>
- Warsi: working on strategic land use planning www.warsi.or.id/About_us/Profile.htm
- Wahana Lingkungan Hidup Indonesia (WALHI): Email: info@walhi.or.id

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