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Associated Program for International Law

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Input to Call: Thematic report to the UN Human Rights Council "Eradicating poverty in a post-growth context: preparing for the next Development Goals" /

Submission to HRC56 report

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Subject: land tenure in poverty eradication

Introduction on the Input

1. This input will cover the discussion, and intended input to Thematic report to the UN Human Rights Council "Eradicating poverty in a post-growth context: preparing for the next Development Goals". In this input, we will especially consider the goals of 1.4. (on equal rights to economic resources, including on land) of 12 (sustainable production and consumption), of 13.1. and 13.2. (on strategy on responding to climate change). This is with the view to contribute to the discussion on goal of 17.18 (on measurement).
2. This input will especially respond to questions no.3 and 4 which are set by the inquiry. This input will qualify the security of land tenure and welfare-making. This input is taking Indonesia as the point of discussion, though, intend to bring security of land tenure into wider and standardised human rights measurement into goals of SDGs.
3. The input will re-bring previous reports on the subjects, i.e. on input on CESCR general comment of right to land: <https://www.ohchr.org/en/calls-for-input/2021/call-written-contributions-draft-general-comment-no-26-land-and-economic>, no.7 (as co-contributor of joint input of Geneva Academy-La Via Campesina-CETIM-FIAN International) and no. 88 (as co-author in the input of the Law Faculty of the University of Atma Jaya Yogyakarta)

The important progress in tenure security; and, how the case of Indonesia will bring important contribution to measurement

1. The government of Indonesia (the GOI) has been organising and setting land titling towards Indonesians, especially those who are living without land titling. By way of land certificate, the GOI sets a standard of security of tenure in law and administration. In series titling awarding, e.g. 5 million land certificate among one intake in 2021[[1]](#footnote-1)1,55 million land certificate in 2022[[2]](#footnote-2), 2,5 million and aggregate of 109 million land certificate as of December 2023[[3]](#footnote-3).
2. The GOI has been alloting and sets an institution of titling to forest, namely “hutan adat” (indigenous forest) inside “perhutanan sosial” (social forestry); e.g. in February 2023 certificate indigenous forest awarding, there were 108 units, 153.222 hectare[[4]](#footnote-4). This type of certificate, though not a straightforward exclusive rights, contribute to the reorganisation of forests into a process of protection of indigenous communities.
3. Both institutions of security of land tenure are important development in the establishment of security for people of Indonesia. Both in research and in practice, the security of land tenure has been contributing to stop the land conversion into wholesale commercial use. For the research purpose and in practical term, the type of land and forest titling such as the case of Indonesia can set an effective bring social protection.
4. In 2021, the Indonesian NHRI (National Human Rights Institution), the Komisi Nasional Hak Asasi Manusia Indonesia, adopted of the Standard Norma dan Pengaturan (“standard setting”) on land and natural resources, the SNP no. 7.[[5]](#footnote-5) The SNP no. 7 institutes a standard of human rights protection in regard of land and natural resources towards Indonesian citizens, especially towards localities, traditional communities, indigenous communities, and rural population. The SNP no.7 enumerates recognition towards peasants, rural workers, indigenous communities, rural women, fisher-folk, nomadic and semi-nomadic communities (including sea nomads) in terms of the originating of rights.
5. The GOI was put a vote “yes” into the UN Declaration on Rights of Peasants and Other People Working in Rural Areas, both in UN Human Rights Council (A/HRC/RES/39/12, 8 October 2018) and in UN General Assembly (A/RES/73/165, 17 December 2018). This UN Declaration set a standard for recognition towards rural communities, especially in terms of land, seed, means of production, and biodiversity. This contribute to the development and to the confirmation of security of land tenure process in Indonesia.

Security of land tenure and poverty eradication

1. *First,* Institutionalising the recognition of right and access to security of land tenure is, in itself, set a social protection and a social-economic guarantee for livelihood. This security of land tenure will not directly transfer to means of production or to a jumped-start prosperity, but, that create a necessary space for the land owner to plan and to organise their life and to do effort on welfare. Out of this, the reach welfare can be in forms of housing, the enjoyment of clean water, the access to electricity, and others self-welfare and government-provided welfare.
2. *Second*, The certification on land towards those who are previously did not have one and who are not a legal subject is certainly fundamental. This set the rights to access and to participate in public services. The holder has a legal basis for the welfare creation –thus poverty eradication. Especially in rural areas and in an area of biodiversity, the holder can further access to input service. They can have input necessary for agriculture-agro ecology-ecosystem-based livelihood.
3. *Third*, a recognition norm and legal regime is necessary for the state (:government) to guarantee the rights of her citizens, including communities, and to create a long-term mapping of land allocation and utilisation. The ever increasing fierce competition on land and natural resources could displace, and in fact, already invariably displaced traditional communities. The weak or the absence long-term mapping could lead into fake certification, multiple certification, black market of land titling. In the long run, the long term-mapping on land can decide how much welfare could be assured. The long term mapping on whole tenure system will set a standard on which way the security of tenure is to be linked with welfare creation –thus poverty eradication.

Recommendation

1. Tenure and commons

The certification-type on land titling could inform how the wider process of secure tenure should further develop, among other: The certification could carry the risk that the certificate is treated as panacea to the chaotic land allocation and utilisation. The natural resource-relation and economic imbalance could create a fragmented land titling –thus, creating unsecure and unprotected land tenure for middle-low income earners and small holders. The fragmentation could be caused by and in form of ventures of new extractive economy projects, new state mega projects, and urban-mega projects. Those can easily override existing security of tenure.

The security of tenure, thus, need to be developed into several forms and projected reachings. The study of “commons”[[6]](#footnote-6), among other, set a type of security of tenure adopted by norm and policy regime of a state where community living ecosystem, together and as community, and enjoy and managing the ecosystem together and as community. The recognition of communal and indigenous land, such as the SNP (para. 7) and UNDROP draws could develop a further, un-fragmented security of tenure. The common-type and common-basis could complement the certification type, and even, could reach further process of ensuring security of land tenure for low- and middle-income, and rural communities. The common also directly contribute to the development of long term mapping on land tenure.

1. Tenure and welfare

There is a challenge on how to be better to link and to internalise security of tenure to welfare creation, both state-provided welfare and self/community-based welfare. Clearly, the poverty reduction will ask a stable outcome of this linkage and internalisation. The welfare, on this matter, will be access and participation into the making of it based on land tenure (as in the Goal 1.1. of the SDGs).

The increasing security of land tenure, both in terms of number, of target unit, and of type of aggregation should be put into the supply in welfare-making when government measure and develop a poverty eradication process. The security of land tenure will allow a necessary access for the holder and for the commons to access services, input, and living standards. The holder and the common also can make the welfare already enjoyed into modified and combined welfare which suits to their situation.

The increasing security of land tenure will enable the state to improve long-term mapping on land tenure, and thus, will enable them to project a long term improvement on security of land tenure, and on the service they will provide for citizens.

1. Participation and welfare

It is acutely in awareness that fragmentation of land tenure is often the case then an organised one. The linkages of security of land tenure and welfare will serve as a point of negotiation. The citizen, mainly the holder and the commons will negotiate the type of tenure and the welfare which come out it this tenure. The negotiation will improve this linkage. The holder and the commons are participating directly into the welfare they legitimately need to have.

1. Archipelago-based welfare-making

This input will not go into very vast studies and practices on welfare-making. Yet, a note will be put just on the archipelagic context.

For Indonesia, and for archipelagic states, the land tenure and welfare-making is directly linked to the maritime reality. The linkage of security of land tenure and welfare will be developed differently. Some characteristics of maritime communities, such as climate-dependent welfare, higher and farther movement, islands natural resources which mix with tenured-land will be important to be internalised into the linkage. The commons-type welfare, with asymmetric components between one to the other, is worth to be developed.

Concluding notes

1. As probably the works of Elinor Ostrom and the report of UN Special Rapporteur on Right to Food of “final report: the transformative potential of the right to food” (2014) shows the development of framework of linkage of tenure and welfare is necessary. Those works repeatedly posited the imperative of this framework as basic component in norm and policy regime. At the same time, a vast references and literature on land tenure is not translated into a policy creation pursuing the security of land tenure-based welfare. Conflict involved and fierce competition towards land perhaps spooked policy-makers as to where they can keep the consistency between the policy and the outcome they so dearly intend to have.

The value is this input will not be a proposal for a new framework, or a derivation of mathematic framework; but, a further effort, both as policy and conceptual exercise, to link and to mutually internalise between security of land tenure and welfare in achieving goals in SDGs and in developing human rights standard. The best practices and collaboration among governments, communities, and academia will be important to transform this linkage into achievement in poverty reduction.

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1. https://www.presidenri.go.id/siaran-pers/presiden-jokowi-serahkan-15-juta-sertifikat-hak-atas-tanah/ [↑](#footnote-ref-1)
2. https://setkab.go.id/presiden-serahkan-155-juta-sertifikat-tanah-untuk-rakyat/ [↑](#footnote-ref-2)
3. https://www.cnbcindonesia.com/news/20231204154602-4-494397/jokowi-sudah-serahkan-109-juta-sertifikat-tanah-ke-masyarakat [↑](#footnote-ref-3)
4. https://ppid.menlhk.go.id/berita/siaran-pers/7048/dari-balikpapan-presiden-serahkan-sk-perhutanan-sosial-dan-sk-tora-untuk-seluruh-indonesia [↑](#footnote-ref-4)
5. https://www.komnasham.go.id/index.php/peraturan/2022/08/05/39/standar-norma-dan-pengaturan-nomor-7-tentang-hak-asasi-manusia-atas-tanah-dan-sumber-daya-alam.html [↑](#footnote-ref-5)
6. The works of Elinor Ostrom. 2009 Nobel Laureate in Economic Science, and the report of the UN Special Rapporteur on Right to Food “Final Report: The Transformative potential of the right to food” A/HRC/25/57 (24 January 2014) provide a basis and key takes on commons. [↑](#footnote-ref-6)