

MIDCOURSE MANOEUVRES: Community strategies and remedies for natural resource conflicts in Indonesia



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-Meenakshi, Manju and Vidya

ABBREVIATIONS

AKT	Asmin Koalindo Tuhup	IDR	Indonesian Rupiah
AMAN	Aliansi Masyarakat Adat Nusantara	ILC	International Land Coalition
AMDAL	Analisis Mengenai Dampak Lingkungan	IMF	International Monetary Fund
APL	Areal Penggunaan Lain	IPK	Ijin Penebangan Kayu
AS3K	Alliansi Sei Ahas Kalumpang Katimpun Kaladan	IPL	Izin Pembukaan Lahan
AUS	Arjuna Utama Sawit	IPR	Izin Pertambangan Rakyat
BAL	Basic Agrarian Law	IUP	Izin Usaha Pertambangan
BAPPENAS	Badan Perencanaan Pembangunan Nasional	IZUPK	Izin Usaha Pertambangan Khusus
BGA	Bumitama Gunajaya Abadi	JATAM	Jaringan Advokasi Tambang Mining Advocacy Network
BNN	Berita Nasional Narkoba	JBIC	Japan Bank for International Cooperation
BPN	Badan Pertanahan Nasional	JPIC	Justice Peace and Integrity of Creation
BRG	Badan Restorasi Gambut	JPIK	Jaringan Pemantau Independen Kehutanan
BRIMOB	Mobile Brigade Corps	KFCP	Kalimantan Forest Carbon Partnership
CCOW	Coal Contract of Works	KKPA	Kredit Koperasi Primer Anggota
COW	Contract of Works	Km	Kilometre
CPO	Crude Palm Oil	KNTI	Ketua Harian Dewan Pengurus Pusat Kesatuan Nelayan Tradisional Indonesia
CSR	Corporate Social Responsibility	Kobar	Kotawaringin Barat (West)
DPMPSTP	Dinas Penanaman Modal dan Pelayanan Terpadu Satu Puntu	Komnas HAM	Komisi Nasional Hak Asasi Manusia
DPRD	Dewan Perwakilan Rakyat Daerah	KPA	Konsorsium Pembaruan Agraria
EIA	Environment Impact Assessment	KPK	Komisi Pemberantasan Korupsi
FBB	Fresh Fruit Bunches	KPP	Kawasan Pangembangan Produksi
FDI	Foreign Direct Investments	KPPL	Kawasan Pemukiman dan Peruntukan Lainnya
GDP	Gross Domestic Product	KUD	Koeprasi Unit Desa
GLC	Global Land Cover	KYMUP	Koperasi Yang Melakukan Usaha Perkebunan
Ha	hectares	LBH	Lembaga Bantuan Hukum
HCV	High Conservation Value	MBTK	Maloy Batuta Trans Kalimantan
HGU	Hak Guna Usaha	MEMR	Minister of Energy and Mineral Resources
HP	Hutan Produksi		
HPK	Hutan Produksi Konversi		
ICEL	Indonesian Centre for Environmental Law		

MP	Member of Parliament	REDD	Reducing Emissions from Deforestation and forest Degradation
MP3I	Masterplan Percepatan dan Perluasan Pembangunan Ekonomi Indonesia	RMU	Rimba Makmur Utama
MPR	Majelis Permusyawaratan Rakyat	RPJMN	Rencana Pembangunan Jangka Menengah Nasional
MRP	Mega-Rice Project	RSPO	Roundtable on Sustainable Palm Oil Plantation
MW	Mega Watt	SEZ	Special Economic Zones
NA	Not Available	STMT	Sarikat Tani Manggatang Terung
NES	Nucleus Estates and Smallholders	TBP	Tanjung Buyu Perkasa
OAT	Organisasi A'Taimamut	TGHK	Tata Guna Hutan Kesepakatan
PERHUMAS	Perhimpunan Hubungan Masyarakat	THEP	Tata Hamparan Eka Persada
PILNET	Public Interest Lawyers' Network	UHP	Usaha Handala Perkasa
PIR	Perkebunan Inti Rakyat	UKL	Upaya Pengelolaan Lingkungan
PKP2B	Perjanjian Karya Pengusahaan Pertambangan Batubara	UNFCCC	United Nations for Climate Change
PLTU	Pembangkit Listrik Tenaga Uap	UPL	Upaya Pemantauan Lingkungan
PPDI	Pejabat Pengelola Dokumentasi dan Informasi	UUPA	Undang Undang Pokok Agraria
PPHMA	Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat	WALHI	Wahana Lingkungan Hidup Indonesia
PR	Presidential Regulation	WIUP	Wilayah Izin Usaha Pertambangan
PT	Perseroan Terbatas	WIUPK	Wilayah Izin Usaha Pertambangan Khusus
RASR	Rejeki Alam Semesta Raya	WPN	Wilayah Pencadangan Negara
		WWF	World Wildlife Fund

1 Introduction

Over the last 50 years, most Asian countries have gone through a shift from subsistence agricultural systems to industrialised economies. But few have been as turbulent as Indonesia. The history of Indonesia's land and natural resources is tied to the swings in the country's political regime. Following intense political instability since independence, President Sukarno's 'Guided Democracy' system attempted to establish a nationalist approach to protect the young nation from domination by Western countries. With the Basic Agrarian Law (BAL) 1960, foreign ownership of land was disallowed. But this too failed to achieve stability or economic growth. In 1966, General Suharto successfully staged a military coup. Under his presidency, Indonesia experienced the "New Order". A key aspect of this regime was trade and industrial expansion, which allowed an economic growth of seven to eight percent each year. Changes were made to foreign and domestic investment laws to facilitate growth. The New Order removed most controls on private investments. By ending government subsidies and preferential access to funds for state owned banks and state owned enterprises it curtailed their activities. A new Foreign Investment Law of 1967¹ opened the country to Foreign Direct Investments (FDI) (Wie 2006). Foreign loans through the International Monetary Fund (IMF) and World Bank were made easily accessible (Awang 2006).

The Asian economic crisis of 1997 brought Indonesia's economy to a collapse and this unleashed political protests against the New Order. Civil society demanded *reformasi total* (total reform) that included free and honest elections, the release of political prisoners, decentralisation of political power, press freedom and lifting of restrictions on political parties. The political and institutional reform that followed the "Indonesian Revolution" adopted decentralisation and neoliberalism. Between 1999 and 2009 the country opened up to foreign investments, most of which were in natural resources. Indonesia, with its deposit of minerals and high potential of energy and food plantations, has seen a surge in foreign capital in the last few years. In the first quarter of 2017, it recorded a year-on-year increase of one percent in its foreign capital (Jennings 2017). In 2017, the country jumped 19 places to be at rank 72 out of 190 countries in the World Bank's latest ease of doing business index (The Business Times 2017). The consequences of these changes are still unfolding but this has led to substantial environmental degradation and deforestation, high inflation and an ever-increasing influence of multinational corporations in Indonesia's path of growth and development (Colorni 2015).

This report tries to analyse how this development based on extractive, large-scale agricultural projects and industrial and infrastructure projects has impacted communities. It also looks at the efforts made by the communities in mitigating the impacts faced by them and the results of these efforts. The first section of the report provides an overview of the economic and political context and the legal framework that governs land based development in the country. The second section provides the extent of land use change followed by the section on impacts. Subsequent sections delve into strategies employed to mitigate these impacts and remedies achieved.*

¹The law contained generous tax concessions, a guarantee to ensure that arbitrary nationalisation of foreign enterprises will not be done and other attractive incentives.

*To develop this report, besides personal interviews, information available online on various government websites, in research studies and media reports as available till the end of February 2018 has been used. While personal interviews were conducted with the help of translators, for English translation of information available in Bahasa Indonesia, Google translate was relied upon

2.1 History of land governance-legal and institutional framework

Land policies in both colonial and post-colonial Indonesia have had an impact on the changes land use has been subject to. The Domein Declaration² and Agrarian Act of 1870 together ensured that any land in the Indonesian group of islands that was not under private ownership according to the Civil Code³, came under the absolute ownership of the state. This implied that native *adat* (customary) land and all other land, if not proved as private property of an individual under the Civil Code, was the property of the state. However, continuance of *adat* rights till such time when a grant of land is made by the state (despite the fact that the land was a *domein* of the state), gave rise to a dual system of land governance and management: *adat* and colonial (Dutch) systems. Due to inaccessibility and tough terrain of many of the islands of the Indonesian Archipelago⁴, the dual system became the norm of the colonial period. During this time, rural lands (excluding plantations) were governed by the *adat* law and plantations and urban lands fell under the Civil Code (Hiscock & Allan, 1982). The dual system also allowed the Dutch to strike rent deals over communal village lands for sugar cultivation by only contracting the village heads. Hence in 1960, 12 years after independence, Indonesia still had 95% of its land recognised under *adat* system with no formal survey or titles (Frederick & Worden 1993).

Post independence, with the focus of land policies being national development, deliberations on the National Agrarian Law began as early as 1948. The deliberations were in favour of allowing only Indonesian citizens to own the land and introducing a uniform system of rights and laws governing the land. Besides, land reform under Sukarno also looked at modernising the colonial system of land ownership (Frederick & Worden 1993). This took the form of the BAL or *Undang Undang Pokok Agraria* (UUPA). In principle it upheld the *adat* system of land governance and community rights but in the same breath it also stipulated that community rights must not be in conflict with national interest. Also, regulations of the BAL allow for the recognition of only individual rights (Hiscock & Allan, 1982) and does not prescribe clear procedures for recognition of group or community rights. *Adat* is a communal approach for regulation of land, so much so that according to *adat* even individual rights can be exercised only with the consent of communities. Article 3 of BAL recognises *hak ulayat*⁵ (communal *adat* land rights) but it states that they are applicable only if they “evidently still exist” and are in consonance with the national and state’s interest. Even these rights can be registered only under one of the seven private land rights (for details, see section 2.2) mentioned in article 16 of BAL (Bakker, 2008). Due to the presence of such provisions, many researchers believe that BAL was directed at the individualisation of land tenure in Indonesia (Fitzpatrick 1997; Lindsey 1998; Thorburn, 2004).

Suharto’s New Order regime (1966 to 1998), although, continued with BAL, shifted the focus of agricultural policy away from agricultural reform towards increase in production. This meant that very little redistribution of land took place in this period (Frederick & Worden 1993). In fact, this period saw the reduction of area under BAL when the then government classified 70% of the land as forestland. The state thus became the single largest owner of land. All land designated as state forest was controlled by the central Department of Forestry. Even the little protections provided by BAL to the *adat* law were undermined by sectoral laws such as this and the Law on Mining (MoME 1967) leaving communities with no rights over forested areas and with land granted by the state to mining corporations (Rhee et al. 2004). Thus, while *hak ulayat* continued to be respected within communities, the state was not bound to recognise it.

²Domein Declaration, during the Dutch colonial period, determined the conditions for registration of unregistered rights based on individual *adat* claims.

³The Dutch promulgated the Indonesian Civil Code in April 1847 with its core parts being: personal law, family law, property law and inheritance law.

⁴As per the geospatial survey conducted by the National Coordinating Agency for Surveys and Mapping from 2007 to 2010, there are 13,466 islands. Out of these, as per the National Seminar of Name For Little Islands From History Side held at Palembang, South Sumatra in 2008, 922 are permanently inhabited.

⁵*Hak ulayat* is a legal term for communal rights of an ethnic community to land based on that community’s *adat*.

After the fall of Suharto's New Order in 1998 and increasing demands for localised control of resources, this centralised system of land governance was abolished. Powers concerning land governance were devolved to regional governments (Law No. 22 of 1999). However, the forests continued to be governed by the central Ministry of Forestry. This devolution brought the conflict between customary and formal law to prominence (Bakker, 2008). While the local governments got more autonomy under the revised Law on Local Government of 2004, many a times local laws and regulations are in contradiction with national laws. The two parallel sets of *adat* laws as prescribed by the local and national laws further added to the customary-formal law divide (Situmorang, 2010).

2.2 Land rights in Indonesia

According to article 16 of the BAL in Indonesia, seven kinds of private rights over land exist. Table 1 gives information on the uses and nature of six of these rights (the seventh is 'other rights' that includes temporary rights):

Table 1: Different Kinds of Land Rights in Indonesia

Right	Kinds/purpose	Time period	Nature of right	Who can get it?	When it can be annulled?
Right of ownership (<i>Hak Milik</i>)	Certified land titles, traditional (<i>Adat</i>) land titles ⁶	NA	Hereditary, transferable, fullest right over land	Indonesian citizens, corporations ⁷	Land goes back to the state if lying fallow*
Right of exploitation (<i>Hak Guna Usaha</i>)	Cultivation of land for agriculture, fishing or cattle breeding	25-35 years, extendable by 25 years	Transferable, between 5-25 ha of land; for land >50 ha, 'reasonable investment' is required	Indonesian citizens, corporations established under Indonesian law	Can be annulled in public interest & if the land is lying fallow*
Right of building (<i>Hak Guna Bangunan</i>)	Right to build and own buildings	<30 years, extendable by 20 years	Transferable	Indonesian citizens, corporations established under Indonesian law & with domicile in Indonesia	Can be annulled in public interest & if the land is lying fallow*
Right to use (<i>Hak Pakai</i>)	Right to use/ collect product from the land	Not mentioned	Can be free, against payment or against services	Indonesian citizens, foreigners residing in Indonesia, Indonesian & foreign corporations	Not mentioned
Right to lease land for building (<i>Hak Sewa</i>)	Not mentioned	Not mentioned	Only when the right to build has been obtained	Indonesian citizens, foreigners residing in Indonesia, Indonesian & foreign corporations	Not mentioned
Right of opening-up land (<i>Hak Membuka Tanah</i>)	Not mentioned	Not mentioned	Not mentioned	Indonesian citizens	Not mentioned
Right of collecting forest product (<i>Hak Memungut Hasil Hutan</i>)	Not mentioned	Not mentioned	Not mentioned	Indonesian citizens	Not mentioned

*It is not mentioned after how many years of lying fallow/neglected the land would go back to the state.

⁶Origin of right of ownership according to *adat* law is to be regulated by the government

⁷Corporations that can possess right of ownership and requirements for the same are to be decided by the government.

Land ownership titles in Indonesia are of two kinds: “*adat*” land rights i.e. customary or traditional land titles and certified land titles. The customary land titles are usually owned through inheritance. Since the traditional land titles are not registered in the National Land Agency, the *Badan Pertanahan Nasional* (BPN) is a government body that manages all land grants, their extensions and renewals, in real-estate and commercial land dealings, it is considered weaker than the certified titles. Customary land statement letters (*Surat Keterangan Tanah Adat*) recognising the traditional land rights are usually issued by the local customary institutions.

Many individual land titles are recognised through a land ownership letter (*Surat Keterangan Tanah*) issued by village heads, verified by sub-district heads and then recorded in village land record books. These are then submitted with the BPN to obtain land certificates that are registered. Several land titles were granted under the transmigration⁸ scheme. Those are called *Surat Hak Milik* and are certified land titles.

The land that has been classified as ‘state forest’ includes cities, towns, villages and settlements and customary lands. It implies that titles for private ownership cannot be obtained on this land, land conversion without a permission from the Ministry of Forestry is not possible and farming on such land would be considered “illegal”. This is because state forest delineation was done without consulting the local communities. As a result, the communities have come to disregard forest boundaries. Even in non-state forest areas, land registration is a highly complex procedure; it is done manually and requires a large number of supporting documents. This leaves many people outside the formal system of land registration (Anon. n.d.). While the formal system is difficult to navigate for many, the customary system, as mentioned above, gets only lip service when it comes to recognition. This renders many indigenous people without any recognised claims over their lands.

The prevalent presumption of the BAL is that all unregistered land is state land until proven otherwise. This presumption has been translated into issuance of concession rights to private companies over lands that are in use by the locals.

2.3 Legal framework of land governance in Indonesia

The legal framework is pyramidal in structure. Laws, government regulations and presidential regulations (with components ordered by the law or for implementation of government regulations) are passed at the central level in the House of Representatives of Indonesia. Regional regulations include provincial regulations passed by the governor and provincial legislature. Regency/municipality regulations are passed by the regent (*bupati*)/mayor with the regency/municipality legislative. Village regulations are passed by the board of representatives of a village with the head. In practice, there are some other sources of laws as well such as presidential instruction, ministerial decree and regulation and circulation letters. Decisions of the constitutional court and other court decisions have also come to govern the use of natural resources. The constitution itself states that land, water and other natural resources be exploited for the benefit of the people. Its Article 33(3) vests the control of these resources with the State.

These legislations are meant to appraise projects for approvals and check and respond to the environmental and social impacts of development activities (President of Republic of Indonesia 2004).

As shared above, the responsibility of administration of the non-forest land lies with the BAL and forestland is under the jurisdiction of the Ministry of Forestry. Land management also involves the *Bakosuratnal* (National Coordinating Agency for Surveys and Mapping), the Ministry of Agriculture and Ministry of Forestry⁹ and Plantation.

⁸Transmigration programme of the Suharto regime of the late 1980s moved large populations from crowded islands of Java and South Kalimantan to Central Kalimantan and other empty islands.

⁹The Directorate General of Forestry used to be under the Ministry of Agriculture and only in 1983 a separate Department of Forestry was established. In 1998, it was changed to Department of Forestry and Plantation. In 2010 it became the Ministry of Forestry. Since 2014, the Ministry of Forestry has been merged with the Ministry of Environment.

Table 2: Land Governance Under Key Laws

Component of land governance	Legal Framework
Legal status of land use rights and recognition	- The Constitution - Basic Agrarian Law - People's Advisory Assembly Decree No. 9 of 2001 - Basic Forestry Law
Land use planning and taxation	Law No. 12 regarding Property Tax Law
Management of public land	Acquisition of land for development in public interest law
Public provision of land information	Head of BPN Decree No. 3 of 2011 about Assessment and Land Cases Management
Dispute resolution and conflict management	Head of BPN Decree No. 3 of 2011 about Assessment and Land Cases Management

Note: Adapted from *Democracy, land conflict and governance in Indonesia- a case study of land conflicts in Lampung Province* (p 82) Thesis by Susan. N, November, 2015, Doshisha University. Supervised by professor Eiji Oyamada. Kyoto. Japan¹⁰.

The regulatory framework of Indonesia is dynamic and going through frequent changes. There are many sector-specific and cross-sectoral legislations that govern the use of natural resources for development in Indonesia. Inconsistencies are seen not just in the inter-tier laws and regulations but also in the intra-tier legislations. Sectoral laws often come in conflict with each other and this allows officers the opportunity to "cherry-pick" which laws to follow.

The section below highlights key laws that govern the use of natural resources and brings out the inconsistencies across these legislations. It points out that these laws have gone through frequent changes either to be in alignment with the economic and development goals of the country or to adjust themselves to the changing contours of political decentralisation in Indonesia or at times to embolden the regulatory framework. These piecemeal changes have turned most of these laws into fragmented legislations, which are difficult to read and understand and certainly cannot be read in isolation.

2.3.1 The Basic Agrarian Law (BAL) 1960

The BAL, enacted in 1960, was a comprehensive legal effort to modernise Indonesian land ownership. The law recognises previous ownership rights under both *adat* and Western systems, but provided a new certification process under which land was to be surveyed, mapped, and registered. All unclaimed land reverted to government ownership. Land certification, however, was not compulsory and registration was still far from complete by the end of the 1980s. The law also set limits on the size of land ownership, depending on the population density of the region and the type of land. In areas with over 401 people per square kilometre, rice fields were limited to a maximum of five hectares and a minimum of two hectares. Absentee ownership was forbidden. The law under article 16, provides seven kinds of private rights over land. The law holds the principal of eminent domain when it states in article 18 "In the public interest, including the interests of the Nation and the State as well as common interest of the people, the rights on land may be annulled with due compensation and according to a procedure laid down by act". The law states that only Indonesian citizens and corporations "established as per the Indonesian Law" can possess the right of ownership over land (President of Republic of Indonesia 1960).

2.3.2 Majelis Permusyawaratan Rakyat (MPR) Decree No. 9 of 2001

Under the MPR Decree No. 9 of 2001 on Agrarian Reform and Natural Resource Management, the highest house of the legislature, the MPR instructs the House of Representatives, the *Dewan Perwakilan Rakyat* (DPR), and the president regarding harmonisation of laws concerning use of land and natural resources so as to promote equity, human rights and sustainable development. However, the decree largely remains unimplemented (USAID n.d.).

¹⁰Reproduced from: <https://doors.doshisha.ac.jp/duar/repository/ir/23013/zk752.pdf>

2.3.3. Law regarding Land Procurement for Public Utilities' Construction 2/2012

Pursuing its aim of better infrastructure development, Law 2/2012 was promulgated in January 2012. Prior to this law, land acquisition was governed by the Presidential Regulation (PR) No. 36 of 2005. The PR provided general procedures for planning and implementation of land acquisition. It suggested constitution of a land procurement committee by the concerned regent, mayor or governor. Under the new law the private sector can finance the land acquisition process and it doesn't need to wait for state budget disbursements. These private companies can either be contracted through a tender process or work with the government under public-private partnership (President of Republic of Indonesia 2012). No provision of consent and no return of land is possible under the law. The Government Regulation No. 71 of 2012 details the implementing regulations of the law. The law is also referred as the Land Acquisition Law or the Eminent Domain Law of the Country. In the last few years, this law has gone through frequent changes. By the beginning of 2015, the presidential regulation for implementation of this law had been revised twice and the government was contemplating a third revision. (Natahadibrata 2015).

2.3.4. Government Regulation No. 103/2015 on Ownership of Dwelling of Residency House by Foreign Persons Domiciled in Indonesia

The regulation allows foreigners to own landed houses in Indonesia for a period of 80 (30+20+30) years under the right-of-use category. The ownership can also be inherited by foreigners' offspring. (Till 2015 foreigners could have right-of-use over apartments priced above 10 billion Indonesian Dollars [IDR]) (President of Republic of Indonesia 2015).

2.3.5. Law No. 27 of 2007 on Management of Coastal Areas and Isles (with Amendment Law No. 1 of 2014)

Coastal Law of Indonesia defines coastal area as transitional area between land and sea ecosystems influenced by change in land and sea ecosystems. It delineates a minimum of 100 metres from the High Tide Line as coastal border and 12 nautical miles from land as coastal water. Small islands are defined as islands whose area is less than or equal to 2000 square kilometres. It allows reclamation, mining and tourism in coastal areas. It demarcates coastal areas for different purposes:

- General use area- includes uses such as fishing, mining and tourism
- Conservation area- for protection of mangroves, reefs and corals, etc.
- Sea current area- includes use of coastal spaces for shipping and ports
- Area of national strategy

Regents or mayors are responsible for management of coastal areas. The law states that anybody wishing to make use of the space of coastal waters or small islands requires a location permit issued by the regional government. The law recognizes the traditional and customary rights of communities and fisher folk. Through its article 31, the law provides space for public participation (President of Republic of Indonesia 2014a; President of Republic of Indonesia 2007c).

2.3.6. Law No. 25 of 2007 on Capital Investment

The law provides protection to foreign investors by guaranteeing equal treatment but also makes them equally liable for preserving the environment, ensuring health and safety of workers and complying with the laws and regulations of the country. It assures that the government will neither nationalise nor take over the ownership rights of any investors, except through the law. If nationalisation or take over takes place it will be with due compensation. It allows for repatriation and transfer of capital (President of Republic of Indonesia 2007a).

2.3.7. Law No. 39 of 2009 on Special Economic Zones (SEZ)

The SEZ Law provides investment facilities, land and building tax rebates, import facilities including waiver of import duties, regional taxes, facilities in obtaining land rights and immigration documents. It also provides facilities in licensing of operations to be set up in SEZs. The law states that an SEZ must be situated close to

international trading hubs or ship channels in Indonesia or situated in an area with prime resource protection. It must correspond with the regional spatial plan. The administration of SEZ is in three tiers: national committee, regional committee and administrators. The national committee makes SEZ master plans and sets general policies and recommendations for SEZ establishment. The regional committees at the provincial level are responsible for establishment of SEZs, their monitoring, control, evaluation and coordinating their operations. Administrators issue business licenses for operations within the SEZ. A one-stop service office provides all licenses and approvals for setting up and functioning of SEZs (President of Republic of Indonesia 2009c).

2.3.8. Law No. 41 of 1999: The Law on Forestry

The Law on Forestry, based on their functions, divides forests into three types: conservation, production and protection forest.

Table 3: Different Kinds of State-Forest Areas

Permits	Protection Forest	Production Forest	Conservation Forest
Forestry related uses			
Forest area utilisation operation*	Yes	Yes	Yes ¹¹
Environmental service utilisation operation ¹²	Yes	Yes	No
Timber forest produce utilisation operation	No	Yes	No
Non-timber forest produce utilisation operation	No	Yes	No
Timber forest produce collection	No	Yes	No
Non-timber forest produce collection	Yes	Yes	No
Non-forestry uses			
Loan use permit (including mining)	Yes (open-cut mining is not allowed)	Yes	No

*Allowed in all forests except natural conservation forest and core zone and forest zone in National Parks

It stipulates that 30% of the total area of a rivershed and/or an island should be maintained as forest area at proportional distribution.

While the law states that management of forest according to the prevailing indigenous law will be permitted, it also states that it should not contravene the provisions of this law. Village forest (*Hutan desa*) or customary forest (*Hutan adat*) licenses that are exclusive and time-bound (20 years, extendable) are granted to the community for management of the forest. The forest, however, remains under the control of the government (Hilhorst & Porchet n.d.). The law also states that irrespective of the permitted forest use the forest function and the associated category will remain unchanged.

The law also provides for the use of protection and production forests for non-forestry use (including mining related activities) through the issuance of loan use permits by the Minister of forestry (President of Republic of Indonesia 1999). Regulation No. 18/2011 and 16/2014 of Ministry of Forestry add that loan use permits can be granted only for strategic purposes (such as, amongst others, mining, electricity generation and transmission and construction of highways, roads and railways). The regulation restricts open-cut mining only to production forest area whereas underground mining can be undertaken in both production and protected forest areas (MoF 2014).

¹¹No activity is allowed except tourism, religious activities and defence purposes. Now under the Geothermal Act, activities concerning geothermal power generation are allowed (as per interview with Indonesian Centre for Environmental Law (ICEL) in July 2016).

¹²For carbon sequestration and storage in production and protection forests

Taking forward its mandate of maintaining 30% of forest cover, the Regulation 16/2014 also mandates that if a loan use permit for exploitation is for a province whose forest area constitutes less than 30% of the area of the rivershed in that province, the area of the island to which the province belongs, or the area of the province itself, then one of the conditions to fulfil under the in-principal approval is to provide land compensation to the ministry. This land's transfer to national forest estate requires an approval from the concerned governor/*Bupati*. But if the loan use permit is for a province which has forest area of more than 30% of either of the three, the applicant is required to pay a fee known as "non-tax revenue" and commit to carry out reforestation at the end of the mining activities. As per a World Bank report, when forests that are not designated as conversion production forest¹³ (i.e. limited production forest) are being requested for release, then compensatory land or money is to be provided (MoF 2014).

2.3.9. Law No. 4 of 2009: The Law on Mineral and Coal Mining

Law No. 4 of 2009 provides general provisions and requirements for mining coal and other minerals in Indonesia. It replaced the old mining law and introduced area-based licensing. The old mining law provided for issuance of Contract of Works (COW) and Coal Contract of Works (CCOW) that granted mining companies the rights to mine coal and minerals for a certain period. However, under the new law, the Ministry of Energy and Mineral Resources designates certain areas as mining areas¹⁴ within which the regency, provincial and national government can give the mining licenses: *Izin Usaha Pertambangan* (IUP) or mining business license, *Izin Usaha Pertambangan Khusus* (IUPK) or special mining business license (in State Reserve areas) and *Izin Pertambangan Rakyat* (IPR) or smallholder mining rights. These provide a license to carry out certain operations in specific mining areas for only one type of mineral¹⁵. It clarifies that IUP or IUPK or IPR do not give the right to own the land. It stipulates that after the designation of mining areas, tenders will be opened for granting mining business areas or *Wilayah Izin Usaha Pertambangan* (WIUP) for metal minerals and coal and the winners of the tenders will then be issued exploration IUPs by the governor or Minister of Energy and Mineral Resources (MEMR) upon separate application. After completion of the feasibility study in the exploration stage the business owner can apply for a production operation IUP to conduct mining related construction, mining, processing, refining/smelting, transportation and sale. The concerned authority at the appropriate government level will review the feasibility report and decide if the production licence can be issued. There are caps on the acreage of the WIUP for exploration and production of coal and other metals that can be issued to one entity. For non-metal and rock minerals, direct applications will be solicited. The zoning exercise is part of the spatial planning as prescribed under the Spatial Planning Law 26 of 2007 that is valid for 20 years. Mining business areas and smallholder mining areas should constitute areas earmarked for mining in the spatial layout plan. All IUP and IUPK holders are mandated to pay production royalties, which are usually a percentage of sale proceeds to the concerned government (that issued the IUP/IUPK) (President of Republic of Indonesia, 2009a).

2.3.10. Law No. 32/2009: The Environmental Law

The Law No. 32 of 2009 on the Management and Protection of the Environment is the prime legislation for environment protection in Indonesia. It vests the responsibility of enforcement and implementation of the law with the Ministry of Environment, governors and regents/mayors in their respective jurisdictions depending on the location of the natural resources and activities resulting in environmental impact/pollution. The responsibility

¹³Conversion production forest is designated both by the Minister of Forestry based on a forest land use agreement and local government based on a provincial spatial planning document (as per the MoF Regulation 50/2009). Conversion forest status is granted to forests that are already highly degraded or cleared.

¹⁴Mining areas are declared by the Minister of Energy and Mineral Resources based on an inventory of mining potential carried out by the minister, governor or regent/mayor in coordination with state research institutes. Mining areas are not necessarily exclusively for mining activities and other uses can also be permitted in these areas. Mining area plans can be reviewed every five years and the governor and mayor can propose changes to these plans. These maps and plans need to be approved by the parliament. Out of these mining areas, based on exploration on the spread of minerals and other geological features mining business areas and state reserve areas are declared by the minister or governor and smallholder mining areas are endorsed by the regent/mayor. Mining areas are not bound by administrative boundaries that make parts of the National Spatial Plan (GR 22/2010).

¹⁵If more minerals are discovered during exploration, the existing IUP holder will be given priority to mine the discovered minerals upon a new application.

includes control of natural resources, control of environmental pollution and damage, providing legal standards of environment, control of activities that have social impacts and development of conservation funds and other funding arrangements for preservation of environment. The law mandates that every business and activity that can have substantial impact¹⁶ on the environment needs to undergo an Environment Impact Assessment (EIA), an *Analisis Mengenai Dampak Lingkungan* (AMDAL) and obtain an environmental permit. While setting broad requisites for AMDAL, the law states that the AMDAL document is to be prepared with the involvement of communities. For projects that do not require AMDAL, the law requires them to have *Upaya Pengelolaan Lingkungan* (UKL)/*Upaya Pemantauan Lingkungan* (UPL), i.e. environment management efforts/environment monitoring efforts. The law also has broad provisions on management of hazardous wastes. The law clearly states that the minister, governor, regent and the mayor are obliged to announce every application and decision on environmental permits in a manner that is easily understood by the public. There have been provisions in the law for issuing regulations concerning emission standards, quality standards, criteria for 'substantial impact', criteria for competence of AMDAL formulators, procedure of licensing, control of pollution, etc. However, as per the information available online and interviews with concerned non-governmental organisations or NGOs, so far only regulations such as the one defining 'substantial impact' and the one regarding compensation for contamination or damage to environment have been issued.

Environmental law does not explicitly define the environmental 'damage' arising from activities that other laws permit. Article 66 of the law states that anyone fighting for the right to good environment cannot be sued (President of Republic of Indonesia. 2009b).

2.3.11. Law No. 39 of 2014: The Plantations Law

The Plantations Law (Law No. 39/2014) provides broad stipulations related to the area of a plantation, permissions required, duration of the permits, mandatory share of the smallholders in the form of plasma, etc. It makes the Minister of Agriculture, governor and regent/mayor responsible for granting licenses concerning plantations. The law restricts the maximum size of an oil palm plantation to 100,000 hectares¹⁷. It also mandates that the company must utilise 30% of its land area and all of the land area within three and six years of obtaining the land rights, respectively. The law requires that the developer, within three years of obtaining land rights, allocate 20% of the land for local community for them to utilise it for plantation activities (President of Republic of Indonesia. 2014c).

2.3.12. Law No. 14 of 2008 on Public Disclosure of Information

Quashing the concept that state information belongs only to the government, this law made state information a public property. The law obliges the government to share information on all aspects of governance (with some exceptions) with the public. It requires government institutions to set up public information bodies called *Pejabat Pengelola Dokumentasi dan Informasi* (PPDI) to classify information as public and ensure its dissemination to the public. The law also considers any attempt to obstruct public access to information as a punishable offence. (President of Republic of Indonesia 2008)

2.3.13. Law No. 26 of 2007 on Spatial Planning

Spatial Planning Law (Law No. 26 of 2007) was issued as an amendment to the erstwhile Spatial Planning Law in 1992. The 1992 law provided guidelines for spatial planning including plan making, its implementation and regulation of developments. The 2007 amendment was to bring the law in sync with the decentralisation laws and stipulates clearly the authority of provincial and district governments in spatial planning. It took into account the rapid urbanisation of Indonesia and brought in concepts of metropolitan area and megapolitan area (Rukmana 2008). However, the central government retains the authority to reverse the locally made spatial plans for special areas if it thinks the issue is "strategic and of national importance." (Bakker 2008). With the

¹⁶Criteria to determine substantial impact include change in landscapes, exploitation of natural resources, potential of causing environmental pollution, introduction of plants, animals, micro-organisms, etc. Further criteria are included in Regulation No. 5 of 2012.

¹⁷State owned entities and public companies are exempt from the upper limit of 100,000 hectares.

aim of 'sustainable, productive, safe and comfortable' use of national space, Law no. 26 on Spatial Planning was issued in 2007. It makes the provincial government and the national government responsible for spatial planning. The regency/municipal government, with guidance from the provincial government, is responsible for the execution of the spatial plan. The law, in its article 60, clearly lays emphasis on public participation in use and implementation and monitoring of spatial and land use planning. The law acknowledges the rights of the citizens to information related to planning, compensation in case planning activities lead to negative impacts and benefits from planning under the wider scope of public participation. Further article 65 of the law mentions participation in the preparation of spatial plans as one of the roles of society along with participation in spatial utilisation and control over spatial utilisation. Article 66 provides for the possibility of a suit in case a loss is suffered by member(s) of society by spatial management administration (President of Republic of Indonesia 2007b).

2.3.14. Law No. 23 of 2014 on Regional Governance

With this law, powers of the district and city governments to govern and manage natural resources falling in their jurisdiction (as provided in the Law No. 22 of 1999 on Regional Administration) were passed on to the provincial and national level governments (President of Republic of Indonesia. 2014b).

Table 4: Institutions and Their Role in Land Governance

Institutions	Role
BPN	Determining the status of land, allocating, registering and regulating non-forest land
Ministry of Forestry	Diversion of state forest land for non-forest use and regulation of forest land
Regent	Spatial planning and zoning of land in a regency and grant of location permits accordingly (For mining and oil palm concessions, in 2014 the power to grant concessions were shifted from regents to governors); acquisition of private land for construction in 'public interest'

3 Land Use Change

In the 1980s, nearly 20 million hectares i.e. ten percent of the total landmass of Indonesia was cultivated, of which 87% of the land was under smallholder cultivation (Frederick & Worden 1993). According to Thapa (2010), there are 17 million smallholder farms (of less than two hectares) in Indonesia, most of which have been usurped by oil palm, coal and other development activities.

Forest area in Indonesia as per the World Bank (2013) is 50.9% and agricultural area is 31.4%. According to the data released by the Ministry of Forestry in 2013, the extent of Indonesia's land cover, inside and outside of forests, in 2012, is as per Table 5 (MoF 2013)

Table 5: Forest and Non-forest Area in Indonesia

Land Ownership	Area (in Hectares)	%
Forest Area (State-owned land)	98,972,000	52.2
Primary	46,709,800	24.9
Secondary	46,429,100	24.7
Forest Plantations	4,933,700	2.6
Non-Forest Area (private-owned land)	89,766,200	47.8
Total	197,840,900	100

While the figures above provide the area based on the vegetation cover, 75% of the total land area of Indonesia is classified as forestland. Based on its function about 15% of forest area is categorised as conservation forest, 22% as protection forest, 46% as production forest and 17% as convertible production forest (UNCCD 2015).

As per the figures available on the World Bank Open Data website, while the national area under forests is on the decline, the area cultivated for agriculture is increasing. According to European Unions' Global Land Cover (GLC) 2000¹⁸ map, land use change in Indonesia between 2000 and 2010 is represented in Table 6.

Table 6: Area Under Different Land Uses

Land use	Total area in 2000 (as per GLC) (in million hectares)	Total area in 2010 (as per GLC) (in million hectares)
Forests	122.1 (64.1%)	120.0 (62.9%)
Shrubs, grasslands and sparsely vegetated areas	9.3 (4.8%)	9.6 (5%)
Cropland	66.9 (35.1%)	68.7 (36.1%)

However, the Food and Agriculture Organisation estimated between 1980 and 2010 the annual deforestation rate in Indonesia ranged between 500,000 to 1.5 million hectares per annum (Sinaga & Mardah 2014). In the first decade of 2000 it has been five percent, one of the highest in the world (Miettinen et al., 2011).

3.1. Oil palm plantations

A key driver of this loss is export-led agriculture expansion, including palm oil production. Oil palm production spread from one million hectares in 1991 to 8.9 million hectares in 2011 (UNCCD 2015). Linking it with the loss of forests, Fitzherbert et al (2008) (Fitzherbert et al. 2008) share that the area of oil palm plantations in-

¹⁸Global Land Cover (GLC) 2000 maps the global land cover using the Earth Observation Data (For details, see: <http://forobs.jrc.ec.europa.eu/products/glc2000/glc2000.php>)

creased from 1.7 million hectares to 6.1 million hectares from 1990 to 2000 replacing an estimated 1.7 million to three million hectares of forests. International Land Coalition (ILC) (2012) also shares similar trends: in its matrix it found that of the 23 large land transactions spread over an area of 7.5 million hectares most were for agricultural purposes (ILC 2012). However, the government estimates are somewhat conservative- the Ministry of Forestry's data shows that the release of forestland for agriculture and plantations up to 2013 was over six million hectares. In Central Kalimantan alone, forest release area licenses were granted to 10 companies of 670,000 hectares in 2012 and 17 companies of 770,000 hectares in 2013 (MoF 2013).

Besides forests, smallholder farms are also being subject to this change. Thapa (2010) shares that most of the land given to plantations is either the land owned communally under different adat rights or smallholder farms.

Fate of deforested forest land in Indonesia

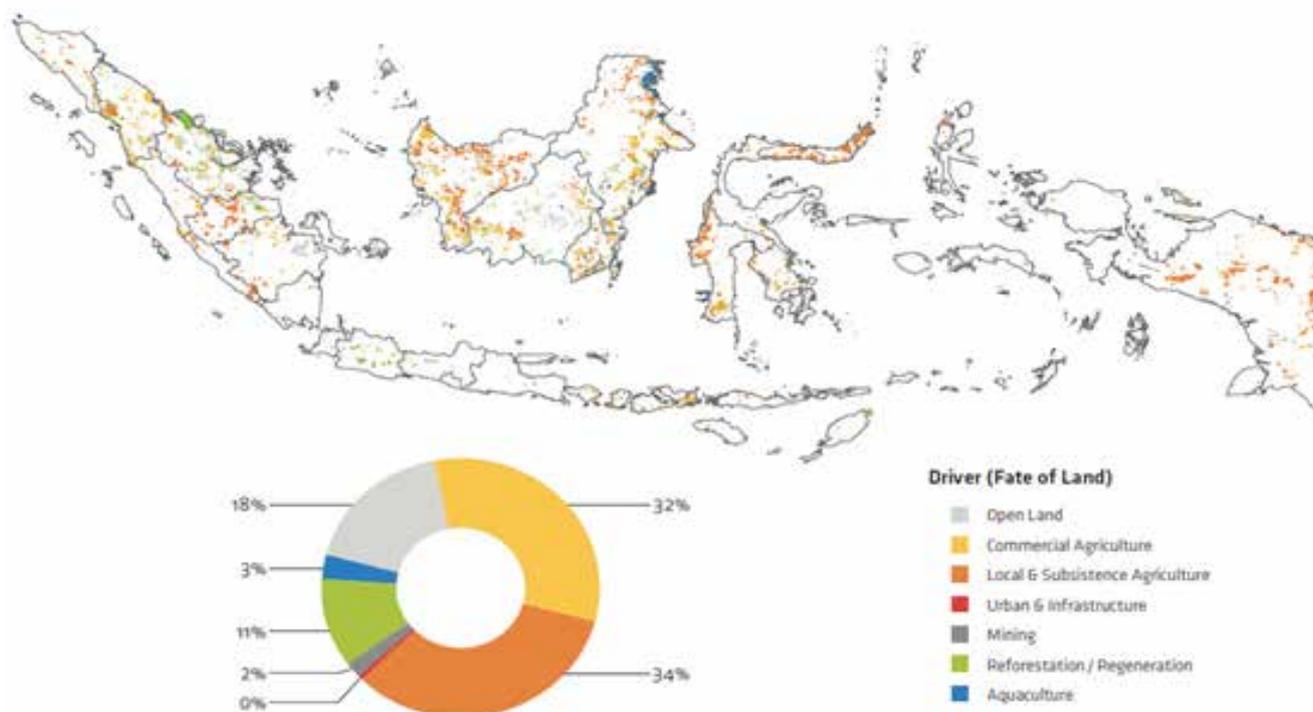


Figure 1. Fate of deforested land in Indonesia. Spatial distribution of deforestation areas and its follow-up land use and links to drivers for Indonesia mapped from Landsat remote sensing data from 2000–2009 (Source: MOFOR, 2011). Caption and image courtesy of Kissinger et al¹⁹.

The same is reflected in the temporal analysis (Figure 2) of the list of permissions granted between 1975 and 2014²⁰. In 1997, close to five million hectares of land were burned enveloping Indonesia and its neighbours in a thick haze. 144 plantation companies that were found guilty in the matter had their licenses revoked in October 1997, many of which were reinstated after two months in early 1998 (Aditjondro 2001). After the fall of Suharto in 1998, till mid-1999, oil palm expansion slowed down (Casson 2000) which is visible in figure 2. In 2007, another peak is observed which can be explained by the increase in global prices of Crude Palm Oil (CPO) in 2006 by 27% (FME 2007). 2007 was also the year when the plasma programme was officially introduced in oil palm plantations (Riauone 2017). This was upheld by many as a way to resolve or avoid land conflicts associated with oil palm plantations, which could prove to be a major roadblock to its growth. According to Down to Earth, by 2004, oil palm cultivation was growing at a rate of 300,000-400,000 hectares per year (FME 2007). As observed in figure 2, since 2012 the growth of oil palm cultivation has slowed down due to a series of moratoriums issued by the Indonesian government on issuance of new permits (see section 6.3.4.3 for more details).

¹⁹Reproduced from <https://news.mongabay.com/2012/09/agriculture-causes-80-of-tropical-deforestation/>

²⁰For the study, a list of business permits maintained by the Ministry of Agriculture that were granted between 1975 and August 2014 for oil palm plantations across Indonesia, were procured through Greenpeace Southeast Asia.

Conversion of forests to palm oil plantations and large-scale land acquisitions began with Sumatra (70% of the oil palm concessions lie in Sumatra), spread to Kalimantan and now have reached Sulawesi and Papua (FME 2007). However, the thrust on oil palm production has not seen a decline. According to data from the Ministry of Agriculture, the total land area used for oil palm plantations in Indonesia at the end of 2015 was about eight million hectares, concentrated in Sumatra and Kalimantan. This is double the area that was under oil palm plantations in 2000.

According to the list of permits granted between 1975 and 2014 (Figure 3), of the 2279 plantation permits granted, land area could be extracted for 1525 projects. While the list may not be a true representation of the actual situation, since overlaps in concessions granted, poor data keeping and lack of coordination between different departments for records and documentation pose challenges to information procurement, it still provides an indicative (although conservative) picture of the situation of plantation-driven land use change in Indonesia. The breakup of land area under plantations across different provinces is shown in figures 4 and 5. As per these charts, the area under Sumatra, which has seven provinces carved out of it (North, South and West Sumatra, Jambi, Riau, Bengkulu, Lampung and Aceh), is over 4.5 million hectares. This sum excludes the area under plantation in North Sumatra and Bengkulu. Information for these two provinces was not available in usable form. The total number of concessions issued in Kalimantan is 740 which are spread over an area of over 6.8 million hectares making up about 30% of the total area under oil palm production, as is generally believed.

3.2. Mining and coal power

In addition to agriculture, the Indonesian Ministry of Energy and Mineral Resources (MoEMR) released data in 2013 stating that it was the world's biggest exporter of thermal coal for industry and overall coal production. It has almost tripled since 2004, to reach 386 million tonnes in 2012 (Scrivener & Lund-Harket 2013). Since 2000, coal mining has picked by 460%. 41 million hectares of land had been allocated for mining by 2013 (JKPP, 2013). According to Jaringan Advokasi Tambang (JATAM) (2016), almost 10% of the total land area of Indonesia has been allocated for coal mining, 80% of which is under exploration. According to the same report, 19% of the existing land under paddy and 24% of land with potential for paddy cultivation is under coal mining. As of 2010, 1.1 million hectares of rainforest were under coal, 85% of

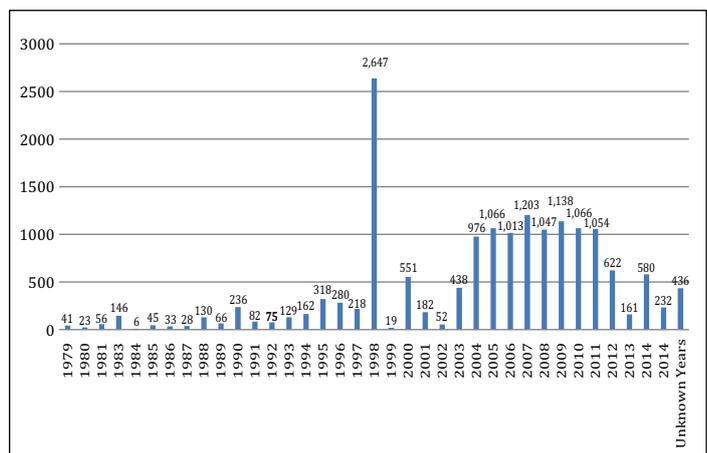


Figure 2. Area under plantations across years: in '000 ha. For years that are not represented in the graph, there were no entries in the base list.

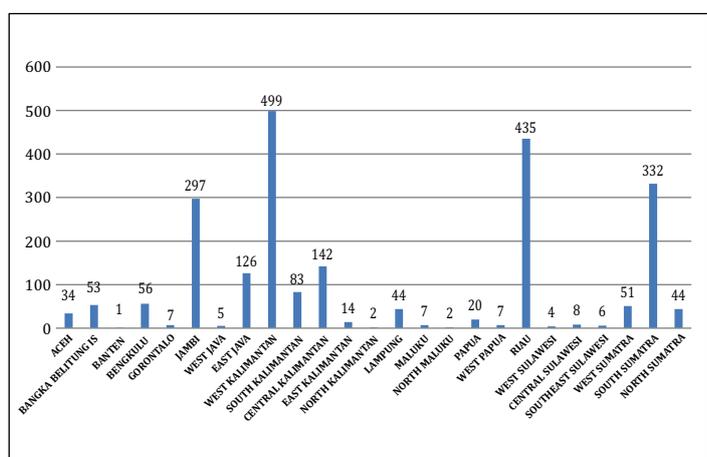


Figure 3. Total number of plantations across provinces 1975-2014

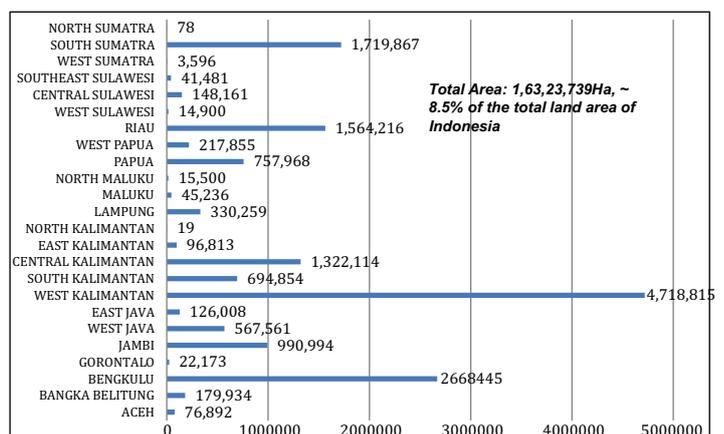


Figure 4. Area under plantations across provinces (Of the 2279 projects listed in the data, for 66 projects the figures mentioned in the 'Area' column were not clear. These are in Bengkulu, West Sumatra and North Sumatra. For 688 projects, the figures for 'Area Under Plantation' were not given. Hence the data is available for 1525 projects.)

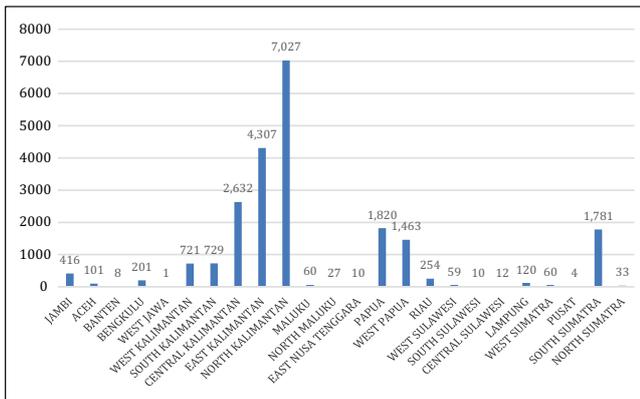


Figure 10. Area under coal mining projects approved in Indonesia till 2016

of new permits and also because of a slump in the global demand for coal and low prices. The breakup of land area under mining across different provinces is as below.

There are clear peaks for Kalimantan, where almost all mining concessions issued are for coal. Bangka Belitung stands out with 70% of its land area allocated for tin mining. (see Figures 8, 9 and 10)

3.3. Urbanisation

According to the 2010 census, the urban population in Indonesia grew from 85 million (42% of the total population) in 2000 to 115 million (50% of the total

population). The urban land has increased from 8900 square kilometres to 10,000 square kilometres in the same period (The World Bank 2016). Urbanisation was concentrated in large cities especially in Jakarta, Surabaya and Bandung till 2010. Post-2010, with these cities reaching their near-saturation points smaller Indonesian cities such as Balikpapan in East Kalimantan, Pekanbaru in Riau and Makassar in South Sulawesi have been growing at a faster rate (Nangoy 2012). This growth is reflected in the land use change in Java: Forest cover has seen a decline from 17% in 1995 to 14% in 2007, wetlands observed a decrease from 30% to 22% in the same period, settlement area increased from 12% to 18% and dry land (dry land, unlike the uplands, are not rain fed and are used for purposes such as household yards, open grasslands, agriculture and sometimes are kept as such) increased from 38% to 43% in the mentioned period in Java (Barus, 2009). Urban villages, which are settlements of people who flee poverty in rural areas in hope of job opportunities, have been on a rise but they are seldom made part of the development plans. In most cases, these settlements are demolished in favour of new business and commercial facilities. During the 1980s when the economy of Indonesia was expanding, investments in property and construction increased in Jakarta. Land prices soared including speculative increases and thousands of individuals left their farms and houses at below market rates under intimidation to make way for luxury homes. This resulted in speculators controlling 40% of land in Central Jakarta. Construction of luxury homes continued through the 90s and ate into the agriculture practiced at the fringes of the greater Jakarta area (HRW 2006). In recent years, the land reclamation project is an example of urbanisation coming to a crossroads with fishing and other traditional livelihoods by reclaiming 5100 hectares, creating 17 new islands (Folmer & Adibrata 2015). Sario and Wenang sub-districts of North Sulawesi province were subject to a massive land reclamation project in 2010 to create new business areas for the city of Manado, the capital of North Sulawesi. Eventually this became the fastest growing urban area of the country and has experienced the highest increase in land prices (McCarthy & Robinson 2016). In all, the sea area that has been filled and reclaimed as land stretches to thousands of hectares (Negasi 2012).

3.4. Infrastructure and industrialisation

Financers and international investors have long lambasted Indonesia for its slow infrastructure growth and limited foreign investment in the sector post the Asian Financial Crisis of 1997 (Davidson 2017; IFC n.d.). However, Jokowi, in his election campaign, made a promise to boost infrastructure growth. Soon after taking office in 2014, he made huge investments in infrastructure. Instead of the usual state-owned enterprises the private companies were given the first right to choose infrastructure projects to invest in (Setiaji & Suroyo 2017). Infrastructure investment increased by 51% from 139 trillion IDR in 2014 to 209 trillion IDR in 2015 (PWC n.d.). Special economic zones are being promoted to attract foreign investments. As of July 2017, only two have started commercial operations: Sei Mangkei, centre for palm oil and rubber processing spread over an area of 2002 hectares in North Sumatra and Tanjung Lesung (1500 hectares in Banten, Java), a centre for tourism (EU-Indonesia Business Network 2015; Indonesia Investments 2017a). Since 2009 the government of Indonesia has notified ten SEZs of which the above two are operational and the rest are at various stages of development

²²Calculated using information available at the websites of National Council for Special Economic zones (<http://kek.ekon.go.id/>) and EU- Indonesia Business Network (http://www.eibn.org/en/page/news_new?278) accessed on 21.02.2018.

(Indonesia Briefing 2017). Together these 10 SEZs are spread across ten different provinces covering a total area of 11,584 hectares²². Two of the biggest SEZs Sei Mangkai (2002 ha) and Tanjung Api Api (2030 ha) are on Sumatra island (North and South). Sei Mangkai is for rubber and palm oil processing and *Tanjung Api Api* is the first integrated centre for rubber, palm oil and coal industry. Another big SEZ is *Maloy Batuta Trans Kalimantan* (MBTK), which is to reap the benefits of the thriving oil palm plantations and the rich coal deposits (largest in Indonesia) of East Kalimantan. It is spread over an area of 1035 hectares and it is the first SEZ as the centre of industry, export and logistics (EU-Indonesia Business Network 2015). While unlike with oil palm and mining, comprehensive data on infrastructure and industrialisation as drivers of land use change in Indonesia is not available, as the above examples show, most of these zones have been demarcated to support the existing oil palm and mining activities in Indonesia. Besides, development of many rail and roadways has been initiated in the last five years, which has caused change in land use. Between 2005 and 2009 road network has increased from 391,009 km to 476,337 km (Global Business Guide Indonesia 2012). Conflicts around land acquisition for Ciawi- Sukabumi toll road project in West Java had stalled the project since 1997. In 2016 the project resumed only after the government took it over from private investors (Susanty 2017). Also, between 2006 and 2014 about 1817 buildings in East Jakarta were demolished and over a thousand people were evicted forcefully for the construction of the 35 kilometre long Double- Double Track Railway Project along East Jakarta Cikarang (Terminski 2014).

4 Impacts of Land Use Change

There is enough evidence available to show that the change in rural landscapes for industry, infrastructure, commercial plantations or conservation is accompanied by social conflicts and ecological impacts for people dependent on natural resources. When forests, fishing harbours, agricultural fields, and grazing lands are partially or fully opened up for creating industrial/economic zones, ports, commercial plantations, power plants or mining, it more often than not leads to impacts. Broadly speaking, these can be understood through three possible scenarios.

- The *first* relates to eviction and dispossession where individuals or communities entirely lose their homes for very meagre or no compensation, lose their land-based livelihoods and water resources and are expected to relocate to areas identified as relocation sites or migrate to new areas on their own.
- The *second* scenario relates to losing access to an area to which livelihoods are dependent. This, in case of Indonesia could include an agricultural land, forest areas or fishing harbours. While these may or may not involve physical displacement, there are incalculable losses of livelihoods.
- The *third* is where operations of a project in the neighbourhood affect the land use and livelihoods of communities around the project. The operations of a plantation or mining activity causes pollution or degradation leading to decline in fish catch, lowering of agricultural productivity, decline in groundwater, water contamination and other related impacts. These have lasting effects on the health, economy and social lives of individuals and communities as a whole.

This categorisation finds mention in Dianto Bachriadi's (2004) observation about mining operations in Indonesia: he states that 62% of profits made from mining do not stay in the country. This leaves only 38% with Indonesia. Out of this 38% only ten percent is kept aside for environment restoration and local communities. He adds, "Local people often receive few benefits from mining operations. Instead, they get environmental destruction like marine and coastal pollution (Newmont gold mine), evictions of small-scale miners (Kelian Equatorial Mining), or human rights violations such as torture and intimidation (Grasberg gold mine in West Papua owned by Freeport Mc-Moran)." Human rights violations such as torture and intimidation usually take place once communities raise their voice or take action in the hope of remedying one or all of the above mention impacts, hence these could be considered as subsequent impacts. Communities face brutal actions in case they speak up against corruption or injustice. There can also be violations of human rights for those who work for these operations but the scope of the study does not include occupational impacts or workers' rights.

More than 22 million households were engaged in agriculture in Indonesia in 2003, of which 20% were female headed (JICA 2011). In agriculture, women play a significant role; in fact, they contribute almost twice as much labour as men. Large-scale land acquisitions by mining, plantation and timber operations reduce women's access to lands and exclude them from decision-making processes as well. Land ownership patterns also tend to disadvantage women. A participatory action research survey on registration of land ownership depicts that over 70% of lands registered are in the name of the husband, close to 17% under the wife's name and 3% registered under both names (ILC n.d.).

According to Indonesia's Ministry of Women's Empowerment, the impact of oil palm plantations on rural women can include: loss of land ownership, longer hours and more effort to carry out domestic chores through loss of access to clean and adequate water and fuelwood, rise in medical costs due to loss of access to medicinal plants obtained from gardens and forests, loss of food and income from home gardens and agricultural fields and an increase in domestic violence against women and children due to increased social and economic stresses (DTE 2012).

A study by *Sawit Watch* and *Solidaritas Perempuan* (Surambo et al 2010) illustrates how the oil palm industry affects rural women. It states that oil palm plantations intensify the injustices experienced by women. The study, titled *Oil Palm Plantation System Weakens the Position of Women*, is based on field research in East Kalimantan



Java woman migrants in West Kotwaringin, Central Kalimantan

and Central Sulawesi. It illustrates gender-related problems such as longer working hours, concerns related to health and safety of women, impact on children, denial of right to information, loss of land tenure, unequal income and erosion of women's culture. It traces the inception of palm oil development, and describes the systematic discrimination against women inherent in the transmigration²³. Julia and White (2011) find that the expanding plantation and contract farming system undermine the position and livelihoods of indigenous women in an already patriarchal community. Women's rights to land are eroded that over time turns them into a class of plantation labour.

4.1. Displacement and dispossession

The people of Indonesia have been subject to involuntary migration from the colonial period. The Dutch colonial government initiated a transmigration programme to move people from densely populated areas of inner islands of Java, Bali and Madura to scarcely populated areas of outer islands of Papua, Sulawesi, Kalimantan and Sumatra. The programme continued through Suharto's regime to provide labour for plantations, and between 1979 and till 1984, 2.5 million people were moved under the programme (Terminski 2013). While these relocations did provide workforce for oil palm plantations, the government claimed that these were carried out to balance the population across Indonesia. Direct development-induced displacement has been seen with the advent of FDI in Indonesia. Freeport McMoran's investment in copper and gold mining in West Papua was the first FDI agreement that Suharto signed after becoming the president. It displaced 15,000 people. Thousands of Kelian people of East Kalimantan were forced to relocate from East Kalimantan with miniscule compensation due to the operation of *Perseroan Terbatas* (PT)²⁴ KEM Gold mine, a subsidiary of Rio Tinto (Hafid 2002). In the Sumatran districts of Indonesia, local elite and business networks have bought up productive palm oil licenses. Statistics show that the number of landless farmers has risen from a few to 30% from 2004 to 2009 in Sumatra (McCarthy, Gillespie, & Zen 2012). Besides mining and plantations, public transport projects have

²³This programme refers to the state-sponsored project which shifted millions of villagers from Java, Madura and Bali to less densely populated 'outer islands', and which supplied labour for agricultural schemes including oil palm plantations.

²⁴PT (*Perseroan Terbatas*) is used in Indonesia to refer to a limited liability company.

also caused huge displacements. The Jabotabek Urban Development project in the suburbs around Jakarta displaced 40,000 to 50,000 people (Terminski, 2013). In January 2006, more than 600 families were displaced in Kampung Melayu Pisangan Timur for the Double Double Railway Track project in East Jakarta (Terminski, 2013). Consortium for Agrarian Reform, the *Konsorsium Pembaruan Agraria* (KPA), an Indonesian NGO, recorded an increase of over 100% in number of conflicts in 2014 (215 conflicts) compared with 2013 (105 conflicts). It attributed this increase to infrastructural projects of the Masterplan for Acceleration and Expansion of Indonesia's Economic Development, the *Masterplan Percepatan dan Perluasan Pembangunan Ekonomi Indonesia* (MP3I) and implementation of Law No. 2/2012 on land acquisition for development for public interest and related regulations (Angoc 2015). Besides this, hydropower is posing further displacement threats for people. An impending 480 megawatt hydroelectric dam in Seko in North Luwu district of South Sulawesi is looking to displace members of indigenous communities of Pohoneang, Hoyyane and Amballong. However, dam induced displacement is not new to the country. In the 1960s and 70s ensuring electricity for Jakarta and the main capital island of Java was a priority and the construction of Jatiluhur Dam in West Java and Gajah Muhgkur Dam in Central Java led to the displacement of several thousand people. Similarly, the construction of Saguling dam and Cirata dam in the 80s has led to displacement of 60,000 and 56,000 people respectively (Terminski 2013). Over 10,000 people were subject to involuntary resettlements for the Thirteenth Power project of Indonesia (Cernea 1999). More recently, Kedung Ombo Dam in Java island, funded by the World Bank, has been one of the most controversial cases of involuntary resettlements involving military coercion (World Bank 1998).

Conservation and tourism projects too have led to mass displacements. Conservation areas cover 28.2 million hectares in Indonesia and have largely been about exclusion of communities. Community farmers have been evicted from their farms in and around Tesso Nillo National Park, traditional fishermen have been displaced from the Derawan islands and expansion of Gunung Halimun- Salak National Park has encroached upon the Kasepuhan Karang territory, which comprised agricultural lands as well (Rights and Resources 2015). Mount Merapi, Indonesia's most active volcano was declared a national park in 2004 but has met with strong local opposition for fear of associated displacements. Despite the volcanic eruptions in 2010 and government's attempts to evacuate the dangerous parts of the mountain, the locals did not leave the area as they feared that once they left the government would confiscate the land and turn it into a national park (Rodrigues 2014). Recently, in Labuan Bajo Komodo Conservation area there have been reports of sale and purchase of indigenous people's lands without their consent (Mercredi 2016).

4.2. Loss of livelihoods

The state considers large tracts of land as 'non-productive' and gives them out to oil palm companies. This is despite the fact that these lands have claimants under the customary law and many smallholders cultivate these lands. As per the KPA, Rights of cultivation/exploitation (HGU- *Hak Guna Usaha*) are usually granted to plantation companies for the lands falling in conversion forest area. Most of the times, the community cultivates these lands (KPA n.d.). Such land conversions impact livelihoods as they result in loss of common and community lands. These lands would earlier be accessed for collection of forest produce, fishing, fuel wood and fodder collection and grazing. Dove (1997) makes similar observation that many of the plantations in Indonesia were developed on lands that were used for swidden agriculture, fruit farming and rubber plantations developed and maintained by communities. However, land use mapping of project sites and estimation of livelihood impacts of projects have begun only very recently. From the 1970s to early 1990s, forest mappings for investments would be based on ecological and biological criteria but with no reference to land use or livelihoods (Colchester, Anderson, & Chao, 2014). The livelihood impacts however have been significant. Smallholdings are being consolidated for oil palm plantations. Smallholders who cultivate oil palm find it an unsustainable alternative. This is primarily because they are often left out of the incentives on offer. Due to tenure constraints they cannot access the credit and financing schemes and eventually sell their lands (Kissinger 2015).

Mining too has similar impacts. In the case of PT KEM, the gold mine impacted alluvial mining being pursued by local people in East Kalimantan. The loss of livelihood could never be recovered as all those who lost their livelihood could not be absorbed as part of the work force in the mine (Hafild. 2002). In another case, fish population in Buyat Bay in North Sulawesi has declined due to PT Newmont *Minhasa Raya's* submarine tailing disposal (Hafild 2002). Conservation areas are often cordoned off causing difficulties for communities



Small scale gold mining in Central Kalimantan

dependent on natural resources. Recently fishermen in parts of Komodo conservation have been denied access to their fishing grounds which forces them to fish further resulting in higher costs. Access to the forest part of the Komodo conservation area is also blocked for communities to collect firewood (Mercerdi, 2016). Similarly, in Bunaken National Park conflicts arise between Bunaken coastal communities and park rangers over the former's access to the sea for fishing and to their use of dead corals for house construction, both of which the rangers prohibit (Putra & Cottrell 2000).

Hydropower in Leuser Ecosystem of Aceh Poses Livelihood Risks

Aceh province hosts 87% of the Leuser Ecosystem of Sumatra Island, one of the world's largest stretches of rainforest and an ecological hotspot. Despite world recognition of the site, Aceh province's 2013 land-use plan does not have any mention of it. Aceh is a semi-autonomous province, which means that the district government wields more control compared to the regional government and even the national government. The land-use plan includes development of a hydro-electric dam in Tampur, Gayo Lues regency. This 428 megawatt dam, which calls for flooding of 4000 hectares of land and relocation of dozens of families, has already got the approval of the committee responsible for review of EIAs in Aceh. The dam is facing opposition from the residents of Gayo Lues who have organised themselves into the Forum of Caretakers of Forest and the Harimau River. The forum, in the past, has sued the Aceh governor and parliament for not including the ecosystem in the land-use plan. The forum maintains that the ecosystem is not just important from the perspective of biodiversity but also supports some four million people in Aceh and Sumatra. The Harimau river is a rich source of fish and the forests provide rattan and honey, all of which supplement the local livelihoods in the area. Another dam project called Kluet 1 in South Aceh Regency, supported through the Indonesian-Chinese consortium – PT Trinusa Energy Indonesia, will bring close to 450 hectares of protected forest under water. The project has received permissions from the Aceh forestry service. The regent of South Aceh gave the project a land use permit in February 2016. But the land-use planning law of South Aceh was not approved by the local parliament till September 2016. This means that the dam was approved before the relevant legislation was in place (Hanafiah 2017).

4.3. Environment degradation and pollution

In several areas where land transformations or conversions have already taken place, there continue to pose everyday challenges for communities living in the neighbourhood (Anon, 2013; Kulkarni & Shah, 2013). Dust pollution, discharge of toxic chemical effluents in rivers and ponds, dumping of garbage and decline in ground water are some of these challenges that people living close to the development project face on a daily basis. Freeport's Grasberg in Papua is the biggest gold mine and the third largest copper mine in the world. The mining concession is spread across 2.5 million hectares of pristine alpine forests, lowland montane forests, freshwater swamps, mangroves and coastal ecosystems. It dumps an extraordinarily large amount of waste (as per its own estimates 700,000 tons per day) into local streams (Perlez & Bonner, 2005). Large-scale mines such as Grasberg lead to pollution of water bodies and acidification of soil and pose threat to life. Take the case of East Kalimantan: according to government data, there are 1,430 mining permit holders in East Kalimantan province. 820 of these companies hold exploration permits and the rest have permission to operate. Altogether, these companies hold concessions covering 5.13 million

Impacts of Tin Mining in Bangka Belitung

Bangka Belitung, where the maximum number of mining approvals has been granted, has 75% of its land area under tin mining by companies such as PT *Timah*, PT *KobaTin* and other mining companies. Each year 5,400 hectares of Bangka Belitung land is converted into mines. Mining activities are being carried out in the sea as well. The province has no more than 300,000 hectares (Total area of the island is 1.6 million hectares) of land available for housing and other settlements. 64% of its total land area is covered with abandoned mines. Such large-scale damage has killed any hope of communities to have sustainable livelihoods. Open pits in abandoned mines are rearing grounds for dengue and malaria. Sungai Liat and Mendobarat areas report the highest levels of haemorrhagic fever. Approximately 70% of mangrove forest on the islands has been subsumed by mining or plantation activities. Former fisherfolk have had to turn to mining due to the decline in fish catch. Coral reefs in the sea are dying due to sedimentation from tin mining with over 50% of them already dead. Yet, more and more mining permissions are being given in the coastal area bringing fisher communities and companies into conflict. (WALHI 2014)



Coal being transported, Barito River, Puruk Cahu

hectares (12.7 million acres), just over 40% of the province's total land area. Samarinda, the capital city of East Kalimantan is a coal terminal and there are 58 open cast coal mines operating around the city. The city has 71% of its area under mining. As per JATAM (2016), there are 216 deadly mining pits, which often lead to fatal accidents. As per the World Wildlife Fund (WWF) (n.d.), 2.5 metric tons of effluents are released into water streams for every metric ton of palm oil produced. These are released due to the processing of palm oil in mills. Latest reports by the Ministry of Environment and Forestry state that 75% of Indonesia's rivers are seriously polluted, 52 of which are heavily polluted and 118 watersheds out of 450 are critically polluted (Saputra 2017). 17 of Indonesia's lakes have been classified as being 'critical' in condition which implies that they suffer from a set of environmental problems, a major one being sedimentation (Victor 2018). Take the example of Lake Limboto in Gorontalo province. The lake is situated right next to Gorontalo city and the land conversions for this ever-expanding city have taken a toll on the lake. In 1932, the lake used to span over 70 square kilometres but today it measures only 25 square kilometres in area. Fishing in the lake has been badly impacted due to such shrinking and shallowing of the lake (Suhari 2014). The major cause lies in the unregulated land allocations for housing and buildings in the area. The Ministry of Land and Spatial Planning was made responsible for the issuance of land certificates when Gorontalo was declared a 'conservation province'. Since then the master plan written for the area by the local government in 2005 has not been executed and the allocations are being granted by the Ministry of Land and Spatial Planning in the area without a reference plan (Morse 2017). Hence, the impact of land use change cannot be assessed only in terms of changes that are seen at the time of conversion; even old and ongoing projects of land use transformation have grave bearing on people living in surrounding areas.

Figure 11 is based on the list of tin mining concessions issued in Indonesia between 1992 and 2016. The figure shows results similar to WALHI's observations: 537,000 hectares of area in Bangka Belitung is under tin mining. Effectively 70% of the province area has been given out for mining.

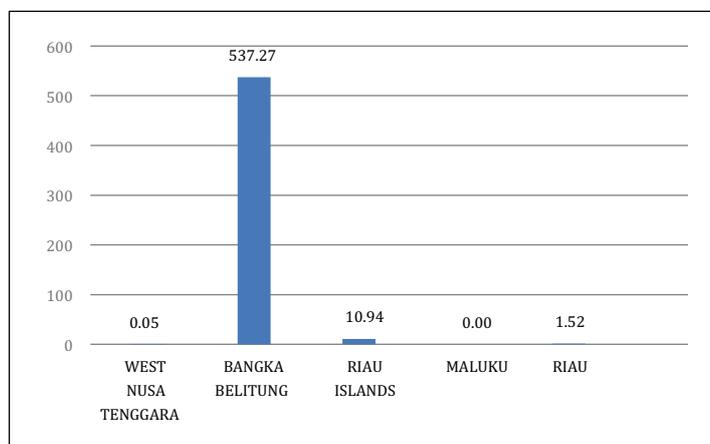


Figure 11. Tin mining across provinces in Indonesia

Batang- The First Coal Fired Thermal Power Plant of the Country

Responding to reduced global demands for coal, a decline in export and a therefore uncertain future facing the mining companies, the Batang coal power plant was initiated with the hope that it would aid in domestic consumption of coal. Batang district is on the North-eastern coast of the central Indonesian island of Java (Woods 2017). The plant is the largest coal fired plant in Southeast Asia with a capacity of 2000 megawatts. Efforts have been on since 2013 to acquire 200 hectares of land for the *Pembangkit Listrik Tenaga Uap* (PLTU), a Thermal Power Plant) in Batang. Five villages in the areas protested against the project and according to the environmentalists, the plant overlaps with the Ujungnegoro-Roban marine protected area. As of May 2013, the villagers maintained that 70% of the land to be subsumed under the project was still with them (Parkar 2013). The plant is slated to have a jetty as well and explorations for the same have given the fisher folk cause for worry as they suspect a decrease in their catch due to the disturbance. Tenant farmers whose plots have been sold for the plant have lost their livelihoods too. People have been opposing the plant using multiple strategies. They saw intimidation by local police and military but have been able to delay the project. However, recently some of the community members have accepted the compensation and are considering giving their consent for the plant. But communities that are already living next to coal plants have travelled to Batang to warn the farmers and fishers not to accept these handouts (Sundaryani 2016).

Batang is also the first public-private investment mechanism financed completely by the private sector. Projects fully financed by private entities need to acquire land directly from the landowners but the government reckons that the plant was in “public interest” and hence it got involved in the acquisition process. This is not all. To allow the project the government has already changed the marine conservation area twice in two years. This is usually a procedure that is done once in five years. The land has been acquired under the Land Procurement for Public Utilities Construction Law No.2 of 2012. A case was filed against the power plant in which the lawyers on behalf of local communities fisher groups argued that the law doesn’t apply here as Batang “is a private project” and not necessarily for “public purpose”. This is the first case in which the new land acquisition law has been used to acquire land. In March 2016, the Supreme Court decided in favour of the project. In December 2016, after losing the court case the community also approached the Japan Bank for International Cooperation (JBIC), the key financier, with a petition against the plant. In response, the JBIC has visited the site and met with the community but has claimed that there was no evidence supporting people’s complaints. (Sundaryani 2016)

4.4. Threats to coastal areas

Coastal development has brought fisher and coastal communities in direct conflict with project investors. For example, in North Borneo fisher interests and shipping uses are in conflict. The coastal law doesn’t give any priority to fisher people. It doesn’t recognise fishers’ first right to the sea and categorises areas for fisheries as well as activities such as tourism and mining under the same ‘general use area’ category. This creates a conflict between the coastal law and fisheries law. However, coastal zone planning as prescribed under the coastal law upholds the principle of public participation and according to Hadiwinata (2017) from the Coalition for Fisheries Justice and Indonesia’s traditional fishermen, the *Ketua Harian Dewan Pengurus Pusat Kesatuan Nelayan Tradisional Indonesia* (KNTI), the provision holds the potential of safeguarding fishers’ rights. He says, “Recently fishing community won a court case against mining in North Sulawesi and has got protection for their coastal land. They used the coastal law. There have been examples when people have used the coastal law and pushed for ‘sustainable fishing ground’ and excluded fishing area from land demarcated for other uses.” However, he also shares that there is not much awareness of it and even the institutions and systems to allow this have not been put in place.

Jakarta Bay Reclamation Project

Off the North Coast of the capital of Jakarta, the Indonesian government intends to build 17 artificial islands to ease the population pressure and slow down the sinking of its capital city. Jakarta, the world’s most densely populated urban settlement on earth, is experiencing a rate of subsidence higher than any other city (10-20 cm/year) (Renaldi 2017). To save the city from being inundated by sea water the project was initiated in 2014. To make way for the project traditional fishing communities and other coastal communities were evicted forcibly. While environmentalists fear great damage to the marine ecosystem and erosion in neighbouring islands and huge losses for the fisheries sector. The Coalition to Save Jakarta Bay estimates annual losses of IDR 178.1 billion related to the project. The KNTI has been opposing the project since the time it was conceptualised. The Ministry of Environment, observing some violations, suspended the ongoing work on two artificial islands in May 2016. In October 2016, however, a high court decided that the project work could resume. The Ministry of Environment at that time asked for certain measures to be taken before the work began. In October last year, work on the project resumed after the Ministry of Environment confirmed the requisite measures had been taken by the project owner (Mongabay 2017a).

5 | Land Conflicts

From 1965 till 1998 the country was under the Suharto rule. The New Order “became a magnet for foreign investment, particularly in the petroleum, forestry and mining sectors.” (Susan 2015). The forestry industry became the biggest contributor to national income. During this regime, the government seized land from communities and individuals and handed it to corporations for developing plantations. “Confrontations between local communities and state- and armed forces- backed concession-holders and migrant farmers- were frequent and often violent.” Political and economic power accumulated in the hands of a few conglomerates, particularly those who were “closely aligned to President Suharto and his family members”. After the fall of Suharto, although three years of massive reform from 1999 to 2002 led to greater democracy and decentralised governance, the country also embraced neoliberalism (Susan 2015; Thorburn 2004).

Decentralisation of power gave *bupatis* the ultimate authority over land allocation. Many of them have been accused of widespread corruption in the way they handed out concessions. Although, Jokowi won the election based on the promise of reducing corruption, the country is still afflicted by it. The Environmental Investigation Agency conducted an in-depth investigation into the palm oil industry in Indonesia and noted many instances of corruption and lax enforcement of law (Milman 2015). Corruption has had implications on communities and environment: while forests have been cleared and communities have been displaced, an administrative nightmare has also unfolded. Overlaps in the concessions granted to mining and oil palm companies have become a common feature of large-scale land use permissions granted in the islands of East Kalimantan and Central Kalimantan. For instance, the total area of Barito Utara regency in Central Kalimantan is 830,000 hectares and if one combines the official figures provided by the regency offices for area under plantation (300,950 ha) and mining (752,188.5 ha), it comes out to be 10,53,138.5 hectares. This observation is corroborated by the findings of a study conducted in 2015 that states that 20% of the mining licenses in Central Kalimantan overlap with incompatible uses such as oil palm plantations (McClellan 2015). Corruption and administrative lapses together have undermined communities’ participation in decision-making. Center for International Forestry Research CIFOR (Myers, Ravikumar & Larson 2015) studied a few cases in Central Kalimantan and West Kalimantan and found that customary land users and local communities have the smallest influence on the decisions of large-scale land use. Although the processes that aim to safeguard the interests of indigenous land users, for example, the EIA, have been applied, the input of these actors remains limited. This has resulted in land conflicts. Fisher et al (1999) also links poor public participation with land conflicts. He states, “land conflicts are characterised by poor public participation in decision-making.”

The BPN defines land conflict as a phenomenon that has a collective impact that may have a bearing on the “condition of the national social economy”. It differentiates these conflicts from land disputes, which are inter-personal conflicts and may have implications only for the parties involved (Susan 2015). The head of the BPN, Juyo Winoto shared in 2010 that 9471 cases of land dispute and land conflict have emerged between 1998 and January 2019 and 2913 of these remained unresolved (Winoto, 2010). Assuming that land conflicts are arising because of poor land administration, the BPN laid emphasis on improving the process of land administration, service, infrastructure and bureaucracy between 2009 and 2013 (Winoto, 2009). According to the data from the KPA, between 2004 and 2015, there have been 1772 agrarian conflicts covering 6,942,381 hectares with direct involvement of 1,085,817 households. On an average, an agrarian conflict occurs nearly every two days. Each day, nearly 1,792 hectares of land is seized by the administration and more than 267 families are deprived of their land (KPA 2015).

As part of this study a set of 75 cases of conflict has been analysed quantitatively. Conflict, for the purpose of this study, has been understood as the first known collective action against an existing or an upcoming project. The action can be geared towards resisting a project or seeking certain demands from the state/project owners in exchange of providing consent to the project or demanding certain modifications to the process and/or timeline of appraisal and/or execution of a project or demanding changes in project design or location.

Method: For the study, media reports of such collective actions were relied upon. These cases have been randomly picked up through online research from media reports, reports of international research and aid organisations, research papers, opinion pieces, photo essays, etc. on the basis of the primary criteria a case must have a report of a collective action. Since oil palm plantation and mining are two sectors contributing significantly to land use change and associated conflicts, data has been collected only for these two sectors.

Limitation: The project team has been aware of the limitation that the media usually picks up what are called flash points in the life of a conflict such as an administrative action, a court verdict or a blockade organised by the community. Also, initially it was decided that 50 cases of conflict would be selected from the oil palm plantations sector and 50 from the sector of coal mining, cases on coal mining in which affected communities had taken some collective action were found to be scarce. Encountering this difficulty, conflict cases concerning coal mining were restricted to 25. The analysis is based on the information available online till the end of October 2017.

5.1 From impact to conflict

Impacts of large-scale land transformations may not get communicated immediately, but after a time lag. There could be varied reasons for this time lag: hostile and oppressive environment in a country/state, people's understanding of injustice, their agency and capacity, prior knowledge of impacts of a project, nature of impacts, etc. According to the dataset of 75 cases, the average number of years between the project approval date and the first collective response in the case of mining projects is 4.2 years and in the case of oil palm plantations, the average time is 11 years. The shortest response period for the full dataset is less than a year (precisely one month) and the longest response period is 28 years, both observed in plantation cases. On the other hand, in mining cases the long period is seven years and the shortest is one year. Plantation cases exhibit such extremes because often the conflict erupts shortly after the project approval date, due to the soon to follow land loss. Cases that involved an agreement of benefit sharing (plasma) with the company show a long time lag between date of project approval and date of collective action. Benefit sharing agreements started off as an informal arrangement to prevent conflicts, but in 2007 they were made a mandatory requirement for oil palm plantations. After this change in the law, issues of unfair compensation from the past have become active conflicts. Sometimes the conflicts have erupted due to activities such as discharge of palm fruit processing waste into a nearby river or blocking of people's access to their resources by these oil palm plantations. In the case of PT Surya Intisari Raya, one of the 75 cases, the conflict erupted 23 years after approval of the plantation. This was because the company had blocked a public road that passed through its concession area and hindered its restoration work (Ramadana 2017). The case in which the conflict erupted after only a month of the company's activities is from Jambi where the local *Semambu* community rejected the project, PT *Inti Starindo Agromakmur*. The community rejected the company because it had been previously active in the area and they had had bad experiences and wished not to have the company operating in their area again. The community also shared that there had been no official transfer of land from the community to the company (Info Tebo 2010).

There are three oil palm cases in which the conflict began before the Ministry of Agriculture approved the project. One conflict erupted four years prior to the approval and two projects saw emergence of conflict five years in advance of the approval date. The plantation business permission is not the first permission that a project requires before it begins operations. Location permits, land transfer, land cultivation rights, all these are needed prior to the grant of a business permits to a plantation company. PT *Tanjung Buyu Perkasa* Plantation, which has been listed as one of the cases in the dataset, received a business approval from the Ministry of Agriculture in 2005 but the conflict erupted in 2001 when the location permit had been released by the regent of Berau in East Kalimantan in 2001 (Redeb 2017).

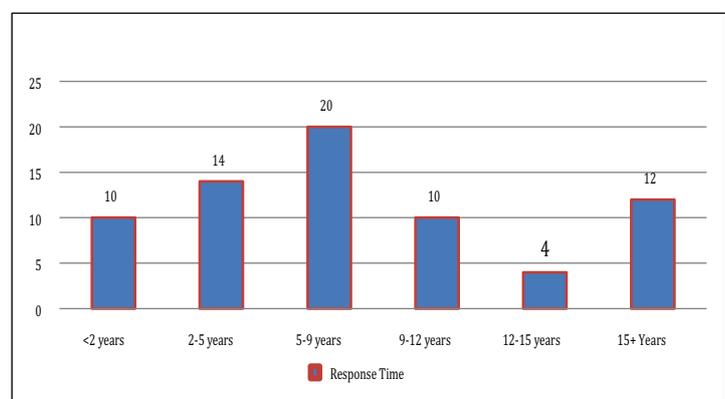


Figure 12. Impact to conflict: time lag (based on quantitative analysis of a database of 75 cases)

5.2. Cause of conflict

Impacts of large-scale land use transformations are communicated in multiple ways: they get vocalised as unequal distribution of the perceived benefits or burdens of development or curtailment of certain rights. They can also be communicated as impacts that have implications for the larger public. They can be shown to be jeopardising conservation goals of the country or as negative consequences for the environment and biodiversity. How impacts get communicated sets the tone for the strategies and remedies that communities seek. If communities feel that they have not benefited adequately, the strategies chosen tend to be persuasive and collaborative in nature. However, when communities feel that they have got only burdens in their share, the strategies are largely disruptive. In Indonesia, impacts such as environmental degradation and accidents have been reported to be the major causes of conflict in mining projects. There have been many cases of fatal accidents of children falling in the open pits of the abandoned mine sites. Although community land and land used by smallholders were acquired for mining, these specifically have not been reported as cause of conflict. In all 25 mining projects, in which a conflict has been reported, communities have cited environmental degradation to be the major impact. On the other hand, for plantation, land loss and livelihood loss are the major impacts as per the communities. (see Figure 13). In the case of oil palm plantations villagers oppose takeover of land as they either see the possibility for collaboration and arriving at a benefit-sharing agreement with the company (For details, see section 6.3.2), or, as in many cases, farmers express the desire to cultivate oil palm themselves. Through the two mining case studies however, it has been observed that farmers believe that such possibilities are not there in mining projects. In the case of PT AKT in Murung Raya, the farmers relented and sold their land to the company at a compromised rate. The fact that areas that are rich in mining are in general lesser developed and more remote also drives the choices of farmers. They view mining companies as opportunities and as a way of meeting their need for basic infrastructure that the government has failed to do. This has been observed in both case studies, KGLR/BNJM in Barito Timur and AKT in Murung Raya. Also, unlike with the oil palm plantations, mining has been going on in areas with a limited number of trans-migrants. Trans-migrants, with their clear land titles that are recognised by the government, tend to resist land takeover or demand plasma agreements from the companies.

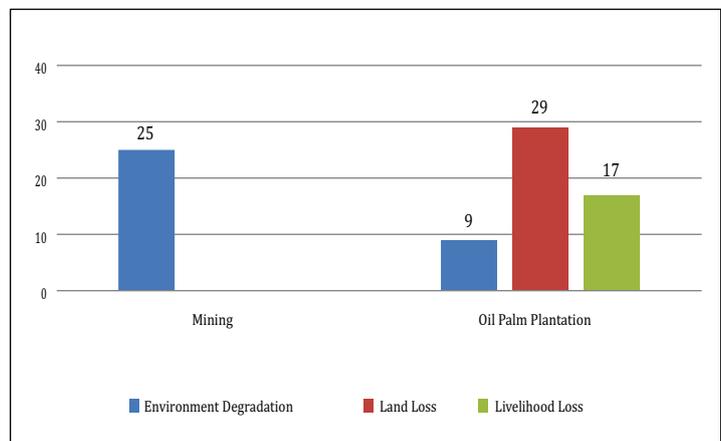


Figure 13. Causes of conflict (based on quantitative analysis of a database of 75 cases)

* In a few of the projects, the impacts experienced by the communities have been more than one, hence the total number of impacts may not tally with the total number of projects.

6

Strategies for Seeking Remedies

As early as 1953, the communist party of Indonesia based the democratic revolution of Indonesia on agrarian reforms. 'Land to the peasants' was the slogan of the agrarian programme initiated by the fifth congress of the party. However, the opening up of land to commercial interests during the Suharto Era escalated the dissatisfaction amongst farmers and despite state repression, new movements of "dispossessed farmers erupted in many rural parts of Indonesia" (Bachriadi 2012). In the early 1990s, the West Java Peasant's Union was the first autonomous peasant union formed in Indonesia after the 1965 authoritarian era. This was followed by creation of several other peasant unions such as the Independent Peasant Union of Central Java, the Lampung Peasant Union and the North Sumatra Peasant Union. By the mid-1990s, the KPA was formed. Only a few weeks after the fall of Suharto, the Federation of Indonesian Peasant Unions was formed (Bachriadi 2012). When the New Order collapsed in 1998, peasants started reoccupying their lands and social and agrarian movements expanded. This tradition of peasant mobilisation in Indonesia that survived the repressive New Order and its preoccupation with liberalisation and commercial takeover of land and natural resources at the expense of smallholders is strong even today. Landless and marginalised rural people have been at the centre of the discourse on agrarian reforms. In fact, there is no distinction between land reform and agrarian reform in Indonesia. As Kurniawan Sabar (2017) explains, "*Land conflict is situated in the agrarian problem. All land in Indonesia is facing an agrarian problem.*" (Sabar 2017)

This strong peasant mobilisation and unionisation has ensured that the landless and smallholders make their voices heard. An increase in land conflicts has been reported in the country since 1998, particularly between "local communities and plantation companies or forestry departments" (Susan 2015). In fact, a study by the World Bank shows that land conflicts accounted for the second highest number of conflict cases in the country since 1998 (the first being criminal activities) (McLaughlin & Perdana 2012). The high number of conflicts is, in a way, also an indicator of the collective agency of the farmers and forest dependent people in the region. These conflicts thus can be viewed as people's disapproval of the biased agrarian and development model of the country. While demand for agrarian reforms lie at the base of most land conflicts in Indonesia, immediate recourse to conflicts is sought from the nearest possible avenues for resolution. On anticipating or observing a land use change, the first reaction of the communities is to reach out to the available face of the project; it could be the company manager/security personnel guarding the project area or the government official carving out the land for the project. Sometimes they approach the available administration office as well and if not received well, they may resort to peaceful protests and blockades, which may intensify. Whether peasant communities faced with land conflicts choose to respond to individual projects or target government policies, strategies deployed by them can be broadly classified into three.

Collaborative strategies are used when communities are faced with projects that are acceptable to them in principle, or when they have little or no space to refuse. These strategies involve negotiating with companies regarding the terms of engagement such as plasma agreements, obtaining jobs or other benefits or compensation in lieu of their livelihood losses or environmental impact. In some cases, collaborative strategies with the government or corporations may be tried out by communities when special spaces or institutions are created for conflict resolution such as with the anti-corruption commission or with the Roundtable on Sustainable Palm Oil Plantation (RSPO).

Persuasive strategies involve bringing the attention of a "responsible third party" or the public to their situation or problem. This could be the media, the government, the judiciary or political leaders, who are all accountable and have the authority to improve land governance. Affected communities present well-argued cases to these parties with the hope of gaining support for their cause and obtaining remedies for their problems. They may approach the government with cases of project violations and administrative complaints, use adversarial avenues such as litigation or seek mediation by an ombudsman or politician. Non-violent protests are a common form of persuasive strategy to bring public attention to land conflicts.

- Administrative complaint is the most popular strategy (followed by protests). In all mining cases, an administrative complaint has been filed. These were the cases concerning environment degradation. While administrative complaints have commonly been used as a single strategy, protests have been used in combination with other strategies. As a single strategy, protests have been observed in only three oil palm cases. In combination, it has been observed in seven of 25 mining cases and 23 of 50 oil palm cases.
- The two-strategy combination has been tried in only one mining case (administrative complaint and litigation) and in 19 oil palm cases.
- Many of the listed strategies have been observed only in oil palm cases: reclaiming the land (four cases), approaching the company (15 cases) and international redress (five cases).
- Litigation has been tried in five cases (three oil palm cases and two mining cases). Overall litigation is not seen as a popular strategy for individual cases. But cases in which the court decision has acknowledged the community's grievances have been well reported in the media.
- Political advocacy has been used in combination with two other strategies in 11 mining cases. It has been used only in three oil palm cases. In one oil palm case, it has been used in combination with administrative complaint.
- Reporting to special commissions has been used 12 times. It has always been used in combination with other strategies (11 times in mining cases and once in an oil palm case).
- The combination of administrative complaint and protest has been seen only in oil palm case.
- Media reporting has always been seen in three-strategy combinations: in mining with administrative complaint and political advocacy (six cases); in oil palm with administrative complaint and protest (two cases).
- Of the 26 single strategy cases, 20 are the conflicts arising from the development of oil palm (see Table 8).

The observations listed above suggest that people don't rely on a single strategy for conflict resolution. They try multiple strategies and different avenues. Conflicts arising out of oil palm plantation projects, which have largely been land related, have seen some strategies, which are not represented in the mining cases. These are: reclaiming the land, international redress and approaching the company. Reclaiming the land is observed when those affected are desperate for resolution or seek urgent remedies; international redress is observed due to involvement of many international companies in the oil palm sector; and people approach companies as they see the likelihood of remedies in collaborating with companies. Conflict cases arising out of mining activities have largely been reported to special commissions and to administrative institutions along with strategic use of media and political actors to further their demands.

Table 8: Single strategies in cases concerning oil palm projects (based on quantitative analysis of a database of 75 cases)

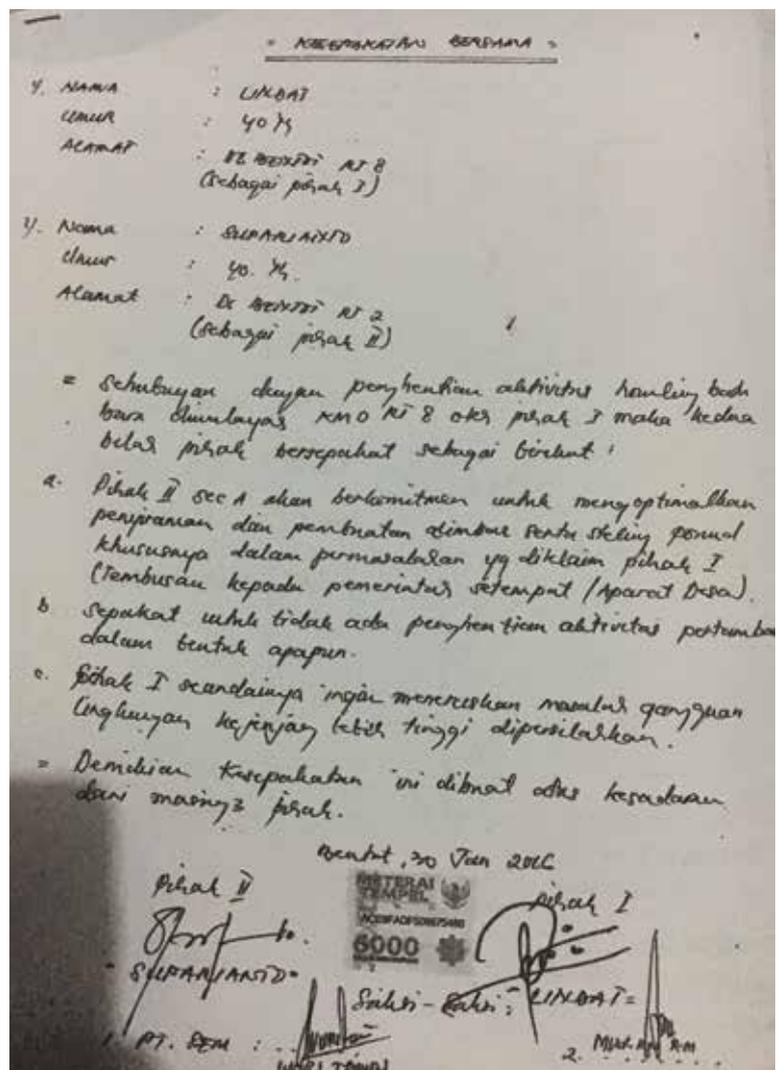
Administrative complaint	7
Approaching the company	6
International Redress	1
Litigation	1
Political Advocacy	1
Protest	3
Reclaiming the land	1

6.1.1. Administrative complaints

Complaints to the administration whether the regent or local environment agency is the usual recourse most people suffering environmental harm seem to take. Administrative complaint is the most popular strategy amongst all strategies alone and in combination as observed in the 75 cases of the dataset. It appears in 13 cases as a lone strategy and in 46 cases it has been used in combination with other strategies. Sometimes, the administrative complaints have also led to discussions and deliberations towards reaching an agreement between the company and the farmers. In the case of PT *Tata Hamparan Eka Persada* (THEP) in Bangka Belitung, the agriculture office of Bangka regency was negotiating with the company to make it complete its plasma responsibility. This was despite the Supreme Court's decision against the farmers in a lawsuit filed by PT THEP against the cooperative and the regent. The court decision denied any rights to the plasma farmers. Despite losing the case, the farmers with the assistance of the agriculture department are looking to initiate

a new cooperative and negotiate plasma terms with the company (Nurhayati 2017). This is one of the three cases concerning oil palm, in which the concerned administration mediated a discussion between the farmers and the company when farmers complained of livelihood loss.

In all mining cases, an administrative complaint has been filed. These were the cases concerning accidents due to open mining pits. Of the 25 mining cases, in 6 cases, administrative complaint was the only strategy used. In all these cases, the administration offered a site visit or a verification of the problem to those aggrieved. However, administrative complaint has been seen to be effective when coupled with other strategies such as political advocacy, protest and media reporting. All these strategies have helped turn the cases of death of children by falling into mine pits into public issues. In the case of BNJM coalmine in East Barito in Central Kalimantan, the local environment agency on request from communities, collected samples from the river being polluted by the mine refuse. However, this was done after the community of Lalap and Bentont villages had filed multiple complaints with photographs and media reports on siltation of the river. In this case, strong evidence of the violation of environment laws has helped in getting the government to take action. (Ref: Case IV: River and Dust pollution by KGLR/BNJM in East Barito). This highlights a difference between the two kinds of environmental cases pertaining to mining projects. In the case of conflicts related to victims of mining pits, raising the issue with the media, the human rights commission and ministry of women empowerment and political advocacy along with an administrative complaint has obtained some outcomes for people. In case of pollution related conflicts, people have seen some way ahead only on submitting strong evidence and persistent follow up. In the case of BNJM, on being denied information by the local agencies under the country's Information Disclosure Law, the case was pursued with the Information Commission. The commission eventually helped in creating indisputable evidence of violations committed by the company (Ref: Case IV: River and Dust pollution by KGLR/BNJM in East Barito). This, in fact, is an example of use of law in administrative complaints and reporting to commissions. It is also pertinent to mention here that the grievance of the community of Lalap village claiming insufficient compensation for damages caused by flooding which occurred due to siltation of the local river, is still pending. It has only resulted in temporary suspension of the company's operation.



Complaint made against the violations committed by KGLR/BNJM coal mine in East Barito

6.1.2. Approaching the company

According to the dataset, approaching the company has been observed as a strategy only in oil palm cases (15). Most of the farmers are aware of the limitations of the BPN and they are familiar with the problem of overlapping concessions. They know that the existing regulations offer meagre protections, hence they don't seem to file administrative complaints in cases of land loss and unfair compensation, they instead approach the

company. In the case of PT *Citra Sawit Harum* in Pelept subdistrict, Bungo district of Jambi, farmers complained to the company of profits from the cooperation agreement (plasma) being much less than what was expected/promised in the agreement (Azhari 2016). In the absence of any conflict resolution mechanism set up by the government to address farmers' grievances after the plasma agreement is in place, the farmers have no other avenue (Palupi 2016). There are very few environmental cases, in which the company is approached. One such case is of PT *Inti Indosawit Subur* (Asian Agri Group), which polluted the Pokahan river in Riau district by dumping the palm oil mill waste in it. In February 2017, the Tangjungpauh community demanded from the company immediate restoration of the river (Telukuantan 2017). Largely, in case of environmental cases, administrative complaints are filed.

6.1.3. Litigation

An abundance of laws and regulations issued by different levels of the governance system has ensured that legal cases are filed in plenty. However, litigation largely has been used as a way to better policies, to seek clarification on ambiguous laws, or to have blanket decisions on mining operations, plantation and other development cases, or to highlight non-compliance of certain laws and guidelines (again applicable over a large area). Cases that reach courts range from challenging the applicability of a law such as in the case of the Batang Power Plant that questioned the use of the Land Acquisition Act of 2012, to highlighting the non-adherence of local zoning specifications as seen in the case of Leuser Forest and Cirebon coal fired plant, and to seeking indigenous rights over forests as seen in the Constitutional Court's landmark judgment upholding customary rights on state forests.

Responding to a civil suit, the Bandung administrative court decided in April 2017 that expansion plans for the Cirebon coal-fired power plant in West Java were in violation of the local spatial planning law. The court ordered the project's environmental license to be revoked. In the second phase of the plant to be located in Astanajapura sub-district, residents already complain of a decline in fish catch and crops getting affected due to air pollution (Mongabay 2017b).

Individual cases of conflict reach courts only when the companies file a lawsuit against the communities charging them with trespassing. However, courts in individual cases of conflict, have largely avoided taking strong stands, they refrain from going against the government in such cases.

Father Sani Lake, the head of JPIC (Justice Peace and Integrity of Creation) states "Alternatives to litigation are better for dispute resolution. In litigation, community always loses. In a recent case the government sent a letter to the court (to create pressure). It said that that if the community wins, the case will have national level implications". (Lake 2017)

However, in the dataset of 75 cases, litigation has been observed in 5 cases. In one of the cases of oil palm, PT *Ichtiar Gusti Pudi*, members of the plasma cooperative jointly sued the oil palm plantation company operating in Landak, West Kalimantan. The farmers argued in the District Court that the provisions passed by the Landak county government regarding partnership conditions and purchase price guidelines for palm fruit have not been obeyed by the company. The case was resolved after the Dayak²⁵ Council and the company signed an agreement on better compensation (Tribun landka 2016; Pardosi 2017a; Pardosi 2017b). Thus, it seems litigation was used as a pressure tactic to strike an agreement with the company, in which they demanded that their loss in income be compensated.

In another case from the dataset, the Sungai Sodong village in South Sumatra came into conflict with PT *Sumber Wangi Alam* in 2011 when the company converted community land into plantations without following the due process for release of land or compensation. The issue came into the spotlight in 2011 itself, when casualties arose as a result of the communities trying to reoccupy the land. The Kayuagung District Court sentenced five persons who belonged to a private security firm contracted by the company, to imprisonment (Saleh 2012). With the help of PILNET (Public Interest Lawyers' Network), the community members defended their customary rights challenged by the company in a lawsuit filed in the district court. The court however did not accept the lawsuit and did not clarify the status of the land in question (Maradona & Ilir 2014).

²⁵Dayak people are the indigenous people of the island of Kalimantan.

The next case was filed by the Legal Aid Institute of Indonesia, the *Lembaga Bantuan Hukum (LBH)* along with the support of communities as a collective case against non-“clean and clear (CnC)” mining operations (Vinolia et al. 2017). The State Administrative Court ruled in October 2017 that the business licenses issued to all non-CnC operations were to be revoked (*see section 7 on remedies for details*). The Ministry of Energy and Mineral Resources acted on the court ruling in November 2017 and cancelled the concessions granted to PT Thomas Jaya Trecimplant, a mining company in North Sumatra and 20 other companies.

6.1.4. Political advocacy

Reaching out to the local politicians and parliament members with requests for halting certain projects have been observed in several cases. Political advocacy at the local level is usually used for individual projects and at the national level it has been useful in obtaining blanket bans when used with media campaigns. In the case of dust and water pollution by BNJM coal mining company, members of the local parliament were approached. While the member who supported didn't do so explicitly he provided advice privately (*Ref: Case IV- River and Dust pollution by KGLR/BNJM in East Barito*). Of the 25 mining cases, in 11 cases political advocacy has been used in combination with two other strategies and it has obtained either remedies or remedies and policy outcomes. In the case of abandoned coalmine pits of East Kalimantan leading to deaths, the support came from the president's office in the form of a ban on future mining licenses. The dangerous nature of the coalmine pits added to the pressure put on the president through political advocacy. The fact that the president belonged to East Kalimantan province helped in the eventual closure of the mines (Toumbourou 2016). This is a clear example of use of political advocacy in strategic way.

Of the three oil palm cases (out of a total of 50) in which political advocacy has been tried, it is not linked with any remedies/policy solutions. It has been used in combination with administrative complaint in one oil palm case and has not reaped any result.

6.1.5. Protests

Protest is the most commonly observed strategy after administrative complaint. Protests as a lone strategy has been observed only in three oil palm cases. Protest has been observed in 7 of the 25 mining cases and 23 of the 50 oil palm cases. Outside of the dataset of 50 cases, in a case of a cement factory, in March 2017, 50 indigenous farmers protested outside the president's office against the factory in Kendeng, Central Java. It has been reported that construction of the factory would lead to eviction of 300-400 families from not just their homes but their paddy fields as well. PT Semen Indonesia TBK had announced its plan for construction of the Cement factory in 2010. The case was fought in court and the Indonesian Supreme Court, in October 2016, ruled in favour of the farmers and cancelled the environmental permit issued to the project. However, the regional governor issued another environmental

Women's Participation in Protests

One of the struggles well known in Indonesia and the world over is from the highlands of Timor Tengah Selatan against marble mining in Mollo district. Mining began in the area in 2004 and involved the displacement of a village that lived under one of the marble towers. All this was going on despite the area being a conservation reserve. Once the residents realised the gravity of the impacts of the operation, they formed an indigenous association called Pokja OAT (*Organisasi A'Taimamut*) against mining. The association staged peaceful protests and blockaded the mining site. The community outnumbered the police and the military backing the project.

Marble mining was stopped in 2010 and the success was attributed to the peaceful year-long weaving protest spearheaded by Mama Aleta Baun (Susetyo 2014). In 2017 Baun started a \$100,000 initiative with funds from her Goldman Environmental Prize²⁶ to help women in rural Indonesia fight for environmental causes (Varagur 2017). In another case, that of upcoming hydropower plants in Seko in North Luwu in Sulawesi, women have taken over the protest from men. Men, suspecting arrests by the police have taken flight into the forests and since February 2017, the women have set up an encampment at one of the project sites. Hundreds of them blockaded and fenced around the company's equipment. In March 2017, the police made women discontinue the protest (Rusidanto 2017).

²⁶The Goldman Environmental Prize honours grassroots environmental activists across the world for their sustained and significant efforts to protect the environment despite the serious personal risks involved. (Find more about the prize at: <http://www.goldmanprize.org>)

permit to the company. The Indonesian president was to inaugurate the factory in April 2017. The farmers first protested before the company, and then took their protest to the president's palace. (SAINS 2017). However, the company went ahead with the construction and in fact registered a criminal case against one of the lead protestor farmers (The Jakarta Post 2017b).

6.1.6. Media campaigns

Media reporting has always been seen in combination with more than one strategy: in mining (total 25 cases) with administrative complaint and political advocacy (6 cases) and in oil palm (total 50 cases) with administrative complaint and protest (2 cases). While the dataset has been created largely through the media reports of conflict, the cases in which media reporting and campaigns have been used as a strategy stand out- these are the cases of public concern. Abandoned mining pits, the issue of haze due to forest fires and conservation of forests and biodiversity are some examples of how the impacts are shaped for a media campaign. Because of constant media scrutiny of Batang Thermal Power Plant and Jakarta Bay Reclamation Project along with the protests against the two, the work on the projects has been slow. Work of special commissions such as the human rights commission, the information commission and court decisions are regularly reported by the media, which helps in creating a better-informed community.

One of the oil palm cases from the dataset, in which media reporting has been used is from Pulang Pisau in Central Kalimantan against PT *Suryamas Cipta Perkasa*. The company was operating without a forest clearance permit and had in fact burned the forest. It was claimed that the company destroyed large areas of peat swamps which were over 3 meters deep (Warta One 2016). Peat areas have gained international attention because of their carbon sequestration services. They are one of the best sinks of carbon in the world. According to the presidential decree 32 of 1990 and Agriculture Minister Regulation No. 14 of 2009, operating in peatlands of depth more than 3 meters was not permitted. The procedural violations of the company were traced and documented by Telepak, an NGO. The report, "*Testing the Law: Carbon, Crime and Impunity in Indonesia*" was released to the press (Mongabay 2012).

6.1.7. Reporting to special commissions

Indonesia has created special commissions to tackle certain concerns across sectors. These include the human rights commission, information commission, anti-corruption commission and Ministry of Women Empowerment. These commissions do not directly concern themselves with the use of land and natural resources but they can be approached when these conflicts exist coupled with other issues such as non-payment of state revenue, violation of human

Anti-Corruption Commission

Taking note of the high incidence of corruption and graft by public officials, Indonesia's Corruption Eradication Commission, the *Komisi Pemberantasan Korupsi* (KPK) was created in the post-Suharto era. Due to its vast mandate and paucity of resources, KPK could complete investigations in only 17 cases and had a backlog of 16,000 complaints in 2008. The KPK is Indonesia's most revered institution. Its immense reputation comes from the fact that it has never lost a case it has taken to court. Living up to its image and maintaining this record of being invincible makes it over-cautious. The commission is reluctant to proceed with any case in which it is not certain of conviction. The law on anti-corruption (30/2002) bars the KPK from dropping any investigation case it has begun. While this stipulation was added to prevent defendants from paying their way out of trouble many believe that this stipulation is keeping the commission away from more complex cases (The Gecko Project 2017). Despite its limited impact on corruption due to its cautious ways, there have been continuous attempts by politicians to weaken the ability of the commission to investigate and prosecute independently. The KPK has faced challenges in the past including curtailment of financial resources, staffing it with inexperienced commissioners and denying it an independent office (Abbott 2017). Besides, many times the government has referred to it as an ad-hoc institution to aid police and prosecutors. In the past, committees have been created to review its functioning along with the message that the commission must comply with the committee's recommendations. In 2017, international and national NGOs such as Transparency International (Transparency International Indonesia 2017) and the Indonesian Corruption Watch condemned these attempts of the government (Claudia 2017). People assembled on the streets in Jakarta in support of KPK during Car Free Day events and individuals and NGOs even organised themselves as the Save the KPK Coalition (The Jakarta Post 2017).

rights and denial of information in violation of the law on public disclosure of information. In our dataset, reporting to special commissions has always been used in combination with other strategies. When used with two other strategies, on 11 occasions it has led to site visits or verifications (all mining cases). Except with the anti-corruption commission, reporting cases to commissions have led to outcomes such as temporary suspension of projects.

6.1.8. Reclaiming the land

Farmer and peasant unions in Indonesia have been using this strategy for a long time. Drawing of a customary police line called *hinting pali* is the traditional way Dayak communities secure their land. Besides the customary way of reclaiming their lands, farmers sometimes have tried to harvest the contested lands by themselves. In the case of PT *Rejeki Alam Semesta Raya* listed in the database, observing the company's relentless way of continuing oil palm plantation on community land without their permission, the villagers of Sei Ahas village decided in 2015 to harvest oil palm from their land by themselves. When the company reported them to the police they discontinued harvesting only to start again in 2016. Till July 2017, farmers were harvesting oil palm from their lands on their own and the company couldn't do much as its license had been cancelled and it was, in fact, operating illegally (*Ref: Case Study II- Case of illegal oil palm plantation of Rejeki Alam Semesta Raya in Kapuas*). In the dataset of 75 cases, the strategy was observed in four cases. All were from the set of 50 cases concerning oil palm plantations.

6.1.9. International redress

International redress has been used as a strategy in five oil palm cases (out of a total 50 of cases) from the dataset. For oil palm plantations, international redress has been attempted in those cases in which the concerned companies commit to certain international standards of palm production. One such set of standards is by the RSPO. The RSPO is a non-profit that unites different actors of the palm oil industry towards implementation of global standards to mitigate negative environmental and social impacts of oil palm cultivation. Companies that



A field visit of RSPO members to the site of conflict (PT BGA). Aggrieved farmers are showing the land in conflict and explaining their grievances to RSPO members.

are members of the RSPO gain a higher price for their palm oil in international markets as they may claim to produce it with the least environmental and social impact. The RSPO provides a mechanism for addressing grievances and complaints made by the communities impacted by the operations of its members. For instance, in the case of *Bumitama Gunajaya Abadi (BGA)*, farmers, who lost their land without due compensation, filed a complaint with the RSPO in July 2015. A series of meetings and negotiations took place. Farmers were asked in successive meetings to bring more documents as evidence for their claims. However, after over two years of pursuing the case with the RSPO the matter was still pending without concrete resolution for people (Ref: *Case Study I- Plasma Partnership in BGA oil palm plantations in West Kotawaringin*). Outside of the dataset, in the case of Batang Thermal Power Plant, in December 2016, the community approached the Japan Bank for International Cooperation (JBIC), the key financier with a petition against the plant. In response, the JBIC visited the site and met with the community but claimed that there was no evidence supporting people's complaints.

6.1.10. Land mapping

Land mapping has been used as a strategy in only one oil palm case where reported land loss is the cause of the conflict. This is the case of PT *Padasa Enam Utama* in Riau province, the farmers mapped the land under use by the company, concessions granted by the local government and the demarcations made under the spatial plan of the government and submitted it with the local government (Riaunews 2018).

6.2. Combination of strategies

While the dataset of 75 cases created for this study may show that certain strategies occurred in combination, they may not have occurred simultaneously. In most cases, these were discreet strategies tried at different stages of the project development and through the course of the conflict. As per the dataset, multiple (more than two) strategies have been used in 18 mining cases and 11 oil palm cases.

A two-strategy combination has been tried in only 1 mining case (administrative complaint and litigation). However, in 19 oil palm cases a two-strategy combination has been tried in general. The most commonly used combination is the two-strategy combination which has used protest and administrative complaint (8). The two next most common combinations are, three-strategy combinations: protest, administrative complaint and reporting to special commissions (6) and media reporting, political advocacy and administrative complaint (6). Many of these three-strategy combinations were applied simultaneously or with a time lag in cases of accidents such as in the abandoned mine pits in East Kalimantan.

6.3. State's efforts at resolving conflicts

6.3.1. Institutions for conflict resolution

In Indonesia, there are four institutions that are accessed for resolution of land conflicts: the civil court, the criminal court, the administrative court and a dispute settlement forum established by the BPN. In general, the dispute settlement forum established by the BPN appears to offer band-aid solutions that are only tackling the symptoms and not the root cause i.e. the discord between policies and agencies. As a step towards conflict resolution, the BPN recently created a systematic form of land registration that is accessible online. However, the current system has not been implemented well and most of the documents are still available only in hardcopy. From 2002 until now, the BPN has functioned as a state institution headed by ministerial level officials. It is unable to resolve a majority of the conflicts within a reasonable time due to various constraints: limited power, corruption and the faulty design of the conflict resolution mechanism. This mechanism doesn't ensure impartiality of the government. The fact that 75% of land is under the control of the Department of Forestry adds to the inaction. The complaints at BPN are just kept as data without much action. The current mechanism doesn't empower the BPN to take on the political and economic actors, who are usually involved in such conflicts (Susan, 2015). In furtherance, quite often BPN is a party to the dispute, calling into question its ability to settle disputes. Over all, parallel institutions with overlapping mandates and the presence of both formal and informal systems have undermined the efficacy of the conflict resolution system (Deininger, Selod & Burns 2012). The formal dispute resolution system (administrative and civil courts) seems to favour the government agencies (Deininger et al 2012) or the companies because they usually have legal documents that are recognised by the

Case of PT Rezeki Kencana- Tianjin Joulong Group- Case of Multiple Strategies

In Kalimantan Barat, Kubu Raya Regency 2600 hectares of land from Kampung Baru village and Jankang II village has been taken up by PT *Rezeki Kencana*. The company destroyed the rubber and fruit plantations of the community and cleared the land in 2013. The community members tried to have talks with the company but frequent changes in people holding office made it difficult. They complained to the local government and through the BPN confirmed that the land belonged to the village community. The BPN of Kubu Raya at the community's request conducted a re-measurement of the land and confirmed again that the land belonged to the community. They wrote a letter to the company rejecting its claim on their land and denying any transfers of land from the community to the company. Instead, when the villagers wanted to map their lands by on-ground verification, the company reported them to the police. The company is one of the suppliers of Wilmar, which is a member of RSPO. With the help of the NGO Link-AR Borneo the villagers complained to RSPO as well. The community has been defending its right to land since 2009 (when they first found out about the company take over) and has already reported the case to the Ministry of Agriculture, police and National Commission on Human Rights, the *Komisi Nasional Hak Asasi Manusia* (Komnas HAM). Sawit Watch, an NGO member of RSPO also got involved in the case and demanded that a report on settlement of conflicts in all oil palm cases of West Kalimantan should be released by RSPO (Link-AR Borneo 2017). This case has demonstrated the use of multiple strategies: administrative complaints, approaching the company and international redress (through invoking RSPO guidelines), however, in terms of outcomes it has only resulted in intimidation by the police.

government (Susan, 2015). For many, due to the remoteness of their location and the lack of knowledge of resources, civil process becomes inaccessible and its use inconsistent (Deininger et al 2012). Therefore, the land conflicts are resolved politically. The shortfall of the current system of conflict resolution has also given rise to a demand for creation of a Land Court.

6.3.2. Plasma agreements

Since 2007, the plantation companies are required to allocate 20% of the land to the local community for them to utilise it for plantation activities. To implement this clause of the law, companies have initiated Plasma Programmes. The companies lease out plots of land to smallholders and offer them a price for the oil palm crop they grow. The companies are also expected to help them out with technology to increase the productivity. These small plots are called *kebun plasma*. *Kebun* means 'Garden' in Bahasa Indonesia. The Indonesian Chamber of Commerce records that as of 2014, close to 22% of the total land under oil palm plantation in Indonesia is cultivated by smallholder farmers as plasma. These plasma plots are developed under various foreign and state funded programmes (Deininger et al 2012). This has lured many smallholders to give away their agricultural

Communities Divided Between Threats of River Damming and Dreams of Power

In Tana Makaleang village in Seko sub-district of North Luwu in Sulawesi, Seko Power Prima Company has planned to build a 480 megawatt hydroelectric dam. The project is in the survey stage at the moment. The company and the government have told the locals that once the dam is established, the village will be electrified. Between October 2015 and May 2016, the villagers blockaded the road to central Seko to keep heavy machinery out. The effort was successful till the police intervened and detained two of the protestors. Afterwards the resistance became more aggressive. Eventually 13 Seko residents were arrested for vandalism and sentenced to seven months in prison. Responding to the protests but not dropping its wish to develop the project, the North Luwu government arranged for a few community representatives to visit a similar project in South Sumatra. The people who were part of the trip shared that they were not allowed to explore how the lives of people had changed there, they were only showed how the plant operates. However, another member of the group thought everything was fine in the project site and since his return from the trip he withdrew his opposition to the project. However, this was not all, the project was only one in the series of planned hydroelectric projects in the area- 11 preliminary permits for hydropower plants have been granted (according to the head of the Mining and Energy Authority). According to the North Luwu Mining and Energy Authority, two mining permits have been issued in Seko for iron and gold. The villagers, who are still opposing the project, suspect that the electricity produced through these projects will be directed to these mining operations and not to them. They also fear that this will be the first step towards bringing extractive industries into the area (Mongabay 2017c).

Locating Strategies in Identity and Limiting Remedies Within an Identity

In December 2016, at the Declaration of Recognition of Indigenous Forests, management rights for nine forests was handed over to indigenous groups. Many academics and researchers saw it as a symbolic move towards recognition of the rights of indigenous communities. Control of the forests was handed to the Kajang people of South Sulawesi, who were at loggerheads with the national government on the change of status of forests from 'indigenous' to 'production forests with limited uses'. This change made it possible for the government to allocate forests to the private sector for development of rubber plantations. The community with the support of NGOs got the local government to issue a Bulukumba district regulation on inauguration, recognition and protection of the indigenous people of Anmatoa Kajang in 2013. This regulation has led to the issuance of a presidential decree for handover of titles for forestland (Gaol & Dahlia 2017). Transfer of land to indigenous people doesn't necessarily mean corporate activity must end there, it only means that the concerned community gets to designate the area within the forest for corporate activity. As per the Indigenous People's Alliance, the *Aliansi Masyarakat Adat Nusantara* (AMAN) 8.2 million hectares of *hutan adat* (customary forest) belong to the indigenous peoples of which only 20,000 hectares of forest has been divested to communities as of March 2017 (Varagur 2017). The transfer process is slow in the absence of local regulations to implement the 2012 constitutional court ruling (Varagur 2017).

between the company and the smallholder cooperative is signed (Mayer, 2015; Institute for Ecosoc Rights 2015). Although it could not be verified through interviews, there have been reports of successful implementation of the plasma scheme by PT *Hindoli*, a subsidiary of Cargill in South Sumatra. The company has built a partnership with 9600 farmers. In August 2010, according to media reports, Hindoli farmers became the first farmers in the world to obtain RSP0²⁷ certificates. Farmers concede that their monthly income is 2 million to 3 million IDR (Amri 2017).

lands to oil palm companies in hope of receiving plasma plots in subsequent years.

However, many smallholders have protested against the conditions they faced when they participated in the plasma scheme. These schemes, in exchange for the local customary land, had promised participants eventual legal titles to small oil palm plots. But this has not been observed so far. As per the programme, plasma owners are supposed to get money after five to seven years when the oil palm trees start to bear fruits. Usually, the companies maintain that they are taking care of the plasma plots for smallholders and they promise that would give them income from the sale of palm fruits from their plots once the harvest begins. But farmers usually find it difficult to wait for that long for repayment (Palupi 2016).

Plasma, in effect becomes even more detrimental as smallholders are enticed by the anticipated profits and participate in it willingly. This way they let go of the compensation and there is no channel for them to complain after selling the land out of desperation. As per a review of the management of the scheme carried out by the Institute of Ecosoc Rights, in the villages of South, West and Centre of Central Kalimantan 80% the landholders lost their land due to participation in plasma. The schemes are not transparent as the government and the corporations don't grant the public (not even the participants) the right to information about the scheme. People usually are not aware of the terms of the agreement (Institute for Ecosoc Rights 2015).

While the companies are supported by the plantation legislation issued by the state, the state leaves the smallholders to themselves once the agreement

7.1. Interim outcomes

Interim outcomes are important milestones towards the resolution of conflicts. However, they don't change anything in the existing situation of those affected and hence cannot be called remedies. Exposure trips, mediation, committee reviews, re-measurement of land, verification, constitution of special investigation committees, all seem more like attempts to pacify the angry protestors, divide the community or deflect the opposition than efforts towards genuine resolution of conflicts. As per the database, interim outcomes were achieved for 56 projects, out of which 19 projects received more than one interim outcome. Of the 56 cases, 32 are cases of oil palm (total 50) and 24 are mining cases (total 25). In all (mining and oil palm cases put together) site visits/verification/investigation has been carried out in 33 cases. Mediation between the communities and the project proponent took place in 22 projects. Lastly, re-measurement of the land was done in three projects. (See Figure 14)

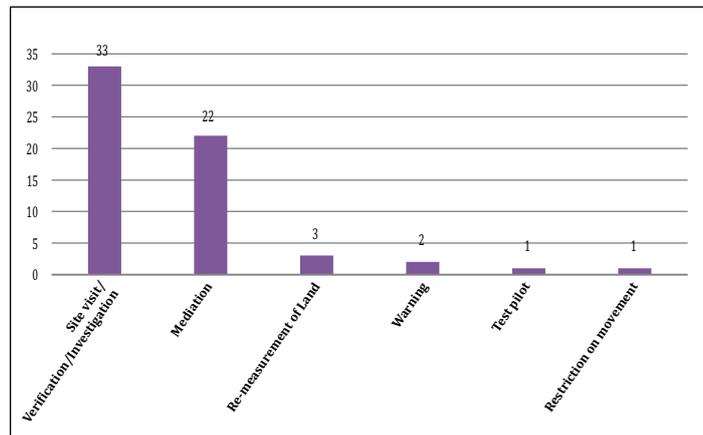


Figure 14. Interim outcomes of conflicts (based on quantitative analysis of a database of 75 cases)

*The Total does not tally because in 19 cases, two outcomes have been achieved.

7.1.1. Site visit/verification: Site visit/verification has been observed in 33 cases of which 24 are cases of coal mining and nine are oil palm cases. Largely, site visits have been made in cases of environmental degradation. In the case of PT *Bina Mitra Makmur* in Jambi, locals complained of river pollution at the Bungo environmental office. The environment agency conducted site visits and confirmed the complaints made by the locals. The company was given administrative sanctions in the form of a written warning. The case thus observed two interim outcomes. However, after complaints from the community for the second time, in 2017, the agency did not find any pollution in the river and the case was closed (Jaka 2017).

7.1.2. Mediation: Of the dataset, mediation was achieved as an interim outcome in 22 cases and all were related to oil palm plantations. In the case of PT *Agrowiyana*, the local parliament, the *Dewan Perwakilan Rakyat Daerah* (DPRD) got the residents of Tebing Tinggi village in Jambi and the company to discuss and resolve the grievances concerning plasma raised by the villagers. The villagers complained that the company was purchasing palm fruits at a rate lower than the market price. The local politician supported the community in the mediation process. This was after the locals filed a complaint with the local authorities and approached the company in the matter (Azhari 2015).

7.1.3. Re-measurement of land and warning: Re-measurement of land has been obtained in three cases. Re-measurement and warning to the company have also been achieved after an interim outcome like mediation between the community and the company. In the case of PT *Rezeki Kencana* in West Kalimantan, after receiving a complaint from the communities, the local land agency office carried out re-measurement of land to ensure that it belonged to the community. In the case of PT *Roempoen Enam Bersaudara* from south Sumatra, the regent warned the company of consequences if it didn't pay the compensation as agreed in the plasma agreement. In November 2015, in a mediation meeting the regent ordered the company to pay due compensation to the farmers of seven villages around the company or its permit would be revoked. The company agreed to pay the compensation as agreed upon. The meeting, while it was chaired by the regent, was attended by the DPRD vice chairman, police chief, company head and other local officers (Sripoku 2015). This is an interesting example of how local officers, despite not having any official control over the plasma agreements, can influence positive resolutions of conflict cases concerning plasma payments.

7.1.4. Test pilots: Communities that have been exposed to cases in other areas, where introduction of oil palm plantations by private companies have led to land conflicts, have been resisting concessions in their areas. During the initial socialisation visits of these companies, they clearly express their unwillingness to host them and part with their lands. In provinces such as Papua, where oil palm companies have started work only in the last few years, the opposition of communities is being dealt with by getting them to accept test runs. The same was observed in East Kalimantan, which was first opened for coal mining by the government and followed by promotion of oil palm as well in more recent years. In the case of PT *Tanjung Buyu Perkasa* (TBP), while the company received an approval from the Ministry of Agriculture in 2005, the conflict erupted in 2001 when the company got the location permit. After that, the regent convinced the farmer group, *Baba Gunung*, to let a test pilot run and only after due assessment of impact of the pilot would any concession be granted. Eventually the concession was granted in 2005 and while the company promised plasma to the communities, their land was developed as core (main) plantation of the company. The farmers did not receive any benefit from the development of oil palm plantation by PT TBP (Pro Berau 2017).

7.1.5. Temporary restrictions: In October 2017, PT *Cilandra Perkasa* expressed its reluctance to permanently open a public road that passed through its concession area. After conducting a site visit the regent and the transport department put restrictions on the movement of the company's truck till the time the road was opened to the public (Riauterkini 2017).

7.2. Remedies sought

Efforts to mitigate the impacts of large scale, land use change pursue results that lie at two ends of the spectrum. There are systemic goals such as reducing the power imbalance between governments, corporates and the communities; correcting or revealing the inherent biases in the laws; expanding the avenues available for free, prior, informed, consent; unearthing corruption; and ensuring long-pending recognition and rights of the indigenous people. There are also organisations working with communities to mitigate the negative impacts



A plantation worker loading palm fruits for transport in Kapuas, Central Kalimantan

of infrastructure and industrial projects that they are forced to face on a daily basis. They strive to resolve the impacts of projects on their occupations, risks to their health and quality of life. Environmental and human rights groups and NGOs working in Indonesia have been striving to fix the systemic problems and do away with inherent biases in the current governance system of natural resources. Making space for public participation in environmental appraisals and spatial planning, public disclosure of information and the recent judgment of the Constitutional Court recognising communities' rights over forests are results of the efforts of the communities and these groups.

The section draws from the data set results as shown in figure 15 and builds on those. It is an attempt to understand the different kinds of remedies sought and achieved by those impacted. Remedies that people seek evolve during the life of the project and the conflict. Opposition, project reviews, compensation or no further expansions are remedies that the communities may find realistic at a given point in time in response to a particular project. However, it should be mentioned that even when they pursue individual case outcomes, affected people also seek broader systemic changes. This is a characteristic feature of Indonesia where most communities are aware of the struggles of the past and have a legacy of peasant movements, which have persistently demanded reforms.

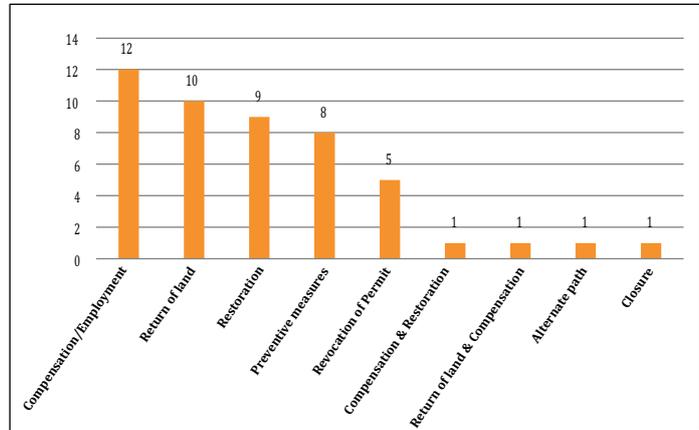


Figure 15. Remedies sought (based on quantitative analysis of a database of 75 cases)

7.2.1. Compensation/employment: While compensation/employment demands related to plasma have been sought in 14 cases, they have been achieved in nine cases. Such demands have been seen only in cases of

oil palm. It has been observed that in many cases of land conflicts, farmers opposing land takeover by plantation companies are offered plasma agreements as fair remedy for their concerns. However, the database and the oil palm sector in general are rife with cases in which plasma agreements are gravely ignored and farmers seek the payments that were discussed at the time of execution of the agreements. Beyond the stipulation that the companies are expected to reserve 20% of their total plantation area for smallholders and provide them technical assistance in oil palm cultivation, plasma agreements are not governed by much. Instead of farmers directly, a farmer cooperative created under the most utilised KKPA plasma scheme becomes the face that the company engages with. This makes the case of plasma agreements even more obscure and opaque. The farmers give a minimum of ten hectares of land for plasma to the company, become a part of the cooperative and receive share certificates for two hectares each. In most cases, cooperatives come to be managed by the office bearers of the village or others with might or money. Although on paper the cooperative has the autonomy to develop

Remedies don't remain constant

In the case of *Bumitama Gunajaya Abadi* (BGA), operational in West Kotawaringin, farmers initially drew attention to the problem of overnight clearing of their lands in 2004, but were brought on-board with the promises of plasma. Plasma was executed and farmers patiently waited for payments. They started receiving some amount as their plasma share from 2011 onwards, however they were clueless about how the profits were being calculated and they suspected that they were being paid much less. Then they started to pursue a better deal under plasma. During this time, many farmers were working as plantation labour in the concession/permission area of the company and were reliant on their daily wage for livelihood. Realising that the cooperative and the company were working hand in hand and losing hope in the plasma schemes, farmers again started pursuing the return of their land and hoped to harvest oil palm on their lands on their own (Ref: *Case Study I- Plasma Partnership in BGA oil palm plantations in West Kotawaringin*). Farmers' expectations, their knowledge of the functioning of the company and cooperative and the existing legal framework, assistance from NGOs, and their status of land ownership (government-issued individual land titles or customary collective or individual land rights), all governed what they expected from the case through the life of the conflict.

and manage plasma, in practice, decisions regarding land allocations, recruitment of labour and sales price of the palm fruits are made by the company (Vermeulen & Goad 2006). Many times, the participant farmers and the company have no direct contact with each other, they only communicate through the cooperative head. The cooperative is responsible for disbursing profit shares to the participant farmers. However, the palms start bearing fruits only after four years or so and before that no profits are made. What farmers receive till then is subsistence level support, which needs to be paid back to the company along with other costs such as land clearance, planting, fertilisers, cooperative administration, etc. once palms begin to bear fruits (DTE 2004).

7.2.2. Return of land: Return of land has been observed in ten cases in the dataset. In the case of PT *Rejeki Alam Semesta Raya* (RASR), active in Kapuas regency of Central Kalimantan, farmers of Sei Ahas village were pursuing the return of their land right from the beginning of the conflict in 2007. The lands were collectively held rubber plantations, which were turned into oil palm plantations by the company. While the group of farmers that demanded the return of their land shrank over the years as many accepted plasma agreement after their initial opposition, a group of 20 farmers continued with their initial demand. The fact that the license of RASR was revoked in between only gave strength to their efforts and made them more hopeful of getting the land back. Observing that despite the revoked permit the company continued to work the land, farmers decided to protect their land and started harvesting oil palm on their lands on their own (*Ref: Case Study II- Case of illegal oil palm plantation of RASR in Kapuas*).

7.2.3. Restoration of original conditions: Restoration has been sought in ten cases in the dataset. This remedy is usually observed in cases of environmental degradation. In the case of activities of BNJM-KGLR in East Barito in Central Kalimantan, the villagers sought the restoration of the river that was heavily silted due to dumping of mine refuse by the company, to its original condition. The farmers also sought compensation for the damage they incurred in the past when the mud from the river ended up on their rubber plantations and left their crops dead. When asked if farmers would be in agreement if the company continued to pay for damages in the future while continuing to pollute the river, many didn't reply in the affirmative. The villagers of Lalap and Bentont villages wanted the company to restore the river and abide by environmental laws in future (*Ref: Case study IV- River and Dust pollution by KGLR/BNJM in East Barito*).

7.2.4. Preventive measures: Preventive measures have been sought in eight cases of accidents due to open, abandoned coal mining pits in East Kalimantan. The community demanded that the pits be filled and in the meantime, to prevent accidents, fencing, appropriate security and notices through hoardings, etc., should be provided outside these open pits. An NGO active in the region, JATAM, ran a political and media campaign on the issue and the mines were suspended temporarily (Yustinus & Hardjanto 2016).

7.2.5. Revocation of permit/closure: In the dataset, revocation has been sought in five cases. All these cases are of environmental degradation caused by mining in Jambi province. Pursuing this remedy, the communities along with other efforts, reported the cases to the KPK in the hope that it would investigate the issue and eventually order suspension of their permits. As part of its investigation, the anti-corruption commission visited these mining sites. However, only one project has seen closure. In fact, out of 49 ongoing conflicts, 42 projects are in operation, only one project under mining has been closed down by the authorities and for the remaining six the status of the project could not be found out. (See Figure 16).

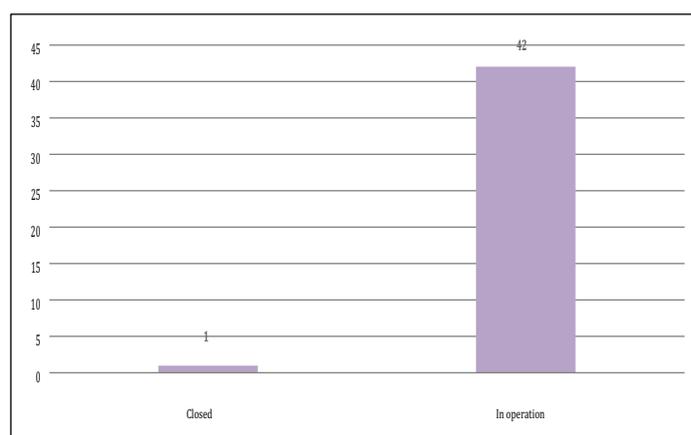


Figure 16. Status of projects (based on quantitative analysis of a database of 75 cases)

7.3. Remedies received

Remedies have been received in 28 projects out of 75 (See Figure 17). In the plantation sector, remedies such as compensation (9), return of land (2) and future assurances (1) have been achieved. In the mining projects,

remedies such as permanent closure was achieved in four projects while temporary closure was achieved in eight projects. For the rest of the projects in mining, revocation of permit, fines and punishment were achieved as a part of state action.

Of the 25 mining cases, remedies have been obtained in 16 (>50%) mining cases in North Sumatra (3), Central Kalimantan (1) and East Kalimantan (12). Only 12 out of 50 cases (~25%) of oil palm have achieved remedies.

Of the 28 cases in which remedies were received, in 21 cases an interim outcome was achieved in the past. Table 9 is on the progress of cases from interim outcomes to remedies. In the case of oil palm, only five cases have moved from the stage of interim outcomes to remedies out of a total of 32 cases that achieved interim outcomes. In 24 cases of coal mining in which interim outcomes

were achieved, 13 cases received remedies (details are as in Table 9). In seven cases (all oil palm), remedies have been achieved without any interim outcomes. It is interesting to note that the strategy used in three of these cases was litigation, which is not a popular strategy for cases involving individual projects but has led to remedies such as compensation and future assurance. In the remaining four cases the communities had approached the company; in two they got the land back and in two they got an increase in compensation.

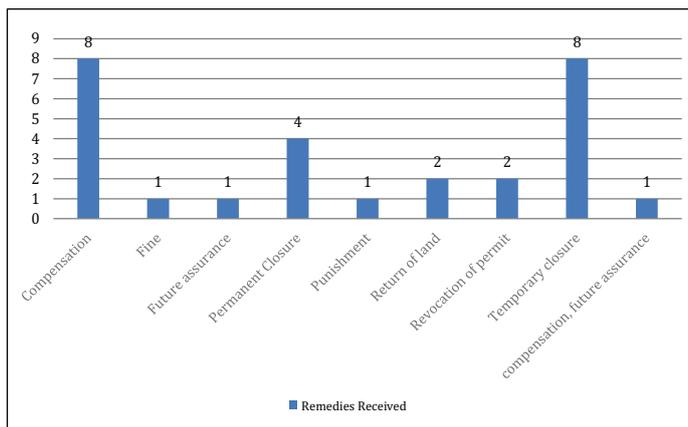


Figure 17. Remedies received (based on quantitative analysis of a database of 75 cases)

Table 9: Sector-wise analysis of interim outcomes and remedies received (based on quantitative analysis of a database of 75 cases)

	Interim Outcome	Remedy Received	Sector
1	Mediation	Compensation (better price for palm fruits)	Oil Palm
2	Mediation	Compensation	Oil Palm
3	Mediation	Compensation	Oil Palm
4	Mediation	Compensation	Oil Palm
5	Verification	Compensation	Oil Palm
6	Verification, site visit	Temporary closure	Coal Mining
7	Verification, site visit	Temporary closure	Coal Mining
8	Verification, site visit	Temporary closure	Coal Mining
9	Verification, site visit	Temporary closure	Coal Mining
10	Verification, site visit	Permanent Closure	Coal Mining
11	Verification, site visit	Temporary closure	Coal Mining
12	Verification, site visit	Permanent Closure	Coal Mining
13	Verification, site visit	Permanent Closure	Coal Mining
14	Site visit, warning	Temporary closure	Coal Mining
15	Verification, site visit	Temporary closure	Coal Mining
16	Verification, site visit	Temporary closure	Coal Mining
17	Verification	Punishment	Coal Mining
18	Verification, site visit	Permanent Closure	Coal Mining
19	Verification, site visit	Revocation of permit	Coal Mining
20	Verification, site visit	Fine	Coal Mining
21	Verification	Revocation of permit	Coal Mining

If remedies are arranged according to what was sought and what was received, the dataset reveals the results below.

Table 10: Comparison of remedies sought, remedies achieved, interim and policy outcomes (based on quantitative analysis of a database of 75 cases)

	Remedy sought	Interim outcome	Remedies acheived/ policy outcomes
1	Return of land	Re-measurement of land	NA
2	Return of land	Mediation	NA
3	1. Compensation 2. Restoration	Mediation	NA
4	Compensation	Mediation	NA
5	1. Return of land 2. Compensation	Test pilot	NA
6	Compensation	NA	Compensation
7	Compensation	Mediation	NA
8	Compensation	Mediation	NA
9	Restoration	Site visit	NA
10	Return of land	NA	Return of land
11	Return of land	Verification	NA
12	Restoration	Site Visit, restriction on movement	NA
13	Employment	Mediation	NA
14	Return of land	Mediation	NA
15	Compensation	Mediation	NA
16	Compensation/Employment	Mediation	NA
17	Compensation	Mediation, warning	NA
18	Return of land	Mediation	NA
19	Compensation	NA	Compensation
20	Compensation	Mediation	Compensation
21	Return of Land	NA	Return of land
22	Return of land	Mediation, re-measurement of land	NA
23	Return of land	Mediation	NA
24	Preventive measures	Verification, site visit	Temporary closure, moratorium
25	Preventive measures	Verification, site visit	Temporary closure, moratorium
26	Preventive measures	Verification, site visit	Temporary closure, moratorium
27	Preventive measures	Verification, site visit	Temporary closure, moratorium
28	Closure	Verification, site visit	Permanent Closure
29	Preventive measures	Verification, site visit	Temporary closure, moratorium
30	Restoration	Verification, site visit	Permanent Closure
31	Restoration	Verification, site visit	Permanent Closure
32	Preventive measures	Verification, site visit	Temporary closure, moratorium
33	Preventive measures	Verification, site visit	Temporary closure, moratorium
34	Restoration	Verification, site visit	Temporary closure
35	Preventive measures	Verification	Punishment
36	Restoration	Verification, site visit	Permanent Closure
37	Revocation of Permit	Site visit	NA
38	Revocation of Permit	Site visit	NA
39	Revocation of Permit	Site visit	NA
40	Revocation of Permit	Site visit	NA
41	Revocation of Permit	Site visit	NA

Remedies can be categorised based on the actors involved (communities, company and/or government) or based on where they are obtained from (courts, responsible government institutions, companies, international tribunals, commissions [human rights, women's rights], zoning and planning bodies, institutions which have a stake) or based on what they seek (rights, compensation [monetary, plasma, jobs], cancellation of projects, future assurance). We have chosen to pursue what they seek and analysed it at a preliminary level. Since the dataset is small, further correlation between different factors and remedies has not been attempted. However, the results presented in this and preceding section offer some clear trends: administrative bodies are able to offer remedies in cases of environmental degradation as establishing the aggrieved and those causing the harm is easier. On the other hand, in cases of land and livelihood loss, unclear land claims and the difficulty in quantification of lost livelihood and associated compensation makes resolving these cases difficult. Weak powers of the BPN at resolving conflicts and ambiguity around plasma agreements further complicate matters. Also, environmental cases can be framed as cases of public interest and thus have better scope to mobilise mass appeal. The demands associated with such cases can also be wrapped up in conservation concerns for greater appeal and support. The examples provided in these sections demonstrate that in environmental cases, more agencies can be invoked depending on the concern that gets highlighted e.g. environment agency, ministry of forestry, state and province heads, public works department, etc. All these factors may have had a role to play in their resolution.

7.4. Other remedies

7.4.1. Remedies located in rights

Remedies sometimes are placed in larger demands related to rights and self-governance. Once achieved, these rights help communities in strategising their actions in response to projects. Rights can then be used by communities to demand newer, more effective and stable remedies. Below are a few examples when communities have demanded rights that stretch beyond the scope of individual projects that may have/likely to have impacts on them.

7.4.1.1. Indigenous Peoples' Bill: Law on Recognition and Protection of Indigenous People's rights or Indigenous peoples' Act, the *Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat* (PPHMHA) is being discussed



Secondary forest in Central Kalimantan

since 2003 when the AMAN made the demand for a special law for indigenous people of Indonesia. The AMAN drafted the bill in 2005 and in 2010 after finalising it based on consultations with its members across Indonesia, the AMAN handed the law to the Chair of House of Representatives. Since then, it has been demanding the enactment of the law by the Government. The draft is one of the bills on the list of the current house term (2014-2019) but was dropped out of the priority agenda in 2016. It was decided that a task force headed by the Ministry of Law and Human Rights will be finishing a draft of the law first. Indigenous groups, however, fear that this drafting would dilute the key components of the bill (Rogers 2016).

7.4.1.2. Communities' rights to manage their forests: Forests, traditionally have been *adat* community forests which would be maintained, accessed and claimed by communities. But the Forest Law of the country gave powers to the state over forests. It stated, "Customary forests are state forests that are located in the areas of custom-based communities." However, the ruling of the Constitutional Court in May 2013 gave indigenous people the rights to manage the forests they live in. It directed that the word 'state' be deleted from the legislation.

7.4.2. Remedies located in agreements with companies

7.4.2.1. Plasma agreements: Execution of a plasma agreement as a means of benefit sharing has been a common remedy pursued by the communities. This is the most commonly offered remedy when companies face opposition from the community. However, efficacy of plasma agreements as a remedy is yet to be proven. Creating small plots of oil palm called plasma for farmers who give their land to the company is a legal stipulation under the law on plantations. But the law doesn't provide any guidelines on how these agreements are to be executed. The government has come up with bank credit schemes for development of plasma but has been silent on good practices such as maintaining transparency in palm oil production, information sharing with and being accountable to plasma participants, mechanisms for plasma participants to generate income during the gestation period, etc. It doesn't provide any grievance redress mechanism for plasma participants. In fact, once an agreement is signed between the company and the farmers, the state has no responsibility towards the farmers.

7.4.2.2. One Map Project: So far less than 15% of forestlands have been demarcated in the country. Indigenous communities mostly reside in forests and carry out farming with unrecognised land claims. The poverty rate among these forest dwelling indigenous communities is 20% (as against an 11% national average). The World Resource Institute is supporting the national One Map Project in the four provinces of Riau, South Sumatra, Papua and South Papua, to come up with unified maps after the resolution of conflict over land boundaries between communities, companies and government bodies. According to them, conflicted boundaries have costs for the companies; companies may run the risk of encroachments, lose income and suffer losses if the conflicts remain unresolved. The Ministry of Environment and Forests has established a Directorate of Social Forestry in Papua. Papua is the next area that is being vied for by the plantation companies. With ongoing movements for its separation from Indonesia, working directly with the communities seems an attractive option for the companies (Erdenesanaa 2017).

7.4.2.3. Corporate Social Responsibility (CSR): Crumbling state infrastructure often pushes citizens to look towards the company and makes them rely on CSR. This was observed in the case of PT *Asmin Koalindo Tuhup* (AKT) coal mine in Murung Raya in Central Kalimantan. The lack of basic infrastructure and facilities by the government in Tuhup Raya gave huge advantages to the company. The community in the hope of jobs and basic facilities such as water and road construction adopted a collaborative attitude towards the company (*Ref: Case Study V*). However, CSR is neither substantive nor imperative. It makes an already unequal power relation further skewed and influences communities' choices and compromises their independent decision-making.

7.4.3. Policy reforms and moratoriums

Besides the remedies mentioned above which have been achieved on a case-by-case basis, there are certain policy outcomes that may have a bearing for an entire sector or an entire region. Policy outcomes were obtained in seven cases of coal mining recorded in the dataset. A moratorium on new mining permits was

achieved in projects located across East Kalimantan. Special teams were also formulated by the Central Government to evaluate the process of permitting grants to the mining companies. This was a result of a persistent campaign involving the media and reaching out to politicians including President Jokowi, who is from East Kalimantan.

There are certain policy outcomes that have been achieved or are being pursued through sustained campaigning and the fight by the NGO networks in Indonesia. However, these policy outcomes and even the remedies achieved are the result of multiple factors, including but not limited to international pressure, centre-province-regency relationship, change in global demands of certain resources and conservation targets of the country.

1. The draft land bill was discussed in the House of Representatives in 2016. The bill is expected to better communities' access to land. However, the KPA demands that the land bill should be brought in line with the BAL and should resolve the agrarian conflicts, overlapping licenses and ecological crisis in rural areas of the country. It suggested that the land bill should encourage active, transparent and participatory land registration; lands under HGU should be given to farmers' cooperatives (KPA n.d.).
2. In April 2016, the Indonesian president declared a moratorium on new licenses to establish oil palm. In July 2016, it was shared that it would be turned into a presidential instruction to last for five years. (Jacobson 2016). However, current status of the presidential instruction is not known. Such moratoriums, their extensions, revocations and resumptions have been going on since 2011 under international pressure to check deforestation (Busch et al 2015; Indonesia Investments 2016).
3. In October 2017, the Indonesian energy minister promised that there would be no new coal fired thermal power plants in Java (Renewable Energy to contribute 23% from 12% to the energy mix by 2025; coal is 57%) (Jensen 2017). The announcement also came because of the economic growth being slower than expected and the energy demand decreasing (Woods 2017).
4. With Indonesia's generous allotting of forests licenses coming under the scanner of global forestry and Reducing Emissions from Deforestation and forest Degradation (REDD)²⁸ efforts, degraded lands are being seen as the next piece of land available for development. Also, as a solution towards sustainable palm oil production, use of 'low carbon' degraded lands for oil palm cultivation is under consideration (Rosenbarger. et al. 2013).
5. At the end of 2014, the government made an announcement that all mining and oil palm clearances should be CnC. This implied that only concessions and operations with valid permissions, that are in line with the environmental stipulations and have no pending taxes would be allowed to operate and the rest would be closed down. The government gave time to companies till December 2016 to obtain the "clean and clear" status. In Central Kalimantan, there are more than 300 palm oil palm concessions, only 85 are CnC and the rest are illegal (WALHI 2016). Already over 900 mining licences have been cancelled in the country (McClellan 2015).
6. New institutions such as the Conflict Resolution Committee have been constituted to ensure compliance and resolution of conflicts. Under the conflict resolution policy the government is making efforts to resolve the conflicts through the independent resolution committee. However, it needs to be seen how, while mediating, the committee ensures that there is no power imbalance between communities and the government or company, in the true spirit of mediation.

7.4.4. Negative outcomes

In most cases it has been observed that the impacts immediately felt by those affected by mining and large-scale plantation projects have ripple effects. Efforts of people to try and mitigate the impacts most often have resulted in secondary effects. Not just strategies, sometimes even the remedies have resulted in a range of new impacts, to which people again respond with some strategies, which may again lead to unsatisfactory remedies resulting in further impacts. These secondary and tertiary impacts then blur the distinction between

²⁸REDD program was initiated by the United Nations for Climate Change (UNFCCC) in early 2000s to reduce emissions from deforestation and forest degradation in its efforts to combat climate change.



Oil palm fruits harvested from a plantation in Central Kalimantan

impacts, strategies and remedies. For example, in the case of *Seko Dam* in South Sulawesi, the company began work without seeking consent from the local communities. The company agreed to pay a customary fine of ten million *rupiahs* and a water buffalo to the local communities (Mongabay 2017c). As per the villagers' report to the media, the company later reported this incident to the police as an attempt by the locals to extort money. Such reports of registering false charges against members of the communities and protestors are common. However, protests and blockades have resulted in second-level impacts: people getting into trouble with law and order, being booked for criminal offence and jailed. As per WALHI (2016), in Central Kalimantan, a 107 people were booked under charges of criminalisation while they were struggling for their land in 2014. In 2015, 20 people were arrested, one killed and five people were injured in similar protests. According to the dataset, communities faced counter litigation in one project, people were arrested in three projects, communities faced police intimidation in four projects and mafia intimidation under one project.

8 Conclusion

Indonesia accounts for 53% of the world's palm oil production. Palm oil contributes 4.5% to Indonesia's Gross Domestic Product (GDP). Besides being the biggest palm oil producer, it is also the biggest exporter of thermal coal in the world. According to different estimates land area of Indonesia under oil palm plantations varies between 10 and 14 million hectares, which is about 7% of the total landmass of the country. 10% of the land has been allocated for mining activities. Thus, close to 20% of the total land area in Indonesia has been given away for these two activities. After the Asian Economic Crisis of 1997, investments (both domestic and foreign) in natural resources have seen a surge and the economic growth of Indonesia has predominantly hinged on these natural resources. It has been attracting foreign investments by simplifying laws and policies that govern the use and access of these natural resources. This has been reflected in the recent jump in the World Bank's 'Ease of Doing Business' rankings. All this has made Indonesia the world's third fastest growing economy, after China and India. However, such a high pace of growth has had its impacts. Poor and half-baked practices of land management and natural resource governance have aggravated the impacts and turned them into unresolved conflicts. Reports of conflicts between community and company and community and/or government have become a regular feature.

Still, the pace of growth of the country is not likely to decrease in the coming years. Domestic demand for palm oil is expected to shoot up as the government has recently decided to direct some of its savings from the cutting down of fossil fuel subsidies in 2015 (IEA 2016) towards biofuels (Kissinger 2015). The National Medium Term Development Plan, the *Rencana Pembangunan Jangka Menengah Nasional* (RPJMN) of 2015-2019²⁹ looks to accelerate economic growth through an increase in production of value added products and competitiveness of agricultural commodities, including oil palm.

Under the leadership of Joko Widodo (Jokowi), Indonesia has committed itself to moving up to number 40 on the list of 'Ease of Doing Business' and to achieve this it is looking to ease the licensing process (Indonesia Investments 2017b). This implies that the development and economic targets of Indonesia will continue to rely heavily on its extractives and agricultural outputs. Industrial and infrastructure projects, which have not picked up as yet, will also be built to consume what the extractive industry digs and to support and facilitate these extractives and monoculture plantations through infrastructure projects. The Jokowi government hopes to redirect almost 15.7 billion USD from the state budget to basic infrastructure. Over the next five years, the government aims to build 5,000 km of railway, 2,600 km of roads, 1,000 km of toll roads and 49 dams (Natahadibrata 2015). In April 2017, Indonesia offered Chinese companies the development of dam projects worth over 330 million USD, largely for generating power and irrigating rice fields (Rombu Energy 2017). The government also has an ambitious mission – to build the capacity to generate 35,000 megawatts of power by 2019. Of this, 50 to 60 percent would be generated from coal (Gandolphe 2017). The MP3EI aims for an electrification rate of 99.7% by 2025. This requires 80,000 megawatts of new power plants, of which 64,000 have been already allocated (Woods 2017b). If laws and policies of land governance continue to remain as weak and vague as they currently are, not just oil palm and coal mining, even the sectors of infrastructure and industry will contribute significantly to conflicts.

The above analysis shows that there have been efforts from the communities, companies and the government to resolve these conflicts. While communities take to protests and blockades, at times make use of the existing administrative avenues, invoke institutional accountability and seek justice from courts; the government and

²⁹According to the announcement of the Ministry of National Development Planning, the Badan Perencanaan Pembangunan Nasional (BAPPENAS) in 2011, the MP3EI's focus is on investments in plantations, forestry, mining, fishing, exploitation of natural resources and expansion of transportation infrastructure in six economic corridors in Sumatra, Java, Kalimantan, Bali-Nusa Tenggara, Sulawesi and Maluku Papua. When Jokowi took over from Susilo Bambang Yudhoyono in 2014, the acronym MP3EI was dropped but the current government upheld and continued to pursue the objectives of the master plan as those were in line with the RPJMN.

companies have tried collaborative arrangements such as plasma agreements and the One Map Project for mapping of community land; the government has also created special avenues for conflict resolution; and the civil society has demanded better policies time and again. In a few cases the efforts have resulted in successful remedies, in many they have caused newer conflicts or have only offered quick-fix solutions instead of long-term sustainable remedies. The analysis of strategies and remedies highlights the failure of plasma as a strategy to resolve conflicts and the successes of mass-scale media campaigns and planned political advocacy. It also showcases the potential of invoking administrative accountability particularly in cases of pollution and contamination. While planning a growth path for Indonesia that doesn't compromise the lives and livelihoods of the natural-resource dependent communities is a tall order, results of the study offer an insight into communities' perspectives on the conflicts and the different ways in which they are approached. This insight will be useful for policy makers as they put effective systems and arrangements for conflict resolution in place and for communities to make an informed choice of remedies to pursue and strategies to deploy.

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Land transformations in Central Kalimantan

The island of Borneo is spread over three countries: Brunei Darussalam, Malaysia and Indonesia. The Indonesian part of Borneo is the largest and is called Kalimantan. Central Kalimantan, with an area of over 15,000 hectares is the third largest province of the five provinces of Kalimantan (Eriksen 2016). 11 major rivers and 33 smaller rivers/creeks flow through the province (Statistics of Kalimantan Tengah Province (BPS), 2016) and about two-thirds of its area is under forest cover (Earth Innovation Institute, n.d.). As of 2014, the island had a population of 2.4 million (Statistics of Kalimantan Tengah Province (BPS), 2016). 66% of its population is rural and largely depends on natural resources to make a living. According to the Governors' Climate & Forests Task Force, the Dayaks, indigenous people of Central Kalimantan are the largest ethnic community of the province (Governor's Climate & Forests Task Force, n.d.). Most of these are the *Ngaju Dayaks*, swidden cultivators in the middle courses of the series of rivers (Eriksen 2016). They have suffered decades of exploitation and deprivation. Their lands and forests have been appropriated for rubber and palm plantations, logging concessions, and transmigration that has continued from the colonial times (Dove, 1997).

The province has been the site of immigration for large numbers of people from South Kalimantan and Java under the transmigration programme of the Suharto regime in the late 1980s. Mining of gold, oil palm and timber plantations and logging concessions have led to environmental degradation and destruction to the island. After the introduction of oil palm in the early 1990s, the Ex-Mega Rice Project¹ of 1997 brought in another wave of settlers, the *Madurese*. This resulted in their conflict with the *Dayak* people for the already dwindling natural resources. With an increase in conflicts arising out of impacts of oil palm plantations, the focus has shifted to harnessing sub-surface resources. In the last couple of years, apart from gold, potential coal deposits in North and Eastern Central Kalimantan have also been marked. (Kuraniawan, 2014) A large number of licenses for exploration and production of coal and other minerals have been issued. According to WALHI- CK (2016), such natural resource-based investments control 78% of the land area of the province with oil palm and mining occupying over 50% of the area of the province.

Table 11: Area under different land uses in the Central Kalimantan province of Indonesia

Activity	Area Under Use
Oil Palm Plantation	4.111.255 ha (332 units)
Mining	3.872.829 ha (875 units)
Logging, Timber	4.894.408 ha (89 units)

Note. Reprinted from Land use change in Indonesia by WALHI- CK, 2016, Central Kalimantan, Indonesia.

¹In order to make the country self-sufficient in rice production, President Suharto in 1996, ordered the reclamation of peat lands for rice cultivation. The goal was convert one million hectares of peatlands into paddy fields. The project was subsequently abandoned after half a million of peatland forests were destroyed, with dry peatlands left behind.

Cases of conflicts arising due to oil palm plantations

Oil palm plantations began in Indonesia in the early 1900s (Afrizal 2009). According to the Indonesian Chamber of Commerce, as of 2014, of the total land area of 189 million hectares of the country, oil palm was cultivated on a little over 9 million hectares (Jupesta, Lakitan & Harayama 2014). The report on plasma and transmigration in the oil palm sector in Indonesia states that in as early as 1969, the World Bank provided loans to state-owned oil palm plantations (The Institute for Ecosoc Rights. 2018).

The oil palm plantations started to appear as a major land use in Central Kalimantan in the 1990s after the IMF issued structural adjustments promoting private investments in Indonesia (Acciaioli 2011). Rapid expansion of the oil palm sector was observed in Central Kalimantan in the four years before the economic crisis hit Southeast Asia in 1997. In these four years, oil palm plantations in Central Kalimantan has seen a five-fold increase by five times from the time of their introduction in Kotawaringin Barat (West) (Kobar) and Kotawaringin Timur (East) regencies (Cramb & McCarthy 2016). According to the Plantation Office of Central Kalimantan (2012), the palm oil sector contributes 28% to the gross domestic product of Central Kalimantan and provides 165,600 jobs. 885,894 hectares of the area in Central Kalimantan is under private palm oil plantations owned by companies¹.

The following three case studies on oil palm are from Kobar, Katingan and Kapuas provinces. The three provinces have suffered high rates of deforestation (ranging between 320,000 and 407,000 hectares of forests). Between 1973 and 2012, Kobar lost 53% of its forests, while Kapuas lost 25% and Katingan 24%, at the hands of timber and oil palm concessions. While Kapuas and Katingan have large stretches of peatland swamps and High Conservation Value (HCV) areas, Kobar is largely heath (shrub lands) and wetlands (Ibie 2016). Kapuas and Kobar have witnessed transmigration for oil palm plantations and rice cultivation (Mega-Rice Project [MRP]) respectively, while Kapuas and Katingan in the recent years have been prime sites of conservation programmes such as REDD+² and Kalimantan Forest Carbon Partnership (KFCP)³. Through these case studies the aim is to understand the factors that impact the choices communities make in the face of anticipated or already operating oil palm plantations.

¹As per information received from the Plantation Office of Central Kalimantan in June 2016.

²REDD+ represents countries' efforts towards reducing emissions from deforestation and forest degradation, and foster conservation, sustainable management of forests and enhancement of forest carbon stocks. The programme is an expansion of the scope of the United Nations programme on reducing emissions from deforestation and forest degradation. REDD programme was initiated by the United Nations Framework Convention on Climate Change (UNFCCC) to reduce emissions from deforestation and forest degradation in its efforts to combat climate change in the early 2000s. Retrieved from the UNFCCC website http://unfccc.int/land_use_and_climate_change/redd/items/7377.php

³KFCP is one of the four demonstration activities of REDD+ in Indonesia. The KFCP intervention area was part of the EMRP area. It officially ended in June 2014. One of the mandates of KFCP was to have a planned inventory of territories of customary communities.

CASE STUDY I

Plasma partnership in BGA oil palm plantations in West Kotawaringin¹

The BGA cleared land belonging to residents of 12 villages and one sub-village of Kobar in Central Kalimantan. Many of the farmers who lost their land were made a part of plasma agreements with the BGA without their knowledge. Under the agreement, the company, in exchange of their land, was supposed to develop oil palm plantations on behalf of the farmers. Income from harvesting these plasma plantations was to be distributed to the farmers through a cooperative. In case of the BGA, the heads and the administration of these villages were handling the workings of the cooperative in violation of the existing laws. Farmers complain of the illegal ways of cooperative management, inadequate plasma payments and lack of transparency in income disbursement. They take the matter to different government offices at the level of regency, province and the Centre. They even register their grievance with an international platform for sustainable palm oil production that BGA is a member of. However, the farmers are yet to receive any satisfactory resolution of their problem.

The Kobar (West Kotawaringin) district is situated in the western part of Central Kalimantan. The total area of the district is 10,759 square kilometres. This district is unique in its composition as it was the key site for the transmigration programme of the Indonesian Government and therefore has a large Javan population besides the Dayak communities. Primarily for this reason, 60% of the farmers in the district have land certificates (*surat hak milik*), the strongest type of land title in the country (Institut Penelitian Inovasi Bumi 2016). As of 2015, based on the National List of Oil Palm Plantations obtained from Ministry of Agriculture in 2016, the percentage of area under oil palm plantation in Kobar was about 16%. The second largest oil palm estate in Central Kalimantan is also located in Kobar. Also, the majority of oil palm concessions in Kobar are owned by companies that are members of the RSPO (Jenito, 2016)². The RSPO is a non-profit that unites different actors of the palm oil industry towards implementation of global standards to mitigate negative environmental and social impacts of oil palm cultivation. PT Bumitama Gunajaya Abadi (BGA) that is operating an oil palm plantation in Kobar is an RSPO member.

Bumitama Gunajaya Abadi is a subsidiary of Bumitama Agri Limited. Bumitama Agri Limited, a Singaporean company engaged in palm oil plantations and oil mills, has its operations in three provinces of Indonesia: Central Kalimantan, West Kalimantan and Riau. Central Kalimantan is the first province where it began oil palm plantations in 1996³. As per the company's website, it owns an area of approximately 225,000 hectares of which 175,243 hectares is planted land (including land under the plasma programme). Bumitama and its subsidiaries, as per its website, have received six RSPO complaints since July 2012. As per Eyes on Forest, BGA was operating oil palm plantations illegally on 2500 hectares of forestland in Riau until 2014. But in 2014 the Ministry of Forestry changed the designation of large patches of forest area to non-forest area and the plantation wasn't illegal anymore (Riauone 2017)

Plasma partnerships

Partnerships between communities and companies in the agricultural plantation sector in Indonesia go back to the 1970s. The Presidential Decree No. 11 of 1974 laid the background for it. This decree prescribed an

¹Source of information, if not mentioned, is the interviews and group discussions and observations during field visits conducted in December 2016. Names and other details of interviewees are provided at the end of the case study

²This information was obtained and recorded by Jenito, J. during field research conducted in April 2016

³Information procured from the official website of the Company (<http://www.bumitama-agri.com>)

arrangement whereby a large estate serves as a core for the small plots of plantations called 'plasma' managed by the communities. This arrangement was named *Perkebunan Inti Rakyat* (PIR) or special core plantation. The PIR pattern was tested not only in oil palm but other crops such as rubber, cocoa, cotton, and sugarcane. In 1977, the first pattern, Nucleus Estates and Smallholders (NES) was introduced and tested in Aceh and Sumatra provinces. Under the pattern, the large state-owned or private plantation that serves as the nucleus is obliged to provide the participating farmers with technological assistance and help in processing and marketing of oil palm. Between 1976 and 1991, plasma development received support from multilateral donors such as the World Bank (Project NES IV Betung, Riau Province), Asian Development Bank and German Development Bank. PIR pattern evolved during these years and was categorized into various types including but not limited to: PIR-Bun (*berbantuan* or assisted), PIR-Swadana (self-financed) namely PIR-Lokal (local), PIR-Khusus (special), and PIR-Trans (for trans-migrants) (The Institute for Ecosoc Rights 2018).

Table 12: Different Plasma Partnerships for Plantations in Indonesia

Scheme name	Period	Nucleus	Beneficiary	Conditions
NES/ PIR-Bun	1977-1994	State-owned	Local	Smallholder receives technical and marketing support from nucleus company. Company provides land for growing food crops and housing needs.
PIR Swadana (PIR-Lokal, PIR Khusus)	1980-1986	State-owned	PIR-Lokal-local, PIR-Khusus-transmigrant	Smallholder receives technical and marketing support from nucleus company.
PIR-Akselerasi	1984-1986	Private & state-owned	Local and transmigrant	Smallholder receives technical and marketing support from nucleus company.
PIR-Swasta Kelapa Sawit (Pvt coconut and oil palm)	1985-1986	Private & state-owned	Local and transmigrant	Smallholder receives technical and marketing support from nucleus company.
PIR-Trans (and PIR-KTI for Eastern Indonesia)	1986-1999	Private & state-owned	Local and transmigrant	Smallholder receives technical and marketing support from nucleus company. Company provides land for growing food crops and housing needs.
KKPA	1990-Present	Private & cooperatives	Local and transmigrant	Increased role and responsibilities for smallholder cooperatives. KUD manage smallholder plots collectively. Company does not provide land for growing food crops and housing needs.
Pola Kemitraan	1999-2006	Private	Local and transmigrant	Profit sharing model (management by company) and transfer of plantations after 15 years to smallholders

Revitalisation	2006-present	Private, state-owned & cooperatives	Local and transmigrant	Smallholder receives technical and marketing support from nucleus company and profit sharing model.
Revision of Pola Kemitraan in 1999	2007-present	Private, state-owned & cooperatives	Local and transmigrant	Profit sharing model, grants (such as transfer of plantations after 15 years to smallholders) and negotiated credit arrangements

Note. Reprinted from Diagnostic study on Indonesian Oil Palm Smallholders- Developing a better understanding of their performance and potential by Molenaar, J.W., Persch-Orth, M., Lord, S., Taylor, C. & Harms, J. (2013, September). International Finance Corporation. Retrieved from: http://www.aidenvironment.org/media/uploads/documents/201309_IFC2013_Diagnostic_Study_on_Indonesian_Palm_Oil_Smallholders.pdf

Since 2007, as per the Plantation Law, the plantation companies allocate 20% of the land that they develop for local communities to utilise for plantation activities. As of 2014, the Indonesian Chamber of Commerce records close to 22% of the total land under oil palm plantation in Indonesia as plasma cultivated by smallholder farmers and developed under various foreign and state funded programmes (Jupesta, Lakitan & Harayama 2014).

There are different kinds of arrangements that companies have made with the local people under plasma schemes for oil palm. Based on these different terms of agreement or MoUs, Institute for Ecosoc Rights has put together a comparison. Drawing from the comparison, below is an analysis of the most-popular scheme among companies, the *Kredit Koperasi Primer Anggota* (KKPA).

The KKPA or the Primary Cooperative Credit for Members scheme is a smallholder cooperative scheme introduced by the Indonesian government in 1986 to replace PIR *Lokal*, PIR *Khusus*, PIR *Akselerasi* and PIR *Swasta* (The Institute for Ecosoc Rights. 2018). The scheme consists of three participants: the bank that provides the capital for development and maintenance of smallholder farms, the company that manages the smallholdings and the plasma farmers who are the plasma owners. They usually participate in the scheme collectively as a cooperative. These cooperatives are called *Koperasi Yang Melakukan Usaha Perkebunan* (KYMUP). The cooperative can develop oil palm plantations and process the fruits by itself (Molenaar et al. 2013). Usually the village cooperative unit, or *Koperasi Unit Desa* (KUD) doubles as KYMUP. The KUDs are governed by local village authorities as per the Cooperatives Law of 1992. However, sometimes, instead of the village or communities, the company can set up the cooperatives too. The KKPA scheme was, in fact, the first one to make it possible for cooperatives other than KUDs to participate in oil palm plasma schemes.

As per the KKPA scheme, the small landholdings that are to be developed as oil palm plantations are held by the cooperative, on which it can get a loan of up to IDR 50 million (from the Bank of Indonesia) at a partially subsidised repayment rate of 16%. As per the World Bank (n.d.), the lending interest rate in Indonesia in the 1990s had ranged between 17% and 32%. In most cases the credit risk is borne by the cooperative. With this scheme, the KUD took centre stage in the management of smallholder business. The farmers in exchange for a minimum of ten hectares of land for plasma receive share certificates for two hectares each. Although the cooperative enjoys considerable autonomy in the development and management of plasma under the scheme, decisions regarding land allocations, recruitment of labour and marketing (including the price) of Fresh Fruit Bunches (FBB) are made by the company (Vermeulen & Goad 2006). The company is also responsible for providing the guarantee for the cooperative's loan. The cooperative disburses, monitors and reimburses the smallholder credit, maintains infrastructure and provides profit share to the participant farmer based on the dividends issued from the profits of the cooperative and earned wages. However, the profit starts coming in only after 4 years or so when the palms start bearing fruits. Till then the farmers receive subsistence level support, which they have to repay along with the cost of land clearance, planting, fertilisers, other inputs and cooperative administration once the harvest begins (DTE 2004). Under the KKPA scheme, the cooperative can also hold shares in the plantation company (Molenaar et al. 2013).

Since 1995, this scheme has become the commonly-applied plasma scheme in the oil palm sector. In fact, over the last two decades, the NES and PIR schemes have been converted to KKPA schemes. The Plasma and KKPA scheme, over the years have come to be used interchangeably or have significant overlaps.



Record book of a member of the plasma cooperative- cover



Record book of a member of the plasma cooperative- inside

Like in Kobar, in many other districts of Indonesia the KKPA scheme and the state-sponsored transmigration took place simultaneously, most likely to make cheap labour available for oil palm plantations (DTE 2005; Jupesta, Lakitan & Harayama 2014). In most KKPA schemes, the KUD is often controlled by the nucleus company, which in turn plants, manages and harvests the crop of the smallholder plasma. The smallholders may or may not work on the land (plasma or nucleus estate). If they choose to work, they work as labour and receive daily wages, which is in addition to the percentage of harvest revenue that they receive (after plantation establishment and management cost has been deducted). The ratio between nucleus and plasma plantation varies from project to project but overall 60-70% of total scheme is smallholder plasma and 30-40% is nucleus estate. Total smallholder area developed under KKPA is 150,781 ha involving approximately 75,000 smallholders (Molenaar et al. 2013)

Table 13: Features of KKPA Plasma Partnership

Feature	Details
Financing	The State Budget funds it with an investment credit scheme.
Rate of interest on loan	The interest rate is 12% at the time of development, 14% at the beginning of the credit agreement and changes from time to time.
Implementing the development of gardens	Especially private plantation company
Credit risk	The credit risk is borne by the cooperative of plasma holders if the cooperative acts as an implementer. The credit risk is borne by the bank if the cooperative acts as a supplier.
Farm management after the conversion	Either smallholders or cooperatives. The cooperatives could also authorise the management to be the Business Partners / Corporate Core

Note. Extracted from *Privatisasi transmigrasi dan kemitraan plasma menyang industri sawit* by The Institute for Ecosoc Rights (2018).

BGA's activities in Kobar

PT BGA became active in the area in 2004 when it started advocating partnerships with land owners in 12 villages and one sub-village under the scheme of KKPA. Four of the 12 villages are inhabited by the transmigrants from Java, who received land from the government when they shifted to Central Kalimantan in the 1980s and therefore had individual titles. Many of these villagers did not agree to enter into plasma agreements with the company. The BGA found an alternate route and, without informing the actual landowners, it entered into plasma agreements with the heads of 12 villages and one sub-village. In 2005, the company cleared people's lands. When landowners tried to oppose it, the local village governments held meetings with them to make them aware of their participation in plasma schemes. In the meetings, village heads tried to convince the community members to accept plasma scheme. BGA had obtained an IUP or plantation business permit for 26,900 hectares out of which 13,000 hectares of land should have been managed by the local government as part of the cooperative. However, according to Gusti Gelombang, the head of the cooperative in 2016, in reality the village cooperative was managing only 8000 hectares of land.

Dahlan, from Kinjin village and treasurer of the cooperative in 2016, provided the history of the cooperative. He shared that the village cooperative *Koperasi Kompak Maju Barsama*, or the Cooperative to Advance Together, had been in existence prior to the arrival of the BGA in the area. The village government had created the cooperative although the exact date could not be traced. Earlier the cooperative used to handle the sale of ironwood but after the BGA became active in the region, it was supposed to ensure plasma for the farmers. The participants started receiving plasma money from 2011 onwards and between then and 2014 they received 500,000 IDR/month. However, the farmers claimed that there is no transparency and that this amount was not in accordance with what their patch of land and their oil palm trees yielded. Medai, a Dayak woman and a participant farmer who also works in the BGA plantation said, "In 2008, I gave land for the second cluster of the BGA plantation with high hopes. The company promised me money from plasma on every single hectare. But what I am receiving now is much less"

Other than the issues of lack of transparency at handling plasma and inadequate plasma payments, reportedly the operation of the BGA also led to environmental damage, destruction of sacred sites and violation of labour rights (Villagers Post 2016). However, the case study has delved only into the issues of plasma and cooperative's functioning.

Community's initial efforts

Between 2011 and 2014, the villagers approached the BGA regarding inadequate plasma payments. According to them, the company was reluctant to take any responsibility and had instead asked them to go to the village head and other office bearers of the village. When the villagers who lost their lands pursued the matter with the head of the village, the village government made a team to resolve the issue but nothing till 2014, nothing transpired from it.

In May 2014, Gusti Gelombang, an ex-employee of PT BGA became head of the cooperative. He had worked with BGA from 2005 to 2011. In the last four years of his employment with the BGA, he had been on its legal team. From 2012 to 2014 he had worked in a plantation company in East Kalimantan. In 2008, while Gusti was still with BGA, he informed villagers of the terms of agreement of the plasma scheme and also shared related documents with them. However people did not act. According to Gusti, for ten years after the company cleared the land, the villagers did not raise the issue because they were afraid; many were also working on the plantation and feared losing their jobs. He shared that close to 3500 villagers were members of the cooperative, 1000 of which were not receiving any money against their plasma contribution and others were receiving much less. He suspected that the cooperative had colluded with the company and denied villagers their due. He said, "the cooperative comprises of all the members who give their land for the plasma but in actual there were other people as well who did not give their land. It should manage the plasma in its own way but in this case, in actual, the company has been managing it. The cooperative was not following its rules and protocols. No meetings were held and very few people were informed of its activities." He found out that for plasma development, the cooperative had taken a loan by forging farmers' signatures. It has presented farmers' land certificates as a collateral to the government bank without the knowledge of landowners

(Wickansono 2016). He alleged that the cooperative had embezzled credit funds of plasma farmers of IDR 60 billion (Villagers Post 2016).

Soon after becoming the head, Gusti started reworking the management of the cooperative. He asked the local government to recognise the cooperative and advocated for good plasma governance. He shared plasma agreements with the members of the cooperative.



An ongoing group discussion on wages of plantation workers and plasma payments

Around the time when Gusti became head of the cooperative, Sawit Watch, a Jakarta based NGO, which is also an RSPO member and WALHI, Central Kalimantan, another NGO got involved in the case. On the advise of these NGOs, the group made following efforts.

- They reported the case with evidence of illegal practices to the regency government in 2014. They also approached the Central Kalimantan Parliament. This led to meetings in the government office but they only received verbal promises. They received a written reply as well that stated that they needed to resolve the matter with the company but it didn't state anything on the responsibility of the government.
- In the same year, 71 villagers from three villages (Kinjin, Suka Jaya and Bespot) blocked the company's access to the plantation. At that time, police grabbed four people. Only after Gusti and villagers agreed to open the land again, the villagers were released. After this experience, these four villagers dropped out of the case.
- In early 2015, Gusti went to the local police officers to file a complaint.
- In May 2015, villagers went to the police headquarters in Palangka Raya.
- In June 2015, Gusti and Parno, secretary of the cooperative approached the Ministry of Cooperatives in Jakarta and WALHI National.
- In August/September 2015, villagers and Gusti complained to the ministry of trans-migration in Jakarta.
- Constitutional Court was also approached in the latter part of 2015.

Complaint to RSPO

In July 2015, community from Sukajaya village, which largely consists of transmigrants from Java, filed a complaint through Sawit Watch with RSPO claiming that they didn't get due compensation for takeover of their land. For this complaint they invoked the RSPO principles. They also complained about the lack of information about the plasma scheme. Alongside, WALHI, Central Kalimantan also ran a national campaign on the issue in collaboration with the local media. The matter got reported in 2015 in news dailies Borneo News and Media Kalimantan. This had a positive impact in terms of invoking accountability from RSPO.

After complaints to the RSPO and a follow up meeting, it agreed to examine the case. Thereafter, a series of meetings and negotiations took place. It seemed that the community was playing into the hands of other parties involved. At each meeting they would be told that the information provided by them was incomplete and be asked to come for another meeting on some other pretext. In December, a meeting was held between RSPO, as a company mediator (the meeting was led by them), 15 farmers from Sukajaya Village who wanted their land back, Sawit Watch and WALHI. As against the claim of the community that 107 ha of land was in conflict, the company made claimed that there was less land involved. The 15 farmers who attended the meeting intended to grow oil palm on their land once they get it back from the company. They claimed that they were offered plasma but they have denied it from the beginning. The meeting ended with an agreement on following points:

1. Land in question will be verified.
2. In the meanwhile, the company will not intimidate/pressurise the community.
3. To know the exact extent of concession and plasma land, site mapping will be carried out.
4. The company cannot take oil palm fruit from the land under conflict. According to a mapping exercise carried out by Sawit Watch and community, complaint has been made for 107 hectares of land

Counter-action against Gusti

On being accused of embezzlement by Gusti, the village heads indicted him of provoking the villagers and causing disturbance in the area. On November 4, 2015 he was sent to jail on a sentence of six months under charges of corruption during his service in PT BGA. Gusti suspects that it was because his work with the cooperative was troubling the company. In 2015, the company yet again accused Gusti of embezzling company funds (~IDR 8 million). The company claimed that the funds were for the village officials and community leaders. Gusti shared that he had ignored multiple summons he received from the police. Later, he was picked up by the police from the Bogor office of Sawit Watch. They kept him in jail for four months during the trial of the case in district court of Kobar. In March 2016, when the case was being heard, the Human Rights Commission advised the district court to defer the case till the issue of cooperative functioning and plasma payments was resolved (Wickansono 2016). In April 2016, the district court at Pangkalan Bun ordered the release of Gusti Gelombang as the judges didn't find merit in the charges.

Current status and conclusion

Over two years later, the case registered against BGA is still open with the RSPO. In the interim the case was split into two complaints to the RSPO (RSPO n.d.). While one case has been closed, it was not clear from the website what the final resolution in the matter was. A reading of the updates provided on the RSPO website gave information about the times when the community failed in the requirements of the complaint. However, nowhere among the updates was it clear if the company had defaulted or not. It seemed like a convoluted and almost fraudulent participatory mechanism of conflict resolution.

The Plantations Law (Law No. 39/2014) provides broad stipulations regarding oil palm plantations. It makes the Minister of Agriculture, governor and regent/mayor responsible for granting licenses concerning plantations. The law mandates that the company allocate 20% of the land for local community for them to utilise it for plantation activities. It also states that the company must resolve all disputes with the landowners and obtain clear land rights after it has received the location permit and before it starts operation. However, in this case the BGA started operations after consulting the village heads and office bearers but did not resolve conflicts with the landowners.



A collage of farmers in conflict with BGA - prepared by WALHI- Central Kalimantan

The company, from time to time not only used the police to intimidate the villagers, it also tried to frame the community representatives with legal charges. In fact, in response to the complaints of the community with the RSPO, the company responded with a letter of the Bupati (dated 2 June 2016) that confirmed that the company had provided 5500 hectares (i.e. 46% of its total occupation) for plasma development, which was in compliance with the regulation of the Ministry of Agriculture No. 98/2013 article 15. It did not delve into the matter of payments as it left it to be resolved between the village administration, cooperative and the farmers.

Article 19 of the Cooperatives Law (Law No. 25 of 1992)⁴ states that owners and users of a cooperative can be its members. The membership is based on a shared common economic interest that corresponds with the business activity of the cooperative. Article 20 provides each member the right to obtain information on the progress of the cooperative, attend and call members' meetings, participate in voting and utilise the cooperatives' services. In the case of the BGA, it seems that many farmers, though members of the cooperative, didn't know

⁴In 2012, the Indonesian government had come up with a Cooperatives Law No. 17 of 2012 to supersede the Cooperatives Law No. 25 of 1992. The new law was an attempt to broaden the definition of a cooperative, however, the Constitutional Court of Indonesia negated this supersede and restored the legitimacy of the old law stating that a modern commercial view cannot be held for cooperatives.

much about its workings and many times key members of the cooperative disregarded its members' concerns. Article 29 of the law stipulates that the management is to be selected by the members. The management can be appointed for a period of 5 years or less. As per article 32, management is then to appoint operators (with the approval of the members) who have the authority to manage business. Through these provisions the law provides for transparency and democratic ways of management of the cooperative. However, it seems that in the case of the cooperative for BGA plasma, it didn't maintain the required stipulations, as the participant farmers didn't know much about the working of the cooperative from the period prior to 2014.

Although the cooperatives are separate from the village local government, there are overlaps and cooperatives are influenced by village politics. In this case, the overlaps arose because at the time when partnership was initiated in Kobar, there was no regulation to govern plasma. In the absence of clear regulations, village heads took over. The village administration meddled with the functioning of the cooperative and in fact signed agreements with the company on behalf of the cooperative without the knowledge of most of its members. The community also complained of fictitious credit written in their names in the bank. Politics, finances, corruption and exploitation are all enmeshed in the case. Initiation of partnership schemes without requisite regulations in place indicates an intrinsic bias. The lack of transparency within the cooperative makes the matters worse. Villagers are left with no recourse once the plasma agreement is signed between the cooperative and the company. The company and the government both ask them to resolve the issues with the cooperative management. Sri Palupi from Institute for Ecosoc Rights puts the KKPA plasma scheme succinctly, "the KKPA scheme is the most exploitative of all. Most cooperatives are managed with no transparency and are run by the company stooges. According to government most communities are landless people but actually they participate in community management of land. As per the government under the plasma scheme, the landless are getting money from 2 hectares of plasma plantations relinquished by the company for them. This is not the case on ground" (Palupi, 2017)

Since the plasma cooperative was an extension of the village cooperative itself, which Gusti was a member of, Gusti was selected by its members to be the chairman in May 2014. In pursuance to a complaint filed by BGA against Gusti, the representative of the community, he was arrested from the office of Sawit Watch in Jakarta. This jeopardises Sawit Watch's role as a mediator in the process of conflict resolution. Since May 2017 Gusti is not the head of the cooperative anymore. However, he is still pursuing the cause of the farmers⁵.

The case of BGA brings to fore how the current system governing oil palm plantations be misused to deny landowners their rightful claim to their lands. For most who lost their land, something that should have taken place only with their consent and that was supposed to be voluntary, instead became a coerced arrangement. People's land was first destroyed, forcing them into accepting oil palm and weakening their bargaining position. The complicity of village officers with the company made matters worse. The farmers, although they sought to get their land back, were forced to settle with partnership certificates, which were shared with the community members only after the complaint to RSPO. People who once used to own the land (with individual titles or community ownership) are now forced to work on their land as labours and hope to get a share of the plasma profits later in addition to the meagre daily wages they receive for plantation work.

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Interviews conducted between 2nd and 3rd December 2016 in Kotawaringin Lama, West Kotwaringin, Central Kalimantan, Indonesia:

- Dahlan, Farmer, Dayak, Plasma Participant, Village Kinjin
- Gusti Gelombang, Ex-employee in BGA, Dayak, Head of the plasma cooperative (from May 2014 till May 2017), Village Dawak
- Parno, Farmer, Java Transmigrant, Treasure of the plasma cooperative, (from May 2014 till May 2017), Plasma Participant, Village Sukajaya
- Ina Suyarti, Female farmer, Java Transmigrant, Plasma Participant, worker at BGA Plantation, Village Sukajaya
- Medai, Female farmer, Dayak, Plasma Participant, worker at BGA Plantation, Village Kinjin

CASE STUDY II

Illegal Oil Palm Plantation of Rejeki Alam Semesta Raya in Kapuas¹

PT RASR initiated oil palm plantation on 7000 ha of community land in Kapuas district of Central Kalimantan. The land was in use by the locals for cultivation of rubber and fishing. This led to an income loss for them. Farmers organised themselves in a group of affected farmers, demonstrated outside the company office and different government offices, registered formal complaints with the Regent and parliament of the district. In violation of the forestry law, the company also took over land in protected forest. This and people's complaints led to cancellation of company's permission to use the land. Despite all this, the company continued to work people's land and forestland in question. After a series of failed mediations, some of the aggrieved farmers decided to reclaim their lands. Since 2016, the farmers have been harvesting oil palm on their lands on and generating income from the activity. However, they still seek a formal recognition from the government of their right over their land.

Kapuas district lies in the centre of Central Kalimantan. Till 2002 the district spanned over an area of 3.4 million ha. Pulang Pisau and Gunung Mas, two new districts were carved out of the Kapuas district in 2002. The current landmass of the regency is close to 1.5 million ha. Kapuas is one of the rice producing districts of Central Kalimantan. The district has witnessed development-driven land use changes from early on. Logging for timber has been going on in the region since the 1970s. In the 1990s, when the permits of many concessions expired, state enterprise PT Inhutani III received the rights to continue forestry plantations and logging and manage the areas, under cooperative arrangements with the original concessionaires i.e. the logging companies. The 1990s was also the time when peatlands of the district were allotted for the implementation of the Mega Rice Project. Of the one million ha of land allotted for this project, almost 0.85 million ha were located in the undivided Kapuas district (including Gunung Mas and Pulang Pisau). Extensive canal systems were set that drained the peatlands. The Mega Rice Project was shelved soon after the collapse of the Suharto regime in July 1999 but by that time most of the project area had been cleared and close to 1300 families had already been relocated to this region to serve as labour and to live in the hostile conditions of peat marshes (Overbeek 2012).

The trend of land transformation was further intensified in the last decade and a half with the arrival of palm oil companies in early 2000s, implementation of REDD+ programme² and Kalimantan Forest Carbon Partnership (KFCP) projects³ in 2009-10 and introduction of the Peatland Restoration Agency, the *Badan Restorasi Gambut* (BRG)⁴ in 2016. Community rubber and coconut gardens, interspersed with past and present timber logging areas, new oil palm concessions, logged secondary and primary forests, ex-mega rice project sites and sites

¹Source of information for this case study, if not mentioned, is the interviews conducted and observations made during field visits conducted in July 2017. Names and other details of interviewees are provided at the end.

²REDD+ represents countries' efforts towards reducing emissions from deforestation and forest degradation and forest conservation, sustainable management of forests and enhancement of carbon sinks. The programme is an expansion of the scope of the REDD programme initiated by the United Nations for Climate Change (UNFCCC) to reduce emissions from deforestation and forest degradation in its efforts to combat climate change in the early 2000s. (Source: http://unfccc.int/land_use_and_climate_change/redd/items/7377.php)

³KFCP is one of the four demonstration activities of REDD+ in Indonesia. KFCP intervention area was part of the Ex-mega rice project area. It officially ended in June 2014. One of the mandates of KFCP was to have a planned inventory of territories of customary communities.

⁴The Peatland Restoration Agency was created in 2016 after the haze from forest fires veiled the country and its neighbours for weeks. In response to the mounting anger of neighbouring countries, Indonesia created this agency to restore peatlands damaged by the forest fires of 2015 (<https://www.reuters.com/article/us-indonesia-haze-peatlands/indonesia-sets-up-peatland-restoration-agency-after-fires-idUSKCN0US0C620160114>).

for conservation programmes such as REDD+ and KFCP show significant overlaps. The district, in fact, presents a case of land governance gone awry as the permits for oil palm plantations exceed its total area. According to a study conducted by the Institute for Ecosoc Rights, permits have been given for an area over 1.7 million ha whereas the total area of the district is under 1.5 million ha (The Institute for Ecosoc Rights 2015). Similarly, another estimate by Pusaka, a local NGO, also indicates that concessions issued in Kapuas for various activities total to 1.8 million ha. These activities include concessions for mining, industrial plantation forest, forest control rights area, oil palm plantations, Bos Mawas National Park, Lamunti integrated area (PUSAKA 2016). As Nurhadi, a farmer from Mantangai Hulu village in Kapuas says, "Village administrative map is true as it was made by the community in discussion with neighbouring villages. But the government didn't recognise this map as it highlights their mistake. An area cannot be Protected Forest, community management land and concession area, all at the same time! During elections, regent candidates take support from companies for campaigns and later they think which land to give without creating disturbance and they give land from the protected forest."

The imprints of shifting cultivation are apparent in the region. Demarcation and distribution of land amongst communities is based on natural features. People living in one village may have land in the community management area of another village and it is likely that the community area is being managed by a community head living in a third village. Moreover, due to a history of shifting cultivation, there could be multiple claimants for a particular patch of land. For example, people from the Mantangai Hulu village do not care about the land they once used (till 1999). While that same land is mapped by the village government as their community area and has claimants from another village called Kaladan. However, with the companies coming in and the increasing constraints on available land, conflicts in the community are beginning to erupt. Changes over time in the categorisation of land and the associated changes in governance further muddle land ownership and jurisdiction. The Ministry of Forestry, *Bupati*, Ministry of Agriculture, special agencies created for management of donor projects, village administration, etc., have all been simultaneously involved in issuing concessions, mapping and monitoring of the land in the area. All this brings about varied interests and priorities in conflict with each other.

PT Rejeki Alam Semesta Raya: The first oil palm company in the area

Soon after the decentralisation reform and separation of Pulang Pisau and Gunung Mas from Kapuas, lands in Kapuas regency were given out to oil palm plantations. In the past, these lands had been either under the control of timber companies or used for community rubber plantations. In fact, the only private players active in the area till then were the companies engaged in logging activities. PT RASR was the first palm oil company to enter the Kapuas district in 2004. As per Misradi, the leader of the farmers' group (called Karunia Baru) of Sei Ahas village, the community welcomed the company. PT RASR intended to work an area of 20,000 ha. The community under the leadership of Misradi, who was the chief of village Sei Ahas then, selected the land for the company to use for the plantation activity. The community offered 24,000 ha of land from the region for plantation purpose. This land did not have any community claims. However, the company started working an area of 20,000 ha of which nearly 7000 ha belonged to the community of four villages: Sei Ahas, Katimpun, Katunjung and Kalumpang (Pusaka 2017; Kabar Palangkaraya 2014; WALHI-CK 2014).

Before the company took over in 2004, the community was growing rubber and pursuing fishing in the area. Some farmers who lost their land shared that each family had about five ha of its land taken over by the company. Although on an average, each member also had three ha of land outside the community management land, they lost 40% of their income. Their usual income from the five ha of land was 1600,000 IDR/week. They also lost out on the fish they used to collect for their own consumption and for sale in the market from the waterlogged areas.

The company on the other hand claimed that since the government of Kapuas had invited it to invest in the Ex-Mega Rice Project area, it had offered to complete all compensations to the communities. The company shared in a submission to the Administrative Court of Palangkaraya (for details see below) that the Regent of Kapuas communicated in a letter in 2004 to the company that the government had completed all compensation related to the land, crops and other things. The company claims that in addition it paid 'ex-gratia' compensation to people in three villages: Sei Ahas, Katimpun and Kalumpang (PTUN PLK 2015).



PT RASR has turned the land that was used by community members for planting rubber into an oil palm plantation.

Conflict between Spatial Planning Law, forestry decrees and community land maps

For a plantation to operate in Indonesia, a number of licenses are required. The first in the series is a location permit. A location permit is an in-principle approval issued by the concerned regent or bupati to grant three years of time to the project proponent to complete 51% of land acquisition. However, if the land in question is forest land, it requires a decree of forest estate release for non-forest purpose. Usually the Minister of Forestry of the province issues this decree. Another permit required for plantation operations is a plantation business permit. The regent issues this permit to allow the initiation of operations on the land within the location permit. Land use rights or HGUs are issued by the regent once all the land under the location permit has been acquired. This gives the project proponent the right to use the land. PT RASR received a location permit on August 26, 2004 and a plantation business license on July 19, 2004 for an area of 20,000 ha (PTUN PLK 2015).

According to Law No. 8 of 2003 on Spatial Planning of Central Kalimantan and Regulation No. 3 of 2002 of Kapuas on the Provincial Spatial Plan, or the Rencana Tata Ruang Wilayah Propinsi, of the mentioned 20,000 ha 9500 ha was ex-Mega Rice Project area and 10,500 ha was from the production development zone, or the Kawasan Pangembangan Produksi (KPP). However, the map of the forest land use agreement of Central Kalimantan, prepared by the Ministry of Forestry in 1982, shows that 17,800 ha of the total concession area lies in production forest Hutan Produksi (HP) and 2200 lies in conversion forest Hutan Produksi Konversi (HPK) (PTUN PLK 2015).

The production forest category was created under Law 41/1999 to indicate the function of the forest to produce forest commodities, mainly timber and timber products. Some production forests are classified as conversion forests. As per the law, land use can be changed from forest to non-forest (infrastructure development, mining, agriculture, etc.) through the issuance of loan use permits by the Ministry of Forestry. Non-forest activities,

however, can be carried out in conversion forest zones classified for other purposes without such a permit. This implies that PT RASR needed a loan use permit from the Ministry of Forestry to operate in the production forest area of 17,800 ha under its location permit.

Besides, these two conflicting jurisdictions, the communities of Sei Ahas, Katimpun, Katunjung and Kalumpang claimed an area of 6962 ha as theirs. WALHI, Central Kalimantan notes in its database land conflict between the communities of these villages and PT RASR (Rompas & Waluyo 2013). It seems that 4040 ha of community land belonging to the villagers of Sei Ahas, Katimpun and Kalumpang and 2922 ha belonging to Katunjung village had been cultivated by PT RASR without the communities' consent and compensation.

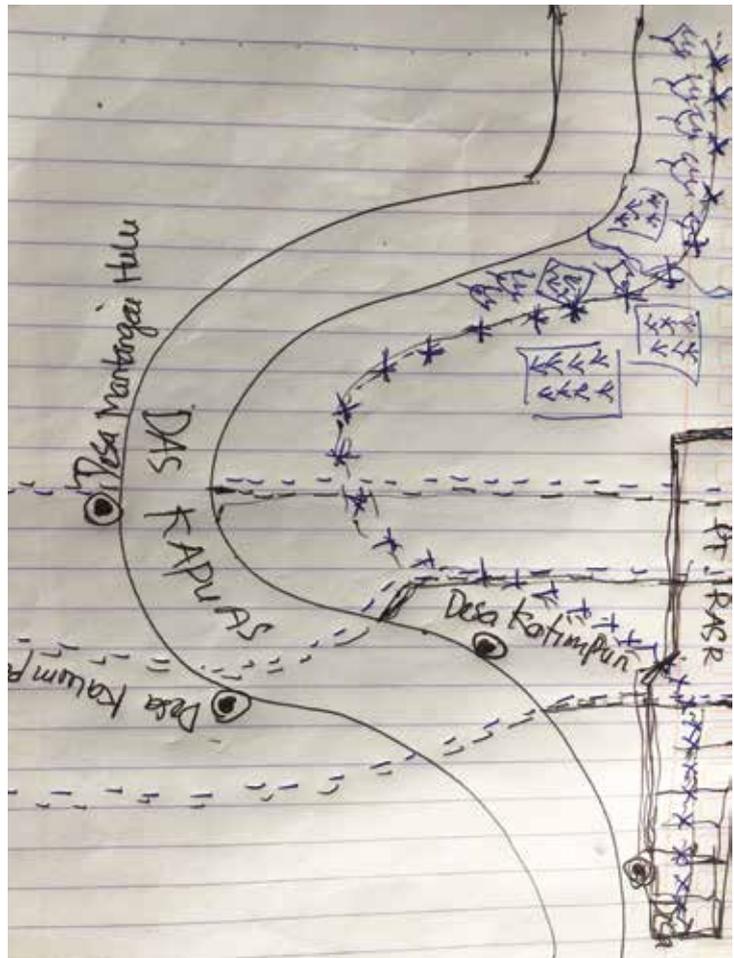
Community efforts: Organising themselves

Immediately after the company started working the land, some community members approached the company asking for the reason behind the change in location of its plantation compared with what the community had mapped. The company only responded with the information that they had permissions

from the government. Subsequently, between 2005 and 2012, the community formed a group of farmers of Sei Ahas village and started educating themselves on laws and regulations that governed the oil palm concessions and forest areas. Mantangai Hulu and neighbouring villages have had a history of farmers' groups. In 1999 Tahata farmer group was created and in 2007 Majar Tabela was formed. Both these groups were fighting land conflicts in the area. In 2010, both these groups merged to form a new group called Sarikat Tani Mangatang Terung (STMT). In 2012, more villages affected by oil palm plantations in the area were brought under one name called Alliansi Sei Ahas Kalumpang Katimpun Kaladan (AS3K) Farmer Group. By this time the company had started harvesting the oil palm grown on a large part of the communities' land. Perhaps, on seeing that the company was reaping the profits from their land the farmers decided to take a more aggressive step.

According to Misradi, the leader of the AS3K Farmers' group, from Sei Ahas village, "In 2012, something exploded in us and we decided to protest and demand our land back." They created the customary police line, hinting pali. Hinting pali is a sacred ritual followed by the Dayak community in which they install certain signs around a place to convey that the place has the influence of an evil spirit. Through this ritual the locals hoped to scare the company into believing that if they disrespected the line they would have bad luck (PHH n.d.). But this line lasted only a week. The company did not honour the line and continued to work the land in question.

AS3K group was dissolved in 2013 and since then members of each village have been pursuing their respective interests. According to the group of 40 villagers of Sei Ahas who are still pursuing the case, there were originally over 200 people as members. The group broke down when PT Usaha Handala Perkasa (UHP), another oil palm company offered plasma to community members whose land it had taken over. Nearly 160 people agreed to the arrangement and PT UHP is currently working on the land of these people. Nurhadie, a farmer from Mantangi Hulu explained the breakup in his words, "Bring Back Our Land" movement was active for a year. But suddenly different people had different demands: some wanted plasma, some compensation. So different subgroups under STMT took up the matter."



Map showing community lands and oil palm plantations in Mantangai Area- prepared by Nurhadi



Members of the Farmers' group of Sei Ahas have lost their land to PT RASR

Administrative complaints and government efforts

On January 17, 2009, the Directorate General of Forestry Planning had updated the map of the forestland, which indicated that of the 20,000 ha under PT RASR, 18,280 ha lies in production forest (HP) and 1720 ha lies in other land use area Areal Penggunaan Lain (APL) (PTUN PLK 2015). After this change, the district head of Kuala Kapuas through Decree No. 153/ Disbunhut 2010, had revoked the company's land acquisition license Izin Pembukaan Lahan (IPL) in January 2010 for occupying forestland without a forestry permit (Koran Kota n.d.). The company, however, claimed that the Ministry of Forestry had not addressed its application for release of forestland for oil palm cultivation (PTUN PLK 2015). It also alleged that despite repeated letters to the Regent of Kapuas, since 2011, its location permit and plantation business license had not been renewed. After three years, on July 24, 2013, the Regent had issued a letter (no. 525.26/1460/Disbunhut/2013) regarding the termination of operations that were not 'clean and clear' (PTUN PLK 2015)⁵. A letter from the Central Kalimantan governor followed the regency government's order on revocation in July 2013 asking them to stop all operations given the unresolved conflicts. This was following the government resolution No. 529/2012 under which more area from the district was designated as forest area. After this new resolution 100,000 ha of forest area got added to the state forest.

In 2013, observing the company's reluctance to respect the customary boundary, the group decided to complain to the government. They complained to the National Forestry Council as the company had occupied the state forest area as well (Overbeek 2012). The group wrote a complaint letter seeking a hearing from the parliament of Kapuas district (DPRD). They staged a protest outside the office of the regent in September 2013 (Ekuatorial 2013). In a hearing after the protest, a Member of Parliament (MP), Eleiser Tizbung asserted in September 2013 that PT RASR must stop its activity. The MP further shared that the local government was preparing for an investigation. If the on-ground verification confirmed that the land belonged to communities, PT RASR would have to return the land (SOB 2013). But the investigation never took place (Pusaka 2016) and the company continued to work the land. Another hearing attended by the National Land Agency, Kuala Kapuas DPRD, the district plantation agency and the district police chief took place. It didn't lead to any outcome, as the company was not represented in this meeting. However, on ground the conflict remained just as it was. Misradi with

⁵Clean and clear (CnC) implies that only concessions and operations with valid permissions, that are in line with the environmental stipulations and have no pending taxes should be allowed to operate and the rest should be closed down. A review of the concessions of mining is currently going on by the President's unit on monitoring. According to WALHI, in Central Kalimantan, as of 2016, there were more than 300 palm oil concessions, only 85 are "clean and clear" and the rest are illegal.

fellow villagers (29 villagers from Sei Ahas, Katimpun, Kalumpang and Pulau Kaladan) occupied the Kuala Kapuas district office. Their demand of getting their 3000 ha of land back was still pending (Parker 2013).

In 2014, the group complained to the provincial parliament and again received two hearings in November 2014. PT RASR, in June 2014, on the pretext of opposition from the farmer group, expressed its inability to pay salary to their employees some of who were from the community. The community could see through what the company was trying to do – accusing villagers for something for which they were not responsible and creating rifts within the community. The group and the head of the provincial parliament condemned this act of PT RASR. In 2014, the head of the provincial parliament recommended that the Bupati of Kapuas resolve the issue (Kabar Palangkaraya 2014). In pursuance, on 17 September 2014, the Bupati mediated a meeting between the company and the group. The fact that a large stretch of state forestland was involved in the issue, made it difficult for the Bupati not to address it anymore. The Bupati passed a decree demanding from the company the community land and state land back. This still didn't deter the company from continuing its operations on both. Subsequently, a joint team consisting of three members of Kapuas district DPRD, two land officers, two officials from Kapuas Forestry and Plantation Services, two Kapuas police personnel and other officers conducted a field visit to assess which land needed to go back to the community and which was to go back to the state. It found that the company had caused a fire in a portion of the land that was lying unattended. It also noted the blockade created by the community (Kapuas Government 2014).

Following the report of the team, in January 2015 the government of Kapuas released a statement highlighting the illegal operations of PT RASR: it didn't have an extension license, it was operating in protected area and land owned by local communities. The Regent also shared that the governments' (both at Kapuas and Central Kalimantan) efforts to mediate turned out to be futile because PT RASR did not attend these meetings.

Blockades and takeover of land by community leads to more mediations

The community, in 2015, took recourse in blocking the river route of the company for transporting the oil palm fruits. The company using the police and Mobile Brigade Corps (BRIMOB)⁶ tried to intimidate the group. The group was baffled to find out that the state apparatus was supporting an illegal operation. They suspected that perhaps the company had bribed the police and BRIMOB to take action against them. According to villagers, for nearly a month, the company was not able to operate despite police cover. But as soon as the group retreated the company resumed its operations. Observing that the company was not going to relent, the group decided to harvest oil palm from their land by themselves. Noting that the community had started harvesting the oil palm, the company reported them to the police placing charges of theft of oil palm fruit against them. But the case didn't see much headway, as the company's status was illegal till then. However, the police intimidated the group and threatened them with imprisonment if they continued harvesting in the 'company area' again. The group relented.

Soon after, on August 19, 2015, PT RASR made an application with the Regent of Kapuas for extension of the cultivation business license for a plantation for an area of 20,000 ha. On not hearing from the Regent for two months, the company appealed to the State Administrative Court of Palangkaraya. It invoked Law No 30 of 2014 on Government Administration that states that if a government agency doesn't respond to or take action on an application received by it in full, the application shall be deemed granted. It appealed that its application for extension of the permits be therefore considered granted. On November 13, 2015, the administrative court decided in favour of PT RASR and ordered the Bupati to extend the mentioned permits (Pusaka 2017).

In 2016, mediation between the company and the community took place again in the district government office of Kapuas. In this mediation, it was decided that activity in the area would not be undertaken, neither by the company nor by the community. But villagers claimed that the company was still carrying out its activity (like pesticide spraying, cleaning the area but no harvesting). The community took photos of the activity and submitted them to the district government through a letter. However, the villagers shared that the government did not reply. Perhaps, by then the Regent of Kapuas had renewed the location permit and plantation business license of the company. However, the company still didn't have the forest release permit. Hence the community started harvesting again.

⁶Mobile Brigade Corps (BRIMOB) is the special police force for parliamentary law enforcement in Indonesia.



PT RASR has stopped operation but its equipment still occupies the land

Company uses court, police and plasma

PT RASR filed a civil court case against the community and demanded compensation from the community at the rate of 100 million IDR/day for loss of harvest. The community challenged the petition arguing that the case be moved to higher level “criminal case”. The company suddenly withdrew the case. But the company once again reported the community to provincial police. The villagers shared that although the police called the group twice to their office, seeing them united, the police could not do much. However, this time the company made an offer to the community: 10% of the income from harvesting the fruits to go to the community and 90% income for the company. The community rejected the offer. Other companies operating in the area such as PT UHP supported PT RASR’s offer. Another mediation meeting took place in 2016 in Kapuas district capital. This meeting was facilitated not by the Bupati but by the Single Door Department of Investment and Integrated Service, or the Dinas Penanaman Modal dan Pelayanan Terpadu Satu Punttu (DPMPTSP)⁷ at the regency level. A visit to the website of the DPMPTSP gives the impression that it is to facilitate operations for companies. How the DPMPTSP got involved in the matter is not known. However, the result of the mediation was the same – maintenance of status quo and neither of the parties involved take action. The community rejected this result and communicated this to the provincial police and the company. They argued that since the facilitator of the mediation was not the Bupati but the chief of this newly created body, they would not accept the decision. Until today the community continues to harvest oil palm from the land.

Current status

Currently 40 community members from Sei Ahas village under the leadership of Misradi are self-harvesting. All of them harvest the oil palm on a total of 150 ha of land falling in the concession area of company PT RASR. Since April 2017, they have started selling the fruits and sharing the profit among them. They harvest the fruits every two weeks. They earn 150,000 IDR/ha from oil palm. So far, the group is waiting for a response

⁷DPMPTSPs were created in each province in Indonesia as a measure to curb bureaucracy and bring in transparency in delivery of ‘public services’. Actions taken under the Government Regulation No. 96 of year 2012 on implementation of Law No. 25 of 2009 on public services are: 1) an institution for an integrated single door issuing of licenses and non-licenses. 2) using online-based application process for this integrated issuing process. These measures were also made part of the Regional Action Plan of Corruption Prevention and Eradication 2014 (according to the website of DPMPTSP- Central Kalimantan accessed in January 2018).

from PT RASR to their action. If the company takes them to court they say they will fight it. The group says in a collective voice, "Our strategy is to just wait and watch, continue to harvest oil palm and make income and respond only when company acts." They are afraid for the future because there is no security as to how long they can continue to harvest. As Misradi puts it:

"What if tomorrow the company comes and stops us? The land is ours but the plantation is not ours. We want written recognition from the district government about the ownership of the land. Although the plantation is not ours but the plantation can be viewed as the compensation from the company for the loss of income and trouble the community faced in the past years. If we are asked to pay the cost of the plantation, we would tell the company that it has already harvested between 2010 and 2014 and earned, now we should be compensated. So we will not pay as everything is clear and settled from our side."

While the company is not working the land of these 40 members of the community, it is operating in Katimpun, Katunjung and Kalumpang villages. Misradi's group thinks that the company is still operating in these villages because the villagers there had accepted the 10% share agreement. They claim that leaders from the group of these villages are working there and receiving a salary from the company. 30% of community members from Sei Ahas had also accepted the share agreement. Misradi says, "When we have meetings we invite the whole community, the community didn't support us initially but when they saw some progress they came along and participated in the discussions but some accepted the 10% arrangement."

However, people who have accepted the share agreement reckon that compared to rubber and rattan cultivation, oil palm plantations are work and cost intensive crops. Oil palm cultivation is profitable if pursued on large-scale and hence works for larger groups making the investment manageable and risks smaller (Eriksen 2016). Uber Esneus, farmer who gave his land and now works as a supervisor at the RASR plantation area, Katimpun village, says, "It is better to do cooperation with company. Because the money required to run this business is big. We want to help each other (community-company), we do not want to disturb each other."

There have been other implications of company's operation. The arrival of oil palm companies to the area and anticipation of profits has changed community practices. The Nurhadie provides an instance of conflict that has arisen because of such changed community practices. Haji Kakan, a local, rich landlord from Kaladan village made a small canal and till the early 2000s people used the canal to access the Kapuas river for transporting wood, rattan, etc., and they would give Haji Kakan some money as transport duty. PT RASR entered the area and it suddenly cut the small canal route and divided it into small plots. Haji Kakan declared himself as the owner of the land and sold this land to some members of the community. Community members bought this land hoping they would get compensation from the company but they didn't get anything and joined the AS3K. All the villages including Mantangai Hulu village joined the AS3K. Although the members maintained that they joined the group in solidarity, in reality they joined the movement in hope of getting some compensation. After Haji Kakan's demise, the trend of selling land that does not belong to oneself has been on the rise in the area.

Conclusion

Community choices are often embedded in their immediate financial conditions, leadership and feelings of injustice. Companies too decide strategically how to negotiate with different people and what to settle for. First there is a show of power, then efforts to appease key people from the community, followed by registering fictitious lawsuits. Between these two sets of counter-actions, emerge the strategies adopted (by the state/company/community) to resolve the conflict and remedies pursued/obtained/offered.

Many land use activities being carried out in Kapuas district, different mapping exercises and spatial plans do not align with each other and are often in conflict. Plurality of institutions regulating land and resource use has been a key factor towards overlaps in land use (Earth Innovation Institute 2015). Nurhadie believes that corruption at various levels of governance and the strong nexus between local leaders and the police and private companies have also aggravated the situation. All these factors together allow a space for communities, private parties, government and judiciary to focus on certain elements of regulation and ignore others. Such selective application of laws and regulations is apparent in the case.

This is a case of varied interests leading to various strategies and outcomes. Alongside, the case also demonstrates how people have chosen some laws and regulations over others to obtain the desired results. For instance, in 2010 the STMT group had reported to the Ministry of Forestry that PT RASR was operating in dense peatlands. Thereafter, the regency government revoked RASR's permit. This demonstrates how people used a legislation that is commonly seen as to be bending towards nature conservation and in conflict with the interest of the communities, to serve their purpose. On the other hand, certain people have chosen to accept the share agreement and collaborate with the company. However, even the strategic use of regulations alone didn't reap much result in the case. Eventually, the community had to take over their land and decided to self-harvest oil palm on their land. The fact that this group of farmers had surplus land and could afford to carry out an activity that is high on investment cannot be ignored while studying the recourses taken by the affected community. However, this only offered a temporary solution to the community. There is no future assurance that the company would not disturb them again and the community is still not certain whether they have hit a long-term resolution or an interim solution through their efforts.

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- Nurhadi, Farmer, ex-head of STMT, Mantangai Hulu village
- Basri, Farmer, head of STMT, Mantangai Hulu village
- Misradi, Farmer, head of *Karunia Baru* Farmers' group of Sei Ahas village
- Group discussion with members of *Karunia Baru*
- Uber Esneus, Farmer, Katimpun village
- Sri Anto, Farmer, Mantangai Hulu village
- Rumi, Farmer, Mantangai Hulu village

CASE STUDY III

Community response to Arjuna Utama Sawit's oil palm operations in Katingan district¹

In 2008, PT Arjuna Utama Sawit (AUS) took over land belonging to inhabitants of eight villages of the Katingan district in Central Kalimantan. The local community was using this land for horticulture plantations. PT AUS not only violated the moratorium on use of peatlands, it also dug canals and planted oil palm in peatland forest area as well. It dumped the waste from its oil palm factory into a nearby lake and the Katingan river. The company, although promised plasma agreements to the community, has yet to deliver on the same. Initially, the community did not protest the land grabs aggressively, but later on tried to reach out to the company and bring government's attention to illegalities committed by the company. However, the company continued its operation ignoring communities' complaints and efforts. In October 2017, the community members from one of the villages blocked work in PT AUS's plantation area. They demanded execution of the promised plasma agreements and full details of the plasma scheme provided by the company.

About 60% of the total peat area of Kalimantan lies in Central Kalimantan (about 3 million ha). Located on the west side of the province capital Palangka Raya, the Katingan regency holds a considerable part of these peatlands. A majority of the population in Katingan is rural and depends on 11 large rivers that flow through the regency for their daily activities and livelihoods. Many inhabitants of the regency are *Ngaju Dayaks* who adopted Islam or practice *Kaharingan Hindu* religion (Eriksen 2016). Its proximity to the city is one of the factors contributing to the abundance of donor interventions in the area in the last decade. Sebangu National Park and REDD+ projects are conservation initiatives that have ensured that NGOs such as the Heart of Borneo and WWF were active in the area. The Katingan Peatland Restoration and Conservation Project², a private carbon emission reduction project and the Kalimantan Forest Carbon Partnership (KFCP)³, a bilateral project between Indonesia and Australia and a Marubeni proposed REDD+ project are other donor interventions going on in the regency⁴. Another donor project ongoing in Katingan is a bull-rearing programme⁵. Villagers shared

¹Source of information for this case study, if not mentioned, is the interviews conducted and observations made during field visits conducted in July-August 2017. Names and other details of interviewees are provided in the end.

²The Katingan Project was initiated by a private Indonesian company PT Rimba Makmur Utama (RMU). PT RMU works with NGOs such as Yayasan Puter Indonesia (YPI) towards organising livelihood programmes and activities such as participatory land use mapping, use of rattan for livelihood generation, awareness building on REDD+, etc. It received an Ecosystem Restoration Concession for 108255 ha in Katingan regency from the Ministry of Forestry. (Source: <http://katinganproject.com/about-us>; http://www.v-c-s.org/wp-content/uploads/2016/10/CCB_PROJ_DESC_1477_11MAY16.pdf)

³KFCP is one of the four demonstration activities of REDD+ in Indonesia. The KFCP intervention area was part of the Ex-Mega Rice Project area. It officially ended in June 2014. One of the mandates of KFCP was to have a planned inventory of territories of customary communities.

⁴REDD+ represents countries' efforts towards reducing emissions from deforestation and forest degradation and forest conservation, sustainable management of forests and enhancement of carbon sinks. The programme is an expansion of the scope of the REDD programme initiated by the United Nations for Climate Change (UNFCCC) to reduce emissions from deforestation and forest degradation in its efforts to combat climate change in the early 2000s. (Source: http://unfccc.int/land_use_and_climate_change/redd/items/7377.php)

⁵Observed during the field visit conducted in July 2017.

that PT Toyota was running it for conservation of peatland. However, more details on the programme could not be found. The tourism ministry is also operating a guesthouse close to the lake in Katingan⁶. In addition, plantation companies, PT Arjuna Utama Sawit (PT AUS), PT Persada Era Argo Kencana and PT Mendawai are also operating in the area (YPI n.d.).

PT AUS is an Indonesian company registered in Central Kalimantan. The company on job portals and online business platforms maintains that it holds a concession of 15,654 ha in the Katingan regency. It has been charged in the past by its employees for non-payment of salaries and other benefits due to them. Following unsatisfactory response from the company's management, the employees demonstrated outside the office of the company in August 2016. The company has also been in conflict with the Public Works Department office for an illegal construction in the region (Saleh 2016). PT AUS received a location permit in 2006 from the erstwhile Regent of Katingan, Rawing Duwel, who governed Katingan for two terms (2003-2008 and 2008 to 2013) (Anon. 2015). By 2015, PT AUS had palm oil fields and a distillation factory under construction (Eriksen 2016).



A bull rearing project is ongoing in Katingan

PT AUS initiates palm plantation in a dubious way

According to Sarwepin, an ex-chief of the Jahanjang village, between 2007 and 2008 PT AUS went village to village and shared its intentions of land acquisition with the community. According to him, PT AUS had asked for permission from the government to use 16,000 ha, but were allowed 11,500 ha. Of this, 6,500 ha was to be developed as the company plantation and infrastructure such as the office and factory. On the remaining 5,000 ha, plasma was to be developed. Eight villages were covered in this concession: Asam Kumbang, Baur Bango, Tumbang Runen, Jahanjang, Karuvi, Parupuk, Talagah and Tampelas. In 2008, PT AUS made its base camp in Asam Kumbang village and carried out area mapping surveys in every village. The company also prepared the nursery in Asam Kumbang village. In 2010 it started to grow oil palm between

⁶Observed during the field visit conducted in July 2017.

the reforestation area of 108,255 ha being managed by PT Rimba Makmur Utama (RMU) and the villages in the Katingan area (Katingan Peatland Restoration and Conservation Project, n.d.). This area originally had community horticulture plantations. Sarwepin gave the example of Jahanjang village where PT AUS took a 350 metre wide and five kilometre long patch of land from the community area. A study by Eriksen on the status of forests in Katingan corroborates this, "Allegedly PT AUS had moved property lines and used land belonging to the village without paying the promised compensation, at least not officially." The study further states that there was an insinuation that village administration had received the compensation "under the table." (Eriksen 2016)

According to Law No of 8 of 2003 of Central Kalimantan on Spatial Planning, the area for which the location permit was granted to PT AUS was production development zone (KPP- kawasan pangambangan produksi), residential areas and other designations (KPPL- kawasan pemukiman dan peruntukan lainnya) and production forest (HP- hutan produksi). But according to the Map of Forest Land Use Agreement, Central Kalimantan revised by the Ministry of Forestry in 2009 Tata Guna Hutan Kesepakatan (TGHK), the land was conversion forest hutan produksi konversi (HPK) and production forest hutan produksi (HP). As per the sector monitoring report by WALHI in 2013, PT AUS only received an in-principle approval and did not conduct an environment impact assessment. It received its business license (IUP) on September 14, 2009 (Rompas & Waluyo 2013). Even before the Ministry of Forestry could release the production forest for non-forest use, the company started to clear the land. As per the Forestry Law, a company cannot clear forestland based only on an in-principle approval. Contamination of the lake with waste discharge from the oil palm area, which would be a violation of the Environment Law (for details of laws see case study II) was also noted in the report by WALHI. WALHI also accused the company of closing the boundary canals between Jahanjang village and Tumbang Runen village used by citizens since 1975. In addition, operating in peatlands would attract the Regulation 14/2009 issued by the Minister of Agriculture concerning guidelines on the utilisation of peatland for oil palm cultivation under which operation on peatlands is not allowed.



Figure 1. Mapping of PT AUS' plantation activity in Katingan done by WALHI.

In August 2010, Indonesia's Minister of Forestry, Zulkifi Hasan declined a request made by the then Governor of Central Kalimantan, Agustin Teras Narang and the then Regent of Katingan, Duwel Rawing to develop peatforest for oil palm cultivation and mining activities. Hasan claimed that since he took over as the minister in 2009 he had not issued any permits to allow commercial activities in peatlands (Simamora 2010). The Presidential Instruction 10 of 2011 prohibited the granting of any new concessions in primary forests and peatlands (The REDD Desk n.d.). This area was designated a moratorium area. In furtherance, the Ministry of Environment and Forestry⁷ assisted by the Environment Agency of Central Kalimantan Province placed a ban on any activity in the fire prone locations and one such location fell in the concession area of PT AUS. PT AUS ignored the ban on use of peatlands and fire-prone areas and continued oil palm cultivation in the region. On several occasions, the Central Kalimantan Independent Forest Monitoring Network, the Jaringan Pemantau Independen Kehutanan (JPIK) found signs of forest burning by PT AUS (Ekuatorial 2014). In October 2014, the JPIK shared through a press release that 1000 ha of land area in PT AUS's concession was burning. It stated that in July 2013, PT AUS had worked in the area and cut down trees, which had contributed to the fires (ProKalteng 2014). The company, however, denied the charges that it had opened the mentioned land for burning. It put the blame of the fire on the community (Kompas n.d.). However, the violation was confirmed in an investigation made by the Ministry in September 2015. The media report of the visit states, "...the team found 160 ha of burning land and sealed it." (Wickansono 2015)

Impacts: Land Loss, water scarcity and contamination, and fires in peatlands

As per Sarwepin, ex-chief of the village of Jahanjang, the community land according to village discussion and mapping, was situated after the first 250 metres from the road. Earlier each family had 1.5 ha of community land. The community had been managing that area for 10 years growing fruit trees. 700 families were in Jahanjang and all of them had land in the community area. When PT AUS became active the community started using land closer to the road, in the first 250 metres, and each family now had plots measuring 250 x 25 metres (~0.6 ha). According to Puji, a farmer from Tumbang Runen village, 40 families of the village lost their one ha share from their community land due to company operations.

As per Wancino, Secretary, Pendang Bahnung village⁸, a total of 5000 people from 11 villages were impacted due to the operation of PT AUS: Tasipian, Kampang, Petak Bahandang, Hiang Bana, Talingkeh, Asem Kumbang, Bon Bango, Tumbang Runen, Jahanjang, Parupuk, Keruing, Telagah.

Junaidi, the current chief of Jahanjang recalls that PT AUS cleared the land and then cut all the trees without considering the age of the trees. In addition, they had planted palm oil in peatlands. To make the land better-suited for cultivating oil palm, canals were dug. These canals drain water from the peatlands and lower the water table. It is the lowering of the water table which dries out the peatland and makes it susceptible to catch fire. There have been frequent episodes of fire erupting in the concession area of PT AUS. These canals don't just make the peatlands dry, they drain water from the nearby Danau Bulat lake as well. This has led to water scarcity.

Sarwepin observes that Danau Bulat lake is silting up as it is drying and the fisher population find it difficult to get fish. WALHI, Central Kalimantan notes in its report that the company operations have been contaminating the lake by dumping the waste from its oil palm factory into it.

Plasma agreements with the community

Conflicting information on plasma was obtained from different interviewees, online media reports and research studies. According to Eriksen (2016), a cooperative of eight villages from Katingan regency called Koperasi Harapan Sejahtera executed a plasma agreement with PT AUS in 2008 for 25 years or till the land no longer provided any yield. Under the agreement, the cooperative members could work as labour for the palm oil company, get their share of profit from the plasma and eventually become owners of the plasma plots (four ha of land per household was promised). PT AUS became the guarantor for the loan taken to finance plasma

⁷In October 2014, Ministry of Forestry was changed into Ministry of Environment and Forestry by the Labour Cabinet of President Joko Widodo.

⁸Interview was conducted in August 2017 by Pinarista Juliana, JPIC



Danau Bulat lake is silting up due to drainage canals built by PT AUS

plots and managed the funds to develop plasma. The cooperative was obliged to sell the palm oil fruits to the company and the profit would be used to pay the credit loan to the bank and to pay the cooperative members (Eriksen 2016).

However, locals share different details. Sarwepin, in an interview, revealed that the company carried out sampling, mapping and collection of ID cards from eight villages. Data of the families was collected, and the company chose who all would get the plasma. Since 2010, 2000 families received plasma. He added that after eight years of plantation, the community was supposed to get 40% and the company 60% share of the income from plasma (for details on plasma scheme, see case study I). Until the time of the interview, the community had not received any income from plasma. Sarwedi, one of the plasma holders from Jahanjang village shared that at the start of operations, the company had promised one ha for each family but he didn't know the details as to where his plot was, when would he get the money or the plasma plot. He said, "I asked the company why I was not getting payment. I think company doesn't care about the plasma. Now they have started harvesting the fruit from the trees close to the road. I do not know if these are company trees or plasma trees." Sarwedi also shared that the cooperative had asked for some money from the community to manage the plasma. However, the head and other office bearers of the cooperative were not available for interview.

Conflicting information received from different sources raises suspicion and hint towards some dubious arrangement of plasma agreement. Another reason for suspicion is a mention of a complaint against the company on a government portal. According to a government website for registering complaints against corruption, in May 2016, an anonymous group of people from Kamipang sub-district complained to the police at the national level about the creation of a fictitious cooperative that entered into an agreement with PT AUS. The report alleged that the law enforcement officers of Central Kalimantan had colluded with the company and had deprived the community of their rights and embezzled money through this fake cooperative.

The report said that the team had previously reported the matter to the Katingan police. On receiving no reply from the police, it wrote to the ombudsman of Central Kalimantan and did not hear from there as well (Anon. 2016)

Initial objections raised by the community

There is a divide within the community about the reputation of the company; some villagers maintained a sympathetic view for the company and others held negative opinions. The ex-chief of Jahanjang village felt that companies and communities both are being exploited at the hands of corrupt government officers. Sarwepin said, "Company and community are victims of government politics. The candidates take money from the company for campaigns and promise them the land. Later on, they hand over people's land (especially that is not recorded in government records) to the company." But he further added that, between 2008 and 2014, the community complained to the company, which led to several discussions but the company continued its operations. When probed about the details of mediation however, Sarwepin expressed his inability to recall the details.

Nevertheless, the current chief of Jahanjang village and the head of Tumbang Runen village had suspicions about the company and they suspected that the village officers were colluding with the company. Wancino, the secretary of Petak Bahandung village shared that in 2009, the community of his village appealed to the Association of Public Relations *Perhimpunan Hubungan Masyarakat* (PERHUMAS) regarding the company's duty to give the community the plasma programme and to abide with what was promised to them. But there was no response from the company. In 2011-2012, the community members reported the company to the district police for cutting trees without a "tree cutting permit", an *Ijin Penebangan Kayu* (IPK). In this way the community tried to leverage some space for their issues by calling attention to the illegality of tree felling by the company. However, the police did not take any action against the company. With the support of Wancino, the community tried to talk about illegalities rather than the community land take over. In 2013, the villagers of Petak Bahandung village complained about the contamination of the river Katingan and demanded clean water. The regency administration built a clean water tank for the community's use. However, these complaints did not affect the company's operations. In Wancino's words, "Since they did not close their canals, the waste flew from canals to the river and polluted the water. This pollution impacted two sub-districts of Katingan Districts; Tasipian and Kamipang, with some villages such as, Petak Bahandung, Hiang Bana, Talingkeh, Asem Kumbang, Bon Bango, Tumbang Runen, Jahanjang, Parupuk, Keruing, Telagah. We decided to ask for clean water. But at that time, there was no response from company and instead the government provided us water."

Junaidi, the current chief of village Jahanjang gave details of efforts by the community during his term. In 2014, the community submitted a letter to the local government and asked them to facilitate a meeting between the community and the company about the boundary issue. PT AUS had disrespected the boundary of a community area and had not paid anything to the community. In this meeting the company made a presentation about the license of the concession area and gave a chance to the community to represent their demand. In the same meeting, the company promised that it would give some land from the plantation area for the community's use. In 2015, Junaidi found out that PT AUS was operating in a production forest and he learnt through his visit to the Ministry of Forestry's office that the company only had an in-principle approval. Arguing on this basis, Junaidi requested the regent to facilitate a meeting between the community and the company. In response, the regent confirmed to the community in a letter that the land in conflict had been given to PT AUS for its oil palm operation.

Current status and recent unrest over unfulfilled plasma

Since 2016, the protest and the action against the takeover of land has seen some momentum. In 2016, the community from Jahanjang village carried out *hinting pali*, a sacred ceremony to demarcate the original community area. (as per Dayak ritual, anybody who crossed the land would be cursed). Junaidi shared that at the moment, he and chiefs of other villages are in discussion and contemplating on doing something jointly on the land issue. In early 2017, the people of Talagah village demonstrated and destroyed a machine of the company over the issue of non-realisation of plasma.

In October 2017, Ijuansya, the village head of Tumbang Runen was reported to the police by the company for blocking work in PT AUS' plantations. This disruption was over the unfulfilled promise of executing plasma agreements between the community and the company (Borneo NeTV n.d.). Ijuansya along with the chairman of the village consultative board demanded that the work at PT AUS be stopped till the issue of plasma was resolved. The community made other demands concerning clear land titles of plasma plots and full details of the plasma programme of the company as well. The company, in a meeting mediated by the Katingan district government, once again promised that it would realise plasma (Pro Kalteng 2017; Kasongan 2017). The villagers said that they have complained about the issue to the Katingan regent, parliament and police chief as well as to the Kampiang sub-district and sub-district head (Berita Sampit 2017). In response, in November 2017, the head of the Kampiang sub-district in which the concession area of PT AUS lies, acknowledged the problem of non-execution of plasma agreement between the company and 1,700 people from eight villages whose land had been taken over by the company. The head of the sub-district demanded that the company should report on community plasma growth every month. The head also shared that according to the latest report from the villages, the company has opened the land but PT AUS claimed that plasma has not been realised due to infertility of the land (Gerak Kalteng 2017). Along with these plasma demands the community has started talking about the involuntary manner in which their land was annexed by PT AUS.

Conclusion

There are many similarities between case studies II and III. Both areas have an excess of donor interventions, peatland and high rate of deforestation. Both PT AUS and PT RASR had carried out illegal activities. However the response of the leadership of the communities/village were quite varied. Leaders who tried to mediate the conflict resolution between the community and company soon realised that there is little they can do. Misradi who chose to fight on behalf of and with the community may have had more success at least in bringing the company to a discussion with them. But Sarwepin did not think he was in a position to alter anything for his people. He says, "I acted as a facilitator between the people and the village. I don't have power to change the regulation of the government. I only facilitate communication between company/government and village. I retired early (in 2010 instead of 2012) because I feel my position is difficult. I am in the middle and I cannot take side of the village or the company. Hinting Pali was not my idea, it was village's idea that I executed."

There are certain facts that jeopardise Sarwepin's role as the leader of the Jahanjang community and his relationship with his community and the company. He retired in 2010 at a time when, by his own admission, plasma agreements between the villagers and the company were being executed. Later on, the company was accused of forming a fictitious cooperative and denying the community their due. Eriksen too notes in his research study that in general the villagers' view of the relationship between the village administration and the company indicated a lack of trust. (Eriksen 2016)

It seems like in the initial years, communities didn't think of uniting themselves and facing the palm oil company collectively. The unity and unfazed efforts of the community in the case of Kapuas is not seen in Katingan in the first eight to nine years. Eriksen also observes that there "were little formal protests against the land grab." (Eriksen 2016) WALHI's report on violations committed by oil palm companies lists the land conflict between the community of Sei Ahas and PT RASR, doesn't mention the land conflict created by PT AUS, it only talks about the violations related to the environment and forest area. This fact again reiterates that the response of the community to the company's activities in violation of customary and government laws was not combative but accommodative. This may be due to the lack of institutional or political support for the community at both levels, village leadership and regent level administration.

The state level discourse on conservation and climate change, and REDD+ and the NGOs active in the area all together create the context in which communities act and also shape their perspective and choices. Between 2008 and 2011, a lot has been in flux in the district. Abundance of conservation projects, moratorium on new concessions in peatlands, certain restrictions to check fires, conflicting forestry maps spatial planning maps, new targets for forest conservation, all these changes were happening around the district, which perhaps didn't give communities the time and space to act. People along the Katingan river basin have worked in the forestry

sector or timber companies spread along the river as loggers. Many viewed oil palm as an opportunity to bring back the glorious time when the timber business was booming in the region. It is only after ten years of not receiving any share of the benefits of oil palm that people have started pursuing their case of land and livelihood loss with some vigour. It appears that the new chief and community are looking for new ideas to take their case ahead. People have started placing their land related demands before the company and higher levels of state and sub-district administration. However, the efforts of the villagers of Petak Bahandung to look beyond the land issues and place demands concerning clean water and tree protection are worth noting. How they leveraged laws other than the plantation and forestry law and spoke about other irregularities by the company is a good example of how communities innovate while choosing strategies.

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- Sarwedi, Farmer, Plasma participant in AUS plantation, Jahanjang village
- Puji, Farmer, Tumbang Runen village
- Junaidi, Head, Jahanjang village
- Wancino, Secretary, Petak Bahandang village (interview was conducted by Pinarista Juliana on phone in August 2017)

Cases of conflicts arising due to coal mining

Since the beginning of the 1990s with the reopening of FDIs to the coal sector in Indonesia, coal mining has seen an upsurge in the country. In fact, since 2007 Indonesia has been the largest exporter of thermal coal and competes with Australia to be the largest overall exporter of coal (McClellan 2015). This push towards coal production and export has changed the share of different land uses in the archipelago. As of 2017, almost 10% of Indonesia's land was allocated to coal mining. It is the largest net industrial land use allocation in the country spread over an area of nearly 17.5 million ha (JATAM 2016). With most of the coal reserves lying in Sumatra, Kalimantan, Sulawesi and Papua, at least 20% of the total land area in each of these islands gets allocated for mining. Most of this coal (roughly 80%) is exported to India, China, Japan and South Korea (Indonesia Investments 2018). However, in the recent years, with Indonesia's commitment to its energy programme, as per the Ministry of Energy and Mineral Resources, it intends to increase the share of coal in the domestic energy mix from 24% in 2011 to 30% in 2025¹.

In Central Kalimantan, over the years the commercial activities have seen a switch from above-surface use of resources such as timber and agricultural plantations to sub-surface resource extraction such as coal and gold. As per WALHI, Central Kalimantan, as of 2016, over 20% (3.7 million ha) of land in the province had been allocated for coal exploration and mining. 66% of mining concessions in Central Kalimantan lie in the Barito river basin, including 80% of current production licenses while the remaining are in the basin of Kahayan and Kapuas river (McClellan 2015). Most of these allocations are in the north part of the province in East and North Barito and Murung Raya².

Table 14: Current coal mining concessions in central kalimantan (by catchment)

	Barito	Kahayan	Kapuas	Katingan	Mentaya
Exploration and pre-production	63.3%	18.7%	13.8%	3.9%	0.3%
Production	80.2%	4.1%	15.7%	0	0
Total	66.1%	16.3%	14.1%	3.2%	0.3%

Reprinted from Report on Central Kalimantan field research in support of coal mining and infrastructure campaigns by N. McClellan, July 2015.

The two case studies below are from East Barito (Barito Timur) and Murung Raya. The two regencies offer a contrast as Murung Raya (despite its large size) has less than one percent of its land allocated for plantations and East Barito (a small regency carved out of North Barito in 2002) has 73% of its land area under plantations (EII 2015). In East Barito, over 25% of its area has been given out for mining. In Murung Raya, nearly 30% of the area is under mining concessions³. While forest cover in Murung Raya is the highest in the entire province including primary forests as well, it has seen a decline of six percent between 1973 and 2012. East Barito has seen a loss of over 50% of its forests in the same period (Ibie 2016).

The two land locked districts of Central Kalimantan East Barito and Murung Raya share their borders with South Kalimantan and East Kalimantan province, respectively. The population density of East Barito is 25 per square kilometre⁴ with Dayak Ma'anyan ethnic people as the majority and 300 families of immigrants from surrounding areas, Java and Lampung⁵. In Murung Raya, the population density is only four people per square kilometre⁶ with Dayak Murung as its main inhabitants.

¹If that is achieved along with an intended jump of 20% in the share of renewable energy in the same period, the contribution of oil will come down from 50% to 23%.

²Based on field visits conducted by Johannes Jenito, between April and June 2016.

³National list of concessions for mining and oil palm plantations obtained from the Ministry of Agriculture and Ministry of Mining respectively (For details: see country report on land use change in Indonesia)

⁴Official government website: Statistics Indonesia. <https://www.bps.go.id> accessed in December 2017

⁵Earth Innovation Institute. (2015, January). Central Kalimantan Land Governance Assessment. Retrieved from: <https://openknowledge.worldbank.org/bitstream/handle/10986/28514/119618-WP-P095390-PUBLIC-7-9-2017-10-8-38-CentralKalimantanFinalReport.pdf?sequence=1&isAllowed=y>

⁶Official government website: Statistics Indonesia. <https://www.bps.go.id> accessed in December 2017

CASE STUDY IV

River and Dust Pollution by KGLR/BNJM in East Barito¹

KGLR/BNJM started mining in Pantangkep Tutui sub-district of East Barito in 2005. The mining activity led to impacts for the inhabitants of the sub-district living or/and working close to the mine. The residents complain of impacts on their rubber plantations, dust pollution, and contamination of water sources. They protested, investigated, collected evidence of environmental violations committed by the company, complained to different government offices with evidence and reported the matter to media as well. In 2016, the area witnessed the worst flood in the history of the sub-district, which the locals suspect was because of mine operations. While the problems still persist, the efforts have led to successes such as field investigation by government offices and direction by information commission for making government documents pertaining to the mine, accessible to public.

Patangkep Tutui sub-district of East Barito gets its name from two rivers that flow through it, Patangkep and Tutui. These rivers form the lifeline for the ten villages that are part of the sub-district. Residents of Awang sub-district of East Barito also have high dependence on its rivers: Janah Manasiwui, Paku and Bananug. The sub-districts are largely inhabited by Dayak Ma'ayan people who follow Christianity or the Kaharingan religion².

As per the villagers of Bentont in Patangkep Tutui, between 2002 and 2005, three companies carried out explorations in Patangkep Tutui: BNJM (Bangun Nusantara Jaya Makmur), KGLR (Karyah Gemilang Limpah Rejeki) and Bara Maratus. By November 2007, KGLR became active and it cleared the land³. Villagers shared that the company had a target of mining 1000 ha but in 2005 it had cleared only 100 ha of land. The company signed agreements with the local people for the first 100 ha at a price of 35 million IDR/ha. Supriono, a farmer from Bentont village shared: "The company interacted with the community first and got them to sign papers. Some people had land titles but most did not have land titles. These were customary lands and the boundary of these lands was based on natural structures."

In 2005, the company initiated mining on 100 ha, five ha of which were in the village of Lalap. Alongside, the company carried on explorations as well. As per the list of mining concessions issued by the governor of Central Kalimantan, in December 2009 (Permit reference no. 592 of 2009), KGLR received an IUP for operation and production of coal on an area of 2592 ha spread across Awang and Patangkep Tutui. On the same date BNJM also received a permit to mine 3074 ha of land in Awang (Permit reference no. 627 of 2009). However it is not known whether the two companies had procured IUPs for exploration before 2009.

While KGLR had obtained a permit to work on an area of about 2592 ha, the villagers shared that until July 2017 it had been operating on 1000 ha. Once the company started to buy the land, the local farmers started to make individual claims over lands, which in many instances led to conflicts among them over land claims and ownership. As per the interviewees, there are still many farmers who didn't get any compensation for takeover of their land by the company. However, in this case study we have not looked into the issue of compensation for land. We are only exploring the issue of environmental pollution caused by the mining operation.

¹Source of information, if not mentioned, is the interviews and group discussions and observations during field visits conducted in July 2017. Names and other details of interviewees are provided at the end of the case study

²Kaharingan is a tribal religion practiced by many Dayaks of Borneo. The Government of Indonesia categorises it under Hinduism. (Source: <http://www.nytimes.com/2011/09/26/world/asia/borneo-tribe-practices-its-own-kind-of-hinduism.html>).

³As per the interview in July 2017 with Supriono who worked in the company for three years (from 2007-2010) in the mines and geology department. He resigned in November 2010 and applied to another mining company in Murung Raya. He worked there from 2011 till 2014. He came back and worked in PT Amana in exploration till 2015. Currently, he pursues farming while simultaneously looking for a job.

Environment degradation and loss of Livelihoods

Mardiana, a woman activist from East Barito said that the mining operation affected the villages of Danau, Amparibura, Lalap, Bahalang, Bentot, Mount Karasik, Janaman Sihui, Amparihawa, Patu betu, Putu Tabuluh, Tampa, Ipumea and Wuran.

Farmers complain of contamination of the river Patangkep, which used to be the water source for Lalap, Bentont, Ramania and Pulau Padang villages. Not just this, but the dumping of mine waste into the river has caused frequent flooding. The floods, in turn, bring mud from the river to the neighbouring agricultural fields and damage the rubber plantations.⁴ Many farmers complain that a large part of their fields remain unused through the year as the mud from the river gets lodged in the field making it impossible to grow anything there. This has directly impacted the income of rubber farmers. As per local estimates, mud is affecting about 300-400 families. Lindat, a rubber farmer from village Bentont whose farm is 4 kilometres away from the mine site shares: "Out of the three farms that I own (2 to 2.5 ha each), I used to cultivate 900 kilos/month and now I get about 450 kilos/month. At that time, (till 2014) the selling rate was 1500 IDR/Kg and now it is 600 IDR/kg (rubber rates are volatile)."

Supriono, another farmer from Bentont village shares how his rubber yield has come down. He says, "I manage 2 ha which is 80 m away from the mine. Earlier I could harvest almost 20 kg of rubber/day but now I harvest only 10 kg/day."

Martianson, a farmer from Lalap echoes him: "I own almost four ha of land which is two km away from the mine of KGLR. I don't remember when exactly, but once when I planted the rice, my crop failed and I did not have any income that year. It was because of the flood and the mud that came to my farm. After, that incident four times a year mud comes to my farm. I used to grow 16 tins⁵/year of rice on tree ha which I used to sell at 16,000 IDR/tin and on 1 ha I used to grow rubber (450 kilos/month). I have stopped growing the rice, I only



Mud is a regular sight on village roads and agricultural fields

⁴Under the mining rules, mining is not permitted within 500 metres around a lake and 1000 metres on both sides along the river.

⁵In central Kalimantan, many locals sell their paddy produce using a standard sized container made of Tin as a unit.

grow rubber now. Now I get only 200 kilos/month from two ha. On other two ha the trees are still small and don't give latex as yet. This is traditional plantation and gives latex after nine years. I planted it in 2011."

Lindat, elaborates on the impacts of river siltation, "River gets silted up and therefore fishing is not possible and mud causes the river to flood and water inundates our crop fields. Mud comes to the farm and my plantation gets affected. The company makes big holes for mining and never fills the holes and causes problems as they do not create steps between the holes and our rubber plantations, they, instead, retain the slope. During rains, the holes get filled with water and the mud comes sliding through the slope into my farm. Like me there are 10 families whose farms (perhaps 20 ha) are getting affected since 2007-08."

Besides river pollution and the problem of mud landing in agricultural fields, dust pollution is another problem that the locals face on a daily basis. Trucks carrying extracted coal use the road (called Jalan Pertamina) that runs along the village Bentont and nine other villages. As the roads are not well maintained in the village, coal dust becomes a problem for close to 500 households that live along this 17 km stretch of road. The dust covers their houses, gets mixed up in the food they eat and shields the leaves of plants in the gardens around their houses. Interviewees, while sharing the various inconveniences caused due to the coal dust, were also worried about the health impacts of inhaling the dust.



BNJM-KGLR mine is located not even one km away from the community rubber plantations

Protests, people's reports and administrative sanctions

According to the villagers, as the impacts of the mine started to show, people started to talk about it and contemplated approaching the company. They made individual protests before the company. In 2010-11 over 100 people protested before the company. Mud had damaged their farms, they asked for compensation and complained about river pollution. According to Martianson: "First we submitted a letter to the company when company did not respond, we blocked the road. We are all rubber farmers from Lalap and Bentont village. We want the company to take responsibility and give us compensation for our losses."

A local journalist, Markus Leleury (working with Berita Nasional Narkoba [BNN] and an NGO Gerhana), wrote the first report on the pollution of rivers in Awang and Patangkep Tutui by KGLR and BNJM in 2011. With the support

of a group of rubber farmers from Lalap village, the report was submitted to the Ministry of Environment and the Ministry of Mining. Leleury shared that the national media covered the findings of the report, however, the report could not be located from online sources. As per the villagers, the Ministry of Environment promised that they would talk to the company to solve the problem. No immediate results were however seen. Meanwhile, in 2013, Boy Ludjen, an activist working with Community Care Development, East Barito and a member of the Indonesian Centre of Environmental Law (ICEL) made complaints regarding the illegal activities of BNJM (Borneo News 2015). In March 2014, responding to people's complaints and following up with government bodies, the environment agency of Central Kalimantan made a team which came to the area and took samples of water from the Ampari, Janah Manasiwui and Patangkep rivers. It found out that the two companies never submitted an environment management and monitoring plan, which are requirements under the Environment Law 32/2009 with the agency. The companies had not obtained a wastewater disposal license and had no arrangements to manage the hazardous and toxic waste. It also noted that untreated wastewater from the mine lands directly in the rivers. Based on the report of the environment agency, in April 2014, the Governor of Central Kalimantan sent a letter (No. 660/207 / II / BLH / 2014) to the Bupati of East Barito asking him to impose sanctions on the two companies. This meant that the company's operations would be temporarily halted (Pro Kalteng 2014). As per Leleury, the local journalist, suddenly in 2014, the mining stopped. BNJM stopped activity in 2014 for about 5-6 months. He claimed that after this it resumed mining as KGLR. Lindat's account of mining operations may help in locating the reasons for this change. According to him BNJM started its operation in the area in 2006. Lindat started working in the mine as a security guard in 2008. He proudly shared that the local Department of Employment had recognised him as a permanent employee of the company. Between 2013 and 2014 (he doesn't remember exactly when), BNJM gave him a letter that the company was to stop work and therefore, was cutting down on its staff because the Bupati had asked them to stop operations. He shared that he received some compensation. He further added that like him 200 employees were asked to leave. Later on, some more employees were given similar letters. He shared that while BNJM didn't offer jobs in return for land, KGLR was trying to acquire more land by offering employment to villagers. Some locals suspect that the switch from BNJM to sub-contractors was the reason behind the lay offs. He suspected that after laying off the permanent staff and the company had hired labour on contract, which is cheaper and is not a liability. The end of 2014 was also the time when the government of Indonesia had made an announcement that all mining and oil palm clearances should be "clean and clear" (CnC). This implied that only concessions and operations with valid permissions, that are in line with the environmental stipulations and have no taxes due to the state should be allowed to operate and the rest should be closed down. As per the list of concessions issued by the governor, the inspection of existing mining concessions in Central Kalimantan concluded that BNJM was a CnC operation but KGLR was not. However, there are also claims floating in the village that mining is ongoing in both BNJM and KGLR area. PT Wings Sejati, a Hongkong-based company, which was sub-contracted in 2014-2015 to mine the region uses the CnC status granted to BNJM and continues to mine till date. According to Leleury, "There are so many mining companies (~180) in East Barito but only ten, perhaps, have CnC."

Although mine operation was subsequently handled by a different company, pollution problems continued. The locals (30 people) submitted the report again to the government in January 2015. The report was submitted to the Department of Environment at the regency level, also to the Bupati, Dewan Perwakilan Rakyat Daerah (DPRD) (local parliament) and BNJM. The local parliament responded that they had made a special committee to investigate the case. A month after that, the committee met only with the officers of BNJM, observed the reclamation done by the company and went back. In March 2015, they reported back that the company was not committing any violations and everything was fine. The Bupati, in fact charged the officials of Lalap village with making uninformed and irresponsible charges against the company. He suggested that the villagers be given technical information about various categories of pollution. Incidentally, this was also the time when BNJM-KGLR was preparing a revision of the EIA report, or the AMDAL document (Borneo News 2015). The Environment Law mandates that every business and activity that can have substantial impact⁶ on the environment must undergo an AMDAL and obtain an environmental permit. While

⁶Criteria to determine substantial impact includes change in landscapes, exploitation of natural resources, potential of causing environmental pollution, introduction of plants, animals, micro-organism, etc. Further criteria are included in Regulation No. 5 of 2012.



A local journalist sharing the media reports on BNJM-KGLR

setting broad requisites for AMDAL, the law states that the AMDAL document is to be prepared with the involvement of communities. Martianson recollects, “Our group’s leader went to the Ministry of Mining and asked about the steps taken, and they suggested to go to the Bupati. Although, the Bupati promised that he would process the case in 2012, nothing happened. After that, our leader did not do anything. The group is not active anymore. I think our leader got a deal with the company and he pushed the matter under the carpet. After that we protested individually till 2014. Since 2014, no activity is there in the group.”

In May 2016, Alprid, a local school teacher, and other inhabitants of Danau village (on the advice from Ludjen) complained to the DPRD. In June 2016, mediation between the community and the company was coordinated by the parliament. As a result of the mediation, the parliament recommended (among other things) that the Bupati monitor the Paku and Benaung rivers with the help of the environment agency of East Barito. On not seeing any action, Alprid complained again to the Bupati. In the same month he also filed a request for information, seeking copies of permission letters issued to BNJM-KGLR. The information was denied to him. Subsequently they were told by the environment agency and mining and energy agency at the regency level that the company documents are clean and clear. Alprid suspected that something underhand was being done as there was no match between the pollution impact of the company on the ground and the clean and clear status granted to them. On not being allowed access to the documents, with the help of Justice, Peace and Integrated Community (JPIC), an NGO from Central Kalimantan, he filed a lawsuit with the information commission in Jakarta against this denial of information in September 2016 (Nugraha 2016).

The commission in its decision (dated 20.10.2016) declared that the AMDAL was a public document (Widada 2016). The community had requested copies of the AMDAL, environment clearance letter, liquid waste disposal permission, IUP and evidence of the post-mine reclamation activity guarantee fund. The Bupati, in response to the court’s verdict, gave reasons for his denial of the documents, stating that the authority to grant mining licenses and all files were moved from the regency to the province (Marpaung 2016). Law Number 14 Year 2008 on Public Information Disclosure makes it obligatory for all state operators providing public services to provide access to information openly to the public.

Markus concludes, "Just making oral protests does not help. Sometimes writing complaints with the ministry gets them to take note of the problem and respond."

In November 2016, a dyke in the BNJM mine area broke and most of the ash landed in the river Janamasi Wui and caused it to flood. Uncontrolled, the water from Janamasi Wui river caused a large flood and landed plenty of mud on the rubber plantations. After this, the farmers made another protest. In the same year, observing that water in the section downstream to BNJM mine in river Panku was turbid, WALHI, Central Kalimantan and the locals conducted tests in the river.

Soon after the community across the sub-district came together and based on their findings, made a report of pollution in the rivers of Patangkep Tutui. They submitted the report with the Ministry of Environment (MoE). The MoE replied with an assurance that they would make a visit to East Barito. In April 2017, the DPRD decided to summon Wings Sejati, the mining contractor of BNJM to enquire about their compliance with the DPRD's recommendations. The recommendations included the discontinuation of mining activity in the first 100 metres from the river. The company had accepted the recommendations but a report on the same was pending (Antara Kalteng 2017). In early July 2017 Lindat contacted the MoE to ask when they intended to come to East Barito, the MoE said they were still forming a group and would let him know.



BNJM stockpile next to Pertamina road. The eight villages alongside the road face dust pollution because the measures to control dust during coal transport are poorly implemented.

Lindat's individual efforts and the implications

Between 2008 and 2009, Lindat shared that he protested before the company against the problem of coal dust individually and orally. He met with the company management then. He asked them to carry out water sprinkling and have settling ponds for the dust to settle. As per his account, the company gave assurances and for two days after that sprinkling happened but then discontinued and no action was taken. Till 2016 he kept complaining to the company at an individual level. In 2016, a local member of parliament (MP) of East Barito suggested that instead of targeting only BNJM, he should make a report on the mining activity of 4 to 5 companies and associated problems and submit it to the local parliament. Before that, in January 2016, he had stopped the company trucks and police called him and suggested that he make an agreement with the company. He received the reconciliation agreement on 30th January 2016. He submitted the report to parliament on 3rd February 2016 as advised by the local MP. The company gave a confirmation letter again about his demands on 3rd February 2016. In June 2016, he found out that

this issue was scheduled to be discussed with the community, company and government in July 2016. However, the schedule was delayed. He recalls his encounter with the police, “On 5th August 2016, I was shocked to see company dump coal waste on the road near my house. I asked about it but there was police there and police hit me. My family and neighbour saw that and police knows that my family took the video. The police tried to confiscate my children’s phone. I was taken to the jail, police made me sign papers admitting that I committed a crime and freed me that very day. In September 2016, I sought JPIC’s help got involved in the case.”

JPIC and ICEL were contacted by Mardiana, a JPIC community organiser to help in the case. The NGOs suggested that Lindat should record the chronology of the case, register a report with the chief of police at the sub-district about being hit by police in East Barito and then in Jakarta. They also advised him to report the case to Witness and Victim Protection Agency (LPSK- *Lembaga Perlindungan Saksi dan Korban*), Ombudsman and Human Rights Commission, all located in Jakarta. Intervention from the Ombudsman and the Human Rights Commission was sought because, according to the JPIC and ICEL, usually in such cases the police do not conduct honest investigations. On his complaint to the Human Rights Commission, the commission directed the police to continue processing Lindat’s report. The Ombudsman of Jakarta asked the Ombudsman of Central Kalimantan to help Lindat. It also directed that a meeting between Lindat, Police office in regency and province should be organised at a place of Lindat’s choice.



Focused group discussion with community members living close to the BNJM-KGLR mine area.

Current status and conclusion

As per news reports, in 2012 KGLR-BNJM changed the technology of coal mining which required the company to conduct a fresh AMDAL (PP No. 27/2012 Environment Permit). (The earlier AMDAL had been prepared in 2005). The company had initiated the process of fresh AMDAL only recently and published the environment feasibility recommendation on 9th July 2017 as the first step of preparation of the AMDAL report. In the meanwhile, PT KGLR has been granted an extension to its mining operation by the Governor of Central Kalimantan (No. 188.44/142/2016) (Tambangan 2017).

As per Lindat, after repeated complaints by the locals, the company changed the route of the trucks in June 2017. According to him, “Trucks ply on this road occasionally now.” But he adds that villagers living close to the new road have protested too. They are asking for compensation from the government but no compensa-

tion has been disbursed as yet. He also highlights the inadequacy of the step," Since we protested a lot, the company has changed the route of its trucks. But route diversion has happened only for 2 km along Bentont village and benefits only 17-18 households. But during rains if the alternate route is blocked, trucks may come back on our road."

Trucks still create noise and dust pollution, which causes inconvenience to over 400 households living next to the road. The trucks cover the coal only partly. Water sprinkling takes place only once a week, while the AMDAL asks for more measures to be taken for both these conditions. Mining is still carried out very close to the river Patangkep and mud still renders a large part of community lands unfit for rubber plantations (as observed in the field visit in July 2017).

Villagers of Lalap plan to activate their group again. However, customarily the group cannot do anything without the permission of their current leader. Even dissolution of the group requires an approval from the leader. Martianson shared that the group members are waiting for permission from the current leader to dissolve the group so that they can make a fresh group and start again. He says, "The leader has not dispersed us as yet. We want to change the leader. But we are living by the promise we made that we would be together under Sukiman (the group's leader). We may meet in August and request the leader to release us." They seek compensation for past crop failure. For the future, they demand that the company does not do any activity near the river. Martianson shares his opinion, "I, personally do not want them to continue in exchange of some money to use for future because compensation is not a solution. It still doesn't solve the problem of mud. But I will go with whatever the group decides." Martianson was standing for the post of village chief in the upcoming elections on 26th July 2017. He believes, "If I become the chief of the village Lalap (400 families, over 1000 voters), if I get community support, I think I will be able to get the Bupati and regency environment department to act".

In Bentont village, people were contemplating approaching the president if things don't change for the better soon. Lindat says, "We want restoration and maintenance of environment. We understand that mining cannot be stopped, but the government can at least minimise the harm to the environment. In November 2016, East Barito saw a flood for the first time in its history, probably because of sedimentation due to mining in the river. We don't want that to happen again." Supriono adds, "I want the government to make a team and see our condition. I want the government to take care of the regulations and get those implemented."

This case involved the use of various strategies such as investigation and fact-finding, protests, approaching institutions and use of media. Different laws have also been tried. The efforts that started individually in different locations that faced the impacts from BNJM/KGLR mine have been integrated since 2015, when people realised that to make a convincing case to the government, they needed to tie different efforts together. The case saw successes such as the information commission's decision advocating public access to public documents and field investigations by the environment agencies at the regency and provincial level.

NGOs, JPIC and ICEL have been active in the region since 2015 and they shared information about regulations on mining and environment with the villagers. Villagers with help from the two NGOs made a report on the company's violations and submitted it to the MoE in March 2017. The report consisted of photos of violations committed by BNJM and KGLR. The NGOs also support the villagers in case of intimidation or advise them on next steps.

The case brings to light the collusion between the local government and the company. The regent blames the community for not having enough knowledge about pollution regulations. The environment monitoring agency at the regency level expresses its inability that it cannot revoke the AMDAL permit of the company. Its officers share that they can only act as per the guidance of the monitoring agency in Central Kalimantan (Metro 7, 2014). The switch from BNJM to KGLR and BNJM area still being mined through sub-contractors also raises suspicion. The fact that the company altered its technology in 2012 but was initiating a process of AMDAL for the revised technology only now also indicates complicity of the local government. According to Leleury, "Companies don't make the AMDAL correctly, the document AMDAL is copy-pasted without considering the ground conditions."

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 - Martiana, Female activist, JPIC, Tamiang Layang
 - Tata Sia, Female farmer, Lalap Village, Patangkep Tutui
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 - Bama Adiyanto, Justice, Peace and Integrity of Creation (JPIC) Central Kalimantan, Tamiang Layang

CASE STUDY V

PT AKT: The Biggest mining company of Borneo¹

PT Asmin Koalindo Tuhup (AKT), the largest coalmine of Borneo took 2000 hectares of land from six villages of the Murung Raya regency of Central Kalimantan. The villagers, under pressure from the company, agreed to relinquish their agricultural lands at a price much lower than the market rate. Mining activities have led to contamination of the local water sources, the Hingan and Kohung rivers. Villagers have raised their concerns with the company and with local government departments. On losing their land-based livelihoods, the villagers had hoped that the mine would give them employment. In absence of state-sponsored basic infrastructure, they also expected facilities such as clean water, better healthcare arrangements and education from AKT. However, their hopes and expectations have only been met with empty promises. As of January 2018, the Ministry of Energy and Mineral Resources of Indonesia had cancelled its agreement with AKT. In such a scenario, it is unclear who will take responsibility of remedying environmental destruction, offsetting loss of livelihoods and ensuring reclamation of land from which the coal has been mined out.

Maruwai, a settlement of about 700 people is situated near the Heart of Borneo. The Heart of Borneo is a zone spread over 220,000 square kilometres, and contains “some of the world’s most important equatorial forests.” (ADB, 2013) In 2007, Indonesia, Brunei and Malaysia together committed to protect this zone from the onslaught



PT AKT and PT Marunda Graha use Barito river for transport of coal extracted from over 40,000 hectares of land in Murung Raya

¹Source of information for this case study, if not mentioned, is the interviews conducted and observations made during field visits conducted in July- August 2017. Names and other details of interviewees are provided at the end of the case study.

of mining, logging and commercial plantations. Besides being close to the Heart of Borneo, Maruwai also sits within 15 kilometers of the two biggest mines of Borneo- PT Asmin Koalindo Tuhup (AKT) and PT Marunda Graha Mineral (Denton 2014). Together, the two mines operate over an area of 40,000 hectares across Barito Tuhup Raya and Laung Tuhup sub-districts of Murung Raya regency. The village is also the site of the Haju mine, the first stage of a gigantic 350,000 hectare IndoMet project, a joint venture between Adaro Energy and BHP Billiton (McCauley 2015).

About PT Asmin Koalindo Tuhup

PT Asmin Koalindo Tuhup (AKT) is based in Jakarta, Indonesia and was founded in 1992. Until 1998 it was called PT Swabara Guna. Since December 2009, PT AKT operates as a subsidiary of PT Borneo Lumbung Energi & Metal Tbk. AKT is Borneo's biggest mine. On its website it maintains the image of a low cost coal producer. According to the Financial Times, in 2012 Indonesia's forestry ministry suspected the company of being involved in illegal practices such as violation of production permits because the company used forestland. In 2012, a tribal rights court fined the company 486 million IDR for violating the rights of villagers living near the mine (Aglionby 2012). AKT also has shares in Bumi Plc, the troubled firm listed in the London Stock Exchange and owned by the Bakrie family, whose members have been in the cabinet of Indonesia as well. The group has large stakes in some of the biggest mining projects in East Kalimantan. Bumi plc also owns 29% stakes in Bumi Resources, Indonesia's largest coalmine (Vidal 2013).

PT AKT was granted its Coal Contract of Work (CCoW) concession by the Ministry of Energy and Mineral Resources (MoEMR) in 1999 for an area of 40,610 hectares located in Murung Raya regency. As per the website of Borneo Lumbung Energi & Metal, AKT relinquished 18,980 hectares of the area citing 'economic unviability' and kept the remaining 21,630 hectares. The CCoW was later converted to a Perjanjian Karya Pengusahaan Pertambangan Batubara (PKP2B). The company began production in 2008 and produced 3.2 million tonnes of coal in 2012, which it transports through Damparan river port in Barito Utara (North) regency (Scrivener, A., & Lund-Harket 2013). As of July 2017, exploration was going on in 45% of the concession area (the project is commonly called Tuhup mine). In Maruwai settlement and Kohung village, currently mining is being carried out on 916.73 hectares of land.² In Maruwai, close to the AKT mine near Laung Tuhup lies another big coal mine of PT Marunda Graha Mineral having a concession area of 20,084 hectares that produced 2.5 million tonnes of coal in 2012 (Scrivener, A., & Lund-Harket 2013).

Land and work negotiations with AKT

According to the account of villagers of Hingan Tokung village, the company started visiting the area and interacting with the community members between 2005 and 2007. It bought the land at a price lower than what the community demanded. They shared that they received 250,000 IDR/m². It seems that people were perhaps hoodwinked into giving their lands to AKT. They shared that in 2005-2006 a big meeting between the community and the company was held, in which the community agreed to give the land at the rate of 500,000 IDR/m². But the villagers claimed that later they had to accept the low price because the local people who worked in the company persuaded them to accept the revised offer. Villagers felt pressurised and afraid that they would be arrested if they declined to sell the land at the offered price.

The land was taken in two phases during which, besides the price of the land the villagers received, a per-family compensation for the crops was given; in 2005 it was taken at the rate of 7,000,000 IDR per family and in 2006 at the rate of 4,000,000 IDR per family. Villagers shared that 250 hectares of the customary village forest area was also taken and the company fenced off the land. Since the land was fenced off, people could not use it despite it lying unused for six years after the takeover. Before the land was taken, the local Dayak Murung from the area used to grow paddy and rubber on it and use the land for hunting and fishing as well.

²Official website of PT AKT. http://borneo.co.id/index.php/project_info/location Accessed in December 2017.

In 2008, in Tumbang Bauh village, as per the details shared by the villagers, the company provided compensation to the community for leasing customary community land for 25 years. The land included the area around the river Tuhup and river Butuan. In total 2000 hectares of land was taken from Hingan Kohang, Tumbang Bauh, Hingan Tokung, Liang Yaling, Bahu Toja and Tawai Hauwei villages. However, the biggest impact was on the Tumbang Bauh village. All of its 169 households lost land and only 98 families received compensation. Riko, the chief of the village said, “The last chief said that these families received the compensation because they had ID cards. This is strange because all people are original inhabitants of this area but they chose to compensate people with ID cards.”

Tatang, the ex-chief of Hingan Tokung village, shared that the company never offered jobs in exchange for land. He said that the company provided jobs for two to three youth from each village. He added that the village office made junior high school education a minimum criterion for selection, although very few Dayaks have high school certificates. He also shared that six people from the village Tukung Kohung were working in the company at the time, but was quick to add, “People who work in the mine earn 7-8 million IDR/month. They are the better off people.”

A worker from the mine confirmed Tatang’s claim about the number of employees hired from the local villages. He stated that in all only 10-20 local people worked in the mine. Contrary to what Tatang shared, the chief of village Kohung, Suwardi, shared that at the end of 2016³ AKT started visiting the village and promised jobs to 70% of the community members. He lamented: “But of the 408 individuals of Kohung village, 50% work in the company. I cannot only blame the company. Because sometimes the community is not disciplined, doesn’t follow rules of the company and creates problems. I think AKT is more tolerant than BHP. Unlike AKT, BHP never made it clear to us what was the eligibility criteria to get a job in the mine”



Hingan Tokung village is one of the villages impacted due to AKT coal mine

³Interview conducted in December 2016 by Pinarista Juliana from JPIC.



Many farmers in Hingan Tokung village had to sell their land at low prices

Impacts: Land loss, reduced income and water pollution

After the land acquisition, people who lost their land in Hingan Tokung village started farming in a nearby area. But they reported a decline in paddy production. Tatang, of Hingan Tokung complained: “Earlier I used to harvest 200-300 cans/hectare but now I harvest only 40-50 cans/hectare. It is because of contamination of water of river Hingan that we use to irrigate our fields. Also the fact that the current land gets infested by insects very easily has led to dropped yield.” Suwardi further shared that their livelihood was now dependent on the company because the price of rubber was not sufficient: “Here the selling price of rubber is only IDR 3000 per kilogram, while the prices of items we need for our families are only getting higher. Rattan is difficult to find these days. So there `s only one choice for us now – work in the company.”

In 2011, close to 1000 employees and contract workers of PT AKT went on strike demanding better housing allowance, meals, and wages as promised by the company. Linked with this, in 2013, there were reports that AKT fired a large number of employees⁴. But as per Suwardi, many of them were switched to an “on call” arrangement. They would receive a retainer fee from the company irrespective of the availability of work. Some employees, though, were fired because they had dues pending with the company.

In an investigation carried out by the World Development Movement in June 2013, the inhabitants of Maruwai shared their concerns about the lack of safe drinking water. One villager complained of a ‘burning sensation’ on bathing with river water (Scrivener, A., & Lund-Harket 2013). Royani, from the Hingan Tokung village, shared something similar in an interview in August 2017, “when river water was used for bathing, it gave skin irritation.” On the issue of water pollution, villagers of Tumbang Bauh also complained about the condition of water in their village. “The river changes colour between black, brown, white and blue. Flood has become a regular occurrence nowadays” said Riko, the chief of Tumbang Bauh.

⁴As per an interview with Thomas, Heart of Borneo in July 2017 and Arie Rompas, WALHI- Central Kalimantan in December 2016.

Regina from Maruwai summed up the impacts of mining in an interview with the Borneo Project⁵ in 2014, “Mining has polluted the river, increased flooding, deprived people of their lands and created a kind of dependence among villagers.” (Denton 2014)

Action against water pollution

Since the water from river Hingan is used for both household activities and for drinking, Tatang claimed that in a meeting organised by the company in 2012 he demanded clean water. However, he shared that company did not do anything about the problem.

Also in 2012, people from the Tumbang Bauh village started to protest. They tried to block the area of the company. After four days of protest, the chief of district police came on the site to stop them. On the sixth day, the chief of regency police came and on the seventh day the local parliament chief ‘Henry Midi Yosef’ came. On the eighth day the community was invited by the local parliament to come to the regency office to meet with the director of AKT who had come from Jakarta. In the meeting he said that they had given everything that was due to the community. The protest was put on hold. But after ten days, people started to block the company area again. The local parliament called them again and the community and the company entered into an agreement, which was facilitated by the chief of the local parliament. At that time people stopped the protest because they demanded certain things and the company through this agreement promised to provide those. These included clean water, better roads from the river port to their village, better health and education facilities, electricity, etc. At the request of the local parliament to give the company the next four to five years to carry out the promises made by them, the villagers waited. “We are waiting because the local government asked the community to wait till 2016. They said between 2012 and 2016, things will change” said Riko, the chief of Tumbang Bauh.

In 2016, the community from Kohung village with the help of WALHI, Central Kalimantan, established that PT AKT was dumping coal waste in Kohung river and that this had led to high concentration of heavy metals in the river rendering the water unfit for drinking and domestic purposes (Udang 2016; Nugraha 2016). In June 2017 a meeting was held with the sub-contractor of the company. Although the meeting was intended for the



Road to village Hingan Tokung is used for transport of coal from the mine area of PT AKT

⁵The Borneo Project draws international attention and support to the efforts of communities to save their forests and their right to life and livelihood.

hiring of new workers, people raised the issue of water as well. Tatang, the ex-chief of Hingan Tokung said: "The last governor had pushed the company to give us clean water. Therefore the company dug a pool near the mouth of the river. It worked for some time. But the government was supposed to maintain, run the pump to draw water out into the pool. But the pump is lying idle now as most people don't have money to buy the gasoline to run the pump. Some people who can afford it, use it as and when they need water or when they have money to buy the gasoline."

Empty promises

Two corporate laws, Law No. 25 of 2007 on Investment and Law No. 40 of 2007 on Limited Liability Companies, and the regulations issued under these two laws made Corporate Social Responsibility (CSR) mandatory for state-owned companies and companies engaged in the business of natural resources: oil and gas, forestry, coal, water resources, industry, etc. However, these laws do not fix an across-the-board or constant percentage but leave it up to the sectoral laws to decide the share of the revenue to be spent in CSR. The Law no. 4 of 2009 on Mineral and Coal Mining has not fixed this share. This leaves the CSR spending based entirely on the negotiation between the company and the communities. In the case of AKT, the community viewed it as an opportunity to obtain the missing facilities such as road construction, electricity, etc. Eight villages were part of the CSR program of AKT. Tatang from Hingan Tokung village shared that while on the issue of land the community couldn't do much, the community asked for electricity in exchange for land. The company provided small facilities like a small path to the village from the main road. In the past they have asked the company to provide them with pesticides and a nursery but nothing has come as yet. The community's hopes from the company and their disappointment at those not being met are apparent in village voices. "And I thought, there would be good development in our access, like infrastructure and road, when company came in" said Suwardi, chief of Kohung village. Riko, chief of Tumbang Bauh also complained, "When the company came, the community did not feel any change. The problem arose when company began mining and did not do any CSR."

Current status

Locals shared that all villages meet every three months (especially chief of villages, village officers and some villagers) and discuss next steps. Their demand from the company is to have the terms of the agreement between the community and the company realised. They have heard that the company is looking to expand and there will be another round of land compensations. This time the villagers don't want the company to take their lands. They also hope that the company's operation is investigated under the 'clean n clear' drive of the government. In 2014, the Government of Indonesia announced that all mining and oil palm clearances should be "clean and clear". This means that only concessions and operations with valid permissions that are following the environmental stipulations and have no pending dues with the state would be allowed to operate. Currently, investigations and a review of mining and plantation companies are going on across the country.

Villagers of Tumbang Bauh claimed that one condition in the AMDAL document of the mine operation is that the local population would get prioritised for employment in the mine. But in reality, the company asks for minimum criteria such as high school education. This is difficult for the community members to meet. Riko, chief of Tumbang Bauh village shared his future plans to take on the company: "Community always wants to protest but I as a chief try not to do anything and try to find other solutions. It is 2017 and we have not seen any change and now we are strategising what to do. We have decided to wait till the end of 2017, then we will complain to regency government, if not heard, we will go to Jakarta. In this while we will prepare the documents: agreement of the company, evidence including photo of river pollution, AMDAL (to compare the on ground situation with what the AMDAL mandated), governor regulation and IDs of people who got impacted."

However, On October 19, 2017 the MoEMR of Indonesia cancelled its PKP2B with PT AKT. In 2016, PT AKT offered a guarantee to Standard Chartered Bank for a loan taken by its parent company PT Borneo Lumbung Energi & Metal Tbk. without the consent of the Ministry. When after repeated warnings from the Ministry, the company didn't share a proof of withdrawal of the debt guarantee, the Ministry decided to revoke the agreement (Pemerintah bantah 2018). PT AKT filed a lawsuit in the Administrative Court of Indonesia challenging the

decision of the Ministry and the decision of the court is yet to come (Pemerintah bantah 2018). If the decision of the Ministry is upheld, it is expected that 21,630 hectares of mining concession area of AKT would come back to the government. There are speculations that this area then later would become a special mining business permit area, a Wilayah Izin Usaha Pertambangan Khusus (WIUPK) and/or a proposed state reserve area, a Wilayah Pencadangan Negara (WPN) in accordance with the Mining Law (Pemerintah putus 2017). According to the Law No. 4 of 2009 on Mineral and Coal Mining, after an area is notified as a WIUPK or a WPN, it would be opened for allocation through tendering for state or district-owned enterprises (MoEMR 2009). While according to law on mineral and coal mining (Law No. 4 of 2009), AKT is supposed to fulfil all its obligations under the terms of PKP2B pending from the time when PKP2B was valid, it is unclear where the responsibility for the unfulfilled commitments and reclamation would lie.

According to Suwardi, chief of Kohung village, reclamation of land is a big problem and the company is doing it inadequately. He says: "The problem is about the top soil. There is no topsoil any more on the land. The company just puts many rocks there. So, the procedure is not right. So, even if the company, in the end, want to give back the land to the community, if there are going to be only rocks without the fertile land, it will be useless."

Conclusion

The lack of basic infrastructure and facilities provided by the government in Tuhup Raya makes the communities look towards the company for livelihoods and support. The company calls the shots and the community in the hope of jobs and basic facilities such as water and road construction adopts a beseeching attitude towards it. High dependence on the company and its CSR activities and lack of response from the government have cornered the community with limited options left for their use. The ICEL views CSR as a compensation tool and not as something substantive and imperative. It states that CSR is being used as a way to get communities to not raise opposition to projects. In absence of clear stipulations on how much and how to spend money under CSR, communities tend to view it as a 'go to' solution for all their problems. Shortfalls in governance and paucity of services and basic amenities from the government's side is hoped to be filled via CSR.

Unlike in the case of KGLR/BNJM, the community in Tuhup Raya has not made use of the conditions of AMDAL, of the mining law, environment law or of the public information disclosure law to seek resolution to their problems. Despite an investigation conducted in June 2016 by WALHI, Central Kalimantan, that showed levels of heavy metals in the river much higher than what was permitted (Nugraha 2016), results of the investigation have not been used in the strategies employed.

The issue of water pollution could have been used for collaborative strategies between the mineworkers, their families and the farmers who have lost their livelihoods. The divide between the workers and other affected people dissipates the efforts and energies spent in resolving the people's problems. Perhaps, combining different issues such as employment, contamination of water and loss of community land would have helped in the case. It may have given the issue more visibility and an urgency to seek response from the government. The community of East Barito tried this approach and saw some headway in the case when they started talking about all the violations committed by BNJM/KGLR simultaneously. In Tuhup Raya those working in the mines are viewed as "better-off" by those who are not and this split prevents them from getting together on issues that affect them equally.

There was an urgent need to resolve these issues before the financial challenges of the mining companies prompted them to leave the project site. Now, the fears of the community have come true. The MeMR has cancelled its agreement with PT AKT and has hinted that the government will take over and reallocate the sites. This leaves it unclear who is responsible for cleaning up the mess created by PT AKT: the government, state or centre; new company; or PT AKT. Going by the mining law, PT AKT is obliged to do so, but how the government will make the company accountable for its actions and correct its past doings is a big question mark. As stated by Riko, the Tumbang Bauh chief, using new strategies based on evidence of illegalities of the project may have helped to obtain remedies or greater support to the affected communities from the government. However, in the face of this new development there are uncertainties around how things will turn out for the community even if they highlight the illegalities committed.

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- Tatang, Ex-head of Hingan Tokung village (2010-2016), Murung Raya
- Riko, Head, Tumbang Bauh village, Puruk Cahu, Murung Raya
- Group meeting with villagers of Tumbang Bauh village

Annexure I: Questionnaire administered to collect data for the case studies

Case Research Report

Name of Case & Case Number : Location : Interview Date(s) : Persons interviewed/spoken to about this case (names & role in case): 1. 2. 3. 4. 5.
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I. Case Chronology

I. Case Summary

- Location, country
- Type of case (circle one): hydropower/ports/mining/plantation/other
- Give a short summary of the case (5 lines max):
- Status of the case (pending/solved): if a case is resolved is there a chance that the solution may not be enforced?
- When was this case first reported?

II. Full Description of case

- Give a full description of conflict. What the dispute is about, and between what parties?
- If any, mention big differences in interpretation of the involved parties: Do they 'frame' the conflict (i.e. interpret what is going on) in different ways? Illustrate with short quotes. (other peoples analysis)
- Give a chronology of events: what happened when? What actions were undertaken by different parties?
- If the case went to court, describe the proceedings at the court.
Analysis: Describe the background of main parties involved: Briefly mention relevant characteristics (profession, local status, relevant social connections, etc). of all the parties involved (including dispute resolvers)
Brief legal analysis: According to you, what outcome does state law (and, if relevant, customary law) prescribe for this case?

III. Adopted Strategies

- Name and describe the different courses of action that affected communities undertook at different moments in time.
- What reasons did informants give for choosing these different courses of action at that moment? Why were alternative possible strategies (e.g., legal action, lobby, etc.) not pursued? Give quotes.
- Representation: Which local actors were most active as representatives of affected communities? Why them? Was their role as representatives contested and/or raise concerns among others?
- Discuss the involvement of outside NGO-actors. If so, how did affected communities get in touch with outside NGOs? How did they affect the strategies and the final outcomes? How is their involvement viewed by informants?

5. Did the affected communities and their partners pursue a media strategy? What effect did media reports have on outcome of the case?
6. Discuss the involvement of political actors: did affected communities seek help from them, what did they contribute and at what cost? How do informants evaluate their support?
7. Did affected communities opt for legal action? Why (not)? What kind of legal action was undertaken, and why in this form?
8. Did negotiations between affected communities and company/state take place? Describe the proceedings: who was present, who represented the community, what claims were being discussed and what outcome was reached? Give quotes of informants' description of negotiation
Analysis: what might be the main reasons for the failure or success of these negotiations?
Analysis: what was the role of State representatives in this conflict? Did they adopt a neutral position, or support either side of the conflict? If so, what actions suggest that they were partial?

If paralegal involved:

- How and why the paralegal was involved in this case? Did the client first report the case to others?
- Ask informant: How would he have dealt with the case if there was no paralegal? Would the outcome have been different? Give quotes.
- Ask the paralegal: What was his main advice(s) to his or her client? Why this set of advice? Give quotes.

IV. Final Outcome

1. How long did it take for this case to reach the present outcome?
2. If a solution was proposed (as described above): Were the parties involved satisfied? Why (not)? Give quotes.
3. If a solution/verdict or deal was reached: was it enforced? If not, why not? Give quotes
4. What was done to make sure the proposed solution was enforced?
5. Monetary compensation: Did affected families receive compensation? Yes/no?
 - a. If agricultural land: How much per hectare?
 - b. If displacement of home: how much per family?
 - c. Was alternative housing provided?

Did or would the land use change cause environmental degradation? If yes how?

What other consequent effects did the land use change cause socially and politically?

6. Did the land use change affect the livelihood of affected communities, in positive and negative ways? Describe and give quotes.'

V. Researcher's Analysis

Give your own thoughts and ideas about why the case progressed as it did, what were the main causes, why the parties took the steps they did, etc. Also, please point out any inconsistencies in the accounts given by different parties in the case, and what your best guess is on how to resolve the different accounts.

About Centre for Policy Research (CPR)

The Centre for Policy Research (CPR) has been one of India's leading public policy think tanks since 1973. The Centre is a nonprofit, independent institution dedicated to conducting research that contributes to a more robust public discourse about the structures and processes that shape life in India.

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About Namati

In a world where billions live outside the protection of the law, Namati is dedicated to putting the law in people's hands. It is building a global movement of grassroots legal advocates who work with communities to advance justice. These advocates are fighting on the front lines to ensure that people can protect their land, access essential services, and take part in the decisions that govern their lives.

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