With global consumption of edible oils set to double in the next twenty years, expansion of the palm oil industry has become one of the main planks in the government of Indonesia's plans for national development. Now the opportunity to market palm oil as 'bio-diesel' is fueling even faster expansion. The implications for Indonesia's forests are dire. But what of the millions of people who live in these forests? Will this expansion help them or harm them? How, indeed, do palm oil companies acquire land for these huge estates?

This detailed study by Sawit Watch, Forest Peoples Programme, HuMA and World Agroforestry Centre, examines the laws which regulate land acquisition for plantation development in Indonesia. Through field studies of six palm oil estates in three provinces, the investigation also explores how these laws are actually applied in practice. The findings are startling. Indonesia's indigenous peoples are being systematically deprived of their heritage – their lands, forests, livelihoods and cultures – by oil palm plantations with only token acknowledgement of their rights and interests.

Although the Indonesian Constitution is meant to protect indigenous peoples' rights, a series of other policies and laws allow these rights to be ignored 'in the national interest'. Even where negotiations with communities take place, they are never given the chance to say 'no' to the takeover of their lands, and are never informed that their rights are being extinguished in the process of plantation development.

Palm oil plantations already cover over six million hectares of Indonesia, most the ancestral lands of indigenous peoples. Regional land use plans now envisage the clearance of a further 20 million hectares for these expanding estates. If this expansion is not to cause further harm, Indonesia's laws and policies and company practices must change. Customary rights must be secured. Communities must be given the right to decide whether or not they want plantations on their lands and, if so, on what terms.

Sawit Watch

World Agroforestry Centre
TRANSFORMING LIVES AND LANDSCAPE

HuMa

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PROMISED LAND

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Promised Land

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Contents

Acronyms

ADB	Asian Development Bank
AMDAL	Environmental Impact Assessment with mitigation plan
ANDAL	Environmental Impact Assessment
APL	Non-forest zone ('area of other uses')
BAL	Basic Agrarian Law
BAPPENAS	Ministry of State Planning
BFL	Basic Forestry Law
BKPM	Investment Coordination Board
BPN	National Land Agency
BW	Boswessen (Forest Boundary)
CPO	Crude Palm Oil
DfID	Department for International Development (UK)
DPD	Regional Representative Council
DPR	Parliament
DPRD	District legislature
EC	European Community
FELDA	Federal Land Development Authority
FFB	Fresh fruit bunches
FoE	Friends of the Earth
FPP	Forest Peoples Programme
FSC	Forest Stewardship Council
GAPKI	Indonesian Palm Oil Association
HGU	Company leasehold on State land for buildings
HGU	Company leasehold on State land for agricultural use
HPH	Logging Concession
HPK	Conversion Forest
HPT	Production Forest Area

HSBC	Hong Kong and Shanghai Bank
HTI	Timber Plantation Concession
ICRAF	World Agroforestry Centre
IDR	Indonesian rupiah – the local currency
IPK	Timber Cutting Permit
KUD	State-run farmers cooperative
LEI	Indonesian Ekolabelling Institute
KDTI	Special Purpose Area
MoA	Ministry of Agriculture
MoF	Ministry of Forestry
MPOA	Malaysian Palm Oil Association
MPR	House of Representatives / National Assembly
NES	Nuclear Estate Smallholder scheme
NGO	Non-Government Organisation
PIR	Nucleus Estate Smallholder Scheme
PKI	Indonesian Communist Party (banned in 1966)
PMA	Foreign Capital Investment
PMDN	Domestic Capital Investment
PMPRD	*Repong Damar* Farmers Union
PNG	Papua New Guinea
PPAT	Land register officer
PROLEGNAS	National Programme for Legal Reform
PT CNIS	Citra Nusa Inti Sawit Company Limited
PT KCMU	Karya Canggih Mandiri Itama Company Limited
PT MAS	Mitra Austral Sejahtera Company Limited
PT PHP	Permata Hijau Pasaman Company Limited
PT PMP	Ponti Makmur Sejahtera Company Limited
PTPN	State-owned plantation company
PT PPL	Panji Padma Lestari Company Limited
PT SIA	Sime Indo Agro Company Limited
RSPO	Roundtable on Sustainable Palm Oil
SHM	Land Ownership Title
SK	Decree

SKT	Land transfer letter issued by village head
SPPT	Letter Notifying Annual Tax Payment
TGHK	National process for classifying forest areas
UN	United Nations
UPSB	Large-scale plantation (over 1000 ha.)
UPSBM	Medium-scale plantation (200-1000 ha.)
UPSBK	Small-scale plantation (25-200 ha.)
UUPA	Basic Agrarian Law
WALHI	Friends of the Earth-Indonesia
WASDAL	Government land survey team
WRM	World Rainforest Movement
WWF	World Wide Fund for Nature

Executive Summary

Growing Concerns, Growing Markets, Loss of Forests, Social Impacts

International concern has been growing about the impacts of the continuing expansion of oil palm plantations. The spread of oil palm has been blamed for extensive forest destruction, uncontrolled forest fires, loss of precious wild species and the undermining of environmental services. Yet already in Indonesia some 5 million people are involved in estates and mills as labourers or their families and as many again are tied to large estates as smallholders. Palm oil has major social as well as environmental impacts.

World markets for edible oils are set to double in the next twenty years, implying a doubling of the area under oil palm if market share is maintained. New markets for 'biofuels' also provide scope for increased palm oil sales. Indonesia's national development plans are designed to secure it a large share of these markets.

Palm Oil Expansion in Indonesia is Accelerating

Indonesia is also one of the world's most populous and rural countries, with a total population of 220 million people, of whom between 60 and 90 million people make a livelihood from areas classified 'State Forest Areas', which cover some 70% of the national land area. A large proportion of the rural people regulate their affairs through custom and are referred to as 'people governed by custom' (*masyarakat adat*) – referred to as 'indigenous peoples' in international law.

Oil palm expansion has major implications for rural Indonesians. It implies a major reallocation of land and resources, dramatic changes to vegetation and local ecosystems, substantial investment and new infrastructures, movements of people and settlements, major transformations of local and international trade and requires the intervention of multiple government agencies. Done right, palm oil should generate wealth and employment for local communities. Done wrong, oil palm estates can lead to land alienation, loss of livelihoods, social conflicts, exploitative labour relations and degraded ecosystems.

Indonesia now has some 6 million hectares of land under oil palm and has cleared three times as much, some 18 million hectares of forests, in the name of oil palm expansion,

mainly so speculators can get access to the timber. Existing regional development plans have already allotted a further 20 million hectares for oil palm plantations, mainly in Sumatra, Kalimantan, Sulawesi and West Papua, and new plans are currently under discussion to establish the world's largest palm oil plantation of 1.8 million hectares in the heart of Borneo.

Multidisciplinary Study of the Impacts on Local Communities in Three Provinces

Where is the land for this massive planned expansion of oil palm to come from? Who are the current owners of this land? How do companies acquire such lands? What are the implications for indigenous peoples and local communities of this major reallocation of lands and forests? This investigation was designed to answer such questions.

Between July 2005 and September 2006, the Indonesian NGO, Sawit Watch which monitors the Indonesian palm oil sector, the international human rights organisation, Forest Peoples Programme, in collaboration with lawyers from the Indonesian human rights organisation, HuMA, and land tenure specialists from the World Agroforestry Centre (ICRAF), carried out an intensive, multi-disciplinary study of the legal and institutional processes of land acquisition for oil palm plantings in Indonesia with a focus on the rights of local communities and indigenous peoples. The work, which was carried out in close coordination with local NGOs and community organisations, included extensive field studies and interviews, as well as background legal documentation and research.

Local Realities and National Frameworks

The research looked into the way land had been or was being acquired by six companies operating in West Lampung district in Lampung Province (Sumatra), Sanggau district in West Kalimantan Province (Borneo) and West Pasaman district in West Sumatra Province. During the field studies detailed interviews were carried out with local community leaders and members, government officials at local and provincial levels, Non-Governmental Organisations, researchers, company personnel, university researchers and professors, and members of the local legislatures.

The research was also framed by the coming into being of the Roundtable on Sustainable Palm Oil (RSPO), an industry-led initiative, involving conservation organisations and social justice groups, that aims to reform the way palm oil plantations are developed, in accordance with international norms and standards.

The purposes of the study were to:

- Document the situation, views and recommendations of local communities and smallholders, who are involved in or affected by oil palm production;
- Assess the implications of the expanding Indonesian palm oil sector for local communities and indigenous peoples;
- Document the legal protections of customary institutions and customary rights;
- Understand in detail the legal steps by which companies acquire land for palm oil plantings in Indonesia;
- Assess the extent to which these laws are adhered to and effectively protect the interests and rights of communities and indigenous peoples;
- Ascertain if the RSPO standard suits the Indonesian reality and is considered applicable by local communities, government officials and companies;
- Make recommendations on how Indonesian policies, laws and procedures should be reformed to adequately protect indigenous peoples' and local communities' rights in line with the country's obligations under international law.

Laws Subordinate Weakly Protected Customary Rights to the 'National Interest'

The Indonesian Constitution respects the existence of customary law communities, acknowledges their right to be self-governing and recognises their customary rights in land. Indonesia has also ratified some key pieces of international law which protect the rights of indigenous peoples and local communities. However, other laws provide only weak recognition of customary rights and allow government agencies a great deal of discretion in deciding whether to respect them or not.

Furthermore, the institutions of these customary law communities were severely weakened during the New Order (*Orde Baru*) when a uniform administrative structure was imposed throughout Indonesia down to the village level. Although Regional Autonomy laws have, since 1999, restored the possibility of customary authorities once again taking charge of village affairs, only in certain parts of Indonesia, such as in West Sumatra, have customary authorities in fact regained control of their areas.

A similar gap between legal principles and practice is found with respect to land rights. While laws recognise the rights of customary communities to their lands, ambiguously, procedures for titling such lands are absent, defective or rarely applied. Procedures for the titling of individual land holdings are also lag far behind the rate at which new land holdings are being created. A five-year-old National Assembly Decree (TAP MPR IX/2001), requiring reforms of forestry and agrarian laws, has yet to be put into effect.

Policies Favour Large-scale Plantation Development

On the other hand, the Constitution and laws of Indonesia recognise the right of the State to control and allocate natural resources for the benefit of the Indonesian people. The laws allow the reallocation of lands for State purposes and for private sector uses in accordance with national development plans. The result is that community rights are all too easily subordinated to private sector expansion.

A complex web of laws has evolved to promote plantation development. Although designed to ensure sound investment, coordinated planning, the public interest and the resolution of conflicting rights, these laws make little provision for community rights and interests. Too often the law treats what are in reality indigenous peoples' lands as State lands. These State lands are either considered to be unencumbered with rights or are allocated to companies through a process that strips communities of the few rights that the government does recognise. Indigenous peoples' rights are thus extinguished and the lands allocated to companies as 90-year leaseholds on State land.

Forest Conversion of Dubious Legality

In 1982, some 142 million hectares of Indonesia were designated as Forest Areas, of which some 30 million were then categorised as available for conversion. A procedure was then elaborated to consult local communities and authorities about the status of these areas before they could be delineated and gazetted, as State Forest Areas if unencumbered. To date only 12% of these Forest Areas has been properly gazetted as State Forest Areas. Legally, the remaining areas remain of uncertain status.

In practice, however, through administrative oversight, all forest areas are being treated as if they are owned by the state and many have then been released for conversion before being gazetted. This is legally problematic, as the areas may well be encumbered with rights and therefore the state should not be allocating them to third parties. Indeed, already 23 million hectares of forest areas have been converted to non forest zones, the majority in the name of conversion to oil palm plantations, though only 6 million hectares have actually been planted. This process is still happening.

Although the Forestry Department has called for a moratorium on further conversion of forests this has been done through the weakest of all possible regulations, symptomatic of a long-term tussle between different Ministries seeking to control Indonesian land.

Case Studies Show Wide Differences in Provincial Interpretation of Laws

The research shows clearly how indigenous peoples in the six case study areas do enjoy rights to their territories and to self-governance through customary authorities, in accordance with customary law. Clearly identified groups control land as collectively owned areas (*tanah ulayat*) subject to well developed rules regulating land ownership, land transfer and group membership.

However, the research shows that provinces vary greatly in the extent to which local governments accept the rights in land of local communities, despite operating within the same national legal framework. In West Kalimantan, customary land rights are given little recognition at the most being treated as ill-defined use rights on State lands. In Lampung, customary rights are accepted in court adjudications but the administration rarely recognises community rights in land, preferring to issue individual titles to villagers. In West Sumatra, by contrast, the provincial government does recognise the collective land rights and jurisdiction of customary institutions as self-governing authorities (*Nagari*) and communities are treated as rights holders.

Serious Legal Abuses and Violations of Human Rights

The case studies reveal that local communities face serious problems and most are in conflict with companies over land. There is a widespread feeling that communities have been cheated of their lands, inveigled into agreements through false promises and denied a voice in decision-making. Among the many irregularities in the way lands have been acquired and held by companies, the most notable include the following:

- customary rights not recognised;
- plantations established without a government license;
- information not provided to communities;
- consensus agreements not negotiated;
- customary leaders manipulated into making forced sales;
- compensation payments not paid;
- promised benefits not provided;
- smallholders lands not allocated or developed;
- smallholders encumbered with unjustifiable debts;
- environmental impact studies carried out too late;
- lands not developed within the stipulated period;
- community resistance crushed through coercion and use of force;
- serious human rights abuses.

In effect the government is failing in its Constitutional duty to protect the rights of customary law communities. Even where government agencies facilitate negotiated transfers of community lands to companies, community leaders are being duped into signing agreements which they think entail temporary transfers of use rights, when the government knows that they are actually agreeing to the extinguishment of their rights in land.

A Flawed Legal and Policy Framework

The research substantiates, in considerable detail, the oft-made claim that oil palm plantations have been established in Indonesia without respect for the rights of indigenous peoples and local communities. Yet, international standards, such as those set out in international law, elaborated in international jurisprudence, adopted in 'best practice' codes, consolidated in the United Nations' Declaration on the Rights of Indigenous Peoples, and recently adopted by the Roundtable on Sustainable Palm Oil, do require respect for such rights. Indeed the Constitution of the Republic of Indonesia also requires respect for the rights of customary law communities.

The study reveals that the processes which nevertheless lead to these rights being violated in the development of oil palm estates result from:

- Contradictory laws, which fail to secure indigenous rights while encouraging land expropriation for commercial projects in the 'national interest';
- An absence of regulations, as a result of which procedures for the recognition of the collective land rights of customary law communities are unclear;
- Weak institutional capacity, both in the national land agencies and in the district bureaucracies, which makes recognition of customary rights difficult;
- National and regional policies and spatial planning processes which favour the conversion of *ulayat* lands and forests into oil palm plantations to increase national and district revenues.

Challenging Recommendations

In fact the National Assembly (MPR), the highest body in the legislature, has already recognised the need for an overhaul of Indonesian laws related to land and natural resources and, in particular, to custom. This study thus makes concrete suggestions about the main legal reforms necessary to give this effect by:

- Balancing the controlling right of the state with greater respect for community rights, so communities' interests are secured in national development projects;
- Removing the impediments to the recognition of customary rights in the basic agrarian law, the forestry act and the plantation act;
- Reassessing the legal status of forests areas and conversion zones to determine which are actually the lands of communities;
- Developing a dedicated law for the protection of indigenous peoples to secure constitutional rights not yet secured by other laws;
- Adopting procedures requiring the free, prior and informed consent of customary law communities as a condition of permitting oil palm plantations on their lands.

Steps Towards Justice

The study recognises that these legal reforms will take some time to be passed and put into effect. In the interim, mechanisms need to be established to resolve existing conflicts between companies and communities, treating communities as land owners and negotiating for the restitution or compensation for lands that have been unfairly taken. Just such mechanisms are indeed required by the RSPO standard.

The findings of this study are that very few oil palm estates in Indonesia are likely to comply with the RSPO standard, in the short term. Indeed the current policy and legal framework implants a process of land acquisition and estate development quite contrary to the RSPO standard. Indonesian laws and policies deny customary rights, encourage State-sanctioned land grabbing, and ignore the principle of free, prior and informed consent. If the current approach to estate development is not changed, there is a risk that 'unsustainable' Indonesian palm oil will be excluded from international markets.

Chapter 1

Introduction

1.1 Reasons for and Scope of the Study

Palm oil is one of the world's major commodities. Its production has historically been associated with extensive clearance of tropical forests and consequent loss of habitat for endangered species, the (often illegal) takeover of indigenous peoples' and farmers' lands and the exploitation of workers and smallholders. Groups such as Friends of the Earth[1] and the World Rainforest Movement[2] have documented in detail how palm oil plantations are a major force driving deforestation. Forest clearance for new plantings is also a major cause of forest fires and air pollution, which contribute to seasonal hazes that are a serious threat to public health. Plantations are often established on indigenous peoples' and farmers' lands without their consent or respect for their rights. The conditions of smallholders and labourers working on or linked to large plantations are often very poor.[3]

Markets for edible oils are currently in a phase of rapid growth, notably in India, China and Eastern Europe. To supply this market, production of palm oil is predicted to double in the next twenty years, implying at least another 5 to 10 million hectares of new oil palm plantings in the same period. Although new oil palm plantations are now being established in many places, notably Sarawak and Sabah, Thailand, the Philippines, Ecuador, Costa Rica and Colombia, the country planning the greatest expansion is Indonesia.

Where is the land for this expansion to come from? Who are the present owners, users and occupiers of this land? Are their rights and interests being respected? What is the legal process by which lands for new plantings are acquired? Are these laws being observed? Do they offer adequate protection for communities? What are the implications of this massive expansion of oil palm for indigenous peoples and local communities?

This study has been undertaken to help answer such questions and to contribute to national and international policy discussions aimed at applying improved standards for the establishment and management of oil palm estates and the production and use of palm oil and other products derived from oil palms. Specifically the study has been designed to assess, and contribute to, the application of the standard for 'sustainable palm oil' adopted by the Roundtable on Sustainable Palm Oil (see section 2.1).

1.2 Methods, Data Availability and Limitations

The study has been carried out by an international research team combining international and Indonesian researchers from the Land and Tree Tenure Programme of the World Agroforestry Centre (ICRAF), two Indonesian NGOs, Sawit Watch and HuMA, and the international human rights organisation, the Forest Peoples Programme. The multi-disciplinary team, which comprised two lawyers, a human rights specialist, an educationalist, a biologist, a land tenure expert and a social anthropologist, also benefited from considerable assistance from local NGOs, community leaders, smallholders, and indigenous peoples' organisations.

The core of the study comprises field assessments of the situation in six oil palm companies' operations in the districts of West Lampung (Lampung, Sumatra), West Pasaman (West Sumatra) and Sanggau (West Kalimantan, Borneo) carried out between June and September 2005. Data has been gathered by interviews, and workshops, with company personnel, government officials, politicians, local NGOs and indigenous organisations, community leaders and villagers. Extensive work has also been undertaken to compile and analyse existing Indonesian laws, and assess all available documentation about the processes by which companies have acquired operating permits and land. The research has been contextualised through a review of the available literature as listed in the references and footnotes.

This study does not claim to be exhaustive. Apart from the obvious limitations of time and resources, the study faced notable difficulties in getting access to key documents establishing (or not) the legality of company operations and the extent of community lands and claims. Environmental Impact Assessments (AMDAL) were not available for all the operations studied. Provincial Spatial Plans show inconsistencies and irregularities. Land deeds and records of sales in the archives and cadastres of the (BPN) national agrarian offices were often incomplete or absent and some are classified by BPN as confidential data. Only a few of the communities visited had carried out independent, participatory mapping exercises to demonstrate the extent of the lands to which they claim customary rights. Only two of the companies that we tried to visit were prepared to engage in dialogue, although one of them was extremely helpful.

The case studies are thus the best we could achieve within such constraints and should not be considered as equivalent to full legal audits or assessments of compliance with RSPO criteria. The study only examined briefly the situation of smallholders and was not able to devote enough time to an examination of their circumstances, concerns and aspirations – a follow-up study on Indonesian smallholders is thus programmed for 2006.

Notwithstanding these limitations, the investigation does clearly illustrate some of the major shortcomings of current laws, policies and procedures relating to land allocation for oil palm plantations in Indonesia, and the consequent problems experienced by communities.

1.3 Global and National Trends

Globally, the consumption of products containing oil palm products has been steadily increasing over the past 150 years, with only temporary dips occasioned by world wars and economic recessions. While still a major smallholder crop and food source in West and Central Africa, historically the major growth in demand for palm oil products has come from Western Europe. Palm oil has become the world's greatest traded edible oil, making up some 40% of the edible oil trade, about double the figure for second-placed soybean oil.[4]

Since the 1990s, Western European demand for oil palm products has been more or less stable, while demand from India, Pakistan, China and the Middle East has exploded (see figure 1.1). These new markets, and markets in Eastern Europe, are set to expand further as the people in these countries increasingly adopt 'western' consumerist lifestyles. It is the growth in these markets which is currently the main driver of palm oil expansion in South East Asia. Global demand for palm oil is set to double by 2020 with an annual rate of increase predicted at near 4% per year (compared to 2% per year predicted for soybean oil).[5]

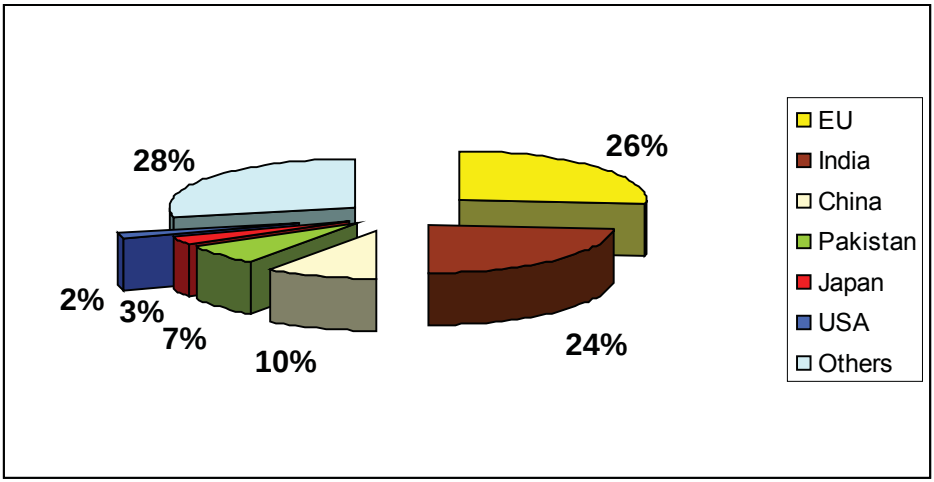


Figure 1.1: Main consumers of globally traded palm oil.[6]

Palm oil is used in a great variety of products being one of the main sources of cooking oil, shortening, ice creams and margarine, as well as being used in common items like detergents, soaps, shampoos, lipsticks, creams, waxes, candles and polishes. It is also used as a lubricant in industrial processes. Palm oil also yields oleins used in chemical processes to produce esters, plastics, textiles, emulsifiers, explosives and pharmaceutical products. In Western Europe palm oil is extensively used in processed foods. Indeed, it is estimated that 7 in 10 of all products on UK supermarket shelves contain palm oil, yet many western consumers are unaware of the fact that the goods they buy contain the oil.[7]

By 2002, Malaysia and Indonesia were producing some 80% of internationally traded palm oil, with Malaysia being the major producer.[8] South East Asia has proven attractive to oil palm developers for a number of reasons, including the favourable climate, comparatively low labour costs, low land rents and concerted government plans to develop the sector, through provision of attractive (or unenforced) legal frameworks, cheap loans and fiscal incentives.

However, with rising labour costs and land scarcity increasingly a factor in Peninsular Malaysia, expansion now focuses on Sabah and Sarawak (Malaysian Borneo), Thailand, Cambodia, Papua New Guinea and the Solomon Islands. In Thailand between 2003 and 2004, palm oil plantations increased by nearly 4% to cover a total area of around 300,000 ha.. The Thai government now plans continued planting at the rate of 64,000 ha. per year for 2004-2029, to achieve a target of 1.6 million hectares of new plantings by 2030. This expansion has major social implications, being directed at old rice fields, other cash crop areas and rubber plantings.[9]

However, the number one country currently attracting palm oil investors is Indonesia. From a low level of 120,000 ha. of productive oil palms in 1968, a figure which rose to 250,000 ha. by 1978, oil palm in Indonesia is now experiencing a firm rate of increase, reaching 2.98 million hectares by 1998, booming to 4.1 m. ha. by 2004 and topping 5 million ha. of productive oil palms by 2005 (see figure 1.2).[10]

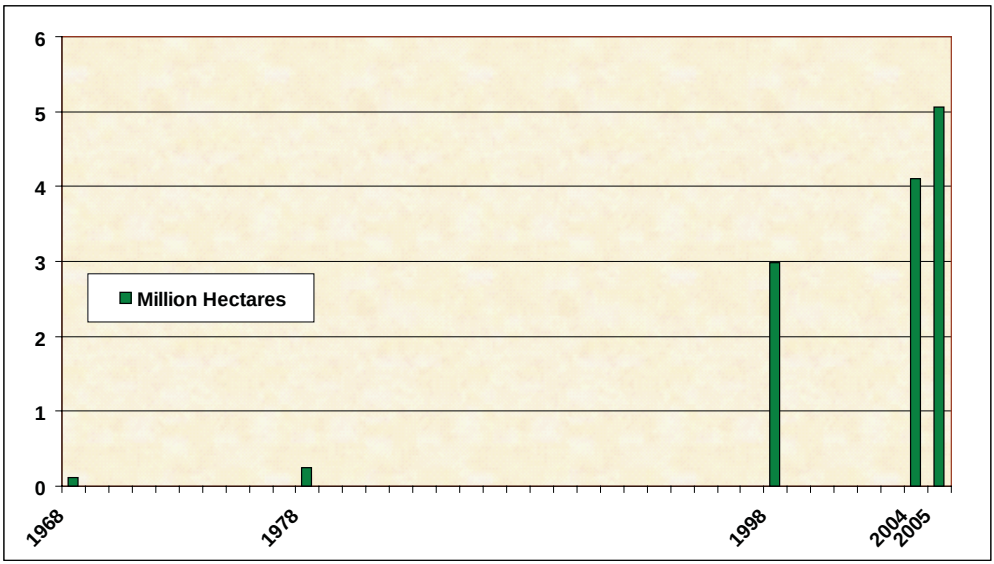


Figure 1.2: Areas of productive oil palm in Indonesia

Oil palm plantings in Indonesia are not only expanding in total area but are also experiencing a rapid transformation of ownership. Early plantations were predominantly state-run schemes, many financed by World Bank, European Community and Asian Development Bank loans. During the 1970s and 1980s, expansion focused on developing plantations in government-sponsored transmigration schemes (PIR-Trans), in which para-statal agencies controlled nucleus estates (*inti*) surrounded by extensive areas made up of 2 to 5 hectare smallholdings (*plasma*) operated by sponsored migrants.[11]

Today, however, the greatest expansion is in private sector holdings, not only through the privatisation of previous state-owned enterprises but also through the establishment of extensive new plantings. Many of these private sector schemes are funded through international investments or as local subsidiaries of foreign corporations. By 2002, there were some 50 Malaysian companies operating in Indonesia. There are great local and regional differences in the extent to which private sector companies are obliged to establish smallholdings as part of these estates.

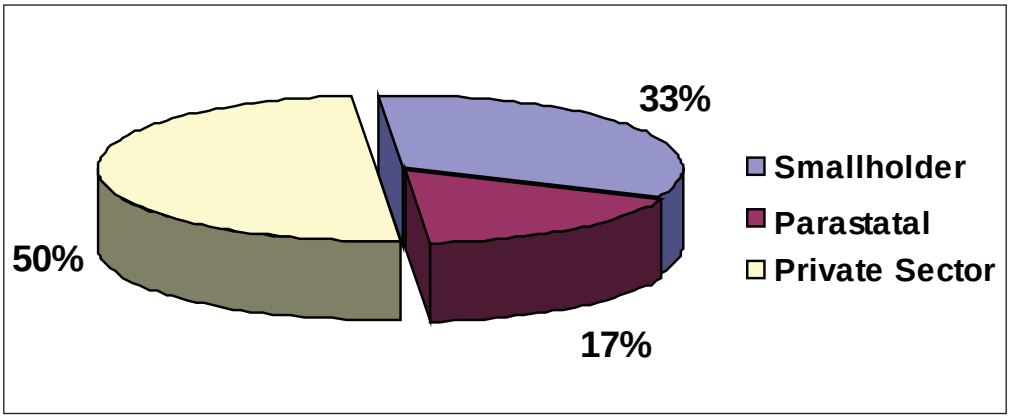


Figure 1.3: Oil palm ownership in Indonesia [12]

These broad trends seem set to continue but government figures show that rates of land acquisition for plantations fell temporarily following the collapse of the Suharto regime in 1998.[13] It took more than four years before investors regained confidence and established new political connections so that rates of planting could be restored to the levels achieved under the *Orde Baru* (figure 1.4), though, according to more recent

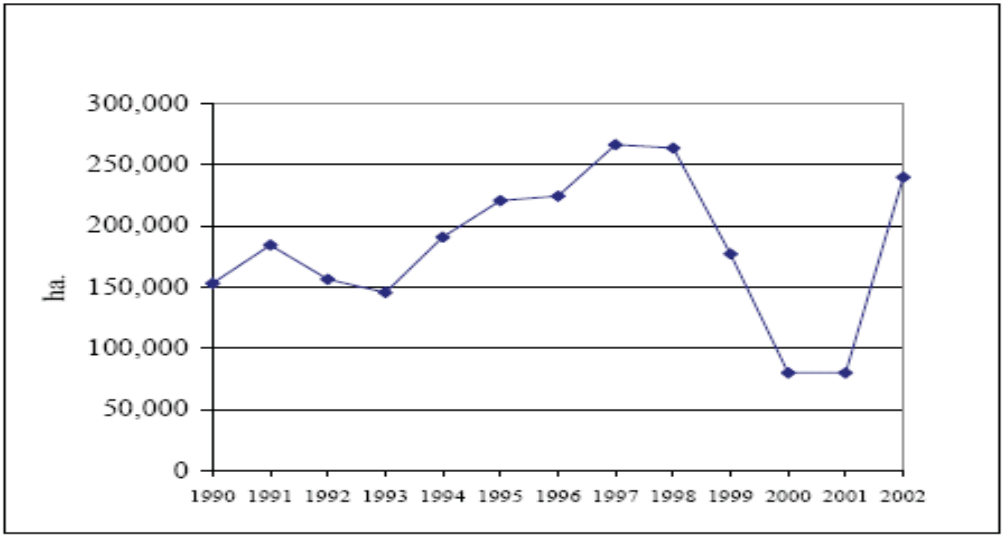


Figure 1.4: Annual rate of oil palm planting in Indonesia 1996-2002[14]

figures, in the past five years, annual planting has increased to as much as 401,200 ha. per year.[15]

Nor have oil palm plantings been equally spread across Indonesia. Plantings have been concentrated in Sumatra and Kalimantan, with a notable extension into Sulawesi and Papua in recent years (see table 1.1 and figure 1.5).

Table 1.1. Areas of Oil Palm Plantations in Indonesia [16]

Province	Area (Ha.)
Sumatra	
Nanggroe Aceh Darussalam	222,389
Sumatera Utara	1,093,033
Sumatera Barat	489,000
Riau	1,486,989
Jambi	350,000
Sumatera Selatan	416,000
Bangka Belitung	112,762
Bengkulu	81,532
Lampung	145.619
Java	
Jawa Barat	3,747
Banten	17,375
Kalimantan	
Kalimantan Barat	349,101
Kalimantan Tengah	583,000
Kalimantan Selatan	391,671
Kalimantan Timur	303,040
Sulawesi	
Sulawesi Tengah	43,032
Sulawesi Selatan	72,133
Sulawesi Tenggara	3,602
Papua	
Papua	40,889
Total	**6,059,441**[17]

In short, Indonesian government efforts to promote oil palm companies and expand plantings have been markedly successful. Within the last five years, Indonesian production of crude palm oil (CPO) has increased rapidly from 5.38 million tons in 1997 to 10.6 million tons per year in 2003, an average increase of 8.6% per year. Exports of CPO from Indonesia have likewise also significantly increased, from 1.47 million tons, equal to US$ 745.2 million, in 1998, to 6.33 million tons, equal to US$ 2.0 billion, in 2002.[18]

1.4 Land Acquisition Projections

In terms of oil palm expansion, Indonesia now leads the world and based on current rates of planting is set to become the number one palm oil producer, overtaking Malaysia by 2010, or even earlier.[19] Like Malaysia, Indonesia is also experimenting with higher yielding varieties. According to the Department of Agriculture, eight new hybrid clones have been developed which are vaunted as increasing rates of production from the 3.5 tons of oil per hectare per year achieved today to as much as 6.5 to 8.0 tons/ha/year.[20]

How much land does Indonesia plan to clear to achieve number one status? Straight line projections from passed plantings may be to under-estimate things. The government, both centrally and through regional plans, has set ambitious targets for new plantings.

One of factors that is considered to favour the development of oil palm plantations in Indonesia is land availability. The Department of Agriculture in Indonesia argues that there are approximately 27 million hectares of 'unproductive forestlands' that can be offered to investors for conversion into plantations,[21] out of a total of 143.95 million hectares of dry lands in the country as a whole.[22] These 'unproductive forestlands' are forest areas considered to be degraded as a result of logging, cultivation and other activities. Moreover, a regional study conducted by the European Commission and Indonesian Forestry Department in 2001 concluded that of approximately 11.5 million hectares of wetlands in Sumatra, around 4,279,300 hectares were suited to conversion to oil palm plantations,[23] a proposal disputed by environmental organisations.[24]

Higher rates of oil palm expansion are also being planned by provincial and *kabupaten* governments eager to increase foreign exchange revenues now that, thanks to decentralisation laws passed between 1998 and 2002, they have gained greater control over lands, forests, budgets and planning. Putting together all the figures available on provincial land use plans, published in newspapers and various other sources, Sawit Watch has found that almost 20 million hectares of the national territory have already been proposed for oil palm development by local governments (Table 1.2).

Table 1.2. Provincial Government Plans to Expand Oil Palm Plantations [25]

Province	Area (Ha.)
Sumatra	
Sumatra Selatan	1,000,000
Lampung	500,000
Jambi	1,000,000
Bengkulu	500,000
Sumatra Utara	1,000,000
Aceh	340,000
Riau	3,000,000
Sumatra Barat	500,000
Kalimantan	
Kalimantan Barat	5,000,000
Kalimantan Selatan	500,000
Kalimantan Tengah	1,000,000
Kalimantan Timur	1,000,000
Sulawesi	
Sulawesi Tengah	500,000
Sulawesi Selatan	500,000
Sulawesi Tenggara	500,000
Papua	
Papua	3,000,000
Total	**19,840,000**

Nor do these figures take into account new plans announced by President Susilo Bambang Yudoyono in July 2005 to establish 'the world's largest oil palm plantation' along the border in Borneo between Indonesia and Malaysia.[26] Puffed as a way of securing national sovereignty and curbing illegal logging along the vulnerable frontier, the plan apparently involves inviting Chinese investors and Malaysian companies to establish as much as 1.8 million hectares of oil palm plantations along the border, facilitated by support from the Department of Agriculture and provided with a workforce through further transmigration under the Department of Labour and Transmigration. The plan has however been critically

received by the Department of Forestry,[27] and roundly condemned by Indonesian non-governmental organisations.[28] Despite this criticism, the Ministry of State Planning (BAPPENAS) has continued to promote the project.[29] However, this has not stilled opposition. In March 2006, the Regional Representatives Council (DPD) of Kalimantan spoken out strongly against the project, noting that while development along the frontier in terms of infrastructure, services and education was vital, the local people were not poor and the government should find other ways to develop the area without clearing the tropical forests along the watershed.[30]

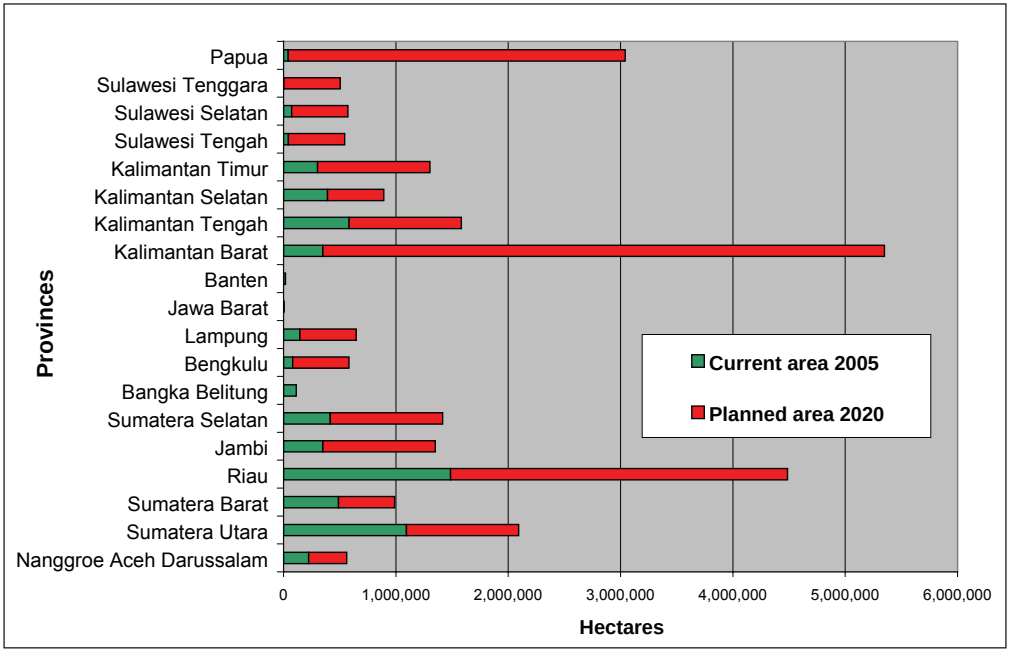


Figure 1.5: Oil palm estates: current and projected [31]

Also yet to be factored into these figures is the new global demand for so-called 'green' fuels. Crude palm oil is being heavily promoted as a source of 'bio-diesel' suited for countries like Japan and Europe, which have adopted renewable energy policies as part of their commitments to implement the Kyoto Protocol. The Indonesian government is now promoting bio-diesel from palm oil for both exports and domestic use.[32]

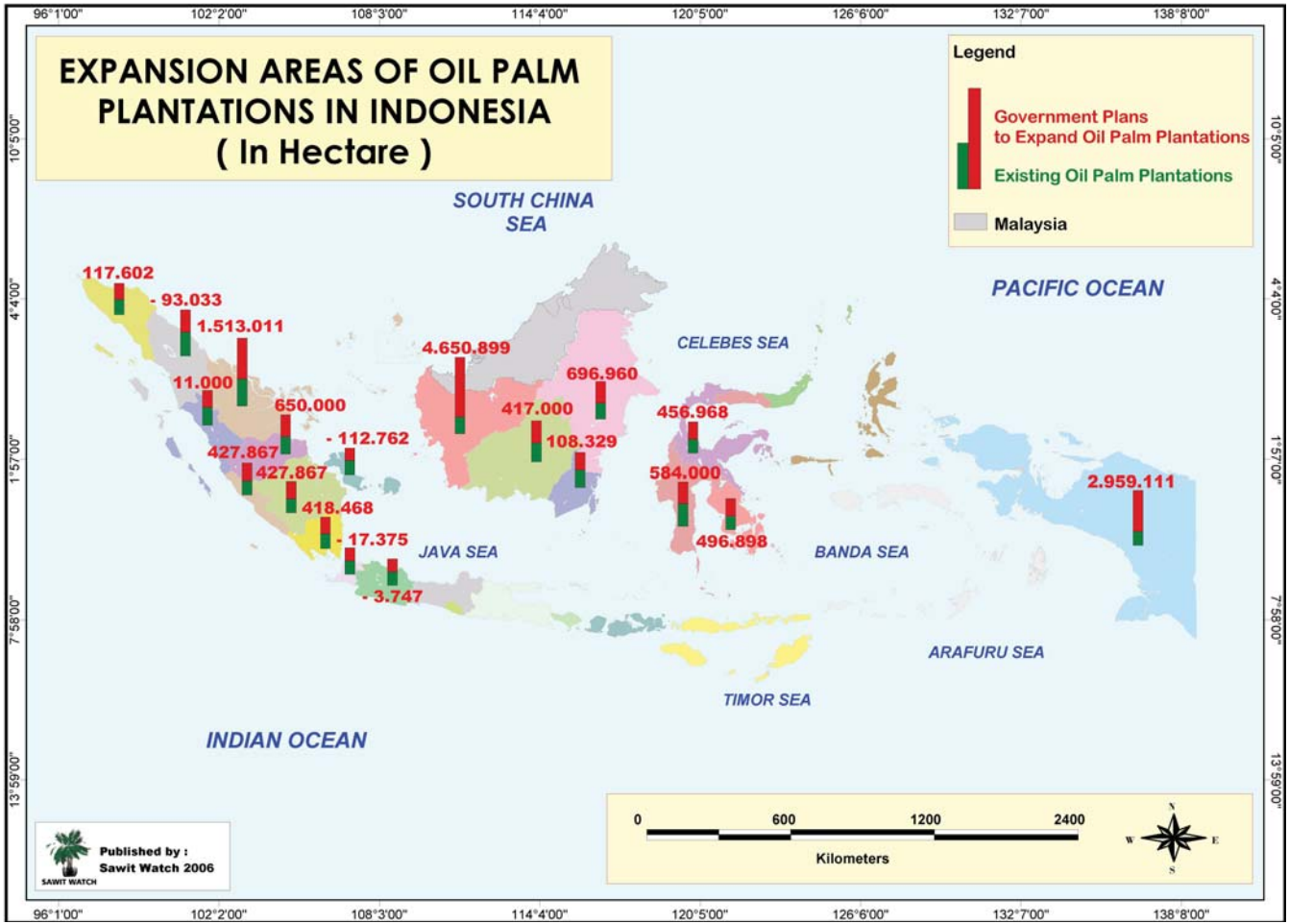


Figure 1.5 Areas of current oil palm cultivation and planned expansion

Potentially, these trends, plans and projections have major implications for Indonesia's forests and forest dependent peoples. Forest clearance for oil palms is one of the main motors of deforestation in Indonesia and cause of destructive forest fires. What though are the implications for local communities and indigenous peoples? Reporting government targets is one thing but predicting actual impacts is more difficult. As explored more carefully in Chapter 3, by law planters seeking land for oil palm in Indonesia are required to go through a complex process of planning and negotiation with several central and regional government agencies to secure access to lands and convert forests, a process which should also entail negotiated agreements with local communities.

Moreover as explained in the following Chapter, efforts are being made by the oil palm industry and civil society organisations to promote more orderly oil palm development with respect for the law, human rights, environmental principles and good management. If these standards are adhered to oil palm development would be directed away from forests and valuable ecosystems towards degraded lands no longer of great value for biodiversity and local livelihoods, and where local communities would agree to such development.

It may seem obvious that, even with a doubling of world demand for edible oils and rising demand for bio-diesel, it is unlikely that Indonesia will clear over 20 million hectares when to supply the market 5 to 10 million hectares of productive oil palm plantations will apparently suffice to meet the projected global demands of the next 20 years. However, the link between areas cleared for conversion to oil palm and global markets is not direct. Indeed, it is estimated that, in the past 25 years, no less than 18 million hectares of forests have already been cleared for oil palm in Indonesia yet only about 6 million hectares have actually been planted.[33] The implication is that some 12 million hectares of forests were cleared in the name of oil palm development by unscrupulous developers who only wanted access to the timber and never intended to plant oil palms at all.

A major driver of this land clearance is the high demand for timber, in a country where the installed timber processing capacity exceeds by about 6 to 8 times the annual allowable cut from natural forests and plantations. In 2001, the World Bank estimated that about 40% of Indonesia's 'legal' timber supply came from land clearance for conversion to plantations.[34] Such land clearance can yield profits of as high as US$2,100 per hectare which can either be used towards the start up costs of new plantations,[35] or else can represent an attractive income stream by itself. Some allege that the proposed 'plantation' in the heart of Borneo is really a ploy to get more timber, as the timber stocks in the area are considerable but the land is not well suited to oil palms, being too high, steep and remote for profitable production.

Further expansion of oil palm plantations seems inevitable. The question remains: is this compatible with 'sustainable development'? In the following chapters we unpick some of the complexities.

Endnotes:

1 Foe 2004; Wakker 2004; van Gelder 2004.
2 WRM 2004.
3 Cited in WRM 2004.
4 Clay 2004: 204. Other major traded vegetable oils include canola (oil see rape), sunflower oil and olive oil. Canola and sunflower exceed palm oil in terms of area of planted crop but are surpassed by palm oil in profitability, productivity and overall trade.
5 According to Oil World overall demand for edible oils is set to increase from 22.5 million tons today to 43 million tons by 2020.
6 Figures and discussion include palm kernel oil.
7 BBC Radio 2, 10th January 2006. Many labels use the generic term 'vegetable oil' on products containing palm oil.
8 Clay 2004:206.
9 NESDB 2005.
10 Official figures vary. These figures have been averaged by Sawitwatch from a variety of different government sources and see also Greenpeace 2000, PT Data Consult 2004 and Harian Kompas, Friday, August 27 2004, Areal Kelapa Sawit Naik Dua Kali Lipat Per Tahun 2003 (Oil Palm Plantation Area increase Two Times in 2003) http://www.kompas.com/kompas-cetak/0408/27/ekonomi/1232706.htm
11 The Ecologist 1986.
12 http://www.deptan.go.id/perkebunan/ks_indo_tahunan.htm
13 See also PT Capricorn 2004.
14 FoE 2004; Wakker 2004.
15 Calculated as an average annual planting rate of oil palm plantation area over five years taken as estates have grown from 3 million in 1999 (Greenpeace Netherlands 2000), then 4.11 million ha in 2002 (PT Data Consult Inc. 2004), and 5.06 million ha by 2004 (Harian Kompas, Friday, August 27, 2004).
16 Compiled by Sawit Watch from various sources.
17 The apparent discrepancy between this figure and that given in Figure 2 is that it includes new plantings that have yet to develop productive oil palms. Newly planted oil palms take between 3 and 5 years before they start producing.
18 Indonesian Commercial Newsletter, retrieved 8 April 2005
19 Indeed, according to official statements, Indonesia may even have overtaken Malaysia in total production during 2006.
20 Department of Agriculture 2005. According to CIFOR (1999:15) in 1997, the oil palms in Indonesia produced an average of 3.37 tons per hectare, slightly below the Malaysian average of 3.68 tons per hectare but higher than the world average of 3.21 tons per hectare (Oil World).
21 Suara Pembaruan, 27 Juta Ha Hutan Tak Produktif Bisa untuk Usaha Perkebunan (27 Million Hectares of Unproductive Forest Could Be Used for Plantation Business), Friday, 18 March 2004
22 PT Capricorn 2004.
23 EC/ Department of Forestry 2001.

[24] Presentation by Peatlands International to the 3rd Roundtable of the RSPO, November 2005.

[25] Compiled from various resources by Sawit Watch 2005.

[26] The Jakarta Post, 18 July 2005, Government plans world's largest oil palm plantations http://www.thejakartapost.com/yesterdaydetail.asp?fileid=20050718.L02 and see http://www.kabar-irian.com/news/msg03392.html,.

[27] MoF released a memo to all *bupati* and governors about the proposed development (S.50 and S 51/Menhut/2005) noted in *Kalimantan Review* December 2005.

[28] Manurung 2002.

[29] http://www.bappenas.go.id

[30] DPD rejects Kalimantan border plantation plan Jakarta Post 3 March 2006.

[31] This figure just combines the data from Tables 1 and 2.

[32] ADB 2004. This project has been funded by Asian Development Bank and Canadian Cooperation Fund in collaboration with Indonesian government through the ADB's Technical Assistance scheme. The goal of this project is to evaluate the effectiveness of alternative energy from CPO and Palm Oil Mills and see http://www.investorindonesia.com/koraninvestor/news.php?Content=22667

[33] Applicant investors/companies can propose for an IPK (timber harvesting permit) if the forest land they are planning to acquire is under the jurisdiction of the Ministry of Forests, as the Ministry has the authority to change the status of forests even of protection forests or national parks. Such irregularities have been exposed, for example, by WALHI Kalteng's investigation which found that 3 oil palm companies' concessions overlapping with Tanjung Puting National Park , Barito district, and villagers recorded an oil palm company logging standing forest in order to open up the plantation. Sawit Watch's satellite analysis in 2003 found that in West Kalimantan 12 oil palm concessions were opening up forests within the Danau Sentarum National Park, while the Meratus Mountains are also threatened from further logging by oil palm companies. In Bengkayang district villagers forcibly stopped PT AMP from further cutting remaining forests for oil palm plantation. It is common for ex-logging concessionaires to apply for oil palm concessions when timber stocks have decreased significantly and remaining profits can only be made by land clearance.

[34] World Bank 2001.

[35] Casson 2000.

Chapter 2

Towards Responsible Palm Oil Production

2.1 What is the RSPO and Its Standard?

The Roundtable on Sustainable Palm Oil (RSPO) is an initiative of some of the major palm oil industries and conservation organisations, which aims to use market mechanisms to reform the way palm oil is produced, processed and used. The organisation was created to counteract the campaigns of environmental organisations which present oil palm as a major threat to tropical forests and their inhabitants.

RSPO was established as a collaboration between leading actors in the palm oil sector, responsible for about one third of global Crude Palm Oil (CPO) production,[1] and major conservation organisations, notably WWF as part of its 'Forest Conversion Initiative'.[2] The business sector was keen that RSPO should counter accusations about the social and environmental damage of oil palm plantations, both by promoting the image of the palm oil sector as a responsible business and by setting standards for the industry to discourage these negative impacts. The RSPO is also explicit about its intention of encouraging a 'responsible' expansion of the palm oil sector to meet an expected near doubling of global demand for oils and fats in the next 20 years, implying according to the RSPO the 'need' for an additional 4-5 million hectares of oil palm estates.

Formally speaking the RSPO is an NGO incorporated in April 2004 under article 60 of the Swiss Civil Law. RSPO is a membership organisation open to oil palm growers, processors and traders, manufacturers, retailers, banks and investors, environmental and conservation NGOs and social / development NGOs. RSPO is governed by an Executive Board which comprises:

- 4 oil palm growers (1 for Malaysia (MPOA), 1 for Indonesia (GAPKI), 1 for smallholders (FELDA), 1 for the 'rest of the world' (FEDEPALMA))
- 2 Palm oil processors: (Unilever / PT Musim Mas)
- 2 Consumer goods manufacturers (Aarhus / Cadbury Schweppes)
- 2 Retailers: (Migros / Body Shop)
- 2 Banks/investors: (HSBC Malaysia / 1 vacant)

- 2 Environmental NGOs: (WWF-CH / WWF-Indonesia)
- 2 Social/Development NGOs: (Oxfam / Sawit Watch).[3]

RSPO aims to establish clear standards for the production and use of 'Sustainable Palm Oil' (SPO) and encourage trade in such to the exclusion of palm oil produced in more damaging ways. It seeks to this by:

- Developing a standard for SPO
- Getting this accepted by all RSPO members
- Encouraging RSPO members to reform practices of palm oil production and use, in conformity with the standard
- The Board of RSPO expects adherence to the standards to be voluntary.
- Claims to the production and use of SPO are to be monitored by accredited third party assessors.

The main activity of the RSPO to date has been to elaborate a standard of principles and criteria for 'Sustainable Palm Oil'. The initial draft standard was put together following the first Roundtable Meeting held in Kuala Lumpur in August 2003, by the interim board of the RSPO with the assistance of the UK-based forestry consultancy, Proforest, which was contracted by RSPO to help develop the standard. Proforest advised the Interim Board on the need for the establishment of a broader consultative body to develop the standard. The Board accordingly sought nominations to a Criteria Working Group (CWG), which was established in September 2004.

The CWG was a formal 'working group' of the RSPO ruled by its statutes with the task of developing principles, criteria and guidance on the RSPO standards and advising on the means by which claims to SPO can be verified. The CWG was made up of 25 persons (and their alternates) allocated as:

- 10 for palm oil producers (Pacific Rim Palm Oil Limited, IJM (Malaysia), IPOC (Indonesia), Unilever (UK), Unilever (Ghana), New Britain Palm Oil Ltd. (PNG), Agropalma (Brazil), CIRAD (France/Sumatra), FELDA (Malaysia), Dr Kee Khan Kiang (Malaysia)).
- 5 for supply chain and investors (Aarhus Ltd (UK), UniMill (Netherlands), Poram (Malaysia), PT Musim Mas (Indonesia), Daabon Organics (Colombia)
- 5 for environmental interests (WWF-Indonesia, WWF-Malaysia, Conservation International, WWF-US, Dr Gan Lian Tiong (Malaysia))
- 5 for social interests (Sawit Watch, Tenaganita, Oxfam, Partners with Melanesians, Zalfan Hohn Rashid (Malaysia).

The 25 persons were selected from among 70 nominations by scoring the votes of members of the Board. The CWG was numerically dominated by industry interests and excluded any direct representation of indigenous peoples, smallholders or trades unions or other organisations representing workers in the palm oil sector. Decisions at the CWG were by consensus, but a procedure existed for decision by voting in the case of contested decisions, by which decisions could be made by 3 out of 4 chambers having a majority in favour. The voting procedure was never used.

Following two meetings of the CWG and extensive public consultations, a second draft of the RSPO standard was made available for a further round of public comment during June and July 2005. The draft RSPO standard accepted the need for a 'triple bottom line' – social, financial and environmental.

Following the public consultations, a slightly modified version of the standard was elaborated by the Criteria Working Group in September 2005. This was submitted to the membership for consideration and discussion at the Third Roundtable of the RSPO held in Singapore in November 2005. The standard was then adopted at the Members Assembly by a vote of 55 in favour with only one abstention. The full text is set out in Appendix 1.

At the Third Roundtable it was also agreed that the new standard should be tested over a period of two years before any public claims to the production of RSPO approved palm oil could be made.

The social criteria of the standard include provisions requiring:

- Commitment to transparency
- Compliance with the law including ratified international laws and respect for customary law
- Demonstrable right to use the land and absence of legitimate land conflicts
- No diminishment or loss of customary rights without free, prior and informed consent (FPIC)
- Documented and acceptable systems for resolving disputes and achieving negotiated agreements based on FPIC
- Social assessments of the impacts of existing operations
- Implementation of health and safety requirements
- Open and transparent communications
- Assurances of acceptable pay
- Fair prices and appropriate training for smallholders
- Recognition of the right to organise and free collective bargaining
- Protections of child labour, women, migrant labourers and smallholders
- No forced labour or discrimination

- Contributions to local development where appropriate
- Participatory social and environmental impact assessments of proposed new plantings
- No new plantings on indigenous peoples' lands without FPIC
- Fair compensation of indigenous peoples and local communities for land acquisitions and extinguishment of rights, subject to FPIC and negotiated agreements.

The RSPO Principles and Criteria have been designed to ensure that palm oil developments are done right. Among the main social protections in the draft standard, the following are the key ones that the study sought to investigate:

- Criterion 2.1 There is compliance with all applicable local, national and ratified international laws and regulations.

The study thus sought to identify what are the applicable local, national and ratified international laws and regulations in Indonesia relevant to local people and land acquisition.

- Criterion 2.2 The right to use the land can be demonstrated and is not legitimately contested by local communities with demonstrable rights.

Through the case studies and interviews, the study sought to establish the means by which local communities can contest land acquisition and demonstrate their rights.

- Criterion 2.3 Use of the land for oil palm does not diminish the legal or customary rights of other users without their free, prior and informed consent.

- Criterion 7.5 No new plantings are established on local peoples' land without their free, prior and informed consent, dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions.

Likewise the case studies investigated: the extent of communities' legal and customary rights in land, what processes were taken to negotiate with the communities for the release of their lands to plantations and whether or not their free, prior and informed consent had been sought for such transfers.

- Criterion 7.6 Local people are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements.

Details about negotiated agreements were also investigated to establish what terms had been offered and whether these had been put into effect.

In sum, the study was designed to assess the standard to see if it offered adequate protection for communities and to contribute to an understanding of just how such a standard could be applied in Indonesia.

2.2 Indonesian Experiences with Including Human Rights in Certification and Legality Verification

Indonesia is not new to the idea that forestry standards should show consideration for the rights of indigenous peoples and local communities. Indeed, it was substantially because of concern about the way logging was being carried out in Indonesia and Malaysia without respect for human rights that strong social criteria were included in the standards of the Forest Stewardship Council (FSC). FSC principles and criteria include provisions requiring that forest operations: respect communities' legal and customary rights to land; ensure local communities control management on their lands; only delegate control to others with their free and informed consent; ensure there are effective mechanisms for resolution of disputes; protect sites of special social, cultural or economic importance; compensate indigenous peoples for use of their traditional knowledge; respect the rights of workers in accordance with the standards of the International Labour Organisation.[4]

Indonesian timber operations have faced some major difficulties complying with these standards mainly because the government has allocated concessions without regard for the rights of local communities and indigenous peoples. A study of the way the key principles and criteria relating to local communities and indigenous peoples apply in Indonesia, which was subsequently accepted by the FSC Board, found that the legal and policy framework in Indonesia makes compliance with the FSC standards very difficult. Custom and customary law are fundamental concepts in Indonesian law and are recognised in the Indonesian constitution and a number of laws. The laws however are contradictory and only hazily understood by most administrators. The study noted that:

> The Indonesian State lacks measures for securing customary rights to land and forests. Moreover, it also lacks legal provisions that facilitate exercise of the right of free and informed consent. On the contrary, the prevalent development model, administrative system and legal framework deny customary rights, disempower customary institutions, and encourage top-down forestry, all in violation of internationally recognized norms. The current Indonesian forest policy environment is difficult for, even hostile to, certification to FSC standards.[5]

Following up on prior research by ICRAF, the study carried out a compilation of forestry department records and found that only 12% of Indonesia's forests had been legally gazetted. Forests have thus been designated as State Forest Areas and allocated to companies without the required procedures designed to exclude areas where communities have rights in land.[6] Research also shows that even where forests have been gazetted, the legal requirement to get community endorsement of boundaries has not been fulfilled, implying that gazettement is legally questionable.[7] Subsequent research by ICRAF based on Ministry of Forestry data has likewise shown that only 8% of timber concessions in Indonesia have been fully delineated, meaning that most concessions are also technically forfeit. FSC principles have also been particularly hard to apply in Indonesia because the country has not developed a national interpretation of the FSC generic standard, meaning that no agreed verifiers have been developed to clarify how unclear or disputed criteria should be applied in the Indonesian context.

Indonesian civil society organisations have however developed a national system for timber certification under the auspices of a constituency-based organisation, *Lembaga Ekolabel Indonesia* (LEI). The LEI system also incorporates social criteria into its labelling scheme but, for essentially the same reasons as those following FSC procedures, Indonesian certifiers have only been able to identify a handful of forestry concessions worthy of certificates. Moreover there have been bitter disputes about several of the LEI certificates awarded, notably over the failure of LEI certified operators to respect the customary land rights of local communities.

Internationally, there has been growing concern about the amount of illegal timber being sold in international markets leading to calls for more effective forest law enforcement. Comparisons of data on the amount of lumber being processed in Indonesia timber and pulp mills with the annual allowable cut, have shown that over three times as much timber is being processed than could be expected. The implication is that some 60% of recorded timber has been harvested without a cutting permit.[8]

As part of a Memorandum of Understanding between the British and Indonesian Governments to promote forest law enforcement and combat illegal logging in Indonesia, and with funding from the UK's Department for International Development (DfID), The Nature Conservancy (TNC) developed a legality standard for timber products from Indonesia.[9] Based on a review of some 900 Indonesian laws related to forests, the legality standard requires compliance with a number of procedures designed to respect communities' rights, notably to their lands, forests and resources and to free, prior and informed consent, in the processes of gazettement of forest areas, provincial land use planning, delineation of timber licenses, carrying out social and environmental impact assessments (AMDAL), developing management plans to exploit licensed areas and implementing legally required benefit-sharing measures.[10] So far not one timber concession has been identified which can comply with these standards.

A simplified version of the TNC/DfID Legality Standard is now also being piloted by WWF-Indonesia as the first step in its programme to promote Phased Certification under the Global Forests and Trade Network, the local chapter of which is called Nusa Hijau. So far, Nusa Hijau has only been able to recruit a single member because most concessionaires are unable to demonstrate that their forests have been duly gazetted, concessions delineated and that communities have agreed to these boundaries.[11]

In sum, most certification procedures in Indonesia have sought to protect the rights of local communities and indigenous peoples to their lands and forests.[12] However, major failures in Indonesian laws and policies, and in the application of these laws, have meant that only a tiny amount of Indonesian timber products are actually being certified. Most timber harvesting operations in Indonesia are illegal and a major overhaul of forestry laws and institutions is required before these problems can be sorted out. Revision of the Forestry Law (UU 41/1999) is indeed part of the government's legal reform programme (PROLEGNAS 2005-2009).

Indonesia's experience with timber certification and legality verification has major implications for those now seeking to set standards for the palm oil sector. To be consistent with the requirements of the Indonesian Constitution and Indonesia's treaty obligations under international law, standards have to recognise the customary rights of local communities and indigenous peoples. Yet, in practice, few concessions conform to these standards or to existing law, as much because of lax adherence to the law by government officials as because of omissions by the companies concerned.

2.3 Problems for Inclusion of Smallholder Friendly Criteria

Of the 5.3 million hectares of land currently under productive oil palm in Indonesia, about one third are managed by smallholders, in Indonesia defined as those with holdings of less that 5 hectares.[13] Such smallholders include independent land owners choosing to grow oil palm on their lands, community members contracted by companies to plant oil palm on their own lands and supply the products to the same companies and transmigrants or local people relocated to oil palm areas, where they are assigned lands in palm oil estates (PIR). Whereas farmers in the first category can, notionally, choose to whom they sell their produce, typically, smallholders in the last two categories are tied into monopsonistic relations with the companies they supply. There have been persistent reports that such smallholders gain minimal remuneration for their produce, are trapped into debt to the companies, are often defrauded of their lands and suffer human rights abuses when they protest their circumstances.[14]

Smallholders face a number of major technical constraints which limit their autonomy as independent producers. Land preparation is onerous and often requires the installation of drainage canals, terracing and roads, usually best done by machines. Oil palm seedlings are costly and tend to be supplied by major oil palm companies. Palms only become productive after three to five years and only become profitable after about eight. Oil palms often or usually require treatment with fertilizers and pesticides. Few farmers can afford these machines, investments and delays in income returns without taking out loans, usually from or through oil palm companies. Few smallholders can afford their own vehicles to transport fresh fruit bunches (FFB) of oil palm to mills. The quality of FFB rapidly declines if fruits are left unharvested. FFB need to be conveyed to and processed by mills within 48 hours of harvest if their yield and quality are not to decline. The establishment of palm oil processing mills requires lumpy investments. Mills are rarely economic without a minimum of 4000 ha. of productive oil palms, and most mills require between 10,000 and 40,000 ha.[15] Prices for Crude Palm Oil (CPO) on international markets can vary widely and overall have declined by two thirds since 1960.[16] For all these reasons, smallholders tend to be tied, often by debt and by technical constraints, to large palm oil concerns, limiting their ability to negotiate fair prices or manage their lands according to their own inclinations.

Smallholders also lack the time, skills and resources to develop and document the management plans required by independent assessors as evidence that they are looking after their crops and lands in conformity with standards. Smallholders can rarely afford the costs of independent certification itself, while economies of scale make this investment proportionately much less daunting to large estates.

These circumstances make it unclear how RSPO standards should be applied to smallholders. Should it be those plantations and mills which buy from smallholders who should shoulder the costs and responsibilities of compliance and of audits, thereby intensifying the patron-client relationship between smallholders and large operators? Or should the smallholders shift for themselves?

In the case of timber certification, where the constraints of scale are not so marked, there has nevertheless been a widely noted tendency for certification to favour large-scale operators at the expense of small ones.[17] Although the FSC has made a sustained effort to simplify compliance and reduce or spread the costs of audits, through techniques such as 'group certification', assessments show that small-scale producers still face major obstacles meeting the requirements of the scheme.[18] The reality is that certification does favour economies of scale.

Negotiating acceptable standards for palm oil suited to smallholders is thus not going to be easy. The situation is compounded by the fact that RSPO only issued translations of its draft standard in Bahasa Indonesia in July 2005, too late for Indonesian smallholder organisations to participate in the public consultations.[19] Moreover, few smallholders are organised into representative institutions in Indonesia creating major challenges to those seeking to include smallholders in the standard-setting process.

In recognition of these difficulties, at the RSPO Members Assembly in 2005, it was agreed that a Task Force on Smallholders should be set up with the major objective of reviewing the situation of smallholders, ensuring their effective participation in RSPO discussions and suggesting revisions to the RSPO standards and guidance to ensure they suit smallholders.

The case studies which follow, in Chapter 4, provide further insights into some of the problems faced by smallholders in Indonesia. However, much more still needs to be done if oil palm estates are to contribute to community development rather than become poverty traps.

Endnotes:

1 Ministry of Agriculture, Nature and Food Quality, 2006, Report Workshop on Sustainable Palm Oil, 1st March 2006, The Hague: 2.

2 WWF and industry members are also promoting a parallel initiative named the Roundtable for Sustainable Soy Production. The Forest Conversion Initiative works 'in partnership with stakeholders that are taking on the responsibility of finding economically viable solutions, committed towards producing and purchasing products from well-managed sources that have not contributed to the loss of valuable tropical forests and that respect the rights of indigenous peoples and forest communities' Diemer and Roscher 2004.

3 http://www.sustainable-palmoil.org/governance.htm#RSPO_Executive_Board

4 www.fscoax.org

5 Colchester, Sirait and Wijardjo 2003:18.

6 Conteras-Hermosilla and Fay 2005.

7 De Foresta 1999.

8 Tacconi, Obidzinzki and Agung 2004.

9 SGS/TNC 2004.

10 Colchester 2004. Even the concessionaire that has been accepted as a member of Nusa Hijau is not fully legal, as an audit by Smartwood recently confirmed (Smartwood 2005; Colchester 2006)

11 WWF, GFTN, Nusa Hijau 2005.

12 In 2004, LEI developed a much weaker standard for assessing the legality of harvested timber, which does not incorporate the same requirements regarding gazettement, delineation and community consent. It is not yet clear whether LEI plans to apply this standard widely (LEI 2005).

13 DTE 2004. DTE notes that oil palm smallholdings cover some 1.8 million hectares of land in Indonesia and produce some 30% of the nation's FFB.

14 Ecologist 1986; ELSAM 1996; Anon. 1998; Kusnadi 1998; Anon. 1999a, 199b; Kusmiranty 2000; Sution 2000; Wibisono 2001; Bider 2001; Pramono 2001; Titus 2004; DTE 2005; Dominikus 2005; Paraka 2005.

15 Clay 2004:208 notes that in 1960 the mean price per ton of CPO was US$1,120, a price which had declined to US$307 by 2000.

16 Clay 2004:215.

17 Thornber and Markopoulos 2000; Rezende de Azevedo 2001.

18 Molnar 2003.

19 A Bahasa Indonesia translation of the draft standard was only issued in late July after the consultation period was almost over. www.sustainable-palmoil.org

Chapter 3

The Normative Framework - Land Acquisition for New Plantings

The core of this study (section 4) examines the realities of land acquisition in Indonesia by looking at the operations of six different companies in three provinces. However, to make sense of this information it is first necessary to explain in some detail the policies, laws and procedures by which lands are allocated and acquired in Indonesia by the State, private companies and local communities. This section thus summarises: the kinds of companies operating in the palm oil sector; the way government policies towards the oil palm sector have evolved; changing government policies towards indigenous peoples; existing measures to secure customary rights; procedures for acquiring lands for plantations and, finally; procedures for converting forest lands to estate crops.

3.1 Types of Oil Palm Companies

There are several types of estate crop companies recognized in Indonesian law, which vary in terms of their size and the form of ownership. To complicate matters, as related later, the different types of companies also have different obligations, and have to go through different procedures, in the processes of land allocation and land acquisition.

Large-scale companies: Large-scale companies are distinguished by whether they are State- or privately owned. State-owned companies, referred to as *Perusahaan Terbatas Perkebunan Nasional* (PTPN), are para-statal companies, wholly owned by the State, which operate in all parts of Indonesia in the exploitation of a wide range of natural resource products, such as tea, cinnamon, cloves and palm oil. Palm oil is still the largest and the most profitable product produced by these state-owned companies. PTPN companies are run wholly on business lines and their staff are recruited on a professional basis.[1] PTPN used to control the majority of oil palm plantation land in Indonesia, and it still has a total concession area of about 770,000 ha.,[2] but its dominance has now been eclipsed by large-scale private operators.

There are two major types of privately owned companies operating in the palm oil sector in Indonesia distinguished by the form of their ownership.

1. The first kind are privately owned companies, in which more than 50% of the shares are owned by Indonesians. Some of these are listed on the Jakarta or Surabaya stock exchanges. Where there are foreign owners holding less than 50% of the shares, these are referred to as join ventures and are regulated through the national or local offices of BKPM (*Badan Koordinasi Penanaman Modal* - Investment Coordinating Board).
2. The second kind of companies are those which are more than 50% owned by foreign investors. Most of these companies are listed on international stock exchanges and operate as multinational companies.

As detailed in section 4 of this report, the study examined all three of the above kinds of large-scale companies, all of which operate on 'State land' and all of which are regulated through various permits both nationally and locally.

Medium-scale companies: There are also medium-scale companies, the number of which is now diminishing in Indonesia. These companies are also little researched, are subject to lighter regulation, and the details about them are not recorded in national bureaux. Such companies are formed as collectively-owned cooperatives or are owned by single individuals. These may operate either on 'State land' or on private land. Commonly these operations are established close to large-scale operations to which products are marketed for milling or transport. These medium scale companies tend to use the same oil palm hybrids and plantation management techniques as large-scale operations.

Small scale plantations: Small scale plantations are those covering less than 25 hectares which are mostly owned by single farmer households. Small-holdings may be established by a number of means. Some are established as individually operated smallholdings, known as '*plasma*', in association with large-scale operations which also contain extensive areas, known as '*inti*', operated directly by the companies, and are known in English as Nucleus and Smallholder Estates (NES) and in Bahasa Indonesia as *Perkebunan Inti Rakyat* (PIR). There are a number of variations of the NES model, and some are supplied with human resources in form of migrants moved from central Indonesia to the 'outer islands' under the State-sponsored Transmigration programme (PIRBUNTRANS). Areas of extensive smallholdings can also be established directly through government credit schemes, as well as through farmers' own initiatives (*swadaya*).

This study only examined the land tenure situation of smallholdings established as *plasma* alongside large-scale operations and did not examine the land acquisition processes of independent medium and small-scale growers.[3]

3.2 Government Policy on Palm Oil Development

Based on an analysis of the evolving legislation on plantations, it is possible to identify five phases in government policies for palm oil development in Indonesia. We shall call these the PIR-Trans phase (up until October 1993), the Deregulation Phase (1993-1996), the Privatisation Phase (1996-1998), the Cooperatives Phase (1998-2002) and the current Decentralization Phase (2002-2006). It should be noted, however, that these phases were neither wholly discrete nor did the initiation of a new phase imply the ending of the previously launched processes.

PIR-Trans: Before October 1993, Government efforts to establish oil palm plantations were centred on taking over forested areas on the Outer islands and allocating these areas to PTPN operators, which controlled both *inti* and *plasma* holdings, supplied with a workforce and smallholders through the Transmigration programme. Laws were passed in 1986 and 1990 designed to ensure better coordination between government agencies and so speed up the process of permitting required to release forest lands for conversion. Control of forests remained centralized with regional forestry offices (*Kanwil Kehutanan*) only being authorised to release up to 100 ha. for plantations.[4]

During this period, resident communities' customary rights in land were often not recognised. Instead indigenous peoples were inserted into the Transmigration schemes either by being resettled as Transmigrant villages made up of local people (*Translok*) or by being slipped into mixed settlements (*Transmigrasi sisipan*) comprising local people and State-sponsored migrants from Java, Madura and Bali. Most PIR-Trans schemes allocated only 2 hectares to each Transmigrant family, half of which they were expected to plant with rice and half of which was to be developed as oil palm to supply the mills established alongside the nucleus estate. Migrants complained of sub-standard housing, low prices for fresh fruit bunches of oil palm (FFB) and long delays in the payment of wages, settling debts and transferring land titles.[5]

Deregulation Phase: In October 1993, the government passed two laws as part of a National Deregulation Policy Package.[6] The overall aim of the policy was to give local governors greater authority to promote regional development, while seeking to ensure that private companies had a long term commitment to the areas they were investing in. Under these laws, Governors could issue permits for the conversion of forest areas up to 200 hectares, while areas over 200. hectares remained the responsibility of the Directorate General of Estate Crops in Jakarta. Private companies applying for forest conversion permits, on the other hand, were not allowed to transfer ownership of leaseholds so secured.

Privatisation Phase: The final years of the Suharto dictatorship saw a concerted drive across several sectors, including estate crops, to privatise para-statal companies, encourage

private sector initiatives and facilitate foreign direct investment. A number of laws were passed designed to accelerate estate crop development in this way and ensure fair play between companies. The procedures by which companies secured permits for developing estates were clarified – a temporary, one year, start-up permit (*ijin prinsip*), which could be converted to a permanent permit (*ijin tetap*) and to which an expansion permit could be added (*ijin perluasan*).[7] Requirements were introduced to ensure that companies planning to convert forests first secured the consent of any logging companies with logging permits (HPH) over the same areas.[8] A new law also clarified that forest lands cleared and planted with estate crops were to be classified in Provincial Spatial Plans as agricultural lands but with no rights to plantation permits attached.[9]

Cooperatives Phase: The fall of the Suharto regime resulted in an era of reform (*reformasi*) which allowed politicians with alternative ideas about rural development to gain power temporarily. Efforts were made to encourage models of development that would allow local communities to benefit more directly from lands and natural resources. While a law was passed prohibiting forest conversion in protected forests (*hutan lindung*), so harmonizing local and regional spatial planning procedures,[10] a decree was passed to allow three-year plantation permits (*ijin usaha perkebunan*) to be granted to cooperatives for areas up to 1000 hectares by provincial Governors or up to 20,000 hectares by the central Ministry of Forests and Estate Crops.[11]

Decentralization Phase: The fall of Suharto also ushered in a period of radical political change in Indonesia, whereby far greater powers to control lands, resources and to administer regional budgets were entrusted to local governments and legislatures. Since 2002, these changes have also had some impact on the development of the palm oil sector, while still limiting local authorities to encouraging medium-scale plantations. A new law allows district level regents (*bupati*) to issue permits of up to 1000 hectares, while any areas overlapping district boundaries remain the prerogative of Provincial Governors. However, authority to issue permits of over 1000 hectares was entrusted to the Ministry of Agriculture. Moreover, responding to concerns about the rate at which forests were being cleared for plantations even though vast areas of degraded lands were available for planting, in 2005 the Government passed another law establishing a moratorium on forest conversion for estate crops.[12]

The moratorium was introduced following the signing of a letter of intent between the Government of Indonesia and the IMF, although this did not make clear for how long the moratorium should be maintained and whether it referred to a moratorium on actual conversion of forest cover or a moratorium on changing the status of forest lands to allow planting. In February 2005, the Ministry of Forests released two contradictory circulars to the local government. One stated that the moratorium was still effective, while the other stated that in order to optimise the use of forest land for estate crops the Ministry would

evaluate proposals for conversion on their merits. The same split views can be discerned in the way the Ministry has responded to the proposal to establish 1.8 m. ha. oil palm plantation in the heart of Borneo.[13]

3.3 Government Policies Towards Indigenous Peoples' Institutions

In Indonesia, there are continuing debates about the terminologies applied to self-governing, customary law communities in the various government laws, which directly or indirectly regulate their affairs.[14] Various Indonesian terms are employed to refer to these peoples such as *masyarakat suku terasing* (alien tribal communities), *masyarakat tertinggal* (neglected communities), *masyarakat terpencil* (remote communities), *masyarakat hukum adat* (customary law communities) and, more simply, *masyarakat adat* (communities governed by custom).[15] The term 'indigenous peoples' is the closest term in common usage in international law and policy making to refer to these peoples.

Ideally, the relationship between indigenous peoples and the State should be constituted through a balance of rights and obligations. Indigenous peoples transfer some of their authority to be self-governing to the State in order to improve their welfare, thus legitimating the right of the State to control indigenous peoples by established laws.[16]

The basic regulations on indigenous peoples in Indonesian 'positive' laws have resulted from a compromise negotiated among the founding fathers of the Nation in drafting the Constitution. After protracted debates, the recognition of indigenous peoples was declared through Article 18 of the 1945 Constitution which recognised that Indonesia should be formed of the existing polities – large and small – including the special administrative regions previously recognised by the Dutch, with their customary rights.[17] The explanatory note to this Article states that:

> In Indonesian territory, there are ± 254 *Zelfbesturende Landschappen* and *Volksgemeenschappen* such as villages in Java and Bali, *Nagari* in Minangkabau, *kampung* and *Marga* in Palembang and so forth. These regions retain their original institutions and are thereby considered as special regions. The National Republic of Indonesia respects the existence of these regions and all these regions' regulations that relate to their original rights.

The Constitution was amended in 2002, and the current Article 18b notes:

> 1) The state recognizes and respects special or specific local government institutions that are regulated by laws.

2) The state recognizes and respects customary law communities with their traditional rights, as long as they still exist and accord with community development and the principles of the Unitary State of Republic of Indonesia, as regulated by law.

In 1979, there was a fundamental restructuring of the State's relationship with these self-governing communities through the passing of the Village Administration Act.[18] The law imposed a Javanese model of village administration on all the communities of the whole archipelago and was passed by the New Order regime in order to unify the country and effectively assert the authority of central government. It resulted in customary institutions losing their authority and weakened the social ties that had bound together customary law communities until that time. Customary law systems of self-governance outside Java, accepted up to that time, such as *Nagari* in Minangkabau, *Kampong* in West Kalimantan, *Negeri* in Maluku, *Lembang* in Toraja and *Marga* in South Sumatra, were no longer recognised.

One of the important impacts of the Village Administration Act was that it subordinated all villages to a single common bureaucratic structure that was imposed throughout Indonesia. Villages were often regrouped and were all renamed by the Javanese term *desa*. Each *desa* was run by a village head (*kepala desa*) who was placed under the control of the head (*camat*) of the sub-district (*kecamatan*). These changes led to widespread protests and demands for repeal of the Act.[19]

With the fall of the militaristic New Order regime in 1998, there were strong public calls for a change in the system of administration. The new government responded by passing the 1999 Regional Autonomy Act,[21] which initiated a radical process of decentralization in Indonesia. The Act specifically noted that the 1979 Village Administration Act was unconstitutional, failed to respect the rights of self-governing communities, and should be replaced, thus re-opening the possibility for indigenous peoples to govern themselves according to customary law and customary institutions.

As Rikardo Simarmata has noted,[21] some district legislatures have responded to the Regional Autonomy Act by passing district regulations (*perda*) that recognize the existence of *desa, marga, huta, pekon, lembang, kampung*, and other local structures. For instance, the Toraja district legislature, in South Sulawesi Province, enacted a *perda* in 2001, re-establishing the traditional institution of the *lembang* as a self-governing authority.[22] Some district legislatures in Central Kalimantan province have likewise taken similar initiatives to recognise the customary authority of *kademangan*.

Moreover, although the Act emphasizes autonomy at the district level, the West Sumatra provincial legislature enacted a law re-establishing *Nagari* as self-governing entities.[23] Some of these new laws explicitly confer on indigenous peoples the right to control their natural resources. The new laws in West Sumatra, for example, recognise *Nagari* control of *Nagari* territory, *Nagari* governance and *Nagari* 'properties'.[24]

After being implemented for more than five years, Law No. 22 of 1999 was replaced by Law No. 32 of 2004 regarding Regional Autonomy. The new Law was passed hastily without real debate or prior evaluation of what had been achieved under the law it replaced. The new law somewhat restricts the scope for community self-governance and has been interpreted as an attempt to re-centralize government authority at the village level by subordinating the authority of village-level representative bodies (*Badan Perwakilan Desa*) to the village head (*Kepala Desa*), in turn clarifying that they are subject to the district regent (*bupati*).[25] Under this revised law, the village head and village secretary again become civil servants, but it is not clear how this law now relates to areas where the *desa* structure has now been replaced by customary institutions. Furthermore, although this law has subordinated customary institutions to the local administration, it does not question their existence.

3.4 Laws Relating To Customary Rights In Land

The highest law regulating agrarian and natural resources management is Article 28H of the constitution which protects the right to property. Paragraph 4 notes:

> Every person has the right to own property and this property can not be taken… from them by anybody.

Moreover, Article 28I of the constitution specifically protects the right of customary communities. Paragraph 3 notes:

> The cultural identity and the rights of traditional societies shall be respected in accordance with this age of progress and human civilisation

These two articles can be understood as explicitly protecting the rights of indigenous peoples to their lands and resources but is in tension with Article 33 of the Indonesian Constitution of 1945, which legitimates the right of the State to regulate and manage natural resource use. Article 33 states:

1. Economic matters are managed as common efforts based on family principles.

2. Productive activities related to natural resources, which have importance to the State and significance for the livelihood of the Indonesian people, will be managed exclusively by the State.
3. The earth, water and natural resources are under the control of the State and should be utilized for the maximum welfare of the Indonesian people.
4. The national economic system should be conducted in accordance with the following principles: togetherness, equitable efficiency, sustainability, environmental friendliness, independence, and balancing progress and national economic unity.
5. The implementation of this article will be regulated by further laws.[26]

The Basic Agrarian Law (BAL) of 1960,[27] accords with these Constitutional provisions. Thus, it seeks to reconcile rights to natural resources under customary law, commonly referred to as *ulayat* rights, with inherited colonial legal concepts related to land. Article 3 of the BAL thus states:

> … *ulayat* rights and other similar rights of customary law communities should be recognised, as long as these communities really exist, and [the exercise of these rights] is consistent with national and State interests, based on the principle of national unity, and is not in contradiction with this law and higher regulations.

Likewise, Article 5 of the BAL states that:

> Customary law applies to the earth, water and air as long as it does not contradict national and State interests, based on national unity and Indonesian socialism, and also other related provisions of this law, in accordance with religious principles.[28]

Based upon these provisions, the State justifies itself as the single source of legitimacy for determining the ownership of agrarian and natural resources, in effect giving the government the authority to determine whether indigenous peoples still exist or not and to take over natural resources from indigenous peoples by extinguishing *ulayat* rights.

The explanation of Article 5 of the BAL notes:

> Firstly, application of this regulation should commence with the recognition of *ulayat* rights in accordance with this new agrarian law. Although in reality *ulayat* rights exist and have been taken into account in judges' decisions, *ulayat* rights have never been formally recognized in law. Consequently, *ulayat* rights were often ignored in the application of agrarian laws during colonial era. The BAL recognizes *ulayat* rights, to ensure that these rights will be respected, so long as the

> corresponding customary law communities continue to exist. For instance, the process of granting rights over the land (e.g. a business utilization right - HGU) to communities should start with a hearing process and they would be granted recognition, if [it is determined that] they have the right to receive it as *ulayat* rights holders.
>
> Nevertheless, it is not acceptable for customary law communities to invoke *ulayat* rights to oppose business utilization rights, since such concessions are granted in certain regions to serve the wider interest. It is also not acceptable for customary law communities to use their *ulayat* rights to oppose development projects, for example opposing forest clearing for generating local income or resettlement programs. Indeed, in many regions, development programs are often hampered because of *ulayat* rights. These circumstances are the basic reason for the stipulations in the regulation (Article 3) mentioned above. The interests of customary law communities should be subordinate to national and State interests and the exercise of *ulayat* rights should also conform to the wider interest. Nowadays, customary law communities are not allowed to absolutely maintain their *ulayat* rights, as if they were isolated from other communities and other regions of the State. This kind of action is in contradiction to the main principle stated in Article 2 and will hamper big business development in support of the welfare of the people. As has been explained above, this does not mean that the interests of customary law communities will not be considered.[29]

Since then the law, and the policy behind it, have been strongly criticised for failing to adequately protect the rights of customary law communities. Furthermore, few regulations have been passed to clarify how the State should recognise the ownership rights of indigenous peoples. On the contrary, subsequent regulations have only strengthened the right of the government to control and manage land and natural resources.[30]

After the fall of Sukarno (1966),[31] the New Order government consciously ignored the *ulayat* rights of indigenous peoples. The BAL was indirectly frozen, since it was not taken into account in developing the Basic Forestry Law (BFL) and Basic Mining Law and their implementing regulations.[32] Neither of these two new laws recognizes indigenous peoples' ownership rights. The BFL effectively treats forests as if they were empty, even where they have been occupied for thousands of years, and subordinates all use and access rights to forestry exploitation.[33] To overcome local resistance to logging operations an enabling regulation was passed in 1970 according to which:

> The rights of customary law communities and their members to harvest forest products based on customary law may be exercised, so long as those rights still exist, but they should be regulated so the exercise of these rights does not hamper the exploitation of forest concessions.[34]

The Basic Mining Law likewise implies that, if there is conflict over the land between local people and concessionaires, the people should give way, even in the case where local people have their own [small scale] mines.

In 1999, after the fall of the authoritarian New Order regime, the government realized its mistake and responded to the demands of indigenous peoples for recognition of their rights by passing a regulation aimed at clarifying how *ulayat* rights should be recognised.[35] The regulation sets out three criteria according to which specified lands can be classified as *ulayat* land, namely that there is a legally defined community, which still observes customary law in its daily life, and has effective customary law institutions which regulate, control and use *ulayat* land. The regulation has been criticised for unduly limiting the circumstances under which *ulayat* rights can be recognised and for allowing *ulayat* lands to be acquired for 'public' purposes, such as the issuance land utilization rights (*hak pakai*) granted to individuals and business utilization rights (*hak guna usaha*) granted to corporations.[36] The same year, the Basic Forestry Law was replaced but the new law, though it recognises a new category, 'customary forest' (*hutan adat*) defines these as areas within State Forest Areas, which are explicitly defined as areas with 'no rights attached'.[37]

The continuing lack of effective recognition of indigenous peoples' rights in Indonesian land and natural resource laws remains a major source of controversy. During 2000-2001, a strong mobilization of members of the legislature and supportive civil society organisations led the House of Representatives (MPR)[38] to issue a Legislative Act calling for the revision of the Basic Agrarian Law, the Basic Forestry Law and other natural resource laws in order to offer communities security in land and lessen land conflicts. The Act explicitly recognizes and respects the rights of indigenous peoples over land and natural resources.[39] Unfortunately, numerous laws passed since that date have failed to take this Act into account. New laws on Forestry, Land Reform and Natural Resource Management are still part of the government's legal reform programme (PROLEGNAS) and, technically, should conform to the Legislative Act.

3.5 Land Acquisition In Non-forest Areas

3.5.1 Basic Legal Principles for Land Acquisition

Land acquisition processes in Indonesian law derive in large part from legal procedures introduced in the colonial era to promote foreign investment, capitalist production techniques and international trade. Alongside the *Cultuurstelsel* system (forced planting) implemented by General Governor van Den Bosch in 1830, which obliged local people to labour in the colonial government's plantations, the colonial government declared that all unclaimed land and forest areas were the domain of the State (*domein verklaring*).

Although the application of this principle outside Java was disputed by more liberal Dutch lawyers,[40] within Java and a few other areas, like West Sumatra, the principle was affirmed, whereby lands not under clear ownership were treated as unoccupied State lands.[41] The law directly overrode customary systems of land ownership, according to which rights in fallow lands and secondary forests were retained by whoever had first cleared the land, in favour of private plantation companies.[42]

In applying the law in practice, the Dutch government in West Sumatra realized that their desire to annex lands was incompatible with Minangkabau realities. Considering the strong challenge from Minangkabau people toward the *domein verklaring*, the Dutch Government added wording to the amended decree acknowledging the right of people to open up land for their own needs. The law therefore also recognised that before acquiring such lands an interested party should negotiate with the *penghulu* (customary chief) of the *Nagari* (customary jurisdiction).[43] However, the West Sumatra authorities could not completely block application of the colonial government's policy.[44]

The regulation thus achieved its goal. By 1938, there were 2,500,000 hectares of land in the Dutch East Indies under the control of 2,400 plantation companies. Most of those companies belonged to huge companies or cartels that coordinated their operations.[45] These agrarian policies of the Dutch systematically weakened the social and economic position of the villagers. Farmers who had owned land became labourers and landless or land poor peasants.[46] Although the *domein verklaring* influenced subsequent Indonesian laws related to land acquisition, its legitimacy has been strongly contested.

A second controversial principle of Indonesian law concerns the 'controlling right of state' (*Hak Menguasai Negara*), a constitutionally endorsed power of the independent Republic of Indonesia to regulate and manage the country's natural resources. First articulated in the 1945 Mining Act and echoed in Article 2 of the Basic Agrarian Law, the principle grants the State authority to regulate, operate, classify, utilize, reserve and preserve natural resources for the benefit of the people, including deciding on and regulating the legal relations between people and natural resources.[47]

In common with most other jurisdictions, which assert the principle of 'eminent domain', under Indonesian Law lands can be acquired in the public interest against the wishes of prior owners. In most countries, however, the laws distinguish clearly between lands acquired for public purposes, in which owners have the right to due process and compensation, and lands acquired for private purposes in which the owner also has the right to refuse sale. Under Indonesian land laws these distinctions are blurred because all land tenures are subject to the test of performing their social function. Tenures are thus relatively insecure and even development projects consonant with the achievement of government-set targets can be considered to be of 'public interest', even where the direct beneficiaries are private corporations.[48] Article 18 of the BAL states that:

> Rights over land can be revoked, while giving adequate compensation based on procedures regulated by laws, in the public interest including the interests of the State and the interests of the Nation.

Indeed, in the early years of Indonesia's independence lands were appropriated for development with little reference to local opinion or rights, leading to considerable rural conflict.[49] In recognition of the ensuing abuses, laws regarding land acquisition have been progressively strengthened to ensure fair compensation, negotiated sales and local consensus.

To clarify the application of Article 18 of the BAL, the government passed Law No. 20 of 1961, on the 'Revocation of Rights over the Land and the Goods above It'. This law is considered to be the first regulation of post-colonial Indonesia aimed at facilitating land acquisition for development purposes, up until that time still regulated by colonial laws.[50]

In General Explanation No. 4(a) of Law No. 20 of 1961 it is stated:

> In general, according to Article 18 of the BAL, the revocation of rights may be executed for state businesses (central and local government) in order to serve public interest. However, this law opens the possibilities to revoke the rights for private purposes, based on agreement with the owner. The private sector plan should certainly have been agreed by the government and be in accordance with the national development plan. For example, the development of roads, harbours, buildings for industries and mining, houses and health care facilities and other national development projects.

The law gave authority to the President to revoke rights in land, and required interested parties to apply for application of the power through the Agrarian Ministry. However, after 12 years, the law was amended to try to deal with some of the problems caused by the misinterpretation and misuse of the notion of the revocation of rights over land in the public interest. Presidential Instruction No. 9 of 1973 accordingly stated that land revocation for public interest should be performed carefully through wise and fair methods. Development activities that could be included within the scope of the 'public interest' were activities related to: the State and the Nation's interest; wider society's interest; the people's interest and; the development interest. The Instruction also determined that such public purposes included: defence; general public works; public facilities; public services; religion; science and art; health; sport; disaster management; social welfare; graveyards; tourism and recreation and; economic businesses for pubic welfare. In addition, the President also had sole power to decide what other activities could be included in the category of 'public interest'.[51] In effect, these laws gave the State unusually wide powers to expropriate rural properties in the name of national development and, since plans to expand plantations

were part of national development plans, paved the way for plantations to be imposed on community lands, even against the expressed wishes of local people.

Following an international controversy about the way Javanese peasants had been dispossessed to make way for the World Bank-funded Kedung Ombo Dam, in 1993, the government issued Presidential Decree No. 55 of 1993 on land procurement for development for public purposes. In place of the notion of revocation of rights over land, the decree clarified that land acquisition procedures should apply to any activity to obtain land and should be accomplished by giving compensation to the land owner and by leasing or transferring rights over land to the new user. Compensation for such expropriations should be established by consensus. Meanwhile, the public interest was defined as the interest of the whole society. The decree narrowed the scope of land acquisition for public purposes, while making clearer that land acquisition for other purposes should be implemented through sales, exchanges, or other methods that were agreed between contracting parties.

According to this decree, lands could only be so acquired for 'public purposes', if the development plan was in accordance with existing Land Use Planning. Development activities based on Presidential decree should be carried out by the government on a not-for-profit basis for activities such as: public roads, water channels, reservoirs and other irrigation facilities; public hospitals and other public health centres; harbours, airports or terminals; mosques, churches and so forth; schools or other education facilities; public markets; public graveyards; public facilities, dykes for flood and disaster prevention; postal services and telecommunications; sports facilities; television and radio stations with their supporting equipment; government offices; army facilities and; development activities for other public interests.

This Presidential Decree affirmed the need for discussions with the community in order to lease lands for the common interest, according to a free exchange of views and expression of the positions of rights-holders and those who need land on a voluntary basis, with the aim of reaching an agreement on the form and amount of compensation.

Article 11 of the Decree specifies that land procurement for development for public purposes should be conducted through consensus mechanisms with the following requirements:

- The consensus should be directly negotiated between the land rights holders and the Government Agency which needs the land,
- In case the land right holders are unlikely to reach an effective consensus, a Land Procurement Committee should be established. This committee consists of the Government Agency and the appointed representatives of the rights holders, who will act as their proxy,

- The consensus should be led by the Chairman of the Land Procurement Committee,
- The consensus should be negotiated at a place mentioned in the invitation letter.

These are the key laws governing most of the land acquisitions that have been the subject of the six case studies presented in Chapter 4. However, on 3 May 2005, the President of the Republic of Indonesia, Susilo Bambang Yudhoyono, signed Presidential Regulation No. 36 of 2005 on Land Procurement for Development for Public Purposes, which replaced Presidential Decree No. 55 /1993.

This new Presidential Regulation specifies that land procurement is an activity to obtain land by giving compensation to those who release their rights over their land, buildings, plants, objects relating to the land or who revoke their right over the land. Pursuant to this decree, the releasing or revocation of the right over the land is an activity to release legal relations between the right holders and their controlling right upon their land, with compensation agreed by consensus. Exercise of this right is intended for the public interest, meaning the interests of the majority of the people.

Relinquishment of land rights should be carried out based upon a consensus between the rights holders and the government. However, if any dispute arises, the government may unilaterally set the compensation and entrust the compensation money to a district court. In addition, the consensus should be negotiated directly between the right holders, the land procurement committee, and Government agency or respective local government. In case there are numerous land rights holders who are unlikely to reach an effective consensus, then the negotiation should be conducted by the Land Procurement Committee and Government agency or regional government requiring the land and representatives appointed by the land rights holders, who act as their proxy. The appointment of the representative or proxy of the land rights holders should be written, duly stamped and acknowledged by the Village Head or by power of attorney drawn up before appropriate authorities.

There are various objects of public interest including: public roads, toll roads, railways (over land, above the land, or underground); water supplies, drainage and sanitation; reservoirs, dams, dykes, irrigation, and irrigation buildings; public hospitals and people's health centres; seaports, airports, railway stations and terminals; houses of worship; education facilities or schools; markets; public funeral facilities; public safety facilities; telecommunications; sports facilities; radio and television stations, broadcasting equipment and supporting facilities; government offices, regional government offices, foreign representatives offices, United Nations buildings, and those of international institutions under the United Nations; facilities for the Indonesian Armed Forces and the National Police of the Republic of Indonesia based on their main tasks and function; prisons; low price settlements; garbage disposal points; nature reserves and cultural reserves; parks; social institutions; and facilities for the generation, transmission, and distribution of

electricity.[52] It is not clear that this new law applies to land acquisition on behalf of the private sector in accordance with State development plans, nor has the ruling yet been tested in the courts.

In sum, the regulations relating to land procurement for development for public purposes place severe limitations on community rights of land ownership. Where a public interest can be demonstrated, something that is widely interpreted in Indonesian law, ownership may be revoked and the community has no right to stop land acquisition by the government. It only has a right to fair compensation for the lands so appropriated, following a negotiation aimed at achieving agreement.

3.5.2 Licensing Plantations in Indonesia

When the modern state of Indonesia was established, a large number of plantations established by colonial authority already existed. However, in accordance with Law No. 86 of 1958 regarding Nationalization of Dutch Companies,[53] these plantation companies were taken over by the Government as state-owned companies. The law was further regulated by Government Regulation No. 2 of 1959 regarding Law Enforcement Principles on the Nationalization of Dutch Companies. This government regulation set out criteria for the kinds of Dutch companies that should be nationalized and established the nationalization procedure.[54] Further regulations were issued listing the companies thus taken over by the State. For example, pursuant to Government Regulation No. 2 of 1959, the government issued Government Regulation No. 4 of 1959 on Nationalization Criteria of Dutch Tobacco Agriculture/Plantation Company, which listed some 38 tobacco companies that should be nationalized.

Prior to the BAL of 1960, these plantation companies' rights over land were defined by Dutch laws as rights of *Erfpacht* and *Consessie*. Under the BAL, however, *Erfpacht* rights were converted into maximum 20 year leaseholds on State lands, while *Consessie* rights holders could apply to confirm their concession rights. If such rights were not applied for, or the applications did not comply with the requirements of the Agrarian Minister, they would lapse after a maximum of five years.[55] As far as this study could determine, there are no longer any plantations in Indonesia claiming rights in land under Dutch law.

Most large oil palm plantations have been established in Indonesia under the BAL by which companies are awarded temporary rights of exploitation or cultivation for periods initially of 35 years extendable for 25 years. These tenures, known as *Hak Guna Usaha* (HGU), and corresponding HGB (*Hak Guna Bangunan*) for constructing buildings such as mills, are considered equivalent to leaseholds on State lands. Acquisition of these rights is regulated by a number of further laws, which set out the conditions and procedures under which HGU may be issued and plantations licensed.

Ministerial Decree of Agriculture No. 786/Kpts/KB.120/10/96 regarding the Licensing of Plantation Businesses firstly defined Plantation Businesses as cultivation activities and Plantation Industries as industries processing plantation products, both of which are to be regulated and developed subject to the authority of Minister of Agriculture. Under the decree, Plantation Businesses must acquire a Permanent Permit for establishing plantation crops or a 'Permit of Plant Type Alteration' if they decided to change the crop type. Plantation Industries require a Permanent Permit and an Expansion Permit. Authority to issue such permits was delegated by the Minister of Agriculture to the Directorate General of Plantations for all plantation licenses for lands covering more than 200 ha. However, for plantations that cover 25 to 200 ha., the authority to issue a permit was delegated to Provincial Governors.

All such licenses were issued subject to the companies first securing initiation permits (*ijin prinsip*) for the preparatory activities required to set up plantations and plants. Once armed with these permits, companies may acquire the rights of utilization and exploitation of the land (*Hak Guna Usaha* – HGU) from the Agrarian Ministry. However, these licenses may be revoked: if the company fails to adhere to the regulation stipulated in the license, varies the location, changes the crop type, or expands the crop area without permission; if the HGU is revoked or expires; if the license is returned to the issuing authority or; if the company violates public orders or existing laws and regulations.

The Minister of Forestry and Plantations issued a revised Decree regulating plantations in 1999.[56] The Decree set out further requirements for the management, control and development of human resources with the expressed aim of making plantation businesses more efficient, competitive and sustainable, in order to increase planters' income and living standards, increase foreign exchange revenue, generate more raw material for industry, and promote employment. To assure the Ministry that companies had satisfied these requirements they had to comply with a complex series of permitting steps (see Figure 3.1). The Decree established new categories for plantation types as: small-scale plantations (UPBSK) covering 25-200 ha., medium-sized plantations (UPBSM) covering 200-1000 ha. and large-scale plantations (UPSB) covering areas over 1000 ha.. The Decree also placed a ceiling on plantation size at 20,000 ha, being 10.000 ha. in most parts of Indonesia but twice that in the Province of Irian Jaya (now called Papua). All oil palm permits of whatever scale were subject to the Ministry of Forestry and Plantations.

The Decree also imposed additional conditions under which permits could be revoked including: if the company had not established itself on the land after three year; had not started planting after four years; did not manage the plantation professionally, transparently, participatively, efficiently and effectively; did not sustainably manage natural resources; failed to carry our impact assessments;[57] did not collaborate with cooperatives and small & medium scale industries; carried out land clearing using fire; failed to prepare a business plan and feasibility study; did not apply for permits to change crop types or expand the area or; did not report on business progress each semester.

ISSUANCE PROCEDURE STAGES FOR PLANTATION BUSINESS PERMIT (IUP)
DIRECTORATE GENERAL OF PLANTATION DEPARTMENT OF FORESTRY AND PLANTATION

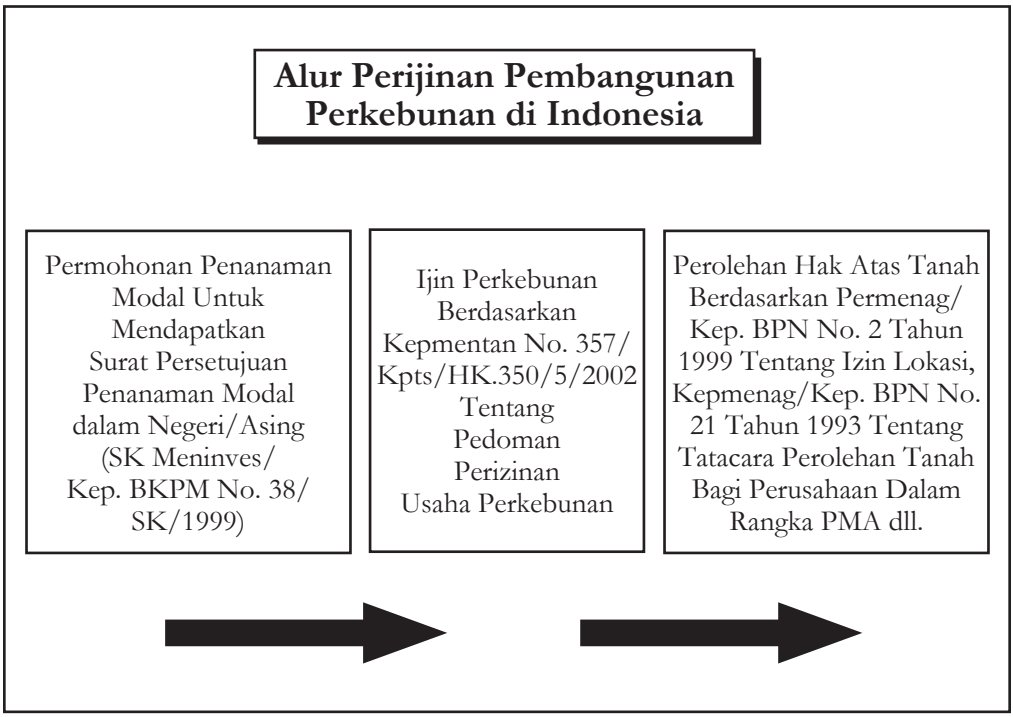
NO	STAGES	ISSUING UNITS						TIME/ DAY	NOTE
		Applicant	GD of Plantation	GD of PHP	B P K P	Secretary General	Minister		
1	2	3	4	5	6	7	8	9	10
1	The application is submitted to Minister with the copy to GD of Plantation, GD of PHP and the Head of BPKP and the disposition of Minister to GD of Plantation							3	
2	Coordinated by GD of Plantation, GD of PHP, GD of Plantation and the Head of BPKP submit their technical consideration							14	
3	Technical consideration and the concept of rejection/decision letter will be reviewed by Secretary General							3	
4	Secretary General will submit its review to Minister							3	
5	Minister can refuse or approve the application of plantation business permit							7	
6	Secretary General will inform the rejection /approval to the applicant with copy to GD of Plantation, GD of PHP and the Head of BPKP							3	
	NUMBER OF DAYS							33	

Note; - *GD OF PLANTATION* : *General Director of Plantatin*
- *GD OF PHP* : *General Director of the Production Forest Management*
- *BPKP* : *Forestry and Plantation Planology Agency*

Figure 3.1: Permit issuance stages for acquiring plantation business license (IUP) in accordance with Ministerial Decree of Forestry and Plantation No. 107/Kpts-I/1999 regarding the Licensing of Plantation Businesses.

Under Indonesian law, capital investment is distinguished between Domestic Capital Investment (PMDN) and Foreign Capital Investment (PMA). Domestic Capital Investment must be invested in compliance with Law No. 6 of 1968 regarding Domestic Capital Investment, as amended by Law No. 12 of 1970. Foreign Capital Investment should comply with the Law No. 1 of 1967 regarding Foreign Capital Investment, as amended by Law No. 11 of 1970.

In the context of plantation development, at the initial stage, entrepreneurs who have the intention of investing should first gain authorization according to the provisions of these laws, before taking steps to get permits for plantations. The procedure is illustrated in the chart below (Figure 3.2):



Translation Section for the table above:

The Scheme of the Plantation Development Permit In Indonesia		
Application for Investment in order to obtain Domestic/ Foreign Investment Approval (Minister Decree of Investment/Head of BK-PM No. 38/SK/1999	Plantation Permit is based on Ministerial Decree of forestry No. 357/Kpts/ HK.350/5/2002 on Guidance for Licensing of Plantation Business	Right Acquirement on Land in Minister Decree/Head of BPN No. 2 /1999 on Location Permit, State Ministerial Decree/Head of BPN No. 21 /1993 on Land Acquisition Procedure for Company under the framework of Foreign Investment, etc.

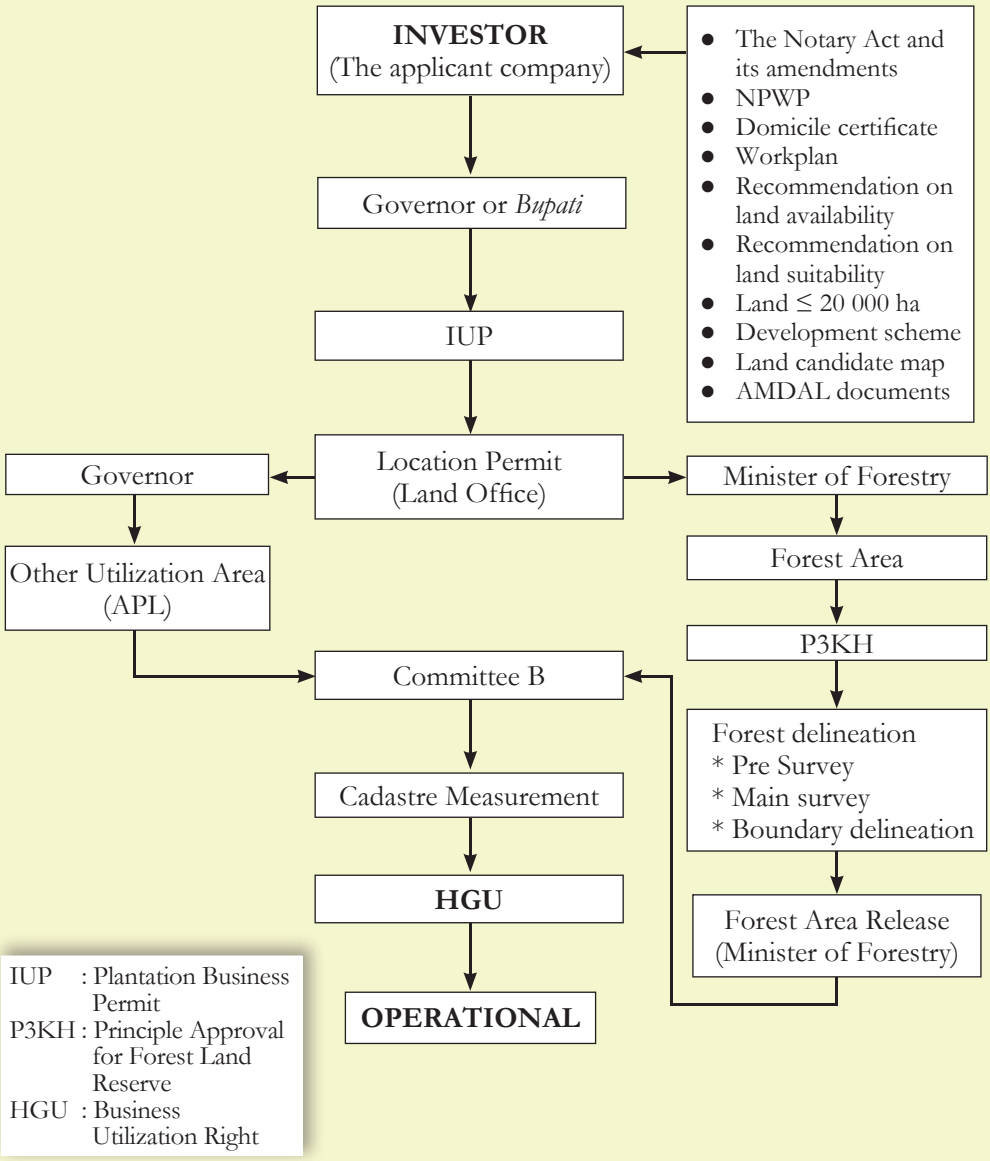
Figure 3.2: Required sequence of permits for plantation development

Once the initial process regulating capital investment has been complied with, the plantation investor candidate should then follow the laws relating to securing plantation permits and rights to the land, as illustrated in the following chart (Figure 3.3 below).

On 23 May 2002, the Minister of Agriculture issued the Decree of Minister of Agriculture No. 357/Kpts/HK.350/5/2002 on Guidance regarding the Licensing of Plantation Businesses. The Decree is intended to clarify the procedures for permitting plantations in the context of Law No. 22 of 1999 regarding Regional Government and the Law No. 25 of 2000 regarding Government Authority and Provincial Authority as an Autonomous Region. The decree differs from the previous Decree of the Minister of Forestry and Plantation in not stating the purposes supposed to be fulfilled by plantation development.[58]

Figure 3.3:

Plantation Business Permit (IUP) up to HGU Process (Based on Ministerial of Agriculture Decree No. 357/Kpts/HK.3511/5/2002)



According to the Decree, to obtain a Plantation Business License, the investors must have a legal deed establishing the company, a Tax Payer Number (NPWP), a domicile certificate, a plantation work plan, a location permit (*ijin lokasi*) from the land affairs agency, a technical survey of the boundary with forest areas from the forestry agency, a technical recommendation of land appropriateness from the Head Office coordinating provincial, local regency/municipality plantations based on the macro plan, in accordance with the commodity region and the RUTR, a statement of land acquisition showing that the company or group of plantation businesses has not exceeded the maximum limit, a statement on the selected development system and, confirmed by a notary's deed, a location map with scale 1 : 100, and an agreement letter for the Environmental Impact Analysis (AMDAL) from the Regional Amdal Commission. Having compiled all these documents the application for a plantation business license is then submitted to Governor or *Bupati* depending on the scale of the operation. The chart (Figure 3.3) illustrates the complex permitting procedure, which plantation companies must go through.

Under the new Decree, plantation permits can be revoked as an administrative sanction imposed on any plantation investors who fail to perform their obligations to: resolve the title to land within at most 2 years of the issuance of plantation permit (IUP); realise development in line with the national or regional macro plan for plantation development; manage the plantation professionally, transparently, participatively, efficiently and effectively; conduct land clearing without fire; manage natural resources sustainably; report any diversification of the plantation business, for example into agro-tourism to the relevant agency and obtain a diversification permit; establish and empower *plasma* or cooperative schemes; report the plantation's business progress on a quarterly basis.

The key law relevant to plantations was again amended on 11 August 2004 through issuance of the Plantation Act, Law No. 18 of 2004, the country's first legislative act on plantations.[59] With respect to the plantation business license, this Law specifies that all existing rules regulating plantations remain valid as long as they do not contravene newly amended laws and regulations. Since no further plantation licensing regulations for implementing the Plantation Act have yet been issued, consequently the Decree of Minister of Forestry and Plantation No. 357/Kpts/Hk. 350/5/2002 and accompanying regulations remain valid. One of the main changes introduced by the Act is that it allows for a considerable extension of the period of the concession, notionally for up to 120 years.[60]

3.5.3 Land Acquisition for Plantations on State and Private Lands

As noted in Section 3.5.1, land acquisition for plantations is based on Presidential Decree No. 55 of 1993, as amended by Presidential Regulation No. 36/2005, and should be conducted through normal mechanisms of sale and purchase, barter, or other mechanisms

mutually agreed by the relevant parties. Meanwhile, the previous two laws and regulations, Law No. 20 of 1961 and Presidential Instruction No. 9 of 1973, opened the way for plantation companies to acquire land for plantations by arguing that the plantations are in the public interest. However, the details of land acquisition are a little more complex than this, as they depend on whether the lands that the company is seeking to obtain are considered to be State land or private lands under the direct control of third parties.[61]

The concept of State Land was first set out in Government Regulation No. 8 of 1953 regarding the Control of State Lands. In Article 1a, this regulation states that State land is land which is fully controlled by the state. The General Explanation of this Government Regulation notes that

> According to *domein verklaring* amongst other things, as stated in article I of the *Agrarisch Besluit*, all lands, which are free from anyone's rights (both those based on Indonesian traditional law and on Western law) shall be considered as *vrij landsdomein* that is lands fully owned and controlled by State. These lands are those which are referred to as "State Land" in this Government Regulation.

Meanwhile, based on the Article 1.3 of Law No. 24 of 1997 regarding Land Registration, State Land is construed as:

> State Land or land directly controlled by the State that is land not encumbered with any land title.

Whereas the earlier law recognised customary rights in land as excluding lands from being considered State lands, the latter law can be interpreted as extending the concept of State land over lands encumbered with customary rights. This is because, as noted, the BAL while acknowledging *ulayat* does not treat it as a 'title' to land.[62] Those lands that are encumbered with 'titles' are those with tenures explicitly recognised in Article 16 of the BAL.[63]

Land acquisition should be conducted by a plantation company after the company has secured a 'location permit' (*ijin lokasi*) from the local Government, either the Regency (district) or Municipality. This should be applied for after the company has obtained an investment permit from the Head of BKPM (the Coordinating Board for Investment)-.

According to a joint decree of the Agrarian Minister and the Head of the Land Agency,[64] location permits regulate capital investment in relation to land acquisition and are required for every capital investment in plantations whether national or foreign (PMA & PMDN).[65] Location permits are temporary permits which give the investor a short term temporary right in the land of between one and three years, depending on the size of the land sought, extendable for a further year if progress is being made, while the investment is agreed and lands are secured.

Article 8 of this decree states that, after a plantation company obtains a location permit, the company is entitled to acquire the land set out in the Location Permit, subject to release of the rights and interests of other parties in the land based on an agreement with the rights holders or concerned parties through selling and purchasing, giving compensation, land consolidation or other methods based on the existing regulations.

Before the relevant land is acquired by the Location Permit holder, all rights and interests of other parties existing on the relevant land remain recognized, including the authority of the rights holders to secure land titles, to use and exploit the land for their personal or business interests, and to transfer the right to other parties. The Location Permit holder is obliged to respect the other party's interests in the land until it is released. The Location Permit holder is also prohibited from closing or restricting community access to the land and must keep and protect public interests as well. Only after the relevant land has been acquired does the Location Permit holder have the authority to use the land in accordance with the purposes mentioned in the investment plan.

The procedures for land acquisition are set out in the Decree of the Agrarian Minister and the Head of National Land Affairs Agency No. 21/1994 on Land Acquisition Procedures for Companies in the Framework of Capital Investment. Article 1 requires that compensation is paid to any person who has a right to that compensation, based on negotiation and consensus. The company also needs to ensure that the title being transferred is equivalent to that to which it is entitled, either HGU or HGB. In the case of acquisition of private land, under *hak pakai* or *hak milik* for example, the company must then re-register the land as HGU or HGB with the land agency.

Lands for new plantations are first transferred from communities or individual owners to the land agency, in the interest of the company, taking into account the location permit. The land title holders or the community's proxy are required to sign a witnessed statement transferring or relinquishing their rights in land in the presence of the local head of land affairs by filling in a specific form.

In arranging the land transfer, the head of the local National Land Agency (BPN) should hold a coordination meeting to explain to the district or provincial head that there is an obligation to consult with rights holders. The agency should also distribute information about the company's investment plan, explain the scope of the impact and the land acquisition plan as well as measures for conflict resolution related to land acquisition. He should also provide an opportunity to the rights holders to obtain explanations on the investment plan and seek solutions if any problems occur. The land agency should also collect relevant social and environmental data from the community and get the community to propose the amount of compensation.

Upon the receipt of compensation, a formal written agreement on the transfer or the release of land title should be prepared by the land title holder. These two documents together transfer the community or individual properties to the State, or relinquish existing HGU, HGB or *hak pakai* (use right) to the State. By so doing, the original owners relinquish all rights in the released land. Thus unencumbered, the Land Agency may in turn transfer the land to the company as a HGU or HGB. The decree for a Land Permit should be signed by the District Head (*bupati*) or municipal mayor.[66]

The result of the whole process, therefore, should be that the company acquires long term leaseholds on State lands for its estates (HGU) and mills (HGB), while any lands to be allocated to smallholders as associated *plasma* are likewise unencumbered and can be titled to them as individual property rights (SHM).

3.6 Policies Regulating Forest Conversion

The formal process classifying national lands as 'forest areas' (*Kawasan Hutan*) and zoning these areas as various categories of forest was initiated in 1982, at a time when authority over forests was still entrusted to a small Directorate of Forests under the Ministry of Agriculture. The so-called TGHK process has, however, not been straightforward as the final process of forest delineation and forest gazettement has been extremely slow, leaving the legal status of almost 90% of Indonesian forests unclear (see 2.2 above).

Moreover, the Ministry of Forests (MoF) has had a hard time defending the Forest Areas under its jurisdiction from reallocation to other interests. As noted in Section 3.1, the passing of Inpres 1/1986 revealed how MoF was forced by other Departments to release land for other large-scale activities besides logging. Yet, MoF has always positioned itself as the key decision-maker over whether a piece of land was appropriate or not for establishing Estate Crops.[67]

The TGHK process classified more than two thirds of the land base of Indonesia as lying in the forest zone, in turn zoned into protection, production, conservation and conversion forests. The overall data from the 1982 process classed 141,774,427 hectares of Indonesia as forests, divided up as follows (see Table 3.1 and Figure 3.4).

Table 3.1: Indonesian Forest Area based on TGHK

No	Forest Function	Area (Ha)
1.	Nature Reserve and Tourism Forest	19,152,885
2.	Protection Forest	29,649,231
3.	Limited Production Forest	29,570,656
4.	Permanent Production Forest	33,401,655
5.	Convertible Production Forest	30,000,000
TOTAL		**141,774,427**

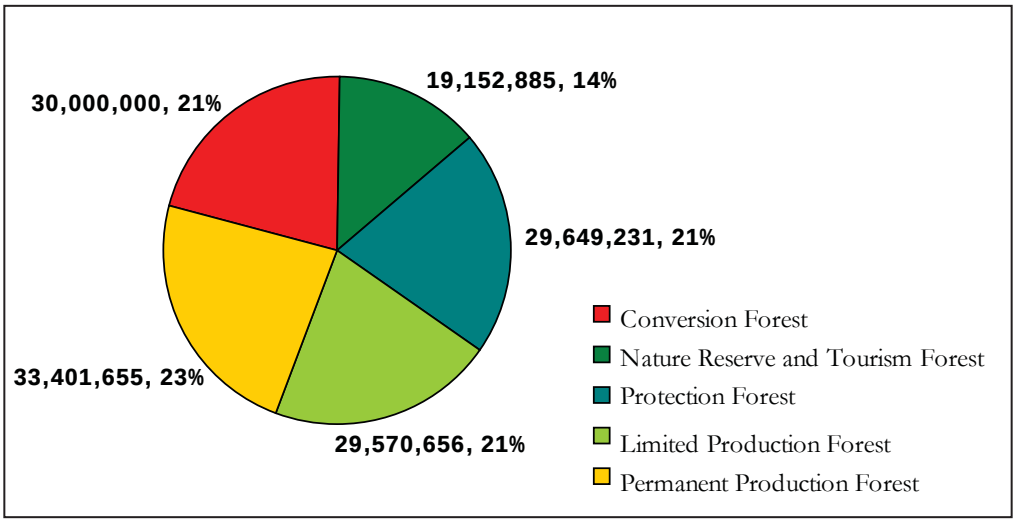


Figure 3.4 : Forest designation by total area and percentage

In the early stages of the development and expansion of oil palm in Indonesia, PIR-Trans and the World Bank funded, PIR-SUS schemes were using communities' lands outside areas then classed as part of the, as yet ill-defined, 'forest zone'. Following the 1982 zoning, the Ministry of Agriculture (MoA) urged local governments to locate non forestry activities outside the newly declared forest zones. The same instruction urged that, if this was not possible, then estate crops should be allowed only in conversion forests, giving priority to fallow lands, areas covered by *alang alang* (*Imperata* grassland), scrub and secondary forests.[68]

This policy was reaffirmed in 1993, through a further MoF decree, which limited applicants for forest conversion to only access the conversion forests.[69] At this time MoF realized that some applicants were just seeking these conversion permits in order to acquire timber cutting permits (IPK) while never having any serious intention of engaging in the palm oil business. The decree therefore prohibited companies from transferring the cleared land until the conversion process was completed.

The permitting procedure for forest conversion faces a number of serious challenges. One of the most important from the point of view of this study is that the majority of the areas zoned by TGHK as Forest Areas have not yet been officially gazetted as State Forest Areas. This is because the five-step process, for surveying, delineating and notifying forest boundaries to ensure that they do not overlap areas encumbered with rights, has not been run through by officials.[70] Indeed Government figures released in 2004, show that so far only some 14 million hectares (12%) of 'forest areas' have yet been gazetted as State Forest Areas (*Kawasan Hutan Negara*).[71]

In practice, through administrative oversight, forest areas are being treated as State lands and released for conversion before the zones have been gazetted. This is legally problematic, as the areas may well be encumbered with rights and therefore the state should not be allocating them to third parties. Indeed, already some 20 million hectares of forest areas have been converted to non forest zones, almost all in the name of conversion to oil palm plantations, though as we have seen only some 6 million hectares have actually been planted. This process is still happening.

There have been tensions between the Ministry of Forestry and the Ministry of Agriculture and Estate Crops ever since they were allocated their different jurisdictions. In 1998, with the beginning of the reform era, the Directorate of Estate Crops was moved from the Ministry of Agriculture to the Ministry of Forestry.[72] However, this arrangement, designed to streamline inter-agency coordination, lasted only two years before the Directorate of Estate Crops was moved back to the Ministry of Agriculture in 2000.[73] Throughout this tussle, however, the Ministry of Forests retained control over the issuance of permits for forest conversion.

The Ministry of Forests has been under continual pressure from the private sector and, since decentralization, from local governments, to release forests for conversion. The main tool that local governments have used to facilitate this process is to revise their Spatial Plans, which as we have noted (see 1.4 above) have allocated some 20 million hectares for oil palms.

The ambiguous attitude of the Ministry of Forests in the face of this pressure is made clear by the fact that when it announced its moratorium on forest conversion in 2005, this was legislated by means of a government circular (*Surat Edaran*), the weakest legal

option available. The overarching law which regulates forest conversion thus remains unamended. For this reason, forest conversion has continued despite the instruction in the circular.[74]

Endnotes:

1 Since 2000, PTPN staff are no longer treated as civil servants but have the rights of private sector employees.
2 Jan Willem Van Gelder 2004; FoE 2004.
3 In recognition of the need for further study of and engagement with smallholders in November 2005, the RSPO agreed to set up a Task Force on Smallholders.
4 Impress RI No. 1/1986; MOA-MoF-BPN joint decree No. 364/Kpts-II/1990.
5 The Ecologist 1986.
6 MoA Decree No. 753/Kpts/KB.550/12/1993; MoF Decree No. 418/Kpts-II/1993.
7 MoA Decree No. 786/10.96. *Ijin Prinsip* are extendable for an additional two years.
8 MoF Decree No. 250/Kpts-II/1996.
9 MoF Decree No. 376/Kpts-II/1998.
10 MoF &EC Decree No. 728/Kpts-II/1998.
11 MoF&EC Decree No. 107/Kpts-II/1999.
12 MoF Decree No. 603/2000; MoA Decree No. 357/Kpts/HK.350/5/2002; MoF circular letter No. S 112/Menhut-VIII/2005.
13 Ministry of Forestry Circulars (*Surat Edaran*) S.51/2005 and S. 52/2005.
14 At the time this report was prepared, there is no law that specifically regulates indigenous peoples. Currently a draft Bill on Indigenous Peoples is being discussed by the legislature with inputs the *Aliansi Masyarakat Adat Nusantara* (National Indigenous People Alliance - AMAN), *Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis* (Association for Community and Ecological Based Legal Reform - HuMA). Passage of this law remain a priority in the agenda of the national legislation program of 2005-2009 (PROLEGNAS) under the regime of Susilo Bambang Yudoyono & Muhammad Yusuf Kalla (SBY-JK)
15 Simarmata 2002; Colchester, Sirait and Wijardjo 2003:92-106.
16 For a discussion see Andiko 2005a.
17 Syahda Guruh 2000:38.
18 Law No. 5 of 1979 on Village Administration better known as UUPD.
19 Yando Zakaria 2000.
20 Law No. 22 of 1999 on Local Governance.
21 Simarmata 2002.
22 District Regulation No. 2 of 2001 on Lembang Governance, later on replaced by District Regulation No. 5 of 2004.
23 Provincial Regulation No. 9 of 2001 on *Nagari* Governance.
24 Provincial Regulation No. 9 of 2001 on *Nagari* Governance, Articles 3, 4 and 7. The term that is used here is not 'right' but 'property'. Similarly, Law No. 22 of 1999 refers to 'village property' (*kekayaan desa*) (Article 107 clause 1). This term is also found in Government Regulation PP No. 76 of 2001 article 49 clause 1 and articles 50 to .
25 Andiko 2005b.
26 Insofar as indigenous peoples are part of the "people" they can thus claim the right to benefit from the "maximum utilization of natural resources for the welfare of Indonesian people".
27 Basic Agrarian Law No. 5 of 1960 (UUPA *Undang-Undang Pokok Agraria*).
28 Translations of the BAL are quite varied. See also Colchester, Sirait and Wijardjo 2003:123-131.

[29] General Explanation of Law No. 5/1960 (UUPA).
[30] Simarmata 2002.
[31] Sukarno was gradually eclipsed from power over three years and he did not resign the Presidency until 1969. De facto, however, power passed to Suharto immediately after he suppressed an (alleged) coup attempt in 1966 (Elson 2001; Legge 2003).
[32] Basic Forestry Law No. 5/1967 and Basic Mining Law No. 11/1967.
[33] Basic Forestry Law No. 5/1967 Article 17.
[34] Government Regulation (PP) No. 21 of 1970 on Rights of Forest Concession and Forest Product Harvesting, Article 16 Para. 1).
[35] Regulation No. 5 of 1999 'A Manual of Conflict Resolution for *Ulayat* Rights related problems' was issued jointly by the Minister for Agrarian Affairs and the Head of National Land Agency (BPN) in June 1999.
[36] Ibid. Article 4 Paragraph 2 as explained in Simarmata 2002. The last part of this regulation explains how local government should carry out research and analysis to determine whether *ulayat* rights still exist or not. In conducting research, the local government should involve customary law experts, the customary law communities of the specified areas, NGOs and other institutions that manage natural resources (Article 5 para. 1). Further explanation on the research and analysis is to be regulated by local regulation (Article 6). Since 1999, this Article has become the legal basis for local governments to issue local regulations on *ulayat* rights.
[37] Basic Forestry Law No. 41/1999. The law notes a number of criteria required for the recognition of hutan *adat* : the *adat* community must be formed as a community (rechtsgemeenschap or paguyuban); it must have a structured *adat* institution; the territory must clearly exist; there must be existing and still operative *adat* law, and forest products must still be in daily use. For more detailed discussions see Colchester, Sirait and Wijardjo 2003: 133-138; Contreras-Hermosilla and Fay 2005; Colchester et al. 2005; Hedar Laudjeng, Legal opinion (draft) on Law No. 41 /1999 regarding Forestry.
[38] Also referred to as the National Assembly, the MPR is the highest body in the Indonesian legislature which issues guiding instructions to the parliament on the legislative reforms required.
[39] TAP-MPR RI No. IX/2001 regarding the Agrarian Reform and Natural Resource Management, see especially Article 5.
[40] Holleman 1981.
[41] In 1874, the implementation of Agrarian Law no 55 of 1870 was broadened to include West Sumatra (State Gazette No. 94 f, 1874). The following year the domein verklaring was broadened to apply to all the East Indies (State Gazette No. 199 A, 1875) but actual application of the law was contested and so it was not widely applied in other areas.
[42] Laudjen and Arimbi 1997.
[43] An interesting example is found in the land owned by Tanjuang clan, Tanjuang lurah *Nagari* Guguak Solok. Around 1890, NV Lanbaw Boekit Gompong rented land from the head of clan (kepala kaum) Kamarullah Datuk Basa (Mangun) that covered more than 100 hectares for coffee plantation. After the independence of Indonesia, this land was converted into state land. This action created long standing conflicts between this clan and the government of Indonesia that have not been resolved to this day. Later on, the office area of Solok district was built on this land.
[44] Rusli Amran 1985.
[45] Geertz 1963.
[46] Laudjeng and Arimbi 1997; Tjondronegoro: 1984.
[47] Abrar 1999:1-98. Although the legal and philosophical bases for the domein verklaring and the concept of HMN are distinct the effective result is similar.
[48] Wallace, Parlingdungan and Hutagalung 1997.
[49] Bigalke 2005.
[50] Before the Law No. 20 of 1961 was issued, land acquisition for development purpose was carried out according to Staatblad 1920 No. 574 the so called "Ointeigeningsordonantie". The regulation changed

several times the last being Staatblad 1947 No. 96. These laws gave recognition and protection to individual ownership and set out legal, executive and judicial procedures for land acquisition. These laws were replaced by Law No. 20 of 1961.

51 Inpres No. 9 of 1973 on the implementation of rights over the land revocation and the goods above the Land.

52 The regulation has been widely criticised by civil society organisations for giving the government over-wide powers of unilateral expropriation.

53 State Gazette of 1958 No. 162.

54 Article 1 Law of Nationalization of Dutch Company (Law No. 86 /1958). The criteria of Dutch companies that should be nationalized were:

a. A company partly or entirely owned by a Dutch individual domiciled in the territory of Republic of Indonesia.
b. A company owned by a legal entity which is partially or fully owned by a Dutch individual or and legal entity domiciled in the territory of the Republic of Indonesia.
c. A company located in the territory of Republic of Indonesia which is partially or fully owned by a Dutch individual who is residing outside the territory of the Republic of Indonesia
d. A company located in the territory of Republic of Indonesia that is owned by a legal entity domiciled in the territory of Dutch Kingdom.

55 According to BAL No. 5 of 1960, Part II on Conversion, Articles 3 and 4,

56 Minister of Forestry and Plantation Decree No. 107/Kpts-II/1999.

57 AMDAL & UKL/UPL,

58 The main significance of this absence is that it makes it more unclear how compulsory land acquisition for plantation development can be justified as being in the public interest..

59 All previous Decrees and Regulations on Plantations had been issued as executive acts without being first considered by the legislature.

60 According to Article 11, plantations may be established for an initial period of 35 years, extendable for a further 25 years, and then again extendable for a further 35 and then 25 years.

61 In fact, most land in Indonesia is considered to be land indirectly controlled by the State based on the 'controlling right of the State' set forth in Article 2 of the BAL. In practice, this controlling right of the State results in most land being treated as if it were owned by the State. The clearest example of this tendency is land situated in forest areas. Although such lands may be burdened with communal rights (or deemed to be customary forests), the state may freely issue plantation concession rights in forest areas using a use-borrowing procedure or by releasing the forest area to a third party (eg for mining), without compensation. Forest areas are considered to be fully under State control. In practice, lands both controlled directly or indirectly by the State are liable to be handed out by the State to any third party. However, this right of disposal is contested as being contrary to the amended Constitution and TAP/MPR/IX/2001both of which, arguably, limit these powers of disposal in favour of recognition of community rights in land.

62 Article 4 of Law No. 5 of 1960 (the BAL) specifies that:

(1) Based upon the controlling right of the State, as referred in article 2, this law categorize the title on the land surface, called as land that can be given to and owned by the people, both individually and jointly with others and or with legal entity.
(2) Any titles of land referred to in paragraph (1) herein confers authority to use the relevant land, likewise the land and water as well as space on them, are just needed for interest, which is directly related to the use of land within the boundaries set forth in this Law and other higher laws.

Article 16 likewise does not list *ulayat* as a recognised tenure but then in explanation of Article 16, it is noted that *adat* rights are classified as 'other rights' (hak hak lain) (Harsono 2002:10). The main purpose of BAL was to eliminate the colonial dualism governing agrarian law which distinguished between customary laws governing native affairs and Dutch law regulating the commercial affairs

of colonial enterprises. While the BAL affirms that customary law is the root of its establishment and recognize the existence of indigenous peoples and their customary law, such recognition is only accorded where there is a strong proof of the community's continued existence. The General Explanation of Articles 22 and 56 of the BAL notes:

> The example of the occurrence of any land titles under customary law is on the land clearing activities. This occurrence shall be set in order not inflict a loss upon public interest and State…. As long as the law regarding ownership title referred to in article 50 paragraph (1) has not been drawn up, then the provisions of customary law shall apply and other regulations regarding rights on land vested in authority as set or equally referred to in article 20, as long as it is not contrary with the spirit and provisions of this Law.

63 Namely a) ownership title b) business utilization title, c) building utilization title, d) use title e) lease right, f) land clearing title, g) right for forest-product harvesting, h) other rights excluded in the rights referred to above that will be specified by Law and rights in nature referred to in article 53.

64 Agrarian Minister and the Head of State Land Affairs Regulation No. 2 of 1999 on Location Permits.

65 There are some exceptions to this requirement that are not relevant to this study.

66 Pursuant to Regulation of Minister of Agriculture / Head of National Land Agency No. 3 of 1999, the authority to issue rights in land is as follows: Business Utilization Title (HGU) is issued by: BPN for land that covers more than 200 ha. or by the Provincial BPN Regional Office for land that covers less than 200 ha; Building Utilization Title (HGB) is issued by BPN for land that covers more than 15 Ha, Provincial BPN Regional Office for land that covers more than 2000 m2 to 15 Ha, Regency/ or Municipal BPN Regional Office for land that covers less than 2000 m2, Right for Agriculture Use (Agriculture HP) is issued by Provincial BPN Regional Office: for land covering more than 2 Ha, Regency/Municipality BPN Regional Office for land covering about 2 Ha; Right for Non-Agriculture Use Title (HP) is issued by BPN for land covering more than 15 Ha, Provincial BPN Regional Office: for land covering more than 2000 m2 to 15 Ha, Regency/Municipality BPN Regional Office: for land covering 2000 m2. According to Government Regulation No. 40 of 1996, the term of right over the land is provided for: HGU at the longest 35 years, extendable at the longest 25 years, but this may be renewed; HGB at the longest 30 years, extendable at the longest 20 years, but this may be renewed. HP (Agriculture and Non-Agriculture): at the longest 25 years, extendable at the longest 20 years, and could be renewed. HGU and HGB of the company can be used as collateral to secure loans when burdened with mortgages. HGU can be granted to companies operating under the framework of Foreign Investment Joint-venture, in accordance with the Presidential Decree No. 34/1992.

67 See Ministry of Home Affairs Instruction No 26/1982 dated 13 May 1982 and MoA circular letter to all governor 17th July 1982 (586/mentan/VII/1982) to support the existence of TGHK and the jurisdiction of the MoA to gazette, administer and regulates forest also urge the Governor to support the forest delineation process.

68 Circular letter 27 December 1982; Surat Edaran No. 910/Mentan/XII/1982.

69 MoF Decree No. 418/Kpts-II/1993.

70 Colchester, Sirait and Widjarjo, 2003; Contreras-Hermosilla and Fay 2005.

71 Statistik Kehutanan 2004.

72 Ministry of Forestry & Estate Crops Decree No .107/Kpts-II/1999 released in March 1999; Ministry of Forestry & Estate Crops Decree No. 645/Kpts-II/1999.

73 And see also MoA Decree No. 357/Kpts/HK.350/5/2002.

74 PP 44/2004 Pernecanaan Hutan. See *Kalimantan Review*, special edition on Palm Oil, 2005, Pontianak.

Chapter 4

Case Studies

As part of this investigation, field visits were conducted to three provinces in order to understand how land acquisition was being carried out in practice and to assess the impacts of this process from community, company and government points of view. The first study examines the situation of the coastal 'Pesisir' people of western Lampung in southern Sumatra where the company PT KCMU is currently seeking to expand its operations. The next four studies look at the operations of four companies (PT MAS, PTPN XIII, PT CNIS and PT SIA) which have acquired lands in the territories of various Dayak peoples in Sanggau district, the area of West Kalimantan (Indonesian Borneo) which has had the longest experience of palm oil development. The final case study examines a more recent operation (PT PHP) on Minangkabau lands in West Pasaman district in West Sumatra.

The six studies vary in terms of detail and analysis. This is mainly due to the very different amounts of information that the team was able to unearth about the different cases. In some cases, companies and government officials were forthcoming with information and documentation about these operations, in other cases they were not. Some officials were open to being interviewed, others declined. This has obviously affected the depth of our investigations. Another reason for the difference in the depth of these studies is the variable extent to which members of our research team had carried out prior investigation in the areas examined. In some areas, team members already had a detailed knowledge of the local situation. In others, the company operations were entirely new to us.

What all the case studies do have in common is that they are of operations that have been implanted on customary lands. Yet the studies show that the communities have been dealt with in very different ways in the different provinces. The legality of the procedures used by both the government and the companies to acquire lands is also extremely contentious.

4.1 PT KCMU

4.1.1 The Pesisir People and Palm Oil Plantations:

The Pesisir people inhabit the extreme western part of Lampung province, the majority living between Pagar Bukit in the north down to Bengkunat in the south, along the narrow coastal strip between the Bukit Barisan Mountains and the Indian Ocean. This region, long recognised as being subject to customary rights, consists of sixteen customary jurisdictions, known as *marga*. Each *marga* is under the authority of a customary leader known as a *Sai Batin*, an inherited position. More recently, the coastal *adat* region has been divided up into five administrative sub-districts (*kecamatan*).[1]

These *adat* communities have a very diverse system of agriculture. They clear dry ground forests for subsistence crops, coffee and other fruit trees and in order to cultivate *damar* trees (*Shorea javanica*). They also maintain large irrigated paddy fields on low ground around their villages. *Damar* is cultivated for the valuable resin it yields, a practise that has been developed by the communities over the past 200 years when demands for the resin surpassed what could be obtained from natural forests. The resin has, in fact, been a major export commodity since the 17th century.[2]

In the 1930s, the Pesisir agreed to lease part of their lands in the Bukit Barisan Mountains to the Dutch Government, to be assigned as a game reserve, to be named the Queen Wilhelmina Sanctuary. This agreement was reached after a long negotiation process and included recognition by the Dutch Government that the communities should maintain rights to tap *damar* resin and collect bird nests in certain parts of the reserve. The reserve's boundary was marked by poles, and is locally still known as the 'BW boundary' (*Boswessen* or forest area).

Intensive migration into two customary jurisdictions, *marga Tenumbang* and *marga Ngambur*, began in 1980s and started when three Balinese families were invited in by one *adat* community to hunt the wild pigs that often destroyed community paddy fields and gardens. They were followed by Javanese, Batak, Sundanese, Semendo and Bugis settlers. Migrants, who now make up 60% of the overall population in these two *marga*, acquired the land by purchasing it from customary owners and these transactions were legalized by the issuance of Land Information Letters (SKT) by the Village Headmen (*kepala desa* – an official position) but without the involvement of the customary leader, the *Sai Batin*. Unlike in *marga Tenumbang* and *marga Ngambur*, the Pesisir of *marga Bengkunat* still strongly follow *adat* law. There the *Sai Batin* still plays an important role in any land disputes. In general, land use and ownership status under *adat* law are based more on trust than formal agreements.

In the 1990s, the coastal *adat* communities were shocked by the sudden extension of the Forest Area over about 40.000 ha. of their customary lands The Indonesian government designated the annexed areas as production and protection forests and granted parts of the area as a logging concession (HPH) to the Bina Lestari company. The permit allowed Bina Lestari to log natural forest, yet it prohibited it from logging *damar* gardens, locally known as *repong damar*. Later, the Indonesian government assigned PT Inhutani V to perform a forest rehabilitation program within the Bina Lestari concession, leading Inhutani V to distribute *damar* seeds to the customary communities to restock the former concession area.

Another major shift of forest management within the land of the coastal *adat* communities took place around 1994/1995. The Indonesian government issued initiation permits (*ijin princip*) to two big oil palm companies outside the enlarged forest area. Panji Padma Lestari Limited Company (PT PPL) was granted a concession on the *adat* land of *marga Malaya*, while Karya Canggih Mandir Utama Limited Company (PT KCMU) was granted a concession overlapping the *adat* lands of *marga Tenumbang*, *marga Ngambur* and *marga Bengkunat*. Indeed, almost the entire proposed concession areas were already being intensively managed by the Pesisir communities as *repong damar*, as coconut small-holdings and as paddy fields.[3]

In response to expressions of concern from local communities and NGOs, the Minister of Forestry developed a compromise, whereby almost the whole of the area of *repong damar* within the area designated as State Forest (but in fact managed by communities) was designated by Ministerial Decree as an Area for Special Purpose (*Kawasan Dengan Tujuan Istimewa* / KDTI). The decree suspended logging in the area and recognised the communities' rights to continue their *repong damar* for an unlimited period. The decree was considered by many to be a breakthrough in forest policy-making, in that it granted public access to forests and recognised the benefits of community-based sustainable natural resources management.[4]

Meanwhile, the persistent objections of the *adat* communities to the permits issued to the oil palm plantations also led to a response by local government, which revoked the permit of PT PPL. However, despite many problems in the PT KCMU area, the second company's permit was not revoked, leading community representatives to the view that the local government was deaf to their repeated objections.

4.1.2 Community Perspectives

In fact it was as long ago as 1984, that PT KCMU started its approach to the village of *Pekon Marang* located on the boundary between *marga Ngambur* and *marga Tenumbang*. Together with the *camat* (head of sub-district), the representatives of company visited the

adat community. They explained their plan to make the area into an oil palm plantation. According to the company, each participant in the plantation would obtain money as credit for seeds, tools and fertilizers. The representatives of company sought to persuade the community to participate in the plantation by promising significant benefits.

This explanation raised the hopes of the Pesisir that they could get better incomes from their limited land. As a result, most of the members of the community registered themselves with the scheme and transferred on average 1 hectare per family - about one third of their land – to the company. The data also show that the indigenous people in the community registered and transferred a higher proportion of their land to the company than the newcomers, although the company valued the newcomers' lands more than the indigenous people's land.

In 1985, the *bupati* (district head) issued a decree regarding the land allocation for PT KCMU's nucleus estate smallholder plantation, requiring that fully 40% of acquired lands should be allocated to the company for its nucleus estates (*inti*) while only 60% should be allocated to the community members registering on the scheme, as smallholdings (*plasma*). The decree also elaborated in some detail on the installments for the payment of credit to the farmers. The company was to loan IDR 7.4 million per hectare of land to the community. In the 7th year of the plantation cycle, project participants should start to pay off the loan in installments in the form of 30% of the takings from harvested produce. Payments should then be made every three months to the company-established smalholder cooperative. Moreover the company would only hand over titles to the *plasma* land to those project participants who had paid off all their loan. In effect therefore, the community members were losing 40% of their land to the company and only recovering their ownership rights to the remaining 60% if they could pay off their debts. According to interviewees, in practice the harvests have never been good, debts remain unpaid and in any case the company has been more interested in buying full rights to the land for use as *inti* than in maintaining *plasma*.

When the communities understood the implications of the *bupati*'s decree, they expressed their resentment by holding a demonstration. Nine community leaders were arrested, sentenced to 3 months and 20 days and jailed. By this time, the Indonesian Legal Aid Foundation (YLBHI), a public interest NGO that supports the poor in litigation, was involved on behalf of the communities. YLBHI demanded the cancellation of the 40::60 scheme stipulated in the Decree. This advocacy succeeded and in 2000 the company decided not to implement the system. But, instead of developing the whole of the acquired area as a smallholder estate (*plasma*), it changed its strategy to directly buying up community lands.

In the New Order era, communities were not able to negotiate directly with companies since the government usually represented the companies in negotiations with communities. The government employed military officers to force the communities to accept company operations. After the fall of Suharto, however, the companies actively conducted direct negotiation with *adat* communities. But many indigenous peoples still question the relationship between the companies and the State. They feel that the State does not provide any support to communities to defend their rights.

Testimony of Amrullah

from Pekon Marang

The rapid migration from Sumatra and other regions into Pekon Marang has created huge pressure on the *adat* community. The uncertainties of land ownership and the high need for cash have forced the *adat* community to sell their communally owned lands to the newcomers. Today community members prefer to sell off their oil palm smallholdings instead of their rice paddies. There is almost no remaining communally owned land in this area. The smallholdings were sold to the company under SKT procedures. Based on the agreement between the company and the people, the National Land Agency (BPN) would be invited to survey the sold land. Subsequently, the land was converted from SKT into a land title. Nowadays, most lands have been surveyed.

Most *adat* communities sold their oil palm lands due to their fear of being trapped in debt and due to lack of information about the value of their harvests. In Marang, POSKO REFORMASI (United Ad Hoc Task Force of Student and People for Land Reform) conducted a survey. We found that 700 hectares of land have been sold to the company. There are only 200 hectares of *plasma* left. Posko Reformasi plays an important role in advocating for a fairer process of land acquisition for oil palm plantation development, to ensure that communities gain sufficient benefit. In the initial phase, Posko Reformasi had many members. However, there are now only 100 families left who still keep up their membership with Posko Reformasi. We have demanded that the company be more accountable and asked the government to ensure an open dialogue with the Pesisir *adat* communities. Posko Reformasi has also demanded that there are clear agreements between communities and the company before they start a partnership. In response, the company set up KPPS (Oil Palm Plantation Farmer Cooperative), a farmers' organization meant to advocate their interest vis a vis the government and the company.

Testimony of Herdi,
PMPRD officer

PMPRD (Repong Damar Farmers Union) is an organization of farmers from a wide area, from the sub-district of North Pesisir down to the sub-district of Bengkunat. From the beginning, PMPRD considered oil palm plantations to be a threat to the survival of repong damar. As the farmers' organization that was set up by repong damar farmers to counter market intrusion, we view repong damar not only as an economic tool to improve the economic condition of community. For PMPRD, repong damar is also a symbol of one's social status and identity. The Pesisir *adat* communities respect someone, if that person can bequeath repong damar to his oldest son. By contrast, the plantation company has broken its promises to communities to give them better life and has converted their repong damar into oil palm plantations.

We may take as an example the interaction between the Pesisir *adat* communities and the company in the area of *marga* Tanumbang. The company forced the Pesisir *adat* community in that area to transfer their land to the company and promised to build a road to help community carry out gravel and ballast mining. The company used many tricky ways to acquire the community lands for the oil palm plantation development purpose. They showed a false GIS map that misinterpreted young repong damar areas as community agricultural lands. They also used local agents to seduce community members into signing agreements to transfer their lands for road building. In the end those lands were actually used for oil palm plantation purposes. Therefore, mechanisms for ensuring free prior and informed consent are strongly needed against which to evaluate the performance of the company, particularly to determine whether the company upholds its obligations or not.

In 1997 [in one area], supported by military forces, the company cleared away repong damar and pepper gardens in the middle of the night. The community reported this case to the district government but received no response. There were strong indications that the district government supported the company more than the people. Nowadays, this kind of oppression cannot be exercised anymore. Nevertheless, the company still has many ways to manipulate the community [by providing false information]. It is difficult for the government to prove the existence of false documents. If the company frankly informed communities concerning production costs, risks and benefits, farmers would be unlikely to develop their own oil palm plantings. The value of oil palm plantings is about IDR 1 million per hectare of land, which is far below the value of repong damar. In addition, repong damar yields a greater variety of products than oil palm plantations.

From my point of view, PT KCMU's performance shows that it does not respect *adat* rights and it clears repong damar without the consent of the communities. However, not every Sai Batin feels able to bravely defend the rights of their *adat* community. The company argues that it has paid compensation to BPN (the local agrarian office). However, BPN has rejected this claim. Team Eleven[5] is handling this problem at this moment. They reported this case to district parliament (DPRD) of West Lampung District. The company has promised to solve the problem, yet it seems the communities cannot stand it any longer. Some plantation

project participants, who have not sold their land, have cut down their oil palm trees and replaced them with orange trees that have better market values. Afterwards, the company reported them to the police, who later took them to prison. This shows how hard it is for the communities to get justice. The government does not provide any assistance to the communities. From the government's point of view, PT KCMU has not violated any rules or regulations. We always wonder, what has the company done to the government so that the government shows such loyalty to the company?

Testimony of Pun Syahril Indra Bangsawan,

Sai Batin of marga Bengkunat

The situation was completely different in 1985. At that time, there were many pressures from the State. If we refused to transfer the land to anyone who had been chosen by government, the State would grab it! The State could do anything that it wanted. I still remember there was a military *Bupati* who originally came from Lampung, Colonel Punawirawan Umpusinga, a close friend of General (Retd.) Hendro Priyono. He invited his military friends with their full set of army weapons and large amounts of food to Bengkunat. I think he wanted to show off his power to the *adat* communities. I was so sad to see a *Bupati*, who was also of Lampung origin, having to threaten us with such oppression. There was a similar incident in the development of shrimp ponds on the east coast area of Bengkunat. They just grabbed the land from the communities.

I still remember the statement of the then Camat when PT KCMU started its operation in this area. For me, his statement has sown deep feelings of hatred, as a farmer proud to make his living from the land. He said, "Every indigenous person should transfer their land to the oil palm plantation company and move to Kota Agung or Krui to become *satay* hawkers".[6] Subsequently, people resisted by holding demonstrations and this led to a special committee being set up in Tanjung Parang.[7] It seems that these demonstrations to the district legislators of West Lampung in Liwa were successful. The mass media and the district government paid a lot of attention to this case. Although PT KCMU has obtained a permit to operate in *marga* Bengkunat territory, they have failed to acquire much land from the *adat* community. Therefore, the company has concentrated its activities in Ngambur, Ngaras & Tenumbang.

However, the company has continued to approach *adat* communities in the south part of *marga* Bengkunat. The company has strategically employed local agents and local government officials to convince *adat* communities to transfer their lands to the company. These local agents informed communities that they lands would be transferred to the company so that they could join as plantation project participants. The *adat* community was eventually convinced that the company could perform well and would yield benefits to the people. By deploying this method, the company successfully acquired land from communities. Local communities sold

their lands at a very low price, at about IDR 500,000 per hectare. Sometimes, local agents acted as brokers, buying up individual parcels of lands and selling them on to the company for the nucleus estate.

Nonetheless, the use of force and intimidations by company has not led the company to acquire all the land it needs for a nucleus estate. In 1998, the company involved the *adat* community as *plasma* with unclear arrangements. Later, the benefit-sharing mechanisms were set under 40::60 model. Instead of negotiating with *adat* leader (*marga* Sai Batin), the company negotiates all land acquisition processes with the village head. BPN and the village head, supported by the Camat, conducted land surveys and measurements. As the Sai Batin, I firmly rejected the presence of oil palm plantations in my *adat* community area. But unfortunately I could get hardly any support from other Sai Batin. This has weakened our position vis a vis the company.

Testimony of Mahyudin

in Talang Padang, Bengkunat

My work is cultivating pepper, coffee and clearing fields for dry land agriculture (*ladang*). In my opinion, the information concerning PT KCMU and its offers have always been unclear. They have never provided any clear information regarding the area that the company planned to acquire and the boundaries of the nucleus and *plasma* plantations. The company interacted with *adat* community on an individual base. In our Pekon, approximately 60 percent of the *plasma* has been bought by the company informally (without following the legal procedures).

There is a forest conversion area (HPK) in Bengkunat with uncertain boundaries. Most of the area had, in fact, already been converted to mixed farms, including repong damar managed by community members. Half of these community members even paid the annual land tax in the form of SPPT (the Letter of Notice for Annual Land Tax Payment) to the village government. The main problem is, not all of *adat* communities agree with the idea of designating the area as HPK... We have not agreed to forest conversion unless there is a consensus in the local community. We are really suspicious that PT KCMU has an interest in this forest conversion going through (so it can acquire the land). We often see PT KCMU officials and their official cars in the proposed conversion area. I think PT KCMU is planning to convert the area into an oil palm plantation.[8] It is important to remember that all lands in this place belong to the *adat* community. So, if the company wants to invest in these lands, they should negotiate directly with the owners.

In my opinion, I don't think the area should be handed to a company with a bad reputation, like PT KCMU, whether it is community land or conversion forest. The company does not have its own mill. They also have not resolved land disputes with communities. I will not lease my land to a company with such a reputation!

Testimony of Mr. Ajan,

from Ngaras, officer of 4th Division of KPPS

There are 3300 families of local transmigrants in this area who have still not obtained the land that they should receive (1 hectare per family). Therefore, it is ironic to see the 'double burdens' faced by these people. On the one hand, they still struggle with the land distribution problem; while on the other hand they face the aggression of the oil palm plantation company which now wants to acquire what land they have obtained.

Still the lure of the oil palm plantation company has been so tempting. Many people have been attracted by the company's offers. In addition, *adat* community members who have rejected the company have been evicted from their land by the company and by army officers who have responsibility for controlling the community (Babinsa). There was no room for negotiation or demanding compensation. The *adat* community members who were evicted comprise 132 families and among them, there are 72 families who join KPPS. Their demands have included:

- Compensation for destroyed crops in their fields, an issue that has never been resolved.
- Banning the implementation of the 40/60 scheme in Ngaras. This demand was fulfilled with the eventual passing of the decree of *Bupati* but now needs to be implemented.
- Government should fulfil its obligation to provide promised lands to local transmigrants.

Finally, the government granted a small cow (worth IDR 300,000) to 3,000 families as compensation for these lands. In other words, one ha. of land was valued at IDR 300,000. Local transmigrants view this as very low compensation. Moreover, over more than 9 years of operation, there has been no written agreement between the oil palm plantation company and the landowners. The company harvests plantation products without informing the landowners. The company has also determined a very low price for the oil palm plantation products. Payments are made every 6-8 months. The average payment has been IDR 83,000/ ha/month,[9] which is very low price for productive land.

The requirements of the *plasma* members are the following:

- Submission of a written statement to each *plasma* member acknowledging the lease of his or her land.
- Where the transferred land is *marga* land, they should get a recognition letter from the Pratin (village head).

In fact, not everybody owns title to their land. To obtain a recognition letter from a Pratin, a landowner should provide testimony from their neighbours recognizing their claim and show boundary markers implanted in the respective land. These practices prompt manipulations. Many lands were leased to the company by non-landowners who secured a letter of recognition letter from the Pratin. This has led to increasing land disputes and fragmentation

within communities. Sometimes, a Pratin also abuses his power and manipulates deals to his own benefit. Many disputes about communal lands remain unresolved.

The company should resolve land disputes as soon as possible by giving compensation to land owners through clear land surveys. They should also provide a written agreement to secure the position of *adat* communities. If they cannot fulfil our demands, we want the company to return our lands. If not, this can be classified as an illegal land acquisition. We never leased our land. We want to develop our own oil palm plantation so that it will bring more benefit to us.

4.1.3 Permitting and Negotiation:

In researching the chronology of permitting and the various strategies deployed by PT KCMU, the team conducted a careful scrutiny of all the official documents relating to the process. The analysis finds that the permitting and land acquisition process did not uphold the principle of free, prior and informed consent and did not adhere to due process of law.

Following up on a survey conducted by PT KCMU on 20 October 1993 of prospective plantings in the North Pesisir sub-district, the *bupati* of Lampung Barat issued a letter allocating an area covering 25,000 ha. to the company. This area was to be comprised of 10,000 ha. in Bengkunat subdistrict (between Way Ngaras and Way Curung Bengkunat), 7,500 ha. in the local transmigration area and 5,000 ha. in areas designated as State forests.[10]

On 22 November 1993, several community leaders and village heads (now referred to as *Pratin*) wrote a joint statement agreeing to lease *marga* lands for the planting of oil palm by PT KCMU, according to the 'company supported partnership' model. These village heads included those of Pardasuka, Pagar Bukit, Tanjung Kemala, Suka *Marga* Penyandingan, Kota Jawa and Raja Basa. The letter was certified by the *bupati* of West Lampung (HS. Umpu Singa), and the *camat*s of the South Pesisir sub-district and *Bengkunat* sub-district. Eighteen community leaders representing these communities leased 25,000 ha. of their lands (without land maps) to the district government. The statement included the explicit provision, in paragraph 3,[11] that, if the land was not managed by a village cooperative unit (KUD) within one year, then the land would automatically become *marga* land again. This became the basis for the permits issued by the government. Did those 18 community leaders obtain mandates from community members to lease their lands? Did these community leaders have the right to grant these lands to other parties and sign the agreement of land acquisition? Were they justified in writing that all of the community members had agreed to sign the letter (as asserted in point 1c)?

On 10 December 1993, the land office (BPN) in West Lampung District issued a location permit to PT KCMU for establishing 10,000 ha. as a nucleus estate (*inti*) and 15.000 ha. as smallholdings (*plasma*). The location permit was granted with several conditions: first, that land acquisition should be finished within 12 months, but could be extended on formal request for another 12 months (point 7); secondly, that land acquisition should be negotiated directly with the landowners through land sales or by leasing land, based on the existing regulation (point 1); thirdly, that land acquisition should include paying compensation to farmers for yielding up lands, crops, and so forth (point 2); fourthly, that 'enclaves' should be created around people who refused to relinquish their lands and houses (point 3). A map was also attached with a detailed description of the nucleus area (in the south of the area) and of the *plasma* area (in the north).[12]

The signing of the written agreement was followed by the issuance of letters by the District-level Head of BPN,[13] that provides guidance on how villagers should be informed about the mechanisms for securing compensation for acquired land. According to these letters, compensation is only payable for community lands to which ownership title (SHM) can be shown. Untitled lands held as *marga* or *negeri*, or under communal ownership (*ulayat*), should be treated as State land. In other words, BPN interpreted the law as meaning that those community members who hold the land according to customary tenures and not as titled lands were not entitled to get any compensation. For these untitled lands, the investor should only pay a certain amount of money, as a transfer fee, to the District Government, which money should be used for the public interest. Finally, the letters stipulated that the amount of compensation payable should be negotiated directly between the landowners and the investor.[14]

In response to this letter, the *bupati* of West Lampung announced that, within two months, BPN should conduct a land survey to measure out the lands for PT KCMU. The district head asked landowners and workers to show their land boundaries (point 3), sign the minutes of meetings and the forms summarising these land surveys (point 4) and show proof of their land ownership rights to government officers (point 5). He also suggested that *camat*s should initiate land dispute resolution processes through open dialogue (*musyawarah*).[15]

However, after these surveys were completed, the investor found that he would not get as much land as expected. Only about 8,500 ha. were thus mentioned in the initiation permit (*ijin prinsip*) issued by the Director General of Plantation of Agricultural Department to PT KCMU Company.[16] In July 1994, the *bupati* of West Lampung wrote a letter to the Governor of Lampung Province suggesting additional sites for PT KCMU, while expressing his agreement with the plan to develop an oil palm plantation.[17] The *bupati* asked the governor to take into account the difficult topography of the area and the presence of

communities' *repong damar* in the buffer zone.[18] The district head recommended the use of former production forests covering 6,000 ha. in West Lampung district.[19] The district government also allocated a further 2,100 ha. of HPK (conversion forest) as a further area for PT KCMU.[20]

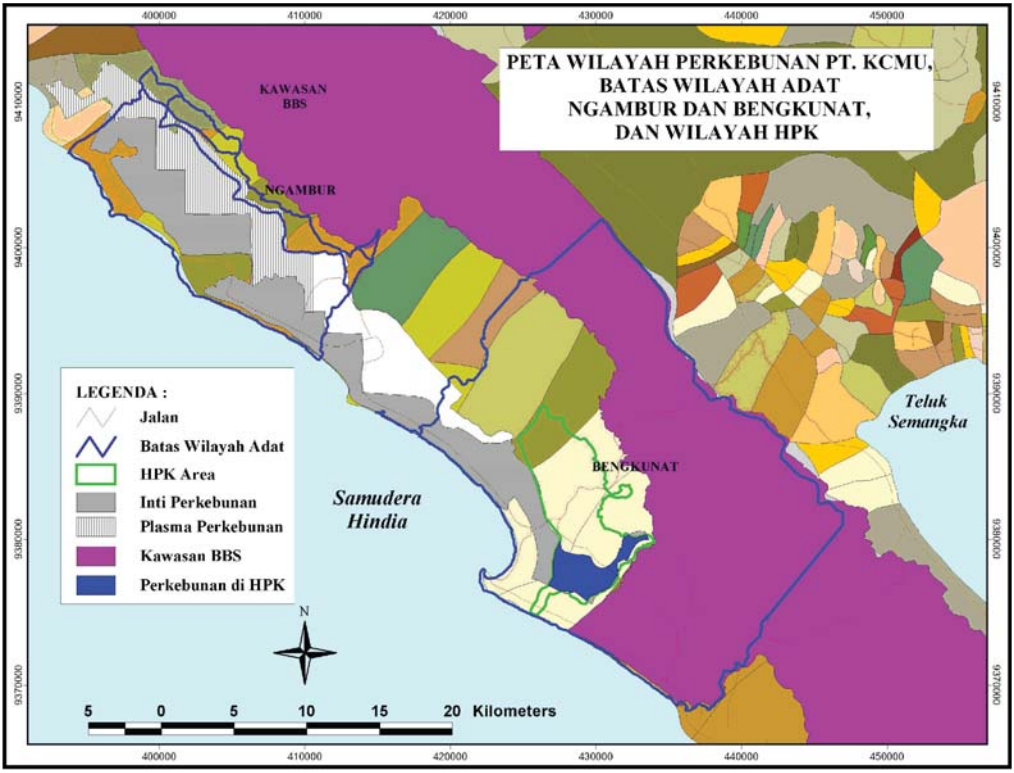


Figure 4.1 Overlapping HPK allocation for PT KCMU (in blue colour)

By this time the project was generating increasing resentment among the local communities. Representations were made by the people of *Pekon Bengkunat* to the Provincial Legislator about the plans of PT KCMU to open an oil palm plantation on their lands.[21] In response, the provincial legislature appointed an investigative commission which visited Pekon Bengkunat on 26 July1994. They held a dialogue with PT KCMU, with the *adat* community, as well as with key local government officials in Pekon Bengkunat.

The report to the provincial legislature of Lampung asserted that the hesitancy of the *adat* communities to get involved in the oil palm plantations stemmed mainly from the

fact that the compensation being provided by the oil palm plantation company was lower than the farmers could generate themselves from cocoa, coffee, and *damar*. To resolve the disputes, PT KCMU should compensate farmers for all crops and lands being absorbed into the nucleus estate, based on existing regulation's (point 4). The district government was appointed to mediate the dispute resolution process.

The report noted that people had the choice either to:

- Be involved in the *plasma* by yielding two hectares of land to the scheme, for which they would then be registered to get land titles. These farmers would then become members of PIR co-operatives. In the fourth year, they would be granted a loan to develop oil palm on their smallholdings
- Accept the 40::60 *inti*:: *plasma* scheme
- Receive alternative land outside the plantation area for land given up to the plantation
- Have their lands designated as enclave areas within the plantation.

The final report stated that the provincial legislature's field visit had resulted in the agreement by local communities to accept the plantation. Local communities withdrew their lawsuit,[22] but they asked the district government to resolve land disputes and to take care that other parties having preferential access to those handing out land transfer letters (SKT) in Bengkunat did not engage in land speculation.[23]

Based on the letter of recommendation of the *bupati* of West Lampung District, the Governor of Lampung then sent a letter to PT KCMU authorising it to extend its land-leasing process into the forest area. The provincial forestry agency recommended issuance of a lease to the former production forest (6,000 ha.) and conversion forest (2100 ha.).[24] However, the provincial forestry agency required PT KCMU either to provide employment for 500-1000 families of 'forest squatters' or involve them as *plasma* farmers. Meantime the oil palm plantation had expanded its extent to 8,100 ha. by taking over an adjacent area leased to the EAK Company for a 3,500 ha. hemp plantation.[25]

Nevertheless, before opening the land, the company was required to coordinate with related government agencies and discuss the plan with local communities.[26] Subsequently, the head of *Suka Marga* village sent an agreement letter to accept the plantation project by leasing 40% of their land for the nucleus estate and reserving 60% of the land for *plasma*.[27] About 17 other villages then sent similar agreement letters, which were certified by *camat* Abdul (Jalil, BA), as support for the government's program to develop oil palm plantations managed by PT KCMU. They demanded that the plantation programme should be materialized.[28]

In effect, there were several changes in the land acquisition process, since the plantation was first mooted. Land areas that were acquired for the plantation area included: communal land and private land, land included in conversion forest (HPK) and a former production forest (logging) area (HPT). Despite all the changes, the government persisted with its target of establishing an oil palm plantation of 25,000 ha. made up of 15,000 ha. of *plasma* and 10,000 hectares of nucleus estate.

4.1.4 Land Consolidation:

Although permitted to go ahead and expand its estate, the company still faced the challenge of negotiating land sales with the communities, thereby consolidating both its *inti* and *plasma* areas. However, these land consolidation processes could not precede easily because of the uncertainty of land compensation. The consolidation process impacted on land rearrangements including the extent, boundaries and positions of lands that were mentioned in the various forms of interim land 'title' that had been obtained by the community (SHM, girik, SKT, SPPT etc.).[29]

In the meantime, a meeting with three community representatives from Pagar Bukit was held in order to achieve 'justice' (point II.2). It was agreed that compensation should be paid to community members at a rate of IDR 250,000/ha. for their land. For crops, the compensation would be based on the regulations and on the findings of field surveys to be carried out by the government WASDAL team, (though this would not involve the people in the decision making process).[30]

To smooth the land leasing process, the *bupati* issued a letter declaring that in the first phase establishing 4,000 ha. oil palm plantation, land allocation to candidates in the *plasma* scheme should prioritise those who had leased over 4 ha. of land.[31] In addition, the district head also designated 17 villages in South Pesisir sub district, covering 25,000 hectares, as potential participants in the 40::60 scheme for plantation development. However, this scheme could not be applied in the former HPT area.[32] Village government officials then issued letters endorsing this process.[33] These letters declared the people's agreement with the 40::60 scheme and demanded that the company implement the project with ancillary facilities such as main roads, estate feeder roads and plantings of oil palms without requiring any further compensation.[34]

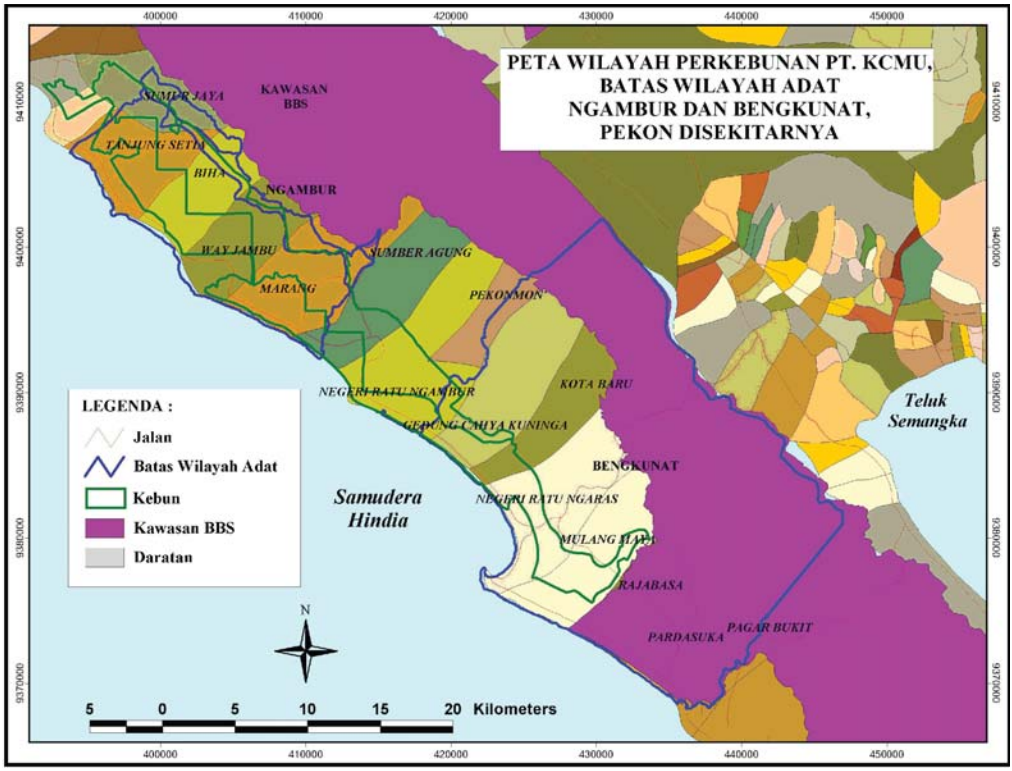


Figure 4.2 Map of Kampung & Adat area vs. KCMU Company area

The statements of the village heads also noted that they were responsible for smoothing out land leasing processes and promised that the villagers would be given fixed compensation rates certified in these statements. PT KCMU also declared that it would pay compensation of crops and would not expropriate unregistered *damar* plantations owned by local communities.[35] Meanwhile, five farmer organizations declared that they would not destroy or cut oil palm plantatings and would support the West Lampung district government program.[36] Subsequently, a *bupati* decree (SK) on the need for payment of a land tax was issued. The decree required the plantation company to pay IDR 48 million for the 2,400 ha. that it was securing as a nucleus estate (Rp.20,000/ha.).[37]

In the land consolidation process, the district BPN office issued a location permit to PT KCMU which included the stipulation that farmer participation in the 40::60 scheme could not be made obligatory (point 10), and the company should take responsibility for any impacts that its activities might incur (point 3). However, the attached map did not show which area should be for *plasma* and which for the nucleus estate.[38]

Indeed, land use in the area covering 25,000 ha. proposed for the estates was already noted to be highly complex and included shrimp ponds, irrigated paddy fields, and transmigration settlements (3,683 hectares). However, there were also local settlements, the people's own productive plantations of crops, such as *damar*, coffee, pepper etc., as well as areas of unfertile land (see table 4.1).

Table 4.1. Land Use in the Working Area of KCMU Company [39]

Land Use	Extent (ha.)	Explanation
Transmigration and other government programs	3,683	Paddy Field, Trans SP II-VI
Hamlets	1,887	Non Transmigration
Productive plantations	3,345	*Damar*, coffee, and pepper
Swamplands and dry rice fields	1,109	
Unsuitable land	462	Steep
Bush and scrub lands with potential for oil palm plantation	6,578	Under conflict with local communities.
Other land with potential to be opened as oil palm plantation	2,000	
Land opened by KCMU	5,936	Have been planted 5,088, ready to be planted 848. This process involves 843 workers
Total	**25,000**	

From this table, we can conclude that BPN Lampung office's designation of plantation area included 5,806 ha. for the nucleus estate and 8,708 ha. for *plasma* (and if the potential land is added, the total area would increase to 14,514 ha.). However, the designation of nucleus and *plasma* lands became disaggregated,[40] as shown in Figure 4.3.[41]

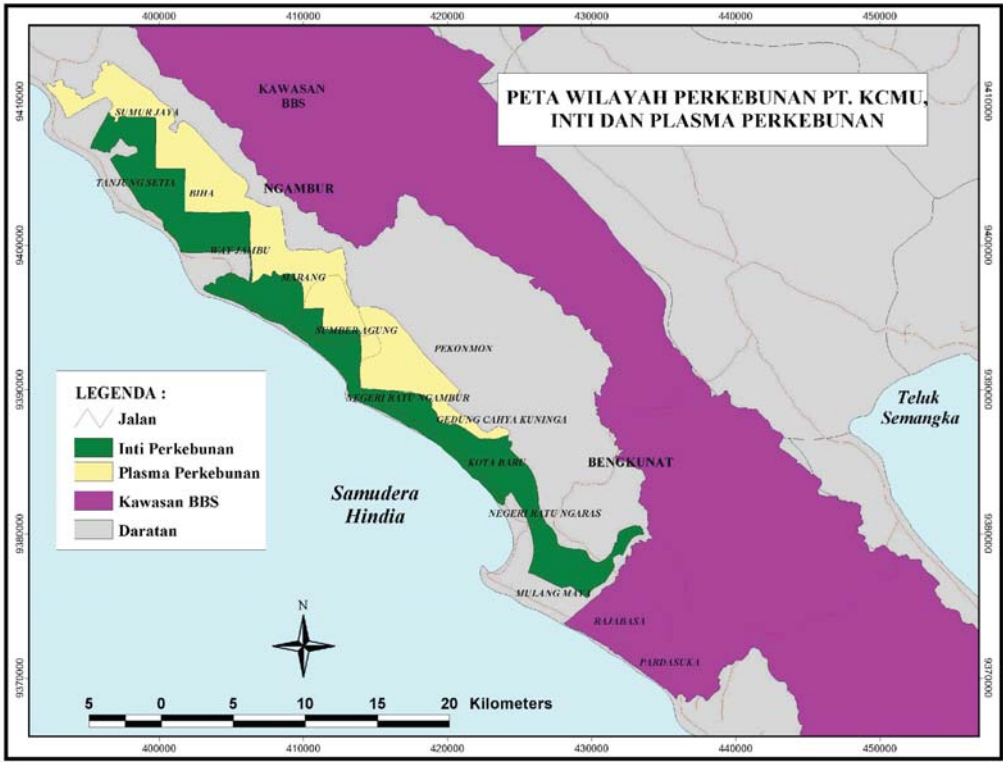


Figure 4.3 Map of Plasma & Nucleus Area of KCMU Company

An environmental impact assessment (ANDAL) study for the PT KCMU operation carried out in 1996, reveals that a high percentage of the people were concerned about the establishment of the oil palm plantation. Their main fear was that the oil palm plantation would destroy the people's *damar* gardens. They were also concerned that the company would determine prices of oil palm fruits and undermine the communities' businesses in coffee, pepper and *damar*. Also, some of the *adat* community who did not own land were afraid that they would lose opportunities to get wage labour on local farms because of the establishment of oil palm plantations. The impact study also described the popular unrest in the face of the land acquisition and land consolidation processes based on concerns that this could lead to land scarcity in the future. For these reasons, many *adat* communities wanted to firmly reject the establishment of the plantation. The report wisely recommended that the company should provide the communities with clear information on: the goals of the project; their plans to enclave the lands of any community members that chose not to be involved in the project; and how they would pay appropriate prices for harvested products from the *plasma* plantation.[42]

The smallholder programme went ahead. On 11 April 1995, the Lampung government sent a letter to support the partnership between PT KCMU and the *plasma* farmers' cooperative (KUD), named Karya Mandiri, authorising loans at a rate of IDR 6,619,537 per hectare but allowing the farmers to grow mixed crops in their plantations.[43] On 8 May 1995, an agreement was signed between PT KCMU, KUD Karya Mandiri and the main investor, the PT BDN Bank, to implement the development and management of oil palm plantation project in the South Pesisir sub-district of *Bengkunat*. The justification for this partnership was the location permit issued by BPN in 1993 that was extended in 1995, the initiation permit issued by Director General of Plantation, the Decree of *bupati* of West Lampung District concerning socialization and boundary establishment in 1994, and the Decree of the *bupati* of West Lampung District concerning oil palm plantation issued in 1993 that authorised the establishment of a plantations covering 10,000 hectares of *plasma* and 15,000 hectares of *inti*.[44]

4.1.5 Changing Government Policies

After the fall of Suharto, many *adat* communities in West Lampung expressed their resentment of the company and revoked their letters of agreement supporting the establishment of PT KCMU plantations on their lands. Clearly, those letters had been signed under duress. In addition, both the nucleus and *plasma* areas were changed (See Figure 4.3). It seems that both the incoming district heads of West Lampung (the first was I Wayan Dirpha, while the current *bupati* is Erwin Nizam, MSi) inherited similar problems, but they viewed the problems differently, especially after 1998 with the fall of Suharto and the beginning of the reform era.

The policy of the first new *bupati* of West Lampung, Lieutenant Colonel (Retd.) I Wayan Dirpha, who replaced HS Umpusinga in 1998, was to promote a partnership between the company and the people and encourage the company to take oil palm produce from the people's plantations. Accordingly, he attempted to facilitate a dialogue between the local community, who were demanding the return of their land, and the plantation company.

Some of the land into which PT KCMU was seeking to expand was actually classified as forest land. This area got caught up in a complex administrative and political struggle over land that developed in Lampung province in the post-Suharto era. In response to the nation-wide moblisation of communities by then reclaiming land rights, the Governor of Lampung Province, H. Oemarsono, proposed a re-arrangement of the province's forest area. He encouraged the Forestry Department to release to (technically) landless people a substantial area of production forest (HPK), totalling 145,125 ha. for the whole province, most of which had in fact already been converted and consisted of settlements, agricultural land, river banks and swamps. He based this proposal on the principles of 'justice, equality, and sustainable environment'.[45] The aim was to show that the government was responding to the demand of local communities to get land titles. Included in this proposal were some

6,260 ha. of land in *Bengkunat*. Likewise, in 1998, a forestry reform team demanded that the provincial government of Lampung implement a programme of community based forest management, which involved leasing forest area to farmers.[46]

Subsequently, the Ministry of Forestry did send a letter to re-allocate these forest areas in Lampung province, including the proposed area in West Lampung. The Ministry agreed that these areas no longer fit with forest criteria and so should be re-classified as non-forest lands.[47] The 6,260 ha. in West Lampung District (in the sub district of *Bengkunat*) were considered by the local peoples to be part of *marga Bengkunat*, which they were already using, but this was also an area that PT KCMU was trying to develop.[48] Indeed, as noted, the local communities had long ago rejected the classification over this area as State forest in 1980, as this implied that these were State lands. Instead the community had demanded that the government designate these areas as private lands, as they were encumbered with customary rights.

Table 4.2 shows land use by the villages in the HPK area, in 2000. As we can see from figure 4.3, the HPK area overlaps the area allocated to PT KCMU. Yet the data show that people already use and manage almost all this HPK area as fields, gardens and settlements. Meanwhile, the BPN office in West Lampung had granted a permit to PT KCMU Company to 2,100 ha. within the HPK area and a further 1,236 ha. outside it, though the locations and boundaries of these areas continued to be a matter of dispute.

The community was suspicious about the allocation of this land to PT KCMU because based on the governor's letter, the same area was being redistributed to them.[49] In a meeting with the research team on 14 July 2005, the head of BAPPEDA in Lampung said these suspicions were unfounded and he confirmed that these former HPK areas were to be allocated to the communities.

Table 4.2 Land Use in the HPK area in Bengkunat sub-district.[50]

No	Sub district Pekon Hamlet	Land holder (Number of people)	Amount of land parcels and extent of land based on land use			
			Settlement		Farmland	
			Amount (parcels)	Extent (ha)	Amount (parcels)	Extent (ha)
1	Pesisir Selatan & Bengkunat					
A.	Sukamarga					
	1. Srimulyo	110	78	24,610	32	102.3
	2. Sukoharjo	90	41	11,920	49	118.7
	3. Sumberagung	240	51	174,00	189	743.3
	4. Jambat	208	63	22,340	145	604.7
	Sub Total	**648**	**68**	**232,870**	**415**	**1569.0**
B.	Penyandingan					
	1. Sumber Rejo	125	68	19,390	58	218.3
	2. Penyandingan	No data	No data	No Data	No data	No data
	Sub Total	**125**	**68**	**19,390**	**58**	**218.3**
C.	Tanjung Kemala					
	1. Tanjung Kemala	128	79	20,120	49	162.1
	2. Tanjung Raja	529	Tad	Tad	529	2622.6
	Sub Total	**657**	**79**	**20,120**	**578**	**2784.7**
D.	Kota Jawa					
	1. Sidomulyo	97	47	13,640	50	203.4
	2. Sukanegeri	118	60	22,130	58	174.2
	3. Talang Beringin Jaya	96	11	4,500	85	235.6
	Sub Total	**311**	**118**	**40,270**	**193**	**613.2**
E.	Pagar Bukit					
	1. Pagar Bukit	529	42	25,050	487	1075.0
	Sub Total	**529**	**42**	**25,050**	**487**	**1075.0**
	Total	**2270**	**375**	**337.700**	**1731**	**6260.2**

4.1.6 Land Redistribution: Marga Recognition or Plantation Expansion?

Notwithstanding these reassurances, the tension between provincial policies to redistribute land to the people and allocate land for oil palm development continued. To promote the land redistribution programme, the governor issued a further decree and the district government of West Lampung issued a provincial regulation to regulate the land distribution process.[51] Surveys conducted by the University of Lampung in 2002 revealed that most community members (99.4%) favoured the change of these areas' status from forest zones into non-forest zones (APL). Yet, this research also highlighted that people were worried about the unclear boundaries between their lands and the remaining protected forest, as well as the overlap between redistributed areas and lands claimed to be owned by customary *marga*. Most people did not posses land titles, leaving them vulnerable to being appropriated by more powerful interests, thereby risking further land conflicts.[52]

In some areas, the land redistribution programme did take account of *marga* rights. In Central Lampung district, for example, 16,870 ha. were redistributed and compensatory fees, referred to as *adat* fees, of IDR 500,000/ ha., were paid by the recipients of the land to the Way Rumbia *marga*.[53] However, some land users later on rejected paying *adat* fees, based on their interpretation of District Regulation No. 6 of 2001. They also rejected the obligation to pay tax to the Central Lampung district government (IDR 100,000/hectare). The district government argued that the agreement between *adat* communities and land users had legal precedence over other regulations. Accordingly, they argued that land users should pay *adat* fees (IDR 500,000/hectare), a land tax to the district government (IDR 100,000/hectare), adjudication fees (IDR 50,000/hectare) and the fees to ascertain the land status (IDR 100,000/hectare). Others disagreed (see endnote for further details).[54]

Conflicts over the administration of land were increasing. On the one hand, people rebuffed elements of the programme to redistribute areas that had been classified as forest land. At the same, the different State agencies held different data about the lands, with the provincial head of BPN and Forestry Agency have discrepant views about the extent and boundaries of the former HPK area. Villagers expressed considerable confusion about this situation. Once the records were properly examined it was found that there were no clear boundaries and there was a lack of minutes showing that previous forest boundaries had been agreed by local communities. This posed a major obstacle to the land redistribution scheme. What land could be redistributed to whom? Only in 2004, almost five years after the proposal to release the forest area, were the forest boundaries finally agreed by both the Ministry of Forestry and BPN.

Another problem was then found in Article 18 of Provincial Regulation No. 6/2002. This article allowed for State lands to be distributed to anybody who needed it, but did not allow the return of these lands to the original owners. No wonder the locals, mainly indigenous people, were unenthusiastic about registering their land with BPN, even though it had set

up sub-offices in each of the five villages in the ex-HPK area in West Lampung.[55]

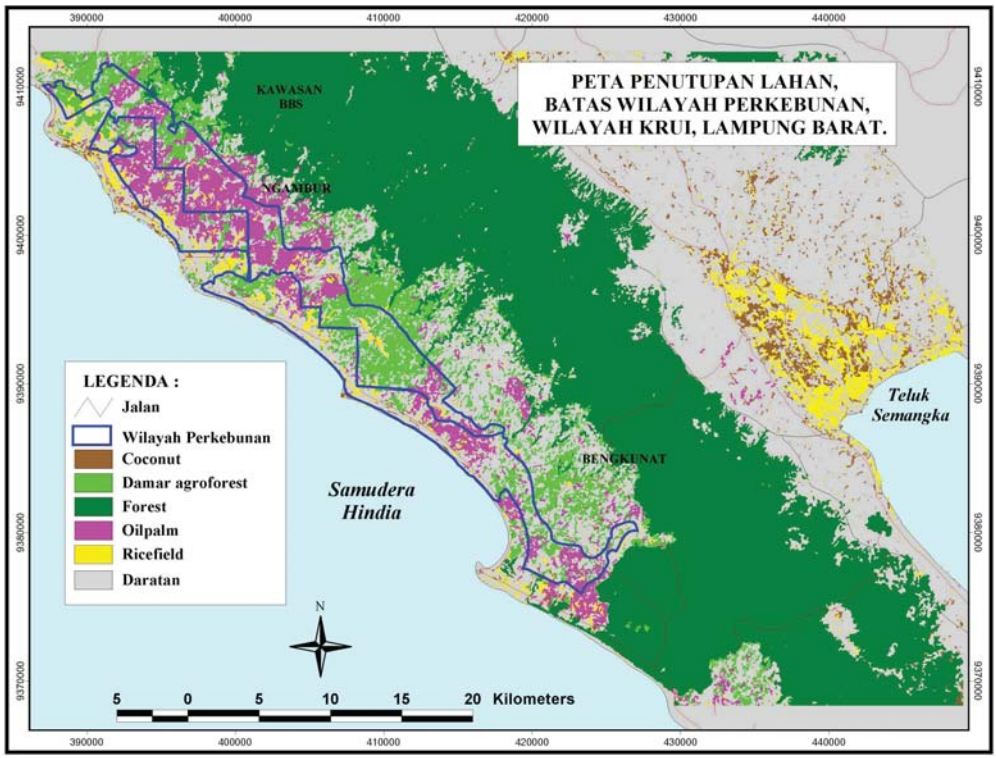


Figure 4.4. Satellite Images Interpretation : Oil Palm Expansion

All this time, PT KCMU continued expanding its plantation, without considering the disputes over the land's status and possession (see figure 4.4). The company appeared to believe that whatever the eventual status of the land, it could acquire it, one way or another, either through voluntary land acquisition in the new land markets that should develop once the lands were titled, or using the old tricks of force and manipulation.

4.2 PT MAS

4.2.1 Development Policies in Sanggau District

Sanggau district is one of eight districts in West Kalimantan province (the westernmost province of Indonesian Borneo). It has a strategic position having direct access to

international transportation linking it to Malaysia and the wider world by road and through the port in the regional capital, Pontianak. Comprising 8.8% of the province, the district has an area of about 1.3 m ha. and is divided up for administrative purposes into 15 sub-districts (*kecamatan*), 6 municipalities (*kelurahan*), 159 villages (*desa*) and 586 hamlets (*kampong*) with a total population 372,489 people. The population density is about 29 people per square kilometre and average population growth over the last ten years is 1.23 percent per annum. The majority population in Sanggau district is made up of various Dayak indigenous peoples who make up about 64% of the total, while Malays (23%) and other ethnic groups (13%) make up the rest. Official statistics show that Roman Catholics make up 51%, Muslims 33%, Protestant 16%, Buddhists 1%, with very small numbers professing Hindu or other faiths.[56]

The government of Sanggau district envisages that by 2010 it will become a centre of agribusiness and agro-industry, based on fast-growing trading activities and environmentally friendly mining, all with the aim of improving local incomes. This is considered to be realisable because the district is already an important trade centre and hosts the largest extent of oil palm plantations in West Kalimantan province.[57] To ensure that investment is significantly increased in the future, the local investment coordinating board has a vision of Sanggau district being 'open to local, national and international investments through faster, cheaper and easier service systems'.[58]

Table 4.3 : Forests in Land Use Plans for Sanggau District [59]

No.	Descriptions	Total (ha)	%
1	Protected forests	160,912.00	12,51
2	Limited production forests	73,200.00	5,69
3	Conversion production forest	27,810.00	2,16
4	Production forest	393,230.00	30,51
5	Plantation/seasonal crops	464,368.00	36,12
6	Mining areas	36,400.00	2,83
7	Dry/wet farmlands	130,860.00	10,18
	Total	**1,286,780.00**	**100,00**

The main emphasis of Sanggau district's investment strategy is to expand and diversify plantations of oil palm and other commodities such as cocoa, pepper, traditional coconut and hybrid coconut. The government facilitates domestic and foreign investments by providing abundant land banks, withdrawing inactive companies' location permits, and changing the use of forest areas through converting their status.

In Sanggau district in 2004, oil palm plantations produced over 1 million tonnes from about 120,000 ha. of productive oil palm plantations.

4.2.2 Tinying Dayak Land Tenure and Governance

The original people who are living in and around PT. Mitra Austral Sejahtera (PT. MAS) oil palm plantation concession and development area are Dayak indigenous people. Centrally, those living in Seribot village are members of the Dayak Tinying tribe, comprising approximately 115 households with around 565 inhabitants. Besides the Dayak Tinying tribe, there are also others tribes of Dayak indigenous people like Mayao, Ribun and Pompakng, as well as Malay people and other newcomers. The majority of the newcomers are company workers.[60] The Dayak Tinying indigenous people have been living in the area since about 300 years ago when their ancestors of Dayak Jangkang tribe first came and established the settlement which was later named Seribot village. They trace their ancestry back to the Jangkang Engkarong area.[61]

The Dayak Tinying's customary system for governing land is broadly similar to that of other Dayak tribes in Borneo, a system that has been applied to their lands for many generations. Land ownership is not ordered through individual titling but is proven, first through demonstrable planted crops or cultivated farmlands, which show that there are people already cultivating and using lands, and, second, through being recorded in the memories of village elders and respected members of the community. Regulations regarding land transfer and allocation are passed down orally from generation to generation. Boundaries are not physically blazed but derive from known natural signs such as prominent trees, clumps of bamboo, river courses and hills. According to *adat*, collective or communal lands comprise protected areas, reserved areas, sacred sites, land for burial locations, and other collective land uses. Within this territory, lands are allocated for farming to individuals and their families, who secure their rights through clearance and cultivation for their subsistence and income generation.

4.2.3 Oil Palm Development in the District

Oil palm was first introduced in West Kalimantan by a State-owned company, which established the first oil palm plantation in Parindu sub-district of Sanggau district in 1979. The company further expanded its plantation areas further south in the Pontianak area in Landak sub-district in 1980s. At that time, the development of oil palm plantations was slow and limited to quite small parts of indigenous peoples' lands in the two districts. The main economic activity at that time was logging, with almost the whole district being allocated to primary forest logging. The result was widespread forest degradation with companies paying little attention to their responsibilities to manage forests for the long term and carry out reforestation. Palm oil only became the main emphasis for investment and business expansion in the 1990s.

The government of Sanggau district argues that oil palm plantations now make a significant contribution to district revenue, amounting to some 17% of annual 'regional domestic income' in 2002.[62] Therefore, the government of Sanggau district provides policy incentives to create a climate conducive for oil palm plantation investments. This has been done through establishing an Integrated Economic Development Region (*Kawasan Pengembangan Ekonomi Terpadu* – KAPET), set up in 1998.[63] Sanggau district is also one of several districts, others being Sambas, Bengkayang, Sintang, and Kapuas Hulu districts, implicated in President Susilo Bambang Yudoyono's policy to develop the world's largest oil palm project along Indonesia-Malaysia border areas in West Kalimantan and East Kalimantan.[64]

4.2.4 Establishing the Operations of PT Mitra Austral Sejahtera

During the economic and financial crisis of 1998, almost all business entities including oil palm plantation suffered from their heavy debt burdens and many came close to bankrupcy. Many of those financially unable to survive were taken over by the government or taken over by more robust or financially healthy businesses. Besides implementing such an exit strategy, the government of Indonesia also encouraged oil palm companies to build up business partnerships with both domestic and foreign investors.

An immediate result of this policy was that, in 1998, five Malaysian enterprises signed agreements for joint ventures with private Indonesian companies to build up plantations and processing facilities in West Kalimantan. The Pahang Estate Development Corp partnered with PT Bakrie & Brothers; Austral Enterprise with PT Ponti Makmur Sejahtera; Lam Soon Bhd also with PT Bakrie & Brothers; Golden Hope Overseas Plantation Sdn Bhd with companies of the Benua Indah Group; and Suka Chemical Bhd. with PT Kalimantan Oleo Industry.[65] These joint enterprises implied Malaysian investors investing substantial capital in some major oil palm companies in Indonesia.[66] PT Mitra Austral Sejahtera (PT MAS), the subject of this case study, was one of these five, a joint venture between Indonesia and Malaysia which merges two companies Austral Enterprises Berhad, Malaysia, and PT Ponti Makmur Sejahtera (PT PMS), Indonesia.[67]

The PT MAS plantation is established in an area already dense with oil palm plantations and industrial tree plantations concessions (HTI). It is bounded by the PIR-TRANS plantation of PTPN XIII in the northern part in Kembayan sub-district, parts of PT Finantara Intiga industrial trees plantation (HTI) to the east, PT Sime Indo Agro oil palm plantation in the south, and another PIR-TRANS plantation of PTPN XIII in Parindu sub-district also to the south. The western edge of the PT. MAS estate lies alongside the main road connecting Pontianak to Kuching (Sarawak Malaysia).[68]

PT MAS also has the biggest Crude Palm Oil (CPO) mill in West Kalimantan with an installed capacity capable of handling 30-60 tonnes of fresh fruit bunches per hour. The huge plant cost IDR 80 billion to establish, includes waste disposal ponds, and is claimed to be the best CPO mill in Sanggau district. The mill was first put into operation on February 7, 2004, after being inaugurated by the governor of West Kalimantan H Usman Ja'far.

4.2.5 Land Acquisition

Through its merger in 1998, the PT MAS joint venture took over the lands already being acquired for plantations by the Indonesian partner PT PMS. This company had begun the process of land acquisition in 1995. In common with other companies in the district, land was acquired from local communities according to the 7.5 model by which the community members, if they wanted to be involved and be assigned small-holding in the *plasma* scheme each had to contribute 7.5 hectares of land. They would then be entitled to an allocation of 2 ha. for their share of the *plasma* with the rest of the land being allocated for company use as *inti* (nucleus estate) and infrastructure.[69]

As explained to the communities in 1995, the PT PMS scheme was envisaged as a 'resettlement programme' (*pemukiman baru*) the requirements being that:

- The farming people should together surrender their lands, including existing village sites, so that the plantation could become an uninterrupted planted landscape;
- Those farming people living in scattered settlements should accept being regrouped in the resettlement area based on the company's and the Sanggau district spatial plans;
- The farming people should accept being relocated to a suitable area where the company wants to set up the new settlement with all the planned facilities and infrastructures.[70]

The land being acquired by PT PMS was categorised as APL (*Areal Penggunaan Lain* – an area of 'other uses') according to PT PMS' interpretation of a decree of the West Kalimantan governor.[71] After completing a survey, the National Land Agency in Sanggau District (BPN) granted a location permit (*ijin lokasi*) to 30,000 ha. of the original 35,000 ha. proposed (see table 4.4 below).[72]

After the merger, more detailed surveys were carried out and although PT. MAS was formally given a land allocation 30,000 ha., it only planned to actually develop 20,000 ha., the remaining 10,000 ha. being allocated as 'enclaves' to communities for settlement, wet rice farmlands, customary forests (*tembawang*[73]), roads, infrastructures, and other supportive facilities.[74]

Table 4.4: Land Use of Proposed PT PMS Oil Palm Estate.[75]

No.	Code	Types/Uses	Total (ha)	%
1	Pd.	Original people's settlements (villages)	142.41	0.40
2	Ld.	Farmlands/cultivated lands	184.64	0.52
3	K.	Rubber gardens	4,172.95	11.92
4	K2.	Oil palm estates	500.00	1.42
5	Sb.	Secondary/idle forest areas	25,266.31	72.21
6	Ra.	Grasslands (alang-alang)	4,733.69	13.53
		Total area suitable for planting oil palm	**30,000.00**	**85.74**

4.2.6 Local People's Perspectives of PT MAS

In 1995, a research team from PT PMS came to conduct a field survey in order to follow up on the preliminary findings of their previous feasibility study. Then in 1996, PT PMS carried out a 'socialisation' programme, first at the district level together with pertinent government bodies, customary leaders, and other community leaders and, in a second phase, village by village to inform the people about the planned plantation.

In the 'socialisation', the company promised local people that it would build housing for community members, establish a clinic, install clean water facilities, school buildings, provide employment opportunities and a meeting hall and made other similar promises. According to the communities, these promises have yet to be fulfilled. The company, without prior consultation with local communities, made out documents for 'agreements of land acquisition' and gave these agreements to the local people to sign. The exception was the people of Seribot village itself, who claim that until now they have still not signed any agreement to release their land to PT MAS.

The presence of PT MAS and its needs for land for planting oil palm generated many different reactions in the communities. It came as a shock to their cultures, ways of life and customary systems of land management. There were heated debates about opportunities, costs and compensation and these led to divisions among the local communities and with both the government and the company. There were also divergent interpretations of the significance of the land negotiations entered into.

According to the company the money passed to the community as *adat derasa* amounted to payment for transfer of the land, so that in effect the community members had sold their land to company.[76] The company also held a customary ritual called *adat ngudas* although this was done without permission from the communities. After this ritual, the company registered the land acquired from the communities, village by village, while at the same

time the company began clearing the surrendered lands, setting up nurseries and planting seedlings for its own plantation. According to the village leader of Seribot, the company did also pay compensation to local people for any losses such as cultivated lands at a rate of between IDR 25,000 and IDR 45,000 per ha. for immature or non productive local crops, and IDR 80,000 for productive crops, like rubber. To enable land clearing to run smoothly, customary leaders gave directions to PT MAS about which land should be opened up.[77]

Community members mention a number of unresolved problems related to land acquisition and the status of acquired lands. In the first place, they note that the government of Sanggau district and PT MAS are not transparent in their dealings with the local people in and around their oil palm plantation. Secondly, the planted lands seem only to advantage and generate substantial profits to the investors. For their part the communities only got an average of 1.2 hectares of oil palm per family, less than the 2 ha. that were promised at the outset. Finally, local people were given no information about the status of the leased lands (*Hak Guna Usaha* - HGU) and what would happen to the land once the leasehold had expired.

In 1997, villagers of Seribot demanded payment of '*derasa*' by the company. For failing to negotiate with the community in advance for getting access to land the company was fined 45 *taels*[78] under customary law (*adat ngidoh ngopis mpet nlunyak nya ompouk bonua*).[79] PT MAS did indeed pay the fine and confessed to misbehaving. Later while clearing acquired lands for its plantation the company was caught bulldozing across, and illegally encroaching onto, the lands of neighbouring Terusan village. In December 1999, Terusan villagers demanded compensation for these losses which had been incurred with without any prior consultation or informed consent.

4.2.7 Impacts of the PT MAS Oil Palm Plantation

Overall, the PT MAS operation has had both positive and negative impacts on the local communities and their surroundings. The physical operations have brought about serious changes to the natural ecosystems and have cleared areas of planted crops and other vegetation. The villagers note that these changes in the vegetation cover have caused changes in species' distributions and have led to uncontrolled pests booming. Land clearance using fire to dispose of debris and dried cut down vegetation has caused air pollution and haze, with consequent problems for human health and to animal species and natural vegetation.

Benefits are also noted. Those who did get smallholdings have improved their incomes, though less than they expected, while road-building has also helped other farmers in previously isolated villages getting access to nearby markets such as Bodok, Bonti, and Sanggau district town.

These changes have also had their costs however notably in terms of social and cultural changes in the local communities. Even though *tuak*[80] drinking is common in rituals and traditional festivals among the Dayak, villagers now note a worrying increase in alcohol abuse. Many older people and parents worry that their children and youths are getting addicted to alcohol, causing them to become lazy and leave school early. People complain that individual profit seeking has replaced traditions of communality, solidarity and the customary, more collective, mode of life. This change to a more individualised and capitalistic ways of life, is leading to everything being measured only in economic terms.

'Stealing In Our Own Homes'[81]

Where is her husband? "My husband is in prison, my father and mother passed away, I don't even have a brother and sister," a young mother Mrs. Ata, told us. Why is her husband in prison?

Thomas Ata was detained at Sanggau Penitentiary due to problems with PT MAS. At that time, July 14, 2003, he together with seven other colleagues harvested oil palm fruits from their smallholdings but because the fruits harvested from their 1.2 hectares plots were not enough to make up their daily needs, Thomas together with Libertus Sukiat, Thomas A, Elisius, Klaudius Piam, Antonius, Yulius Yuh and Sipir also harvested fruits from the nucleus estate.

"Not much. Only sixty-nine bunches. And the fruits were later given back to the company," said Mrs. Jumina who is experiencing the same problems. She testified that their husbands had done this because the income generated from normal harvesting is not enough for their subsistence.

According to those imprisoned and interviewed by the Kalimantan Review, that was their first action. Unfortunately they were spied by two security and two mobile brigade personnel. In the afternoon they were caught and early in the evening sent to and interrogated at Bodok sector police office. After spending some days on bail, between September and December 2003, they were formally detained by the Sanggau Attorney.

"What dissatisfied me is that the company came in and is utilising the customary lands of our people here, who are still practising customary law. So, why did they directly apply State law (to this case), they should have tried to resolve the issue in the customary manner first," said Mr. Anton, a customary leader of Tantang B village.

Since September 2003, those seven fathers never knew their families, wives and children. "My children repeatedly wanted to meet their father. Day by day it becomes harder. And I want my husband back home soon. But I still don't know, how to get them released" said Jumina miserably.

As explained by Mr. Anton, and other villagers, both Tantang B and Sebombo villagers accepted the presence of oil palm because they wanted roads. A road from Parindu toward Tantang B had been established by the local government, but it was ill maintained beyond Engkayuk village (10 kilometres from Parindu). Therefore, the community members were hoping to be able to use the company's roads to get to Parindu and nearby villages.

'I soon realised the sawit system would not benefit the Dayaks. They were just being exploited as a labour force, not being treated as landowners. I was quite idealistic at that time. I wanted the Dayaks to be treated as landowners,' said Mr. Donatus

4.3 PTPN XIII

4.3.1 Background to PTPN XIII

The oil palm plantation under the management of PTPN XIII[82] in the Sub District of Parindu is important in this research since it is one of the oldest plantations in Sanggau District. The plantation, one of the country's first Nucleus Estate Smallholder schemes (*Perkebunan Inti Rakyat* – PIR), illustrates many of the problems associated with plantations, particularly with respect to legal, social, cultural and economic matters.[83]

Some people had predicted these problems from the beginning. They worried that these problems would be create a time bomb for the future. One of these was Mr. Pelandus, who was the Head of Section (*Kasi*) of the Rights over the Land of National Land Agency (BPN) of Sanggau District. According to his information, he had warned the then Head of BPN of Sanggau District that the expansion of oil palm plantations under the PIR scheme in Sanggau district was in contradiction with the land ownership system and land regulations of the Dayak communities living in Sanggau.

He had explained that the proposed expansion was bound to create conflicts over land and cause socio-cultural problems, since land is one of the most important matters in Dayak customary law.[84] Mr. Pelandus's worries have indeed become a reality. The presence of PTPN XIII with its oil palm plantation project has destroyed the customary legal and socio-cultural systems, and has generated both latent and manifest conflicts some of which have led to violence.

The establishment of PTPN XIII in West Kalimantan was organised according to a pre-planned programme established by the central government.[85] The plan envisaged local government merely implementing the policy adopted by the central government without any flexibility to adjust it to suit local realities. Such an approach was strongly advantageous for PTPN XIII, in starting a business in West Kalimantan based as it was on taking over community land according to a process that entirely lacked any commitment to principles of transparency, equality and justice.

PTPN XIII even used intimidation and terror tactics in order to accelerate the take over of Dayak community land. One of the members of Dayak Pandu tribe, Mr. Matius Anyi, explained how the 'socialization' process of the plan of oil palm establishment usually involved military persons, who often threatened any members of the Dayak community who intended to oppose the plan by accusing them of being members of the banned Indonesian Communist Party (PKI).[86]

4.3.2 PTPN XIII - PIR SUS Parindu

Since 1979, PTPN XIII[87] has become a pioneer of oil palm plantation management in West Kalimantan, establishing its first oil palm plantations in Sub Districts of Meliau and Parindu. Unlike the oil palm plantation in Meliau,[88] the oil palm plantation in Parindu was developed as a PIR project according to the 3::2 formula.[89] Established with World Bank support, the PIR oil palm plantation project in Parindu Sub District was designed to complement a *Program Transmigrasi Swakarsa* (Voluntary Transmigration Program) to which 80% - 90%[90] of the project land was allocated. The remaining 10-20% was to be allocated to the local community, who would in return transfer their land to PTPN XIII.

The local community strongly protested this policy. They could not accept the fact that not only had they had to give up their land to the transmigration scheme but that, while the transmigrants would then participate directly in the oil palm scheme as smallholders, they could only participate by giving up further land to PTPN XIII under the 3::2 formula. Although the Government then tried to overcome community objections by various means, the community continued to voice its sense of injustice and rejected the scheme.

In the face of these persistent objections the Government finally changed its policy by carrying out a PIR oil palm plantations project exclusively for local community smallholders but with no transmigrants. Yet the damage had been done and the bad relationship between the government (including PTPN XIII) and the local community persists. As a consequence, any consultations now carried out by PTPN XIII never get a serious response from the local community.

Administratively speaking, in 1980 and 1982, PTP VII [now PTPN XIII was allocated a reserved area of 48,000 ha. in the Sub-Districts of Parindu, Tayan Hulu and Tayan Hilir, in Sanggau District to develop its operations.[91] Afterward, PTPN XIII was awarded a further 13,220 ha. of land to expand its estates.[92] Based on these allocations, in Parindu Sub-District the company then set aside 2,862.32 ha. as its nucleus estate (*inti*) while allocating 3,635.2 ha. to smallholdings (*plasma*), 392.5 ha. for farming and 337 ha. for housing. Altogether 1,364 houses were established in the PIR area as well as 2 elementary schools, 4 teachers' houses, 3 community health centres (so called *Puskesmas*), 1 clinic, 1 public hall, 4 religious buildings and roads. While the company and local government has now also issued 934 land titles for housing plots and farmland, these have not yet been issued for smallholdings, where the 221 participating farmer families are organised into 44 smallholder groups.[93]

4.3.3 Legal Status of PTPN XIII Nucleus Plantation in Parindu

Based on the information we have been able to obtain, PTPN XIII has never completed the legal procedures for operating an oil palm plantation in Parindu. Although, as noted,

lands were allocated to the company to set up its operations, since those Governor's decrees were issued, no application to acquire a Business Utilization Title (*Hak Guna Usaha*-HGU) has been submitted by PTPN XIII as required in these decrees. The research team also could not find any initiation permits (*ijin prinsip*), location permits (*ijin lokasi*) nor letters from the Head of the District recognising the use of the designated forest reserve land by the Forestry Bureau of West Kalimantan or BPN of West Kalimantan.

From a legal point of view, therefore, PTPN XIII lacks authorisation to use the land as an oil palm plantation and its current arrangements appear to constitute a violation of Law No. 5 of 1960, the Basic Agrarian Law. In accordance with the BAL, any person or institution wanting to establish a plantation should get a HGU issued by the relevant government agency (today the BPN but before 1988 the Ministry for Internal Affairs).

With regard to this situation, the Head of Sanggau District (*Bupati*) sent a letter to the President on 7 June 2000 declaring that PTPN XIII's lack of a HGU implied a serious financial loss to the State, particularly in terms of the lack of payment of taxes and fees payable for the 'Acquisition of Land Rights and Buildings' (BPHTB).[94]

4.3.4 The People of Parindu

The Sub District of Parindu currently contains some 62 villages (*kampong*). each predominantly made up of a single ethnic group.[95] Until the transmigration programme commenced, two ethnic groups inhabited the region being Malays (Melayu) who lived in Balai village and Dayak peoples, made up of six 'clans' in the villages of **Pa**ng Podan and Kodan, Taba, Mayau, **Ri**bun, Pa**ndu**, and Dosan. The term Parindu is a composite name made up of the first or last syllables of the names of some of the main Dayak tribes living in this sub district.[96]

The territory of Parindu Sub District covers some 59,390 ha., most of which is today converted into nucleus and *plasma* oil palm plantations. Today the Dayak people live in model linear settlements built alongside the roads, mostly far away from the clean water sources alongside which Dayak villages were usually established to fulfil daily needs for washing, cooking, cleaning and transport.[97]

Like most Dayak groups the land tenure system of the peoples in Parindu is based on communal ownership, regulated by customary law. Individual farmers acquire land rights within this collective territory through land clearance and cultivation, originally through swidden agriculture although this system has almost ceased due to land shortage caused by the expansion of oil palms. According to community members, individual holdings within the *adat* lands are inherited and can be transferred to their children. Although records are not kept of the extent of individual holdings the boundaries of all holdings are well known and agreed to between neighbouring farmers.

In accordance with *adat*, land rights are respected by other members of the group. Infringements of *adat* can be punished pursuant to customary mechanisms for adjudication and sanction. Such fines are referred to as *tahil* by the Ribun people and and *real* by the Pandu.[98] A *tahil* is equal to 20 small (*singkap*) ceramic bowls (*singkawang*), 7 large ceramic bowls, one local chicken with a minimum weight of 1 kg., three bottles of *tuak* (fermented rice wine) or three kilogram of sugar and three *ons* (equal with 1/10 of 1 kg) of coffee.

The chicken should be replaced by a pig in cases when the penalty for an infringement exceeds three *tahil* or more. In the case of a three *tahil* charge, the pig should be equal with 5 *takah* [1 *takah* = 5 kg of pig]. If the person has been charged before, the *adat* penalty may be increased. The most severe punishment is 16 *tahil* which can be imposed for planned or unplanned murder, also called as *adat pati*. In the case of a battering or a fight, the punishment is referred to as *adat setengah* (half) *pati*.[99]

This customary law is also applied to land conflicts, for instance in the case of land trespassing or occupying the land of other people. The amount of the *adat* fine will depend on the decision of an *adat* council (*dewan adat*). The *adat* council has authority to administer justice through an *adat* court. In a hamlet (*kampong*), the *adat* council would consist of the head of sub village, the head of RT (*Rukun Tetangga* – Neighbourhood Council) and RW (*Rukun Warga* – Citizenship Council), elder people familiar with *adat* and an *adat* leader. At the village level (*desa*), an *adat* council would consist of the village head, the head of a hamlet, some people who are familiar with *adat*, headed by a *temenggung*.

Despite this charge and punishment system, the main dispute settlement mechanism under *adat* is to generate consensus. Reconciliation as a form of dispute settlement will usually be implemented and obeyed. Indeed, the functions of customary law are: to protect the public interest among clan members; to maintain order and peace among ethnic groups and among all human society and; to maintain their religions and systems of belief.[100]

However in case there is a dispute between communities and both parties argue that they are in the right, then a customary law system for proving guilt, based on the peoples' beliefs in the action of supernatural forces, can be invoked. In one test, referred to as *sidi*, both contesting parties are asked to dive under water in a sacred place, while local elders recite an incantation. The person who remains longest under water is judged to be in the right. Another mechanism is oath-taking, similar to the Javanese tradition of *sumpah pocong*. People will be saved from the oath if he/she is in the right but those who are guilty will, after a period of time, die in unforeseen ways, such as through accident or illness.

4.3.5 The Legal Process of Land Acquisition

According to Governor's Decree No. 187 on 28 June 1982, PTPN XIII may acquire any lands within the Parindu PIR SUS area that have been obtained by a third party,

through the required process of land acquisition as set out in the relevant regulation (*Permendagri*).[101] Therefore, legally speaking, PTPN XIII had an obligation to follow the regulations summarised in chapter 3.

In PTPN XIII documents on PIR SUS Parindu project, the implementation of the project is described as consisting of three phases. The first phase consisted of a preparation and development phase, that included finalising the legal process, acquiring land, determining capital sources, carrying out a feasibility study, establishing the plantation, building the settlements and other facilities and choosing participants from among the candidates. The second phase, was described as a conversion phase, and included transferring the ownership of *plasma* lands from the plantation company to the participant farmers; transferring credit from the government to the farmers and transferring responsibilities for managing the plantations to the operators. The final phase, termed the 'post conversion payment phase', included establishing a payment mechanism for the credits that had been received, capacity building of the participant farmers and actual production.

To accord with the *Permendagri*, land acquisition for private purposes, with due compensation, should be monitored by the local government. The land acquisition should have been carried out directly with the interested people and the compensation should be decided based upon the agreement of interested parties.

The contracts between PTPN XIII and the PIR SUS Parindu farmer participants sets out the ensuing obligations of both parties. These include:

- Obligations of PIR-SUS participants:

    1. Transfer ownership of their lands that have been designated as part of the plantation project,
    2. Performing hard work in the *plasma* plantation,
    3. Inhabiting and taking care of the housing provided by the company,
    4. Using and taking care of facilities provided by the company,
    5. Obeying and implementing the rules in the project area,
    6. Maintaining order in the project area,
    7. taking care of agriculture and plantings in the project area,
    8. Signing an agreement to manage the oil palm plantation,
    9. Signing the loan agreement documents provided by the bank,
    10. Obeying all rules related to the signed agreements as well as other technical plantation rules.

- The rights of project participants:

    1. Relocation costs

2. Obtaining ID,
3. Receiving living allowances,
4. Receiving facilities and equipment in the project location when they arrive in the project area,
5. Receiving land that covers 0,25 ha land for settlement and 0,75 ha for agriculture land,
6. Receiving on oil palm plantation that covers 2 ha, which is ready to be managed,
7. Receiving education and health facilities as well as other community development assistances,
8. Receiving training and other technical assistance on plantation and diversified agriculture,
9. Obtaining training and technical assistance for agriculture business,
10. Obtaining a copy of land ownership certificate,
11. Obtaining secure market access for their plantation products.

In addition participants are prohibited from selling their lands.

4.3.6 Community Experiences of Land Acquisition

Members of the Dayak Parindu members interviewed during this study asserted that, in the reality, the Dayak people have been tricked by PTPN XIII.[102] They affirm that all of the company's information and promises given to the community have been proven false. In general, the Dayak people who participated in PIR SUS Parindu project complain that, on the one hand, PTPN XIII demanded that people fulfil their responsibilities, while, on the other hand, the company did not provide what participants should receive.

The following inconsistencies in the performance of PTPN XIII were noted:

- 37 families who transferred lands to the company in 1982/1983 have still not received any parcel of land for oil palm plantation, agriculture area or settlement from the company,
- Some people received smaller parcels of land for oil palm plantation, agriculture and settlement than had been agreed by the company (3 ha. each),
- Some lands have still not been converted to oil palm to this day.

The land acquisition process for PIR SUS Parindu project, as experienced by the interviewees was as follows:

- In the 1980s, agents of the local government (Village and Sub District) informed the people of the plan to develop an oil palm plantation,
- PTPN XIII [previously called as PTP VII] developed a pilot project of oil palm plantation in the Sub District of Meliau,

- PTPN XIII invited some *adat* leaders of Dayak Parindu to come and see the pilot project of oil palm plantation in the Sub District of Meliau. There was suspiciousness that this invitation was a strategy of PTPN XIII to use the said *adat* leaders as their campaigners to promote the project in PIR SUS Parindu.
- Afterwards, the said *adat* leaders from Dayak Parindu who had returned to their village informed the people, in village meetings, of their experiences. Some people who served in village administration (the head of RT, RW, sub village, village, and *temenggung*) also attended the meeting.
- The said *adat* leaders were then invited again by PTPN XIII to see an oil palm plantation in Pematang Siantar, in North Sumatra, that was known as *Kebun Bah* Jambi. PTP covered their accommodations and living allowances for a month. It was unclear what the activities of *adat* leaders and PTPN XIII were during their stay in the plantation.
- After returned to their village, those *adat* leaders attempted to persuade Dayak Parindu people to participate in PIR SUS Parindu project by transferring the ownership of their land that covered 5 ha. There was no other information provided except the requirement of the said land transfer.
- According to the informants, the company intentionally provided unclear information concerning the project and its participation requirements to the Dayak Parindu people. PTPN XIII persuaded Dayak Parindu people by giving them the expectation that if they participated in the PIR SUS Parindu program, they would become rich. They asserted that 'you could earn enough money from one oil palm tree to buy a cow, by owning two oil palm trees you could send your children to university, so why don't you transfer the ownership of your land to the company for oil palm plantation project!' In this kind of situation, it was very hard for Dayak Parindu people to reject the plantation project since the lure of the project was so compelling. As the result, nobody rejected the project.
- Thereafter, there was a registration for the Dayak Parindu people who wanted to participate in PIR SUS Parindu project. The registration process was conducted by plantation company staff [PTPN XIII] in collaboration with the heads of each sub village. There were some requirements that should be fulfilled by participant candidates, including providing of citizen ID, pictures and family card (*Kartu Keluarga*). In fact, some people who could not fulfill the requirements still got to participate in the project, such as those who had not married. There was just one meeting held for the 'socialization process'. As a result of this limited transfer of information, there was a lack of comprehension among the Dayak Parindu people concerning the project.
- The next process was land clearing that was initiated as a village festival. Some participants, saw this ceremony as a ploy by the company to show that the Dayak Parindu people had agreed to the PIR SUS project. The land clearing process involved employing people as low paid workers at a rate of IDR 1,200 per day.
- The next activity was planting oil palm seedlings in the cleared land. This activities was organized by contractors who employed local people as their workers

Up to this point no information was provided to the communities about any compensation for any lands acquired from the Dayak Parindu people and transferred to PTPN XIII and which had then been converted into the PIR SUS Parindu plantation project. Our conclusion is that no such compensation was ever paid by PTPN, which instead merely implemented the 3::2 formula, which the community had originally rejected.

The following is the chronology of events as recalled for the post seedlings cultivation phase:

- During the first harvest, three years after planting, the company claimed that all the fresh fruit bunches were owned by the company [PTPN XIII as the nucleus]. The company also argued that the harvested fruits were not yet mature.
- PTPN XIII then designated which part of lands that should be given to PIR SUS Parindu participants as smallholdings (*plasma*). This was a process that took quite a long time, in some cases 3 years, in others 5 years. However, there are some participants who have not acquired parcels of land from the company until now. Another problem is that many people received less than 3 hectares of land.
- When the Dayak Parindu people questioned PTPN XIII about this matter, the company argued that the reason why some people received less than 3 ha. of land was because these people had transferred less than 5 ha. at the beginning. The problem was that the company never informed people about how much land had been transferred, nor clarified who had supposedly transferred less that 5 ha.
- The harvesting process was carried out by the farmers' groups and the fruits were delivered to the company for sending to their mill.

4.3.7 Social and Environmental Impacts of the Plantation

In reviewing their experience with PTPN XIII, community members highlight the following problems resulting from the imposition of the plantation in their lands:

- Some Dayak parindu *adat* leaders, who have allied themselves with PTPN XIII, have used they positions to obtain personal benefits from the company both for themselves and members of their families, including getting privileged access to smallholdings,
- Customary law and cultural traditions have been marginalized by the influx of outsiders,
- New social inequalities have been created and traditions of sharing and collective benefit have been lost,
- Outside workers have undermined sexual mores and encouraged the emergence of prostitution,
- Subsistence economies have been undermined, not least by the loss of land, and have been replaced by cash-based household economies,

- Smallholder families are not able to meet their minimum daily needs due to the low prices of oil palm.
- People have become unduly dependent on the oil palm plantation and the company, weakening both their wider autonomy and their ability to demand fair prices,
- There are uncertainties about how farmers will afford replanting once their oil palms become overmature,
- Extensive areas of forests have been cleared, biodiversity lost, hydrology disrupted and the overuse of fertilizers noted,
- These environmental impacts have in turn reduced the quality and diversity of people's livelihoods, in terms of reduced opportunities for hunting, fishing, gathering, use of forest products and access to clean water.

According to some PIR SUS Parindu participants, the Dayak Parindu people now realize that they were tricked by PTPN XIII, as they have never enjoyed the benefits that PTPN XIII had initially promised.

4.4 PT CNIS

4.4.1 Communities and Oil Palm Estates in Mukok

The oil palm estate of PT CNIS is located on the customary lands of the Bidoih Mayao. The Bidoih Mayao people, who live in this area, are descendants of the Macan Balok of Kelompu, Upe and Lanong. According to the latest available official statistics, from 1997, the Bidoih Mayau sub-tribe is made up of 422 families under the authority of the customary leadership of the *Tumenggung* (hereditary chief). He supervises several *Let Pocaros*, who have the responsibility to lead village level decision-making during the meetings of *adat* leaders (*rapat tua tua adat*), as well determining *adat* sanctions.[103] The Bidoih Mayau have been settled in this area since the 18th century and more recently they have been joined by other settlers from Java, who were moved into the region in national and local transmigration programmes.

Five transmigration sites have now been established in the area amounting to as many as 25,000 people. This big population of transmigrants and the large area of land they cover have made the region into a demonstration area for transmigration. Both local and central government have held several national events in the region, like celebrations of National Reforestation Week, and capacity building workshops for youth, party activists and social organizations. Furthermore, myriads of training workshops for farmers have also been conducted in this transmigration area. There are strong indications that the government created this transmigration region as a model project site to be visited for government officials and farmers' groups from other parts of Indonesia. A large proportion of the

transmigrant groups, in particular those who now live in Engkayu and Engkode kampong, came from Delangu in Central Java, known as a centre of rice production and famous for its *Rojolele* rice variety. By choosing people from Delangu, the government hoped to use the transmigration programme to turn the area into the 'rice barn' of the whole of Sanggau District.

According to the Regional Spatial Plan (RTRW) of Sanggau District, Mukok sub-district consists of forest areas and dry-land agricultural fields. The forest areas are largely allocated for production forest, especially as timber plantations (HTI - *Hutan Tanaman Industri*), whereas the dryland agricultural areas are allocated for transmigration, with the expectation that they can be developed as paddies for wet rice farming.

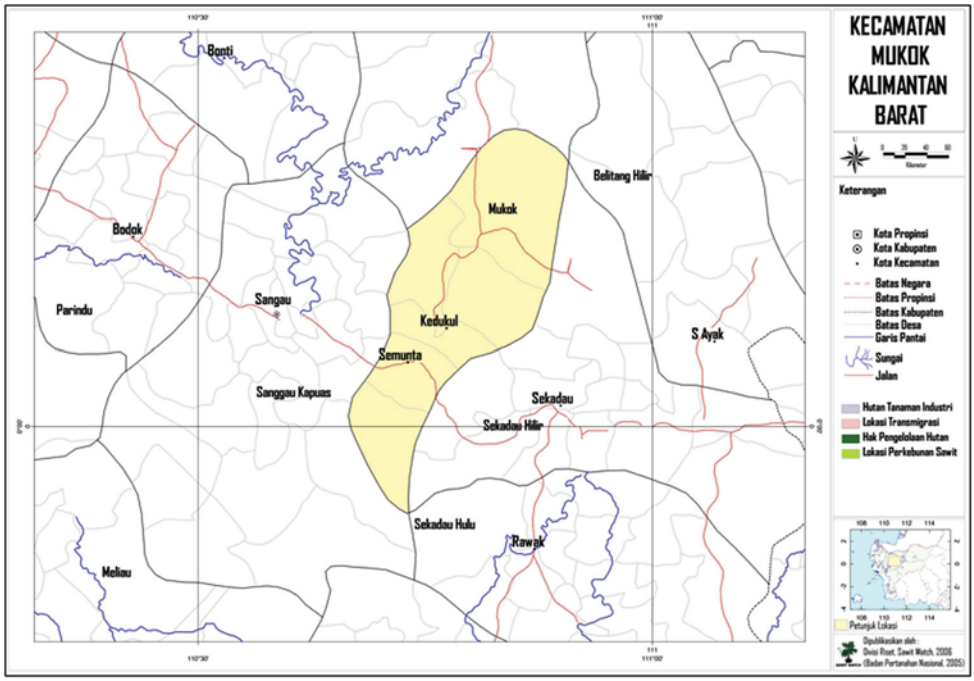


Figure 4.5 Map of Mukok Sub-district

4.4.2 PT CNIS in Mukok Sub-district: the Testimonies of Local People

One of groups of transmigrant farmers who rejected the transfer of their land to PT CNIS is the farmer group of Sadang Baru of Trimulyo Village, in Mukok sub-district. In one of research team's meetings with them, this farmer group showed us a photo album that illustrates their long trials in establishing themselves as transmigrants in the region. In one photo, showing the initial phase in 1983, the farmers can be seen wearing the

transmigration uniform, with passionate faces indicating their hopes of getting a better life in this new place. By contrast, the latest part of the album illustrates their recent condition. The following testimonies, from farmers who chose to retain anonymity, explain their story.

Tesimony of a Transmigrant

We came from Tanjung Village, Klaten, Central Java. We were 58 familes who joined the national transmigration program and went to Mukok sub-district to pursue a better life. According to information provided by the Head of Delangu Village and transmigration instructors in Delangu, we were chosen mainly to develop food crops, particularly the cultivation of paddy. In this place, we met 43 families of local transmigration people from Tokang Jaya. Their original tribe is Bidoih Mayau. They still have land in their home village in Kedukul, which is located on the edge of the Kapuas river. They planted rubber, dry rice fields and *tembawang* (customary agroforests of useful timbers, fruit trees and medicinal plants).

In the beginning, the transmigration office promised to provide us with three types of land parcels for cultivation. The first parcel would cover 1/4 ha. as house and home garden, whereas the second parcel would covers 3/4 hectare for cultivation. The third parcel for one hectare is for further cultivation Nonetheless, we had bad experiences on arrival in this place. We did not obtain any land ready to cultivate as the transmigration officer had promised. We only obtained a house each with ¼ hectare of cleared land as a home garden.

The situation got worse as we had no money to meet our needs and the produce of the land in our home gardens could not meet our daily needs. The daily rations for transmigrants (*jadup*[104]) were soon used up. I still clearly remember the day we organized a demonstration to demand that the government fulfil its promise to provide the two cultivable plots of land on *Pon*,[105] July 1, 1986. At that event, we shaved off our hair and marched to the technical implementing unit of transmigration office SP 1-5 (UPT Transmigrasi SP 1-5) and presented our demands to the Head of UPT, Mr. Suryono.

Six months later, the UPT office provided the first land parcels to us (3/4 ha. per family), but these lands were still not ready to be planted. We were told we should clear the fields first before cultivating the lands. Fortunately, a foreign agency, CRS, supported us by giving *jadup* in the form of rice to fulfil our need for another half year. Not all transmigrants were patient enough to wait for the full allocation process of the first parcel of land and given all the uncertainties related to the second land parcel. Some of them decided to sell their lands and returned to Java or went to find other jobs outside their villages. Others sold their houses and lands and became traders in Sanggau. I decided to leave our family in the transmigration settlement of SP 1 and went to work as an estate worker in another region of West Kalimantan.

The second parcel of land (1 hectare per family) has still not been distributed to us right up to the present, due to land conflicts with *adat* communities of Engkosi. Although these lands are still occupied by the *adat* communities, the National Land Agency (Badan Pertanahan Nasional/BPN) office has issued land titles for a part of these lands to the transmigrants.

Therefore, in reality we only possess one hectare of land (3/4 hectare for agriculture land and ¼ hectare for home gardens). Some of us hold land title for the second parcel of land (1 ha) without any access to that land because it is controlled and occupied by the *adat* communities of Engkosi.

Frankly speaking, we really need irrigation, seeds, fertilizer, cows, and so forth for improving our agriculture activities. However, the situation in Mukok is different. There are no such things here. We learned a lot from the adat Bidoih people about how to plant rice and open fields in the forests and practise shifting cultivation.

In 1999, we were offered the chance of participating in oil palm projects. However, we rejected the offer to join the oil palm plantation and release our land. **Let the oil palm be planted in other villages. Before we came to this place, we already knew about how to plant and take care of oil palms. We have even been have involved as oil palm estates workers, in cultivating the oil palms in places like Kelompu, Ngabang, Kembayan, Semuntai and so on. Oil palm is not the reason why we came here. We came here to plant food crops!**

Our ancestors and our patrons (government institution that sent transmigrants in this place) as well as our transmigration mentors taught us not to sell our land but to cultivate it in order to fulfil our needs. Therefore, our mentors advised us to cultivate food crops. **We have struggled to acquire this land though long negotiation processes and demonstrations. Therefore, it is not that easy to take the land from us!**

Testimony of another Transmigrant

From our point of view, it is not wise to transfer the land given to us. Both in Java and here, the land that is available to farmers is very limited. Based on our farming experience, the oil palm estates will not create significant benefit. The land needs us, the land needs our care and sweat to feed us. PT CNIS offers us compensation of IDR 500,000 for ¾ hectare of land, but we can get better prices when we barter with the local communities (*adat* communities surround the transmigration area). As a comparison, ¾ hectare of transmigration land is equal in value to three parcels of shifting cultivation land outside the transmigration area. Honestly, I would prefer to barter my land to somebody else and get more land than sell it to PT CNIS. I would prefer to get shifting cultivation lands and obtain a land title for it. Later, I would cultivate a mixed rubber garden on it. Currently, I have three parcels of mixed rubber gardens that will be inherited by my three children. I have obtained land titles for these three parcels of land. This situation is much better than participating in *plasma* oil palm plantation in which there is unclear distribution between the company, the co-operatives and the farmers. My experience shows that the benefit from the mixed rubber gardens is better than we can get from oil palm estate. I learned how to build up mixed rubber gardening from the Bidoih *adat* community, so called *tembawang*.

May I comment on the TWH Cooperative here? I heard that the members' annual meeting in 2005 was not run well. Too many outsiders are involved in the cooperative, like government staff, company personnel and so on. I think the cooperative is only a puppet cooperative.

Testimony of a third Transmigrant

I do not want to grumble about the lack of facilities in this place, since that is my destiny as a transmigrant. In Mukok, we obtained many facilities compared to other transmigration programs. In 1986/1987, we were granted cows by the President of the Republic of Indonesia (*sapi banpres*). These were collectively used based on the revolving cow system (*digaduh*). Honestly, I wish I could have my own cows but unfortunately, this place is not suitable for raising cows. In the end all the cows died. A similar story occurred when the government granted us *Bali Merah* (Red Bali) cows.

In 1988/1987, the Plantation Office introduced *Arabica* coffee seedlings. Due to its preference for high ground, the coffee could not grow well here. A similar thing happened when the government give us *rambutan klotok* seedlings. So many outsiders came and held trainings here. Government officials even came to distribute boots, uniforms, and saplings in this area. But there are also problems of manipulation by some government officials. In the morning, they would distribute the fertilizers to the farmers, yet in the afternoon they would take it back from them. There was so much intervention by the central and local government in the area. Since the transmigration project was handed over to the local government to administer, no such assistance has been given to us. But I do not mind, since all the previous assistances did not actually benefit us significantly. However, the second parcel of land that belongs to us has not been transferred until this day! We did not make unreasonable demands of the government. We only defend our rights and demand our land as transmigrants.

In 1999, PT CNIS came and asked transmigrants as well as the local people to transfer their lands into a benefit sharing model under which four parts would be for the company and six parts for the local community. Most of transmigrants released their ¾ hectare parcel of land and some of them handed over as well the land certificates to the 1 hectare parcel of the land, even though that land is still occupied physically by the *adat* community of Engkosi. All the papers relating to the land (land titles etc) were handed over to the company. The company gave us receipts, a small piece of paper. However, only a few of us have held on to these receipts. In the land transfer process, the hamlet head acted as the company's public relations officer. Other lands located outside the transmigration area that were transferred to the company were mostly untitled *adat* lands. The company would accept five hectares of the untitled *adat* lands and give back two hectares of the land to the *adat* farmers with credit for setting up oil palm.

Currently, only half of the lands released to the company have been planted with oil palm, but the boundaries between the lands owned by nucleus estate and that for plasma, and the boundaries between the lands for transmigrants and members of the *adat* communities have never been made clear. We never had a 'black and white' agreement with the company. As a consequence, we never know who is the owner of the oil palm estate's produce that they are transporting by company tractors to the mill everyday.

Like other villagers (*adat* communities of Bidoih), we are more confident about developing our own businesses by planting mixed rubber and food crops. Moreover, ICRAF staff in Sanggau have trained us and collaboratively implemented the program with us. I want to

quote you a sentence that I have written in my photo album in 1 July 1986, the date we received our land from long process of negotiation as my reflection as a transmigrant: *I can only give my sweat and mattock as my contribution to my beloved country.*

Once again, it is not about relinquishing our land but about cultivating our land to feed people!

4.4.3 The Permitting Process

The Jakarta-based company PT CNIS was established in 1998. The company is a subsidiary of a holding company focused on export-import, real estate, transportation services and oil palm estates set up in Pekanbaru, Riau.[106] Based on documents reviewed by our research, it seems that the government now realises that the Mukok Transmigration Program has failed. One of the reasons for the program's failure was the high rate of out-migration, by which many impoverished transmigrants, unable to make a decent living in their new settlements, left the transmigration area. This was typical of many early transmigration sites, which attempted to replicate Javanese systems of agriculture based on irrigated rice farming, in areas with very different soils and economies.[107] Therefore, as long ago as 1979, the government decided to allocate 20,000 hectares of the transmigration area to oil palm estates.[108]

It seems that this government plan was later used by PT CNIS to obtain a recommendation from the Head of Sanggau District and the Head of Regional Office of the Ministry of Transmigration and Forest Squatters (*Kanwil Deptrans & PPH*[109]) to convert parts of the former transmigration areas into oil palm estates in 1998.[110] This request was based on the assumption that there was no land market or bartering in the area. It was almost certain that approval of this request would have negative impacts on both the transmigrants, who would have to sell the lands they had been allocated by the government, and the *adat* communities, who consider much of the area to be customary lands owned and occupied by them.

In response to this request, in 1998, the Head of the Regional Office of Ministry of Transmigration and Forest Squatters issued a note stating that of 20,000 ha. allocated for transmigration in the Kedukul Mukok area in 1979, 9,035 ha. had been set aside for 1,807 transmigrant families. Therefore, Sanggau District Government could allocate the rest of the land, covering 10,985 ha., as an oil palm estate.[111]

Following the recommendations of the governor, the district head and the head of regional office of the Ministry of Transmigration and Forest Squatters, PT CNIS then proposed to the Regional Office of Ministry of Forestry and Plantations of West Kalimantan to increase the extent of allocated land to 20,000 ha.[112] However, this was contrary to a

widely publicised Decree of the Minister of Forest and Plantation, according to which, all matters on forest relinquishment should be decided by the central office of the Ministry of Foresty and Plantation.[113]

A technical review by the Regional Office of the Ministry of Forestry and Plantation showed that the 1982 exercise in consensual forest use planning (TGHK) had divided the 20,000 ha. area into 19,300 ha. of 'Other Utilization Area' (*Areal Penggunaan Lain*/APL) and 700 ha. of Limited Production Forest (*Hutan Produksi Terbatas* - HPT). However, the Provincial Spatial Planning exercise (*Rencana Tata Ruang Wilayah Propinsi* - RTRWP) of West Kalimantan carried out in 1994, noted that there was 7,469 ha. of dry land agriculture in the area (*pertanian lahan kering*/PLK), while common production forest (*hutan produksi*) covered 12,535 ha. (made up of 1,750 ha. of limited production forest and 10,781 ha. of production forest).[114] Thus, from the provincial government's perspective, it was technically feasible to develop oil palm estates in this area.

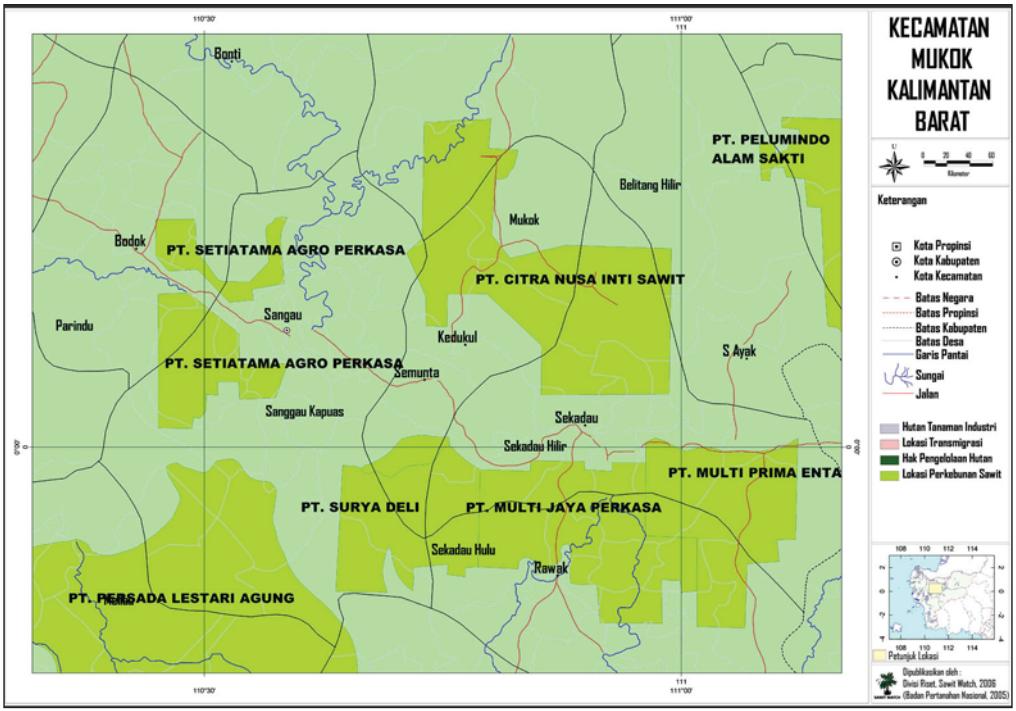


Figure 4.6 Map of Land allocated for PT CNIS

The Plantation Office thus supported the issuance of an initiation permit (*ijin prinsip*) to develop the oil palm estate. Yet, the amount of land allocated in this support was 20,000 ha. instead of the 10,985 ha. recognised as available by the Regional Office of Ministry of Transmigration and Forest Squatters.[115] However, the General Director of Plantation from Ministry of Forestry and Plantation sent a letter to PT CNIS informing it that its plantation business permit (*Ijin Usaha Perkebunan* - IUP) could not be issued yet, as the company had not fulfilled all the requirements for permitting. Nevertheless, the Directorate General of Plantation never questioned the difference in the extent of the allocated land issued by the Regional Office of Ministry of Transmigration and Forest Squatter and Plantation Office of West Kalimantan Province.[116]

Later on, the Ministry of Forestry and Plantation did issue the IUP to PT CNIS for the 20,000 ha. in Mukok and Sekadau, sub-districts. The IUP required PT CNIS to form a joint venture relationship with the community-owned TWH Co-operative by allotting 65 percent of all its shares to the co-operative (see below).[117]

4.4.4 Land Consolidation

On October 23, 1999, the Head of Sanggau District issued the location permit for PT CNIS covering 17,500 hectares. There are several important clauses in this location permit,[118] as follows:

- The Sanggau District required PT CNIS to give appropriate compensation and or provided alternative settlement areas for land owners, as well as involving them as 'business adopted sons' of the company.
- PT CNIS should recognize the civil rights of *adat* communities to be involved in the business, a phrase which became a justification for PT CNIS to acquire lands directly from the land-owning communities and consolidate these lands as an oil palm estate. As for compensation, the villagers asked the company to establish a village land fund in the interest of the villagers living within the location permit area.
- The company should also enclave some areas that had been allocated for the existing government programs such PPKR, reserved forest, village lands, PRPTE, etc.
- PT CNIS should establish the oil palm estates within three years at the latest (by October 2002).
- BPN and the Monitoring Team on Land Acquisition for Private Purposes should also be involved in the land acquisition process.[119]

It is important to note that PT CNIS only got a recommendation to build the oil palm factory instead of to establish the oil palm estate, from the administration in the Mukok Sub-district and the Kedukul Village.[120]

The Environmental Impact Assessment (*Analisa Mengenai Dampak Lingkungan* - AMDAL) for the PT CNIS operation did note several potential social problems associated with the establishment of the oil palm estate. It noted that there was popular resentment about the lease of land to the company, concern about the payment of inappropriate prices for the land, and that the *adat* community (as the first party) still claimed rights over the area. Joint ownership with the local co-operative (*Tut Wuri Handayani*) was proposed as a kind of 'panacea' to meet the people's demands. The EIA also emphasized the need for PT CNIS to communicate effectively with local *adat* leaders.[121]

4.4.5 Credit for the KUD and Benefit Sharing

As one of the requirements to obtain credit from the Bank, PT CNIS arranged a partnership agreement with the Co-operative of *Tut Wuri Handayani* (Kop.TWH) that was located in the Village of Sungai Mawang, Mukok Sub-district. In this agreement, the Co-operative was represented by Mr. Suko as the co-operative head and Mr. H Abdillah M Daud as the treasurer.[122] According to the amended Notary Act of the company in 1999, the Co-operative is now the majority share holder (60%) in PT CNIS.[123]

Initially, PT CNIS and the Kop. TWH proposed securing credit from the BDNI Bank. The credit provided by the BDNI Bank for establishing the oil palm estate in Mukok, was based on assurances that the company and the co-operative would finish planting the estate within four years. In fact, however, this was not even completed within six years. The company and the co-operative then renegotiated for additonal credit from the Permata Bank based on an assuarance that they complete the planting within a further 8 more years.

The Head of the Plantation Office of Sanggau District admits that the replacement of the BDNI Bank with the Permata Bank as principal creditors has, indirectly, disadvantaged participating farmers. As a consequence of these deals, the Permata Bank doubled the credit burden of the *plasma* farmers from the former agreed amount IDR 7 million per hectare to approximately IDR 15 million per hectare. Repayment rates increased proportionately. Unfortunately, there was no written agreement between the company and the farmers when the deal with PT CNIS was initiated.[124]

There was a similar lack of clarity in the initial arrangement between PT CNIS and the *plasma* famers over the process of benefit sharing from the nucleus and smallholder oil palm estate. Local people argued that benefit-sharing should be calculated by Kop. TWH using the 6::4 model, by which the farmers would get 6 portions and the company would get 4 portions.[125] There was also lack of clarity about how profits should be shared between the productive parts of the plantation, the unproductive parts and those parts still being developed. This situation was made even worse by the lack of progress in developing

the *plasma* estate. The farmers alleged that the company had prioritized the development of the nucleus estate, at the expense of making comparable inputs to the *plasma* scheme. The overall result was that the farmers were tied to the parent estate and its creditors by a heavy debt burden while their productive assets were not being well developed. This has magnified their sense of grievance.

Recently, PT CNIS was acquired by PT Indofood, the biggest public food processing company in Indonesia. One of the biggest shareholders of this company is a Hong Kong-based company, First Pacific Co. Ltd, which holds 48 percent of the shares of PT Indofood. A gigantic company like PT Indofood should not shirk the responsibility it has inherited to lessen the excessive credit burden currently being shouldered by the *plasma* farmers. The irony is that neither the central nor the local government, both of which have made recommendation to the oil palm company to address this issue, can do anything to force the company to take responsibility for its failure to develop the oil palm estate for more than four years. More importantly, the government should take responsibility for its allocation of *adat* land to transmigrants, relying on inaccurate surveys, which has resulted in the immiseration of the *adat* community.

4.4.6 Government Perspectives

The conflicts over lands and benefit-sharing associated with oil palm estates in Sanggau are now well known to the local administration and the local legislature and are also issues of active debate at the provincial level. These conflicts do not only incur costs for the communities and companies but reduce revenues to the district and may, in the longer term, discourage further investments in the province. Although the decentralization process, in the longer term, should bring greater transparency to land acquisition and benefit sharing processes, in the short term it has opened up or exacerbated gaps in coordination between the various line ministries, making both compliance and monitoring more difficult.

In order to address these problems, the administration and the legislature have therefore begun to mobilise district teams to deal with them. As the following interviews illustrate, some of these teams are still using a very top-down approach framed by the administrative traditions of the Suharto era. It may be some time before a more grounded and bottom up approach to plantation development, that respects the rights of indigenous peoples and local communities, can be put into effect.

Official in the Provincial Regional Planning Agency (Bappeda) of West Kalimantan

The spatial planning approach is definitely needed to ensure that allocated lands do not overlap in the development of oil palm estates. At least, that is the best that my office can do. Afterwards, we should conduct detailed verification, for example to check whether the permits and the land information documents conform with the District and Provincial Spatial Plans. If there had been a good coordination between all government agencies, information about overlaps should have become clear when PT CNIS was arranging the land information permit.

Based on the input of related government agencies, Bappeda prepares a provincial natural resource balance, which shows the development potential of natural resources and whether resources have been over exploited or not. Such a balance is really needed to create a good plan, since it shows the amount of assets in stock, how much that stock has been allocated and is being managed, and in which locations there should be no further expansion.

According to the Provincial Natural Resource Balance of West Kalimantan Province, the greatest number of Business Utilization Rights (HGU) has been issued in Sanggau District. The review shows that 44 percent of the area is free State land, 3 percent is fresh water, like lakes and so on, while 53 percent is State land encumbered with rights (including *adat* land).

In order to obtain the actual facts, the government should not work alone. The participation of the local people is needed in order to understand the potential benefits as well as the potential conflicts in land allocation. A partnership between the government and the people should be promoted and manifested in direct action such as the regional development plan which is the basic development plan of the provincial and district governments.

However, in the regional autonomy era, none of these synchronizations run smoothly. In some sectors, the district government is handing out location permits instead of this being done at higher government levels. However, the district governments rarely report such initiatives to the relevant higher level agencies.

Mr. Bujang AS, S.H.,
Head of National Land Agency (BPN) of Sanggau District

BPN strongly welcomes initiatives to develop oil palm estates, since they are compatible with the Sanggau District development plan, which emphasises in particular the promotion of the development of agribusiness. Basically, the District Government of Sanggau has set up the 40::60 models as a benefit-sharing mechanism in oil palm estate development. Nevertheless, this model is negotiable. If the land acquisition with benefit-sharing model is considered inappropriate by the oil palm estate company and the *plasma* farmers, they can apply a shareholding model. However, we should be aware that changing agreed benefit sharing models in established oil palm estates is not easy.

In the context of decentralization, the recommendation of a *bupati* (District Head) becomes a key instrument in regulating many matters, including those related to forestry. Nonetheless, the proponent oil palm company should still obtain agreement from the Ministry of Forestry to access forest land. In addition, the project proponent company should obtain an IUP and that is usually a long procedure. After obtaining all of these licenses and permits, the Jakarta office of BPN will issue a HGU for the respective Oil Palm Estate. The Representative Office of BPN at the district level cannot issue a HGU. The other important thing is that all the documents related to the project proponent company are not open to public. The public can only view the licenses and permits.

The State has appointed a Plantation Management Team, led by the Head of Plantation Office, to mediate any conflicts and coordinate any technical assistance related to the operational activities of oil palm companies. The team use NJOP[126] (taxable value) to calculate rates for land compensation.

The working area of PT CNIS is a transmigration area that is considered to be State land and not a forest area or *erfpacht* land. These lands are often claimed as *adat* land. I have heard that *adat* land should be proven by showing its existence, as recognized in certain district and government regulations. To be honest, I have never seen the regulations setting out these requirements.[127]

Mr. Ir. Pontas Sihotang, Head of Plantation Office in Sanggau District,

Basically, all oil palm estate models should be agreed by the community. We, as the government representatives, only play a role as a mediator. Our work is carried out, in accordance with local regulations and associated operational guidance, by implementing units at the District, Sub-district and Village levels. In their operation, the implementing units should involve the participation of related stakeholders.

We believe that the oil palm estate has a good multiplier effect. The financial benefits from oil palm estates are by farmers on the estates, through wages for employment, as well as through the opportunities for the community to conduct business around the estate. These can contribute significantly to the development of the area. We are aware that the development of oil palm plantations can also impose high social and financial costs. Nonetheless, we still feel we are more fortunate compared with other districts [without oil palm]. Due to the lack of financial support for [alternative] agricultural activities, particularly from the commercial banks, it is really hard to develop the agriculture sector in Sanggau District. Therefore, the most feasible activities that can be conducted in Sanggau District are plantation activities especially oil palm estates.

The development of oil palm estates does still have its own problem in the field. The government did not involve itself much in the process of arranging credit agreements, such as the agreement between Kop. TWH and PT CNIS. I do not really understand the rules of the game for these processes. I think the Co-operative Office of Sanggau District has more authority and knowledge concerning those processes. There is another model of oil palm estate development, in which a company comes with its own capital or a part of their capital is guaranteed by the bank. In this case, the *plasma* farmers will not be burdened by an obligation to repay the bank for the credit. [However] as a consequence, such a company will offer a cheaper price for a farmer's parcel of land. To be honest, the farmers do not pay much attention to these differences between schemes. The most important thing for them is how much money they can obtain.

The focus of the District Government particularly the Plantation Office is to review to what extent the company has fulfilled its requirements. The result of this review will significantly influence the future extension of the permit. For example, there are some requirements in the issuance of the location permit, which includes the obligation of carrying out an Environmental Impact Assessment (EIA) that should be fulfilled by the company within a certain period of time. So, we check with the company to see whether they have forwarded their EIA to the Ministry of the Environment and whether the EIA has been approved. And so forth.

Mr. Yan Yohanes, Head of Government Section of Mukok Sub-district

PT CNIS is located in four villages including Sei Mawang, Trimulyo, Layak Omang and Engkosi. Currently, there is an overlap of the territory of the *adat* Engkosi people with the transmigration area. This problem has not been solved ever since the transmigration program came to this area. The Ministry of Transmigration has promised to solve this problem but nothing has been done up until now. As a result, many transmigrants never acquired their second parcel of land.

The presence of PT CNIS has led to land conflicts. Another problem is the way they increased the credit burden on the land from IDR 14 millions into IDR 30 millions per two hectare plot. Kop. TWH is meant to solve this problem. Actually, the Sub-district Government hopes that the company could implement a *plasma* plantation without nucleus plantation. However, as we know, how can the company implement *plasma* plantation without nucleus plantation?

The Sub-district Government is involved in the conflict resolution process related to land problems at the sub-district level. The mediation team is led by the Head of Sub-district. The members consist of sub-district government officers and involve the *Babinsa* (village level police)[128] and other police officers. Whereas at the village level, the implementing units consist of the Village Heads, the Hamlet Heads, community and religious leaders, the *Babinsa* and some officers from the *Koramil* (district level army units).[129]

Mr. Paulus Hadi, District Legislator of Sanggau District

I used to be an agricultural extension trainer for various collaborative projects here in West Kalimantan, especially in this district. Therefore, I do understand the problems encountered by both *adat* communities and transmigrants in getting access to land. After we had had several discussions, we developed a special committee (*pansus*) on PT CNIS to address the increased debt burden that should be paid off by the farmers. More specifically, there is no special committee dealing with land problems because the government argued that all the land was State land. However, we all know that the area is *adat* land, really.

It is not fair if the company burdens the farmers with so much debt. Who will guarantee that the company does not use the credit given in the name of the community on other co-operative interests or in prioritizing other activities such as developing new nucleus plasma? We all understand the way the companies used to obtain and re-invest credit!

Many legislative members assumed that oil palm estates contributed to district revenue generation. Based on the calculation of our Draft District Revenue and Budget Allocation (RAPBD) of Sanggau District, we now see that many oil palm estates have not paid in their contribution to the district's revenue. So when the Central Government asks District Government to pay in its share from the district revenues, the District Government has to cover the portion that should come from the oil palm estates from other budget allocations.

At the district level, there is a conflict resolution team that is based in the plantation area. The team includes members of the executive but does not involve legislative members. Therefore, the resolution of problems relies very much on the perspective and paradigm

of executive members. In this situation, the position of communities remains weak. This condition will get worse if the communities do not organize themselves and clearly state their demands. With regards to oil palm estates in Sanggau, we need to conduct a moratorium, stop new investment, and restructure the existing oil palm estates.

We should promote a discourse on independent plantations which should be implemented on the ground. In addition, we need to limit the role of military and police officers in the land relinquishment processes.

At the present, Sanggau District has a District Regulation regarding oil palm estates that provides benefit-sharing according to the 40::60 model. The small benefits that accrue to farmers under this model should be rejected and should not be facilitated by the government. I am sure that the district regulation is not yet perfect, particularly in comparison with the criteria and indicators of RSPO.

However, [having these principles] could help initiate plantations that do conform to the principles and criteria of RSPO, for instance, local regulations could provide guidelines related to decision-making processes and the actual recognition of *adat* communities in accordance with (draft) principles 1 and 7. Then, any investors who wanted to invest in Sanggau District would not be those thinking only of their own benefits, but investors who want to work collaboratively with the people, and the District Government.

Still, the processes will take a long time. Hopefully, the criteria and indicators could help legislative members to develop appropriate district regulations. However, to date, strong patrons are needed to convince the government. In addition, community organizations should be strengthened in order to challenge the mental block that companies have about negotiating with communities.

Dr. Piet Herman Abiek, DPD member from West Kalimantan

It seems that bureaucrats have false views about [the benefits of] oil palm estates. They usually take the example of the *adat* communities in Parindu. They compare the condition of Parindu communities before oil palm plantation, when the community did not own any satellite TVs and motorcycles, with that after the oil palm estate came to the area, noting that community members now own well-developed houses, motorcycles and satellite TV. This simplification is misleading. People's welfare has increased not because of the oil palm estate but because of [their own] rubber plantations. Even though Parindu community members do own oil palm smallholdings, many of them own rubber plantation that has proven to be much more profitable.

Actually, the factor to be blamed is not the presence of oil palm estate but the mechanism by which lands are leased and by which benefits are shared. It is clearly unfair. Thus, there is a need to develop a district regulation on *adat* recognition, in order to protect their land from occupation. If local communities resist the oil palm estate, please firmly state the rejection. I am ready to fight in their interest when needed. Honestly, the permitting process is very complicated and rapidly changes. As a consequence, it is very hard to monitor these processes. However, we should do that if we want to struggle for people's sovereignty. Coordination difficulties are not an acceptable reason. We should solve these problems.

4.5 PT SIA

4.5.1 Background to The Company

The Sime Indo Agro Limited Company (PT SIA) is a foreign direct investment company from Malaysia. It has established a nucleus estate, with associated smallholdings and mill, in Parindu Subdistrict, Sanggau District, West Kalimantan. The total oil palm estate of PT SIA covers 14,000 hectares and includes two units for milling and processing fresh fruit bunches. PT SIA developed the estate in stages, with 2,000 ha. being acquired in 1996-1997, 4,000 ha. in 1997-1998, a further 4,000 ha. 1998-1999 and a final 4,000 ha. in 1999-2000. The company commenced installation of the processing factories on the edge of Senggoret River in 2000. The two mills have a production capacity of 60 tons and 30 tons of CPO per hour.

According to the Environmental Impact Assessment, submitted by PT SIA for the permitting process, the investment value of PT SIA is approximately US$ 81,476,720, made up of US$ 9 million of private capital and US$ 72,476,720 of loans, all paid by a Malaysian company, Consolidated Plantations Berhad. As required by Indonesia law, after 15 years of commercial production, PT SIA should lease a share of their company to the Indonesian public. On August 28, 1995, the President of the Republic of Indonesia issued a letter approving PT SIA's investment plan.[130] PT SIA, thereby, obtained an investment permit for 30 years starting from the date of commercial production of palm oil.[131]

PT SIA obtained the land allocation letter from the West Kalimantan Governor after going through these legal procedures for approval of foreign direct investment at the national level. The Governor's letter allocated PT SIA land covering 14,000 hectares in Sanggau District.[132] The letter required PT SIA to conduct a location survey as a basis for applying for an initiation permit from the Ministry of Agriculture.

This was followed up by the National Land Agency (BPN) of Sanggau District, West Kalimantan, which issued a location permit for 14,000 ha. on October 3, 1995.[133] PT SIA also obtained an extension of its location permit in 1996. The location permit came with the following requirements:

- Land acquisition should be conducted directly by interested parties through trading or title relinquishment conducted by the Official Land Register Officer (*Pejabat Pembuat Akta Tanah* - PPAT) and with specified compensation.
- Compensation over land, plants and or buildings and other goods should be given directly to the owner of the mentioned goods without any mediator.
- Compensation and conflicts over lands should be dealt with within 12 months of the issuance of the decree.[134]

The company successfully acquired 11,395 ha. of lands in 1996.

4.5.2 Land Acquisition and Social Impacts

The area over which PT SIA obtained a location permit for developing its oil palm estate in Parindu and Bonti Subdistricts, Sanggau District overlaps the customary lands of the Dayak Mayau and Dayak Hibun indigenous peoples. Before the establishment of the oil palm estates, all land in the area was held under customary law, with different land categories being recognised by different terms according to their function. These terms were also different for each ethnic group. For instance, the Dayak Mayau recognise a category of collectively owned agro-forests by the term *tembawang*, which the Dayak Hibun refer to as *temawoang*.

Tembawang or *temawoang* are former settlement sites which have been planted with fruit trees which have re-established canopy forest cover. By custom, such areas cannot be managed or owned individually, but are held in common by the whole community.[135] There are many other land tenure categories in the customary law system. Most farm lands are allotted to individual farmer families, as heritable usufructs, while the underlying title remains with the community as a whole.

According to our interviewees, the inability of government officials to recognise the special status of *tembawang* or *temawoang* as a key part of *adat* territory was the main issue of contention between local people and the government in discussions about land acquisition for PT SIA's oil palm estate. Seeing the *tembawang* or *temawoang* as areas covered by trees, the government tended to regard these areas as 'State forests' and thus felt entitled to allocate these for commercial purposes, such as estate development, without compensating the customary owners.

After obtaining a location permit in 1995, PT SIA was facilitated by the local government to conduct a meeting with the local people of Parindu and Bonti Subdistricts. In this meeting, the company representatives explained their plan to develop its oil palm estate in the two locations. Together with the government, they asked the local communities' agreement to lease them their lands.

The local communities expected that the initial meeting would include a discussion of the potential positive and negative impacts of oil palm estates and involve them in the decision making process. However, in this meeting, the company only one-sidedly presented the plans for the oil palm estate without giving any of the expected information to the local communities. Neither were they involved in the decision-making process.

In the meeting, the company representatives only presented the benefits of the oil palm estate in order to convince the people to participate in the estate development plan. Subsequently, local people were compelled to become involved in the plantation, on the grounds that it would improve their welfare. The *Bupati* (District Head) introduced the '7.5 model', which meant that each farmer should relinquish 7.5 ha. of land, which PT SIA would then allocate as 5 ha. for the nucleus estate, 2 ha. for *plasma* holdings for community members, with the remaining 0.5 ha. being allocated for infrastructure development such as roads, and so forth.

The local communities rejected the 7.5 model offered by the *Bupati*. They proposed a '5 model', in which each farmer would lease 5 ha. of their land to PT SIA to be allotted as 2 ha. for the nucleus estate, 2 ha. for *plasma* and the remaining 1 ha. for infrastructure. PT SIA did not accept this model, as it already had the agreement of the provincial government to implant the 7.5 model.

In imposing the 7.5 model, the communities felt that PT SIA and the government had effectively rejected their existence as a people governed by customary law and had ignored their customary rights in land, and was simply taking over their land for their own interests. What the company should have done, in the view of interviewees, was to involve *adat* communities in decision-making about the development of the estate, but instead they had ignored the local people even when they had rejected company and the government's proposals.

The company continued to implement its estate plan in Parindu and Bonti Subdistricts based upon the 7.5 model. As a result, not every family in Parindu and Bonti subdistricts got *plasma* land and those who did get *plasma* allocations found it was far from enough to fulfil their needs.

Finding that the estate model being implemented by PT SIA did not benefit local communities, the communities sought to withdraw from the scheme and they sought clarification from the government that once the HGU of PT SIA expired their land would revert to them. The bottom-line was that the local communities demanded that the company re-negotiate its commitments to them.

According to local community spokespersons,[136] for its part PT SIA considered the process of land relinquishment by *adat* people in Parindu and Bonti sub-districts to be a conventional land transfer. Therefore, it assumed that local people did not have the rights to demand the return of their lands after the company's HGU expired. In the tripartite meeting between the company, the government and the local people, the company stated that problems related to land were the affair of the government.

Local people strongly rejected the company's argument. They felt that they had neither sold their land nor accepted any land as compensation. The local people considered the small amount of money that they had accepted to be payment of *derasa*h, which is payment for their ancestors' efforts in opening the forest to create new fields. In contrast, the company considered the money to be payment for the land itself.

The case reveals stark differences in the understandings of the company and of local people of the nature of land transactions with respect to the significance of the cash paid to the people. In positive law, the money given to the local communities was to compensate the people for relinquishing their land for the development of the nucleus estate. From this point of view, land rights have been transferred from local people to the government for the use of the company. The government then a granted business utilization title (*Hak Guna Usaha*) to this land to PT SIA. However, based on *adat* law, the money given to people was only to acquire use rights over these *adat* lands and there was no transfer of ownership rights to the government or company. The situation is aggravated by the fact that the local population has been increasing rapidly and intensifying conflicts over land can be anticipated.

4.6 PT PHP

4.6.1 Introduction: Self-governance and Administration

The final case study examines the situation of the Minangkabau people of the community of Kapar in West Pasaman District near the coast in the province of West Sumatra. The Minangkabau are a numerous, hierarchical people originating in the highlands of West Sumatra, whose customs of self-governance as 'kingdoms' were recognized during the Dutch colonial period. Although their customary system was later suppressed during the eras of 'Guided Democracy' under Sukarno and Suharto's 'New Order', it was partly re-established during the current reform period.

Minangkabau oral history recognizes an area of origin (*darek*) in the highlands, consisting of three sovereign regions (*luhak*), Luhak Agam, Luhak Tanah Datar and Luhak Limo Puluh Kota. As the highland populations expanded,[137] Minangkabau of each of these *luhak* extended into lowland areas known as *rantau*. Those from Luhak Agam expanded into the *rantau* on the west coast area into the current districts of Pariaman, Air Bangis, Lubuk Sikaping and Pasaman, those from Luhak Limo Puluh Kota expanded into the *rantau* that now includes the districts of Bangkinang, Lembah Kampar Kiri, Kampar Kanan, Rokan Kiri and Rokan Hilir, while the Minangkabau of Luhak Tanah Datar established their *rantau* in what are now the districts of Kubuang Tigo Baleh, Pesisir Barat, Pesisir Selatan, Padang, Indrapura, Kerinci and Muara Labuh.[138]

In what is now Pasaman district, part of the ancient *rantau* of *Luhak* Agam, governance was based on the customary rule of the king supported by a hierarchy of *adat* leaders. As a *rantau* area, Pasaman was under control of the 'king' of Alam Minangkabau, administratively centered in Pagaruyung. Locally, governance of this part of the kingdom was controlled by the *Daulat Yang Dipertuan Parit Batu*, the council which oversaw the customary jurisdiction, *Nagari*, of Lingkuang Aur-Simpang Empat, in West Pasaman. The area was organized into several semi-autonomous sub-jurisdictions, also referred to as *Nagari*, which were regulated by twin customary institutions. The *Tuan Kadi* were responsible for religious matters, while the *Hakim Nan Sambilan* (the Nine Judges) were responsible for *Nagari* governance. The Daulat also appointed four other officials to manage the *Nagari*.[139] Further extension led to other *Nagari* being established including the community visited in the case study, Kapar, traditionally referred to as Lubuak Pudiang, which was ruled by a customary institution referred to as the *Gampo Alam* (explained below).

Currently all of the *adat* territories of the *Daulat Yang Dipertuan Parik Batu* have been restructured as administrative *Nagari* in West Sumatra Province under the control of Republic of Indonesia. Nevertheless, the customary ties between the Minangkabau people and their *Nagari* are still strongly maintained.

Pasaman was established as an administrative district simultaneous to the establishment of West Sumatra as a province. In the initial stage of the district's formation, the *Nagari* remained as the lowest level of government administration. However, with the imposition of the 1979 Local Administration Act, *Nagari* were gradually replaced as an administrative unit by the *desa* system. Furthermore, the West Sumatra government issued a provincial regulation which further limited the functions of *Nagari*.[140] The *Nagari* were thereby reduced to cultural units, while the *desa* into which they were reformed were under the direct control of central government, and their powers of self-governance according to customary law were very attenuated. Nevertheless the units remained and Pasaman District, on which the case study focuses, was organized into 49 *Nagari*.[141] In 2003, Pasaman District was formally divided into two districts, the area of study becoming West Pasaman District.[142]

4.6.2 Customary Laws and Land Allocation in Kapar

Similar to other *Nagari* in West Pasaman, in the 1980s *Nagari* Kapar was determined by the Provincial administration to be an area suitable for estate crop development. However, with the repeal of the Local Adminstration Act, and following the issuance of Provincial Regulation No. 9 of 2000, the three villages of Kapar *desa* were reconstituted as a formally recognized, single *Nagari* covering 3,500 ha. of land and forest, with a population of about 5,000 people.

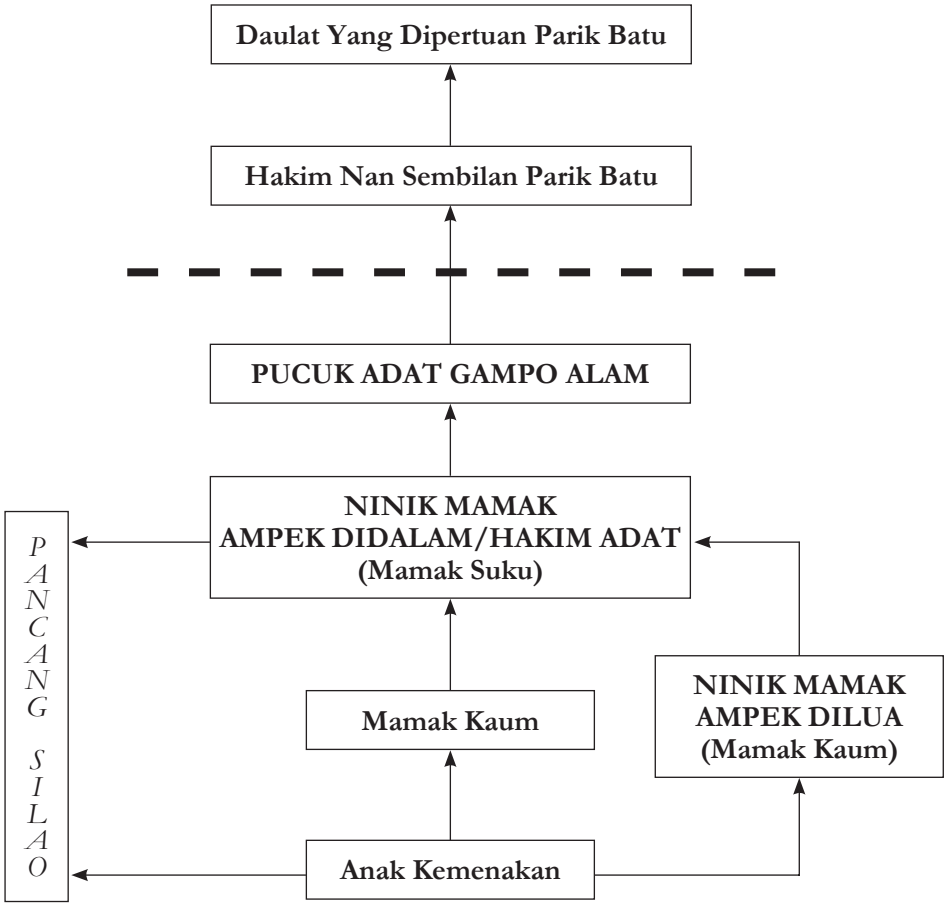
Under the still vigorous customary system, the *Gampo Alam* consists of two main institutions, namely the *ninik mamak Ampek Didalam* and *ninik mamak Ampek Dilua*. The former has a duty to manage natural resources management (*Panaani Sako*), while the latter have a duty to protect the honour of the *Gampo Alam* and to enforce criminal as well as civil *adat* law (usually called *Panyambah Tuah*).

Based upon the *adat* law still prevalent in *Nagari* Kapar, natural resources particularly *ulayat* lands are managed under the concept of *Babingkah Adat*.[143] This concept divides *ulayat* land into two categories. The first, *ulayat yang sudah diulayati,* are lands belonging to named clans with clear boundaries, the lands within which can be allocated to clan members (*anak kemenakan*) or retained as the communal property of the clan. The remaining *ulayat* land is considered communal property of the *Nagari* as a whole and is called *ulayat Nagari*. This land is governed by *ninik mamak Ampek Didalam*,[144] who also have a role in managing natural resource management. If *adat* community members in *Nagari* Kapar need the land to fulfill their daily needs, *ninik mamak* in the *Ampek Didalam* would arrange a meeting with all community members to discuss the distribution of the lands. By custom *ulayat Nagari* land can never be sold, a notion captured in the *adat* proverb: 'although expensive it cannot be bought, although cheap it cannot be asked for' (*mahal tidak dapat dibeli dan murah tidak dapat diminta*).

In *Nagari* Kapar, whereas *ulayat Nagari* lands cannot be transferred to others, being held for the benefit of future generations, clan lands (*ulayat yang sudah diulayati*) can be leased or mortgaged to third parties. Clan members considering entailing their lands in this way, should first discuss the matter with their *mamak jurai*.[145] Usually, a *mamak jurai* would approve such an arrangement, as long as the person taking over the mortgaged land is a relative. However all such deals should be conducted based upon the consensus and agreement of all the parties involved.

If no agreement can be reached, then the disputing parties can bring their dispute to the head, the *mamak kaum*, of the lineage (*kaum*) to which their clan belongs. If *mamak kaum* fail to solve the dispute, disputing parties can bring the dispute to the members of the full *ninik mamak Ampek Didalam*. Subsequently, the *Gampo Alam* could take over to find the best decision to resolve the dispute. In every level of negotiation or conflict resolution, *anak kemenakan*, have the right to be involved in decision- making, (*Pancang Silao*). Their involvement is designed to ease the process of conflict resolution.

ALUR PENYELESAIAN SENGKETA ADAT/ULAYAT DI NAGARI KAPAR



Picture 2. Scheme of Adat Conflict Resolution

Most of the *ninik mamak* in *Nagari* Kapar have the authority to take decisions to resolve problems faced by their own *anak kemenakan*, the exception being those *ninik mamak* who become members of the body representing the *daulat* referred to as '*ninik mamak yang tagaknyo indak tasundak, duduaknyo indak tapampeh' (Datuak Sutan Majo Lelo and Majo Lelo).* If a problem arises within a clan, only members of *ninik mamak Ampek Didalam* have an

authority to decide. In some cases, the *Daulat Yang Dipertuan Parik Batu,* which has a higher position than the local *ninik mamak* can play a significant role in solving *ulayat* disputes, a role performed by the *Hakim Nan Sembilan*. Generally speaking, there is no justification for *anak kemenakan* or *ninik mamak* to lease *ulayat Nagari* or clan *ulayat* land. Normally, such land relinquishment is avoided to maintaim the collective interest.

If an outsider wants to open fields in *Nagari* Kapar, customary laws does provide two means of gaining access. The first is known by the '*adat di isi, limbago di tuang*', referring to a series of procedures which must be gone through to gain the right to temporarily cultivate *ulayat* land. The second requires the payment of *Siliah Jariah*, a compensations fee to pay for the efforts of the land owners who have improved the land. These two terms are really well known in *adat* land acquisition processes.

Our research found that both the *adat di isi, limbago dituang* procedure and the payment of *Siliah Jariah* only transfer management or use rights, not ownership rights, to the outside leaseholder. The only way that an outsider can gain a stronger right in land is if he or she is first adopted by an *adat* clan and performs daily *adat* practices. He or she would then be called *kamanakan dibawah lutuik* or *kamanakan batali ameh*.

4.6.3 Oil Palm Development in the District

Pasaman has been integrated into the global market economy for a long period of time. From the 17th century, it was an important trading centre for spices, rice and gold, a trade which intensified in the mid 18th century.[146] Oil palm was first introduced to the District on a private Dutch estate during the colonial period. After independence, this plantation was nationalized and administered by PTPN VI. In 1981, the estate was expanded into a 10,000 ha. PIR (*inti* and *plasma*) scheme, which provided 2 ha. to each participant as oil palm smallholdings and a further 0.2 ha. each for their residence.[147]

On 27 September 1989, a meeting was held by the *bupati* of West Pasaman District (Mr. Radjudin Nuh, SH) with all *ninik mamak* and Pasaman's community leaders in the Tsanawiyah Silaping Building. The meeting was called to discuss the development of plantations in Pasaman and was attended by the *bupati*'s assistants from West Pasaman District, the Head of Regional Planning Agency (BAPPEDA) of West Pasaman, the Head of Estates Bureau of West Pasaman District (Ir. Rusli Ersy), the Head of National Land Agency (BPN) of West Pasaman District (Drs. Syafrin Sirin), the Head of Economic Bureau of West Pasaman District (Mr. Anasrul BA), and the representatives of West Sumatra Province as well as all sub-district governments.

In this meeting, the *bupati* of Pasaman said that the main goal of estates development was to improve the welfare and standard of living of the local population. He argued that local communities should be involved in the estates through the *plasma* system. The participants of the meeting responded enthusiastically to the government's plan to invite in investors.

They also signed an agreement which stated that:

- Participants agreed to accept investments in estates;
- All *ulayat* lands that would be acquired by the estate companies should be managed and ordered;
- All *ninik mamak* and *cucu kemenakan* should be involved in the estates development under the *plasma* system;
- All *ulayat* lands used for building roads to ease estates operation would not be compensated for except agricultural lands;
- The processes of *ulayat* land acquisition should be accountable;
- The amount of *Siliah Jariah* money payable was to be IDR 50,000 per hectare.

In 1992, a similar meeting was conducted by PTPN IV in Ophir. There the West Sumatra Governor, Hasan Basri Durin, informed the participants of the plan to open oil palm estates in Pasaman. He hoped that the estate companies would develop partnerships with local communities as had already been developed by PTPN VI.[148] These meetings marked the starting point of estate expansion in Pasaman.

On 22 November 1992, the Ministry of Agriculture issued a decree regarding Principle Business Approval of Oil Palm Estates to PT PHP in West Pasaman, West Sumatra covering 9,000 ha.. This area is located within an area that had been allocated by West Sumatra Governor, covering 12,000 ha..[149]

The Permata Hijau Pasaman Limited Company (PT PHP) is a joint enterprise originally owned by PT Kartika Prima Nabati of Jakarta. In 1999, PT PHP changed its status from being a domestic investment company to a foreign direct investment company (PMA). Foreign companies that took out shares in PT PHP included Keiflow Limited (British Virgin Island), HVS Investment Limited (British Virgin Island), Bonoto Investment Limited (British Virgin Island), and Wilmar Investment Limited (British Virgin Island).[150] Additional funds were sourced from Coffrey International. PT PHP was set up as a palm oil company with a mill that was designed to produce 28,600 tonnes of CPO per year, of which about 25% was for the domestic market and the rest for export.[151]

Since 1992, Pasaman District has become famous as an oil palm producing area. Oil palm estates are now widespread in the six sub-districts. By 1999, the production of oil palm in Pasaman District reached 566,957 tons, harvested from 63,249 ha. of estates. However, this has not been achieved without problems. On 8 May 2001, the vice *bupati* of Pasaman District noted that the benefits were being enjoyed unequally. Estate industries had failed to improve local livelihoods. *Siliah Jariah* payments were not being fairly shared and many people were not getting to participate in the *plasma* schemes. Among the problematic estates he specifically noted: PT AMP (1,950 hectares), PT TSJ (800 hectares), PT ASM (500 hectares), PT Puska (550 hectares), PT Grasindo (2,800 hectares), PT AW (3,899 hectares), PT PM (2,104 hectares), and PT PMJ, as well as PTPN VI. The official statistics for 2000 supported his argument. Of a total population in Pasaman of 504,530 persons, no less that 92,033 were living in poverty and hunger, with 778 babies registered as suffering malnutrition.[152]

4.6.4 Conflict at Nagari Kapar

On 28 April 2000, a group of people negotiated with police officers in Pasaman District in order to seek the release of several persons who had been arrested by police.[153] The police officers rejected their demands, thereby increasing the tension between disputing parties.

Suddenly, a protestor threw a stone that broke the windows of the police station. Incited by the stone throwing, other protestors forced their way into the police station to which the police responded by shooting rubber bullets and some live rounds, wounding several protestors. However, the people were able to overcome police resistance and managed to get the imprisoned villagers released from their cells and take them back to their community, *Nagari* Kapar.[154]

The action of the Kapar people provoked a strong response from the police. On 29 April 2000, fully armed police officers with two cars and several motorcycles arrived in *Nagari* Kapar. Shooting their weapons into the air, they demanded that the people involved in the incident give themselves up. Some people of Kapar were then captured by the police when they were in the coffee shop or working in their fields. They were arrested and taken to the police station in Simpang Empat, Pasaman. However, most of the people being sought could not be located by the police since they were hiding or not in their home at that moment. This made the police angrier. They swept through and searched for the suspects in every house in Kapar, creating an atmosphere of extreme fear. Most of these suspects subsequently left their families and ran away from Kapar to the forests or to other inland areas. Others fled to Jakarta.

Picture 3. The case of PHP Company

The following day, at nine in the morning, the police accompanied by the assistants of one *ninik mamak*, Bahar A., came again to *Nagari* Kapar to search for other men. They captured Mr. Bujang Zulkifli and took him to the police station in Pasaman. He was badly beaten on the way there. Five days later, Alisman, another person from Kapar was also captured. The police argued that Alisman had attempted to run away, when, in fact, he was in his step mother's house.

In response to this situation, on 17 May 2000, many people of Kapar, mostly women, came to the Pasaman District parliament (DPRD) to hold a demonstration. The demonstration was led by Mrs. May, Mrs. Inar and Mrs. One. They urged the parliament to mediate in the dispute, and help restore security and order in *Nagari* Kapar, as well as report the latest situation in Kapar to the Chief of Police of Pasaman.

Those arrested from Kapar were later released after posting bail of IDR 500,000 per person. Then, in the early June 2000, Bahar A. and his assistants and the Vice Chief of Police of Pasaman detained Mr. Yurisman in Rao and arrested him. During his detention, Yurisan was badly beaten by police officers, leading to him being hospitalized in Lb. Sikaping Hospital.[155]

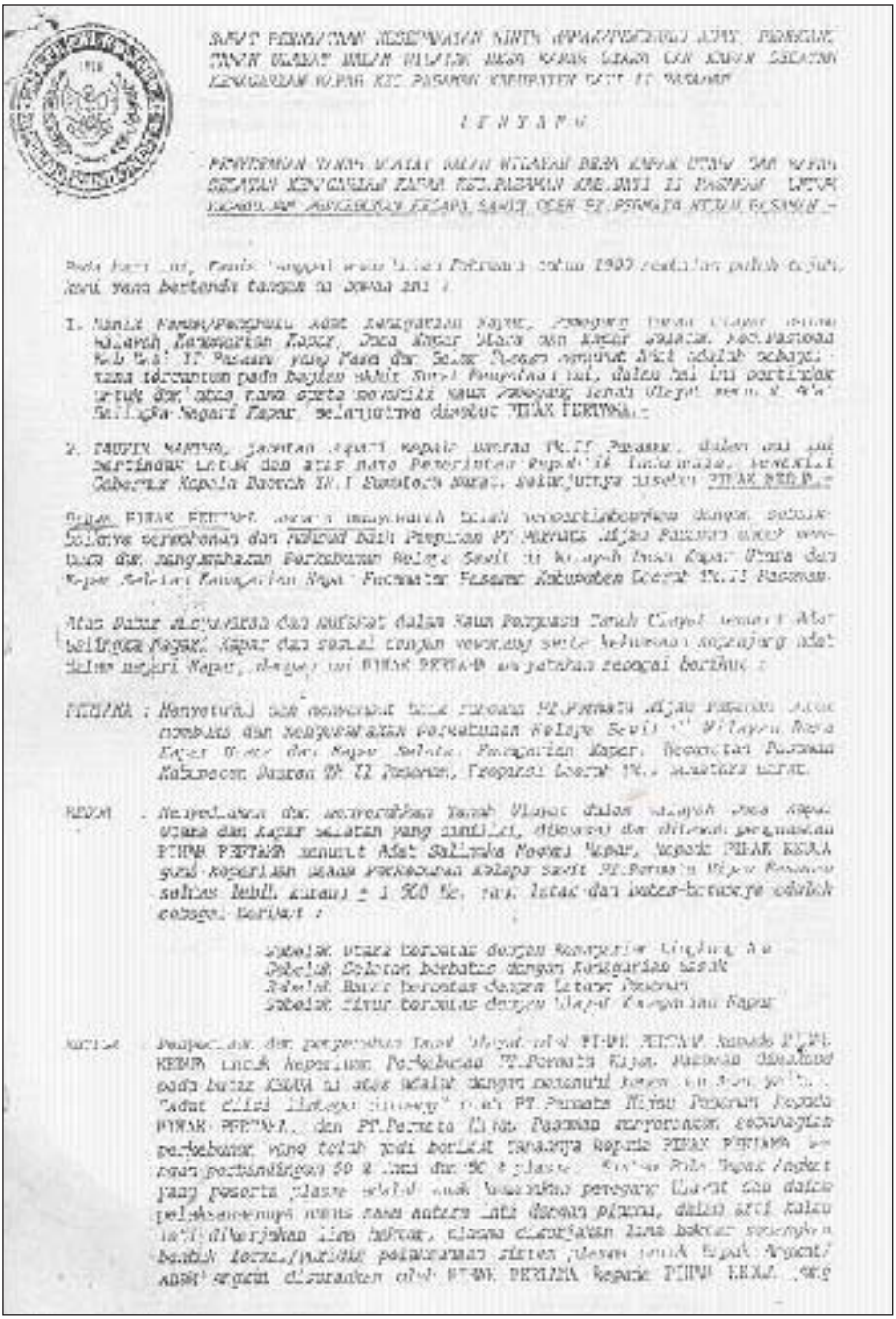
Why should such violence occur between the people and the police? In the following sections we attempt to disentangle the roots of this conflict. We explore: how lands in *Nagari* Kapar were allocated to the oil palm company; what account was taken of customary rights in land; the way that land markets had emerged in an area where such transfers were contrary to custom; the distortions in customary institutions that resulted and; the long history of land disputes that has resulted.

4.6.5 Initial Permitting for PT PHP on Ulayat Lands in Nagari Kapar

On 26 July 1992, PT PHP received a recommendation letter from the *bupati* of Pasaman (Mr. Taufik Marta) to develop oil palm estates.[156] The letter noted that, in conformity with the statement of the *ninik mamak* and *adat* leaders of *Nagari* Sasak and *Nagari* Sikilang about the territory of *Nagari* Sunagi Aur in Lembah Malintang subdistrict, the Pasaman District government agreed to allocate *ulayat* lands covering ± 12,000 ha. for an oil palm estate to be managed by PT PHP. The company was required to fulfill several conditions:

- PT PHP Company should request land from the Ministry of Forestry in order to acquire areas classified as forests;
- PT PHP should negotiate land acquisition process with *ninik mamak*/*adat* leaders based on mutual agreement because all the lands that will be acquired are *ulayat Nagari*;
- The extent of the estates should be based on surveys by the National Land Agency (BPN) in Pasaman District;
- PT PHP should act as a *bapak angkat* (adopted father), in managing the land of local communities that covered 10 percent of the total estate area;
- If PT PHP Company could not realize its activities within a year, this recommendation would be null and void.

The important point in this letter is that it conditioned the establishment of the estate on the prior relinquishment of *ulayat* land rights by the *ninik mamak* to the government, which would in turn release the land to PT PHP.



BERITA PEMERIKSAAN SETEMPAT MENGENAI PERMOHONAN IZIN PENGGUNAAN TANAH ULAYAT MILIK MASYARAKAT ADAT KAMPAR UNTUK KEPENTINGAN PERKEBUNAN KELAPA SAWIT PT. PERMATA KIJAU KECAMATAN KAMPAR KIRI HILIR KABUPATEN DATI II KAMPAR

I N I S I A L

PENYELESAIAN MASALAH TANAH ULAYAT DALAM WILAYAH DESA KAMPAR UTARA DAN KAMPAR SELATAN KECAMATAN KAMPAR KIRI HILIR/KIRI HULU II KABUPATEN DATI II KAMPAR UNTUK KEPENTINGAN PERKEBUNAN KELAPA SAWIT OLEH PT.PERMATA KIJAU KAMPAR.-

Pada hari ini, Senin tanggal dua belas Februari tahun 1990 (sebelas pukul sepuluh, kami yang bertanda tangan di bawah ini :

1. Nama Camat/Pembantu Adat Kecamatan Kampar, Pekerjaan Camat Kepala Wilayah Kecamatan Kampar, Desa Kabar Utara dan Kabar Selatan. Kabupaten Kab Dati II Kampar yang Desa dan Selaku Notaris menurut Adat adalah sebagai tersebut tercantum pada bagian akhir Surat Penyelesaian ini, dalam hal ini bertindak untuk dan atas nama serta mewakili kaum Penggang Tanah Ulayat suku X 4/4 Selaku Negeri Kampar, selanjutnya disebut PIHAK PERTAMA.-

2. DAUDIN NAMIN, jabatan sebagai Kepala Dusun IV.II Pasaran, dalam hal ini bertindak untuk dan atas nama Pemerintah Republik Indonesia, berkedudukan Cabang Kepala Daerah IV.I Sumatera Barat, selanjutnya disebut PIHAK KEDUA.-

Bahwa PIHAK PERTAMA dengan sungguh-sungguh telah bermusyawarah dengan sebaik-baiknya bersepakat dan setuju dengan PIHAK KEDUA untuk memberikan izin kepada PT.Permata Kijau Kampar untuk membuka dan mengusahakan perkebunan Kelapa Sawit di kawasan Desa Kampar Utara dan Kampar Selatan Kecamatan Kampar Kiri Hilir Kabupaten Daerah Tk.II Pekanbaru.

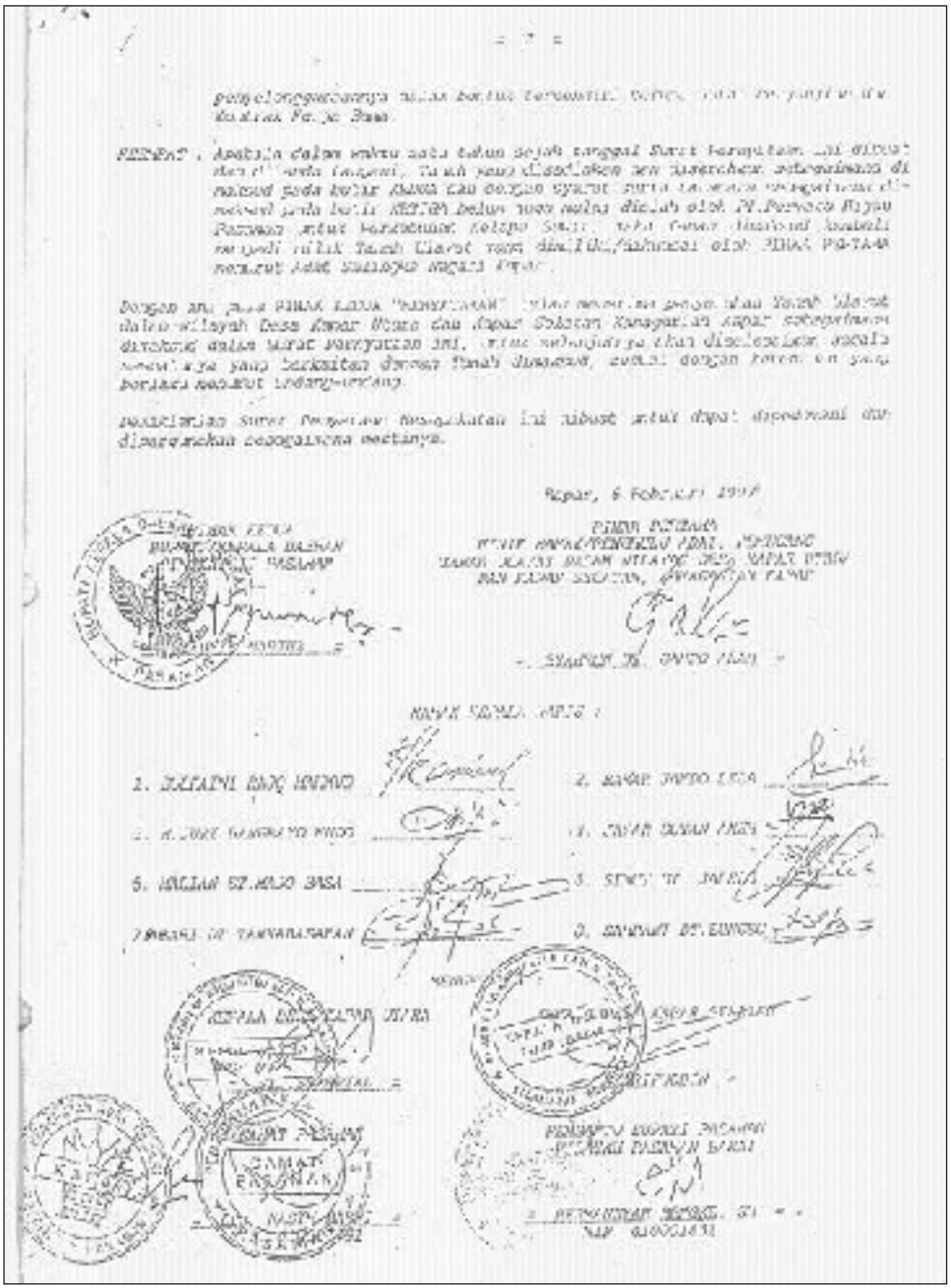
Atas dasar musyawarah dan mufakat dalam kaum Penggang Tanah Ulayat menurut Adat Melayu Kampar dan sesuai dengan ketentuan yang berlaku di Negara Republik Indonesia, dengan ini PIHAK PERTAMA dan pihak kedua sepakat sebagai berikut :

PERTAMA : Menyetujui dan memberikan izin kepada PT.Permata Kijau Kampar untuk membuka dan mengusahakan perkebunan Kelapa Sawit di Wilayah Desa Kampar Utara dan Kampar Selatan Kecamatan Kampar Kiri Hilir Kabupaten Daerah Tk.II Pekanbaru, Propinsi Daerah Tk.I Sumatera Barat.

KEDUA : Menyediakan dan menyerahkan tanah Ulayat dalam wilayah Desa Kampar Utara dan Kampar Selatan yang disetujui dan ditunjuk pengukuran PIHAK PERTAMA menurut Adat Selimbak Negeri Kampar, kepada PIHAK KEDUA guna kepentingan usaha perkebunan Kelapa sawit PT.Permata Kijau Kampar seluas lebih kurang + 1 900 Ha. yang batas dan batas-batasnya adalah sebagai berikut :

Sebelah utara berbatas dengan Kampung Lingkung Aie
Sebelah Selatan berbatas dengan Kampung Lasak
Sebelah Barat berbatas dengan Letak Pasaran
Sebelah timur berbatas dengan Ulayat Kampung Kampar

KETIGA : Penyediaan dan penyerahan tanah Ulayat oleh PIHAK PERTAMA kepada PIHAK KEDUA untuk kepentingan Perkebunan PT.Permata Kijau Kampar dilakukan pada batas KEDUA di atas adalah dengan menurut kaum dan Adat yang berlaku "Adat Alim Ulama" oleh PT.Permata Kijau Kampar kepada PIHAK PERTAMA, dan PT.Permata Kijau Kampar bersedia/sanggup perkebunan yang telah jadi berikut tanaman kepada PIHAK PERTAMA sesuai perjanjian 50 % luas dari 3C % plasma. Kepada Pola Tugas/Anggota yang peserta plasma telah untuk kemudahan pengurus Ulayat dan dalam pelaksanaannya nanti kaum antara lain dengan pajaran, dalam arti kalau [illegible] diberikan lima hektar, biaya dikeluarkan lima hektar sesungguhnya berubah terus/pantas pelaksanaan sistem /dengan untuk Pihak Negara/ ADAT segera dikurangkan oleh PIHAK PERTAMA kepada PIHAK KEDUA yang



Picture 4. Recommendation Letter of Land Allocation

The Governor of West Sumatra, Mr. Hasan Basri Durin, responded to the recommendation letter of the *bupati* by issuing a Governor's decree,[157] allocating 12,000 ha. of land in *Nagari* Sasak, Pasaman Subdistrict, Pasaman District, but also with certain requirements.

The first requirement, as stated in paragaph 3 of this letter, noted that:

> If lands allocated for the estates are *ulayat* land, PT PHP should conduct land acquisition through the Pasaman District government.

Moreover, paragraph 5 stipulated a second requirement, that:

> PT PHP Company should act as the adopted father of the local farmers and accommodate the products of oil palm estates of local farmers in the area surrounding PT PHP.

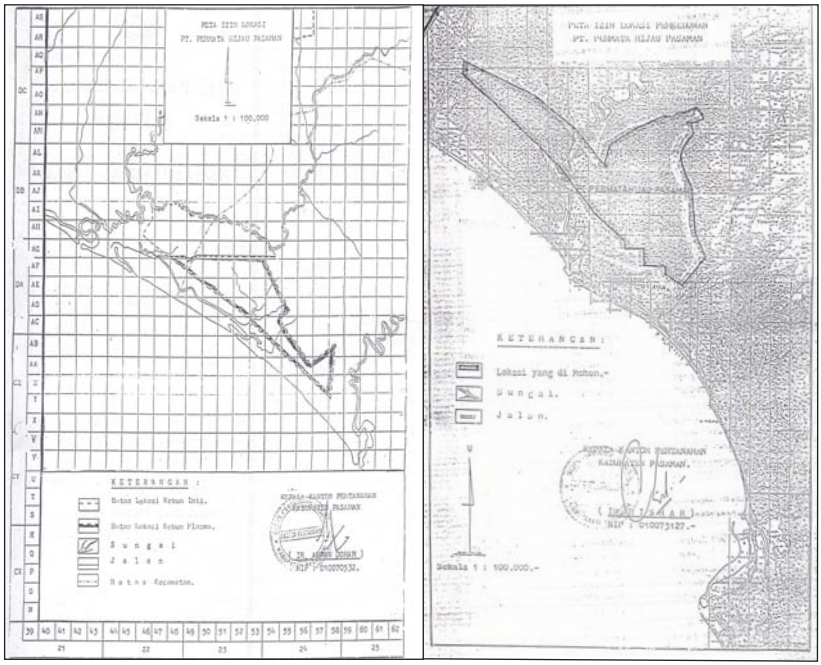
If we compare these two letters, we can note significant differences. The letter of recommendation from the *bupati* of Pasaman District firmly stated that lands allocated for the purpose of establishing the estate were *ulayat Nagari* land. Thus, in order to use the land, the company should obtain agreement from all the *ninik mamak*. This decree also clearly recognized that the *ulayat Nagari* land also included an area designated as forest by the Ministry of Forests. PT PHP could not ignore *ninik mamak* who control *ulayat* rights, even though the land was classified as forest.

The West Sumatra Governor, treated the *ulayat* land as *ulayat* clan land and considered any lands not directly controlled by clans to be State lands. In fact, based on *adat* rules, not all the lands were under the control of clans (*berbingkah adat*). The consequence was to limit the scope of required negotiation to clan land, not the entire area. Therefore, according to the Governor, land compensation was only payable for clan lands and neither the State nor the company need give any compensation for any lands outside clan lands, since all those lands were considered as State lands. In other words, albeit indirectly, this Governor's Decree did not recognize *ulayat Nagari* land.

It was not until 1995 that, following up the approval in principle (*ijin prinsip*) of land allocation for PT PHP's oil palm estate,[158] the Head of the National Land Agency (BPN) of Pasaman District issued a decree[159] granting PT PHP a location permit (*ijin lokasi*) to acquire 3,850 ha. in Pasaman Subdistrict, Pasaman District. This permit states that:

- Land acquisition should be conducted directly by interested parties through land title relinquishment. This process should be informed and witnessed by government officials;
- The amount of land compensation payable should be determined through mutual agreement between interested parties;
- Agreements with regard to compensation for agricultural crops and or buildings attached to the land should also be negotiated directly with the land owners without involving any form of mediator;
- Land acquisition should be conducted within 12 months after the stipulation of this decree, though the decree could be renewed for a further 12 months.

In 1998, the head of the BPN office of Pasaman District issued another decree, granting PT PHP a further 1,400 ha. for a nucleus estate and 2,118 ha. for a *plasma* estate in Maligi Village (Pasaman Subdistrict) and Sikilang Village (Lembah Malintang Subdistrict).[160] The issuance of this permit took into account a letter dated September, 1997, declaring that the *ninik mamak* of *Nagari* Sasak had agreed to lease their lands, which had been authorized by the head of the *Kerapatan Adat* of Sasak.



Picture 5. Map of Location Permit of PHP Company

4.6.6 Land Allocation and Development in Nagari Kapar

The local government was not wrong in assuming that the *ninik mamak* of *Nagari* Kapar were interested in developing their lands. Indeed, in the 1980s, the government had allocated several areas in *Nagari* Kapar for a rice field and irrigation project in Batang Tongar. It was the failure of this project which led to the plans to expand oil palm estates in *Nagari* Kapar.

On January 23, 1980 several *ninik mamak* in *Nagari* Kapar had signed a statement about the *ulayat* lands in this *Nagari*.[161] The statement had declared as follows;

1) The boundaries of *ulayat* land in *Nagari* Kapar includes:
   a. The boundary with the *Nagari* of Lingkuang Aur: Tarok Tongga, Padang Durian Hijau, Bintungan Sarang alang di Talao Titisan Kiduak, Rantiang Tibarau and Lubuak Languang;
   b. The boundary with the *Nagari* of Koto Baru: tarok Tongga, Anak air Pabatuan, Sailiran Batang Sungai Talang and Tikalak Basi;
   c. The boundary with the *Nagari* of Sasak: Tikalak Basi, Tunggua Hitam Pamatang Sariak, to Labuang Sigoro-Goro/Pulau Kalimonyo;
   d. The boundary with Batang Pasaman: Lubuak Languang, Sapantakan Galah, Batang Pasaman, Batang Pasaman and Labuang Sigoro-Goro/Pulau Kalimonyo.
2) These *ulayat* lands can be used for development programmes that conform with the interests of the government and people of *Nagari* Kapar. Some projects that have been initiated in this *Nagari* include:
   a. Airport project in Kampuang Laban, Jorong Kapar Utara;
   b. Rice field development projects in Baramban Sasak, Pematang Jambu
   c. Estates and agriculture areas in the border area of Lubuak Languang, Batang Pasaman and *Rantau* Panjang.
3) Every legal business institution that is interested to acquire lands should get written consent from *adat* leaders, the *ninik mamak*, the *Daulat Parik Batu* as well as the *Hakim Parit Batu* in Pasaman.
4) This agreement was made in order to improve the livelihood of the *cucu kemenakan* who are currently trapped in poverty.

The letter showed that *ninik mamak* in *Nagari* Kapar were open to providing opportunities for investors to invest their capital in the *Nagari*. At the same time, the *ninik mamak* of *Nagari* Kapar had also supported the district government's plans to develop rice fields on their *ulayat* lands.

On 3 April 1981 a meeting between *ninik mamak* and community leaders was held in *Nagari* Kapar to discuss the implication of the influx of migrants into the *Nagari*. The meeting decided to:

1) Accept migrants coming into Jambak and Padang Sari;
2) Grant these migrants land in Lajur Pematang, Lubuk Gadang, Pangkal Pematang and Tandikat;
3) Grant each migrant family a 2 ha. parcel of land including 0.25 ha. for housing and 1.75 ha. for rice fields;
4) Grant these fields to the migrants between Lubuak Gadang and Batas Batang Saman;
5) Prohibit the lease of all rice fields belonging to *anak kemenakan* in *Nagari* Kapar, as long as the *anak kemenakan* can show legal evidence of the land ownership or land title;
6) Require all new comers to make a payment (IDR 75,000) for their parcel of land. The payment could be made in three phases:
    a. First phase, after fulfilling all requirements for transferring rights and signing an agreement/ statement provided by the government of *Nagari* Kapar, the new comers should pay 35 percent from the total amount of compensation.
    b. Second phase, after the first harvest session, 35 percent from total amount of compensation should be paid.
    c. Third phase, four months after the second payment, the rest of the payment (30 percent) should be made.

This meeting also decided to choose a person who would be responsible for matters related to the rights of new *anak kemenakan* in Jambak. The *Kerapatan Adat* of *Nagari* Kapar was appointed to manage matters related to the arrival of migrants. However, the lack of transparency in the allocation of the compensation being paid for lands by the newcomers, fomented new disputes in *Nagari* Kapar. Only a few *ninik mamak* reaped any benefit from these compensation payments.[162]

Local people not only questioned the amount of compensation being paid for the *ulayat* land but also whether the *ninik mamak* had the authority to negotiate as they had. On 12 September 1989, a group of pemangku *adat* and other community leaders sent a letter to the subdistrict head of Pasaman. One of the points mentioned in this letter was that *ulayat* land should not be dominated by a restricted group of *ninik mamak*. Based on *adat* rules, they said, *ninik mamak* were only custodians of custom (*berbingkah adat*) and not custodians of the land.(*berbingkah tanah*).[163] Therefore, in relinquishing title over *ulayat* lands in Padang Panjang, they had broken *adat* rules.

A similar statement was later made in a letter sent by the local communities to the Head of Pasaman Subdistrict, the Head of BPN of Pasaman and the *bupati* of Pasaman District. On 22 February 1993, in this letter, entitled *Gugatan Pengukuran Dan Penjualan Tanah Kosong Yang Belum Digarap* (Legal Suit on Land Surveying and Trading in Unmanaged Land) they stated that the actions of certain *ninik mamak*, to take control of *ulayat* lands in *Nagari* Kapar just to serve their own interests, had broken *adat* rules. When BPN officers conducted the land surveys, more than a thousand people consisting of *adat* leaders, religious leaders

(*alim ulama*), other *ninik mamak* and local people attempted to stop the surveys.

4.6.7 PT PHP in dDsputes Over Ulayat Land.

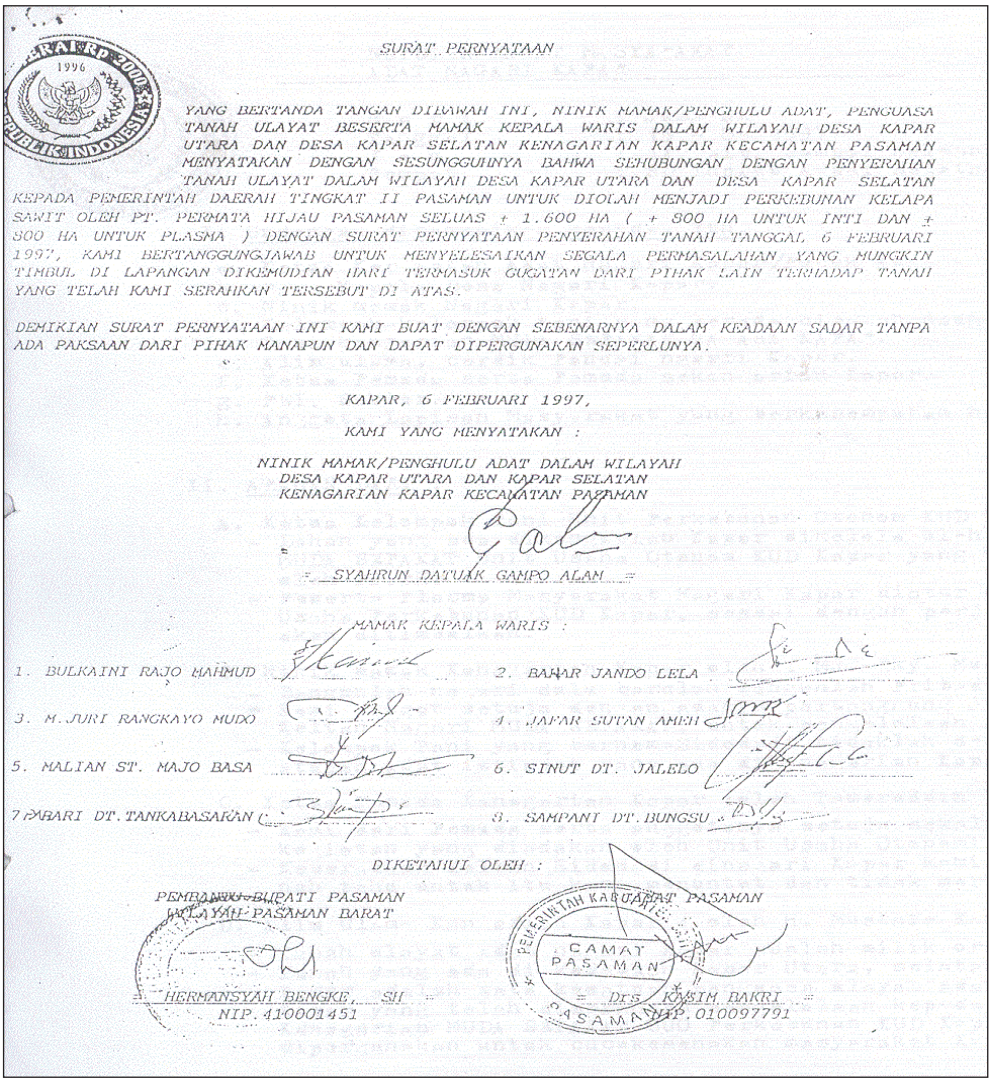
Another underlying problem in these disputes is that the boundaries between *Nagari* are not registered, mapped or surveyed and are thus often unclear. Customary systems exist to resolve these land disputes between *Nagari* but are rarely given scope to operate when the government is involved in land decisions. Now that land markets have begun to operate in the area, this lack of precision has begun to generate problems.

In the case of PT PHP, the company was granted a permit to establish estates in Sikilang and Sasak. In the process, *ulayat* lands in *Nagari* Sasak and *Nagari* Kapar were also leased to PT PHP Company. As noted by a representative of the Wilmar Group:

> To date, the boundaries between *ulayat Nagari* Sasak and *Nagari* Kapar are unclear. In the initial stage, PT PHP developed estates based on an agreement with *Nagari* Sasak. In the process, people of *Nagari* Sasak also leased *ulayat* lands of *Nagari* Kapar. Although the boundaries of *ulayat* lands in *Nagari* Kapar were unclear, people of Kapar then leased more *ulayat* lands in 1997. Based on the agreement, 50 percent of the area is nucleus estates and the rest of area is *plasma* estate. While the development of nucleus estates has run smoothly, the *plasma* estate development was hampered due to the emergence of land disputes. Local people demanded that the company allocate more land for *plasma* estate than was in the initial agreement.[164]

On 6 February 1997, in a letter entitled 'an agreement among *ulayat* lands holders' (*Ninik mamak/Penghulu Adat*) of North Kapar and South Kapar in *Nagari* Kapar, Pasaman Subdistrict, Pasaman, the customary leaders of *Nagari* Kapar agreed to relinquish their *ulayat* lands for the purpose of oil palm estates development by PT PHP. This letter positioned the *ninik mamak* as the first party and Taufik Marta, the *bupati* of Pasaman, as the second party. The agreement stated that:

1. The first party agree to accept PT PHP's plan to develop oil palm estates in the villages of North Kapar and South Kapar, Pasaman District;
2. The first party agrees to provide and lease *ulayat* lands in North Kapar and South Kapar that are owned and controlled by *adat salingka* in *Nagari* Kapar to the second party for developing oil palm estates (± 1.600 Ha). The leased land's boundaries are:
   a. North area is adjacent with *Nagari* of Lingkuang Aur;
   b. South area is adjacent with *Nagari* of Sasak;
   c. West area is adjacent with Batang Pasaman
   d. East area is adjacent with the *ulayat* of *Nagari* Kapar
3. The development of the nucleus estate should go hand in hand with that of the *plasma* estate.



SURAT PERNYATAAN

YANG BERTANDA TANGAN DIBAWAH INI, NINIK MAMAK/PENGHULU ADAT, PENGUASA TANAH ULAYAT BESERTA MAMAK KEPALA WARIS DALAM WILAYAH DESA KAPAR UTARA DAN DESA KAPAR SELATAN KENAGARIAN KAPAR KECAMATAN PASAMAN MENYATAKAN DENGAN SESUNGGUHNYA BAHWA SEHUBUNGAN DENGAN PENYERAHAN TANAH ULAYAT DALAM WILAYAH DESA KAPAR UTARA DAN DESA KAPAR SELATAN KEPADA PEMERINTAH DAERAH TINGKAT II PASAMAN UNTUK DIOLAH MENJADI PERKEBUNAN KELAPA SAWIT OLEH PT. PERMATA HIJAU PASAMAN SELUAS ± 1.600 HA (± 800 HA UNTUK INTI DAN ± 800 HA UNTUK PLASMA) DENGAN SURAT PERNYATAAN PENYERAHAN TANAH TANGGAL 6 FEBRUARI 1997, KAMI BERTANGGUNGJAWAB UNTUK MENYELESAIKAN SEGALA PERMASALAHAN YANG MUNGKIN TIMBUL DI LAPANGAN DIKEMUDIAN HARI TERMASUK GUGATAN DARI PIHAK LAIN TERHADAP TANAH YANG TELAH KAMI SERAHKAN TERSEBUT DI ATAS.

DEMIKIAN SURAT PERNYATAAN INI KAMI BUAT DENGAN SEBENARNYA DALAM KEADAAN SADAR TANPA ADA PAKSAAN DARI PIHAK MANAPUN DAN DAPAT DIPERGUNAKAN SEPERLUNYA.

KAPAR, 6 FEBRUARI 1997,

KAMI YANG MENYATAKAN :

NINIK MAMAK/PENGHULU ADAT DALAM WILAYAH
DESA KAPAR UTARA DAN KAPAR SELATAN
KENAGARIAN KAPAR KECAMATAN PASAMAN

= SYAHRUN DATUAK GAMPO ALAM =

MAMAK KEPALA WARIS :

1. BULKAINI RAJO MAHMUD
2. BAHAR JANDO LELA
3. M. JURI RANGKAYO MUDO
4. JAFAR SUTAN AMEH
5. MALIAN ST. MAJO BASA
6. SINUT DT. JALELO
7. PABARI DT. TANKABASARAN
8. SAMPANI DT. BUNGSU

DIKETAHUI OLEH :

PEMBANTU BUPATI PASAMAN
WILAYAH PASAMAN BARAT

= HERMANSYAH BENGKE, SH =
NIP. 410001451

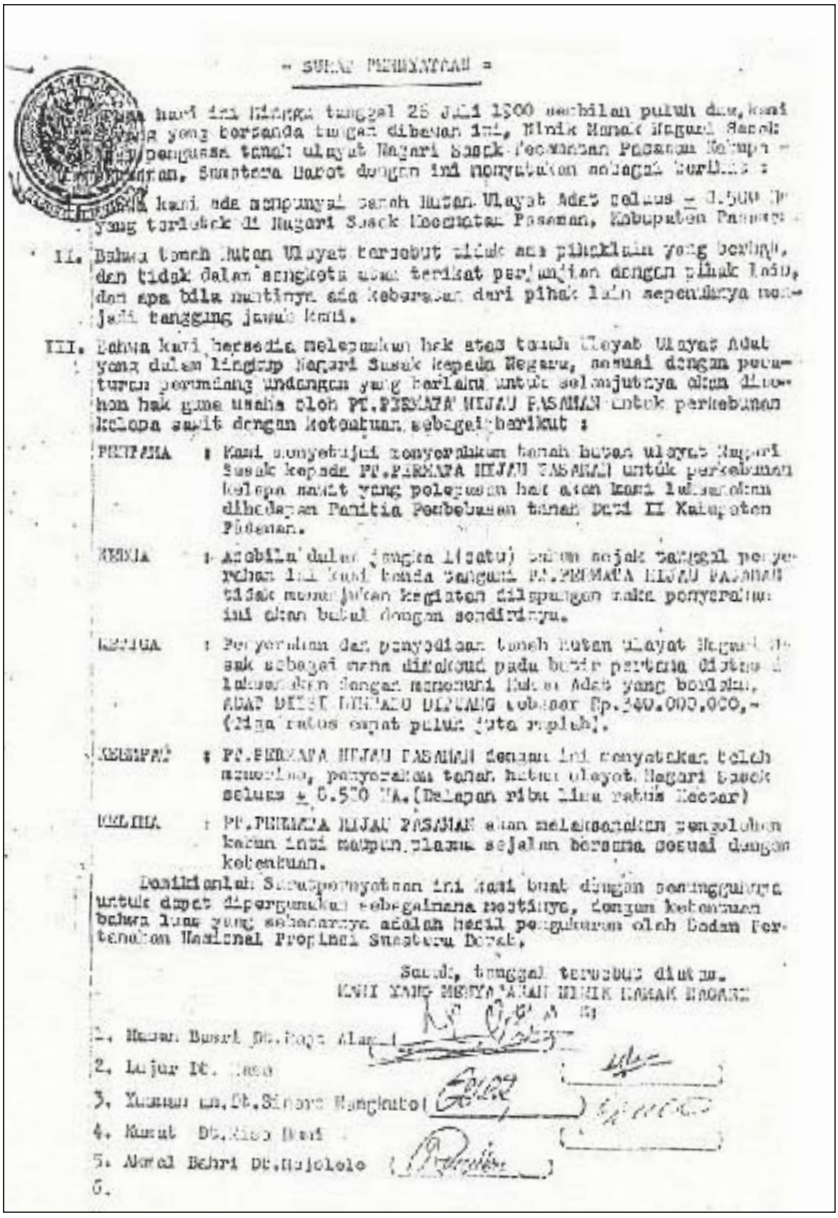
PEMERINTAH KABUPATEN PASAMAN
CAMAT PASAMAN

= DRS. KASIM BAKRI =
NIP. 010097791

Picture 6. A letter of ulayat land relinquishment

This letter was signed by both the first and second parties. The first party included Syahrun *Gampo Alam* (*Pucuk Adat* of *Nagari* Kapar) and several *ninik mamak* who declared themselves to be leaders who represent their clans in customary and State courts (*Mamak Kepala Waris*). The second party was the *bupati* of Pasaman. This agreement was witnessed by the village heads of North Kapar and South Kapar, the subdistrict head of Pasaman and the *bupati*'s assistant in Pasaman. The letter was accompanied by another letter stating

that the *ninik mamak* were responsible for resolving any potential disputes and conflicting claims that could emerge in the future.



- SURAT PERNYATAAN -

hari ini Minggu tanggal 25 Juli 1300 sembilan puluh dua, kami yang bertanda tangan dibawah ini, Ninik Mamak Nagari Sasak penguasa tanah ulayat Nagari Sasak Kecamatan Pasaman Kabupaten Pasaman, Sumatera Barat dengan ini menyatakan sebagai berikut :

I. Bahwa kami ada mempunyai tanah Hutan Ulayat Adat seluas ± 3.500 Ha yang terletak di Nagari Sasak Kecamatan Pasaman, Kabupaten Pasaman.

II. Bahwa tanah Hutan Ulayat tersebut tidak ada pihaklain yang berhak, dan tidak dalam sengketa atau terikat perjanjian dengan pihak lain, dan apa bila ternyata ada keberatan dari pihak lain sepenuhnya menjadi tanggung jawab kami.

III. Bahwa kami bersedia melepaskan hak atas tanah Ulayat Ulayat Adat yang dalam lingkup Nagari Sasak kepada Negara, sesuai dengan peraturan perundang Undangan yang berlaku untuk selanjutnya akan diberikan hak guna usaha oleh PT.PERMATA HIJAU PASAMAN untuk perkebunan kelapa sawit dengan ketentuan sebagai berikut :

PERTAMA : Kami menyetujui penyerahkan tanah hutan ulayat Nagari Sasak kepada PT.PERMATA HIJAU PASAMAN untuk perkebunan kelapa sawit yang pelepasan hak atas kami lakukan dihadapan Panitia Pembebasan tanah Desi II Kabupaten Pasaman.

KEDUA : Apabila dalam jangka 1(satu) tahun sejak tanggal penyerahan ini kami belum tanggung PT.PERMATA HIJAU PASAMAN tidak memulai kegiatan dilapangan maka penyerahan ini akan batal dengan sendirinya.

KETIGA : Penyerahan dan penyediaan tanah hutan ulayat Nagari Sasak sebagai mana dimaksud pada butir pertama diatas dilakukan dengan memenuhi Hukum Adat yang berlaku, ADAT DIISI DENGAN DIPAKAI sebesar Rp.340.000.000,- (Tiga ratus empat puluh juta rupiah).

KEEMPAT : PT.PERMATA HIJAU PASAMAN dengan ini menyatakan telah menerima, penyerahan tanah hutan ulayat Nagari Sasak seluas ± 6.570 Ha.(Delapan ribu lima ratus Hector)

KELIMA : PT.PERMATA HIJAU PASAMAN akan melaksanakan pengelolaan kawasan inti maupun plasma sejalan beserta sesuai dengan ketentuan.

Demikianlah Surat pernyataan ini kami buat dengan penuh tanggung untuk dapat dipergunakan sebagaimana mestinya, dengan kebenaran bahwa luas yang sebenarnya adalah hasil pengukuran oleh Badan Pertanahan Nasional Propinsi Sumatera Barat.

Sasak, tanggal tersebut diatas.

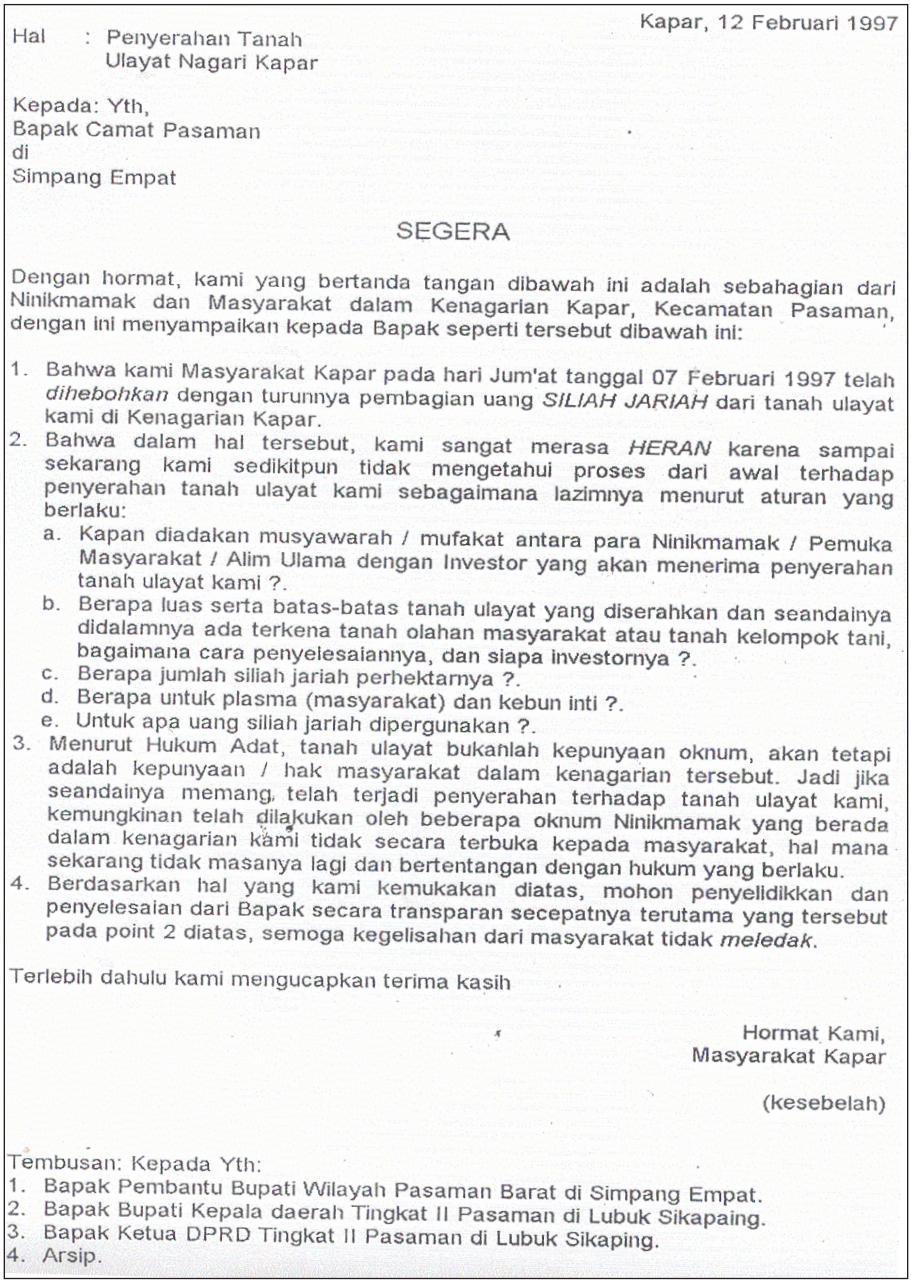
KAUM YANG MENYATAKAN NINIK MAMAK NAGARI

1. Hasan Basri Dt.Rajo Alam
2. Lujur Dt. [illegible]
3. Yusman Dt.Sinaro Mangkuto
4. Kamal Dt.[illegible]
5. Akmal Bahri Dt.Majolelo
6.

Picture 7. The Statement Letter

Local community members of Kapar responded to the relinquishment of *ulayat* lands in *Nagari* Kapar by sending a formal letter on 12 February 1997 to the Head of Pasaman Subdistrict that was entitled '*Ulayat* Land Relinquishment in *Nagari* Kapar'. In this letter, the community representatives stated that:

1. We, Kapar people were really surprised with the distribution of *Siliah Jariah* money to compensate for our *ulayat* lands on 7 February 1997;
2. To date, we have no information about the relinquishment of our *ulayat* lands. The land relinquishment process should be based on *adat* rules. We demand to get information concerning, as follows;
    a. The exact date of the agreement between the *ninik mamak*, the religious leaders and the *adat* leaders and the investors who accepted our *ulayat* lands;
    b. The extent and boundaries of the leased *ulayat* lands. The government also needs to set up mechanisms for resolving conflicts between the people and investors;
    c. The amount of *Siliah Jariah* paid per hectare;
    d. The proportion of lands allocated for the *plasma* estate and for the nucleus estate;
    e. The usage of *Siliah Jariah* money.
3. According to *adat* rules, *ulayat* lands belongs to *adat* community members of the *Nagari*. Therefore, land relinquishment conducted by several delinquent *adat* leaders (*oknum ninik mamak*) on our behalf cannot be accepted. This action has violated *adat* rules in our *Nagari*.
4. Based on the facts described above, we ask the subdistrict head of Pasaman to investigate and resolve the dispute particularly with regard to the second point.



Kapar, 12 Februari 1997

Hal : Penyerahan Tanah
Ulayat Nagari Kapar

Kepada: Yth,
Bapak Camat Pasaman
di
Simpang Empat

SEGERA

Dengan hormat, kami yang bertanda tangan dibawah ini adalah sebahagian dari Ninikmamak dan Masyarakat dalam Kenagarian Kapar, Kecamatan Pasaman, dengan ini menyampaikan kepada Bapak seperti tersebut dibawah ini:

1. Bahwa kami Masyarakat Kapar pada hari Jum'at tanggal 07 Februari 1997 telah *dihebohkan* dengan turunnya pembagian uang *SILIAH JARIAH* dari tanah ulayat kami di Kenagarian Kapar.
2. Bahwa dalam hal tersebut, kami sangat merasa *HERAN* karena sampai sekarang kami sedikitpun tidak mengetahui proses dari awal terhadap penyerahan tanah ulayat kami sebagaimana lazimnya menurut aturan yang berlaku:
   a. Kapan diadakan musyawarah / mufakat antara para Ninikmamak / Pemuka Masyarakat / Alim Ulama dengan Investor yang akan menerima penyerahan tanah ulayat kami ?.
   b. Berapa luas serta batas-batas tanah ulayat yang diserahkan dan seandainya didalamnya ada terkena tanah olahan masyarakat atau tanah kelompok tani, bagaimana cara penyelesaiannya, dan siapa investornya ?.
   c. Berapa jumlah siliah jariah perhektarnya ?.
   d. Berapa untuk plasma (masyarakat) dan kebun inti ?.
   e. Untuk apa uang siliah jariah dipergunakan ?.
3. Menurut Hukum Adat, tanah ulayat bukanlah kepunyaan oknum, akan tetapi adalah kepunyaan / hak masyarakat dalam kenagarian tersebut. Jadi jika seandainya memang telah terjadi penyerahan terhadap tanah ulayat kami, kemungkinan telah dilakukan oleh beberapa oknum Ninikmamak yang berada dalam kenagarian kami tidak secara terbuka kepada masyarakat, hal mana sekarang tidak masanya lagi dan bertentangan dengan hukum yang berlaku.
4. Berdasarkan hal yang kami kemukakan diatas, mohon penyelidikkan dan penyelesaian dari Bapak secara transparan secepatnya terutama yang tersebut pada point 2 diatas, semoga kegelisahan dari masyarakat tidak *meledak*.

Terlebih dahulu kami mengucapkan terima kasih

Hormat Kami,
Masyarakat Kapar

(kesebelah)

Tembusan: Kepada Yth:
1. Bapak Pembantu Bupati Wilayah Pasaman Barat di Simpang Empat.
2. Bapak Bupati Kepala daerah Tingkat II Pasaman di Lubuk Sikapaing.
3. Bapak Ketua DPRD Tingkat II Pasaman di Lubuk Sikaping.
4. Arsip.

Picture 8. The Relinquishment Letter of Ulayat Land of Nagari Kapar

4.6.8 A history of Land Disputes in Nagari Kapar.

Later investigations have revealed more clearly that the dispute over the lease of land to PT PHP was but the latest in a long list of community grievances about the way *ninik mamak* have abused their authority to carry out land deals without the consent of community members. Based upon information given by *adat* community members to the Legal Aid Foundation (LBH) Padang, such land relinquishment has included:

1. Pre-1990: land covering 60 ha. was sold to H. Zainir (a Padang entrepreneur).
2. In 1991, 240 hectares of *ulayat* land from three villages were managed by a farmer group, RTTSK. Later, the land was sold by an '*oknum*' (delinquent) *ninik mamak* to PT PHP.
3. Pre-1994, an '*oknum*' *ninik mamak* sold ± 70 Ha of *ulayat* land to Jayus.
4. In 1995, 2,200 ha. of *ulayat* land in *Nagari* Kapar was leased to PT PHP.
5. In 1995, an '*oknum*' *ninik mamak* sold *ulayat* land in *Nagari* Kapar to H. Sarmal (± 10 hectares).
6. In 1996, a farmer group (Sidodadi) was formed by local people and financially backed by DT. Dawar, an entrepreneur, and *ninik mamak* of *Nagari* Air Gadang. He controlled 400 ha. of *ulayat Nagari* lands in Kapar.
7. In 1996, a community member in *Nagari* Kapar, H. Buyung Norman, used *ulayat* land covering ± 300 Ha.
8. In 1997, several *ninik mamak* sold approximately 12 ha. of *ulayat* land to officers of Yarsi Hospital.
9. The remaining *ulayat* lands in *Nagari* Kapar (± 200 hectares) were communally managed by community members.

It was a later dispute about these final 200 ha. of *ulayat Nagari* lands, mentioned in point 9, that led to the biggest dispute between local community and *ninik mamak*. As reported by LBH Padang:

> In 1999, the people of *Nagari* Kapar began to use the remaining lands that covered approximately 200 ha. In response, a group of *ninik mamak* intimidated and terrorized the people. A farmer, Boy Martin, became the victim of the violence. He was jabbed by Buyuang Picak, Bahar's assistant, when he worked in the field. This attack caused a serious wound in the left side of Boy Martin's head.
>
> In April 2000, a *ninik mamak* (Bahar A) and his friends, accompanied by police officers, came to the fields that were being used by local people. They sought to stop the local people using the lands by threatening them. The police officers arrested seven local people and put them in jail. These local people included 1) Firdaus, 2) Iwan, 3) Pingai, 4) Acong, 5) Sisyam, 6) Ijen and 7) Ucok.

> After hearing the information about the detention of several Kapar people, people of Kapar held a meeting in Kapar marketplace to discuss a response to the detention. They decided to send several community representatives to the police station in order to confirm the information.

This then was the background to the attack on the police station in Pasaman, the detention and injury of the farmers and so forth. According to LBH Padang:

> The case that we are investigating is a demonstration held by 300 people from Kapar in front of the police station in Pasaman on 28 April 2000. The demonstration was triggered by the detention of seven Kapar people. Police officers argued that these people were arrested because they were illegally using *ulayat* lands that had been sold to investors. In fact, the community members in *Nagari* Kapar were never informed about, nor did they agreed to sell, their *ulayat* lands. Based on *adat* law in Minangkabau, *ulayat* lands cannot be traded. These lands could only be managed by community members for fulfilling their daily needs.
>
> In response to the detention, many Kapar people felt it was urgent to fight against the police officers in order to release their friends from the jail. They argued that Kapar people have rights to manage their *ulayat* lands. Because of the strength of solidarity and the close relationships among *Nagari* members, the people of Kapar felt that they had a responsibility to free the jailed Kapar people. This led the local people to be engaged in a spontaneous and unorganized action to demand that the police officers free the people from Kapar.
>
> In August 2001, a year after the demonstration, further disputes between people in Kapar occurred. The protestors burned one person's house in Kapar. Consequently, Yulisman and Fitrizal were arrested by police officers. The detention was conducted without appropriate mechanisms. In fact, the defendants had not been involved in the riot which occurred on 28 April 2000. However, the officers claimed that both defendants had been engaged in the riot.
>
> In sum, the local people's detention was a result of manipulations by delinquent *adat* leaders (*oknum* ninik mamak), investors, and police officers. They criminalized Kapar farmers in order to stop farmers' from reclaiming their *ulayat* lands.[165]

4.6.9 Disputes Over Plasma Land

When the research team visited Kapar in Septmber 2005, further demonstrations were underway, organized by members of a local farmers' institution, Tunas Mekar. Farmers were occupying the PT PHP site and blocking lorries from coming in and out of the mill. They were demanding a fair share in PT PHP's *plasma* estate.[166] Their demands were thus

distinct from other community members who had been demanding the return of their *ulayat* land. The Tunas Mekar group supported their demand for an equal share of the *plasma* estate by referring to the land relinquishment agreement that had been rejected by the other group. The agreement had stated that 50 percent of the area leased to PT PHP would be established as a *plasma* estate for distribution to community members.

According to members of Tunas Mekar interviewed during the investigation, the local farmers' cooperative, KUD Kapar, was also involved in the occupation of the PT PHP area. This cooperative had been set up as the local counterpart of PT PHP to develop and manage the *plasma* oil palm estate in *Nagari* Kapar.[167]

It was surprising to find that members of KUD Kapar were involved in the occupation. The company argued that it had handed over *plasma* lands to the KUD to be distributed to local people. According to the company:

> In 1997, the people of Kapar leased their land again, even though in the agreement the boundaries of the *ulayat* land in *Nagari* Kapar were not clear. The land relinquishment was based on an agreement that 50 percent of the estate's area would be allocated for the nucleus estate and the other 50 percent for *plasma*. The development of the nucleus estate then continued [as planned], whereas development of the *plasma* estate was hampered due to *ulayat* land conflicts [which meant the company did not secure all the lands it had expected to get]. Today, the people are demanding to get their share of the *plasma* estate share based on the initial agreement.
>
> The company has handed the land developed as *plasma* to the KUD. However, the distribution of this land has led to disputes. The KUD is an institution set up to accommodate the needs of *plasma* participants. The *ninik mamak* have the authority to choose which people are to be *plasma* participants. The problem emerged when the *ninik mamak* chose *anak kemenakan* who did not have rights to control the land, for instance, *anak kemenakan* who have left their lands. Furthermore, the *ninik mamak* do not have clear criteria about who should have rights to get *plasma* holdings.[168]

The company explained that the people who were occupying PT PHP's area were harvesting five truckloads of fresh oil palm fruits per day. The problem was being discussed with the district government. The company proposed as a solution that they should establish further *plasma* estates outside the designated areas and grant a subsidy of IDR 100,000 per harvest on each holding of 2 ha.. The company also proposed that the *bupati* should discipline the local people for occupying company lands and harvesting fresh oil palm fruits. The *bupati* of Pasaman stated that the disputes about PT PHP's *plasma* estate had been exhaustively discussed between the company, the people, and the district government. However, the

company persisted in not distributing a greater proportion of the current oil palm estate to the people of Kapar as *plasma*. Thus, the dispute seemed to be intractable.

The company's explanation clearly shows that the *plasma* problems emerged because of the disparity between the rate of development of the *plasma* and nucleus estates. Furthermore, there was lack of transparency in the KUD. Because of unclear criteria for selecting *plasma* recipients, *plasma* was being handed out among *anak kemenakan* in an unequal way. The absence of effective controls, either by the community or the government, over the exercise of the ninik mamak's authority had broadened opportunities for *ninik mamak* to misuse their position and even to sell *plasma* lots to non *ulayat*-owners.

4.6.10 Conflicting Views of Land Ownership and Rights Allocation

The presence of investors in the district of West Pasaman has transformed local social and economic conditions. The expansion of estates since the 1980s, followed by major infrastructure development has brought West Pasaman Barat out of isolation. However, the influx of these investors has also cause new problems.

In chapter three we noted the tension in Indonesian laws about land. On the one hand, the laws respect customary rights, including *ulayat*, but on the other hand the laws assert the overriding imperative of the national interest and subject all lands to an unusual degree of centralized control. Even where lands are allocated to private companies, 'Business Use Rights' (HGU) are deemed to be 25-35 year leaseholds on State lands. Such HGU cannot be allocated on forest lands until after the forest lands are transferred out of the Ministry of Forests' jurisdiction. On termination of the lease, HGU lands must be cleared of removable properties and all buildings, and become State lands again.

By contrast, in Minangkabau, all lands are encumbered by *ulayat* rights. As one academic has noted:

> All lands in Minangkabau belong to *Nagari*, as heritage of the clan, as a source of personal wealth, and as a fund of unused land. However, all lands in Minangkabau belong to human beings. These lands never belong to an abstract thing.[169]

The idea that the State should own land is thus contrary to Minangkabau custom and alien to Minangkabau thought. Even the kings never owned lands.[170]

During Dutch period, the absence of free lands in Minangkabau created difficulties for outsiders seeking to establish estates based on *domeinverklaring* principle.[171] In order to ease the investment process, estates companies signed agreements with Minangkabau *adat* communities according to which the land was borrowed not bought from the local people, since under custom *adat* land could not be traded. Most of these agreements were

not written. The formal validation of these lending arrangements were established by visual surveys of land boundaries (*Batas Sepadan*) followed by a series of *adat* ceremonies.

Although the colonial government perceived these agreements as legal, since it recognised customary law as applying to native peoples alongside western laws applying to colonials, its recognition of a dual legal system could be problematic. When local people had recourse to the courts to reclaim their *adat* lands, judges tended to require written evidence of land ownership and contracts. Sometimes, it was impossible for local people to find witnesses to land agreements that had been made a long time ago.[172]

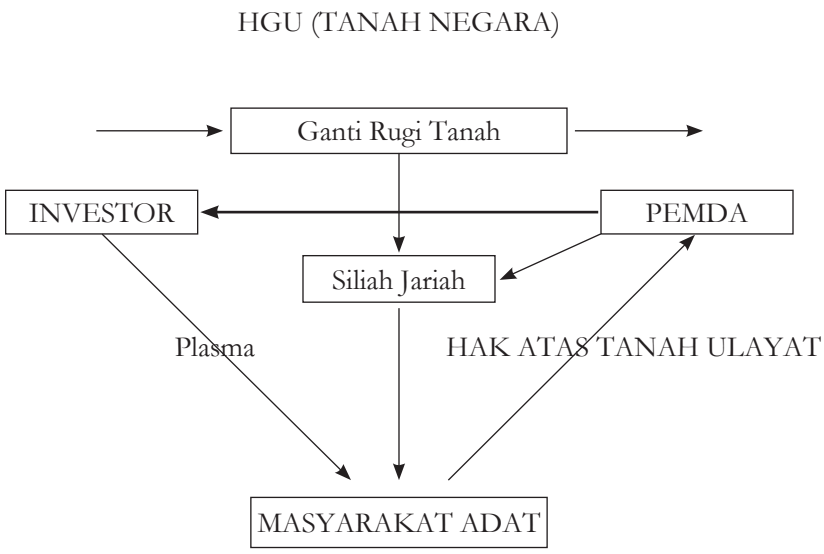
How did the modern State of Indonesia grant HGU over *ulayat* lands? The Indonesian government has its own way of allocating lands for HGU. The law[173] states that land acquisition could be conducted through local owners first transferring or relinquishing their rights over lands to the government, following which the State can grant others rights over these lands.

As noted, the Minangkabau of Pasaman, do have ways of transferring rights over *ulayat* land to third parties, namely through the procedures of *adat diisi limbago dituang* or by payment of Siliah Jariah. Article 4 of the *bupati* of Pasaman's Decree No. 6 /1998 states that:

1. Lands for estate purposes are acquired from ninik mamak/ the owner of *ulayat* lands who lease their *ulayat* lands to the State facilitated by the district government. These lands are then allocated to the farmers' groups that participate in *plasma* schemes under the 'adopted father' system.
2. After the *bupati* has accepted the land acquisition process and agreed on the farmer candidates for the *plasma* estates, as described in the first paragraph of this article, he commands the head of BPN to register these lands as State lands, put in boundary markers, and measure these lands in accordance with the borders of the land as determined by the land register.

Based on these two articles, we can conclude that these *ulayat* lands should be leased to the district government before the government then grants HGU over these *ulayat* lands. The process of *ulayat* rights relinquishment is to be accompanied by conducting *adat* ceremonies, such as *adat diisi limbago dituang*, and by payment of *Siliah Jariah*.

Proses Pelepasan Lahan Ulayat Rakyat Pasaman



Picture 9. The Process of Land Acquisition in Pasaman

However, as we have noted, the *Siliah Jariah* process has been abused and has become, in effect, a mechanism by which outsiders can gain control of Minangkabau *adat* lands. By custom, payment of *Siliah Jariah* gives recognition of a transfer of use rights, not ownership rights. But lack of transparency in the transactions mean that such deals can be all to easily manipulatd, even with the connivance of local leaders, who exceed their authority in finalizing agreements without prior consensus.

Because, from the *adat* communities' point of view, there has been no transfer of ownership rights, the termination of plantation companies' operations should lead to the land reverting to the community. Indeed, insofar as the land has indigenous owners, the land should not be granted as HGU, as HGU can only be granted on State land.

However, from the government's point of view, once the communities transfer their rights in land to the government, they then become State land and can be allocated to companies as HGU. Once this leasehold expires these lands revert to the State, not the community. In effect, deals with plantation companies lead to permanent land alienation, although this is impossible under customary law. This difference in understanding of the significance of *Siliah Jariah* transactions has made *adat* communities' wish to reclaim their land became more difficult.

According to the Head of BPN in West Pasaman, based on the agrarian law, *ulayat* rights are erased when a HGU is granted over what were *ulayat* lands. If a HGU is discontinued or is revoked, then the land becomes State land. Even if the government plans to return these lands to people to use, the land's status as State land will persist. This is because there are no agrarian regulations that regulate *ulayat* rights. The same opinion was pronounced by the spokesperson for the Wilmar Group whom we interviewed. The company representative stated that it has authority to apply for a continuation of a HGU but that it did not have a responsibility to resolve and conflicts, which were caused by the way the government had acquired and the re-allocated lands and by deficiencies in tenure laws. The company was only complying with such laws as exist.

The statement of the head of DPRD in West Pasaman becomes relevant. He stated that investors in plantations felt that they own estate lands in the nucleus area. During the 1980s, these investors paid a lot of money to acquire these lands, about IDR 500,000 per ha. However, the local people only received IDR 40,000 to IDR. 50,000 per ha. as *Siliah Jariah* money.

The legal deception was supported by the district government. When resentment towards estates increased, the government and other interested parties carried out repressive actions to put down resistance. In some cases, the government also gave political recognition to those *pangulu* (traditional leaders) who supported the government and helped them disqualify those *pangulu* who consistently demanded the recognition of *ulayat* lands.

4.6.11 Legal Irregularities

Our analysis of this case suggests that both customary and national laws have been violated in the establishment of the oil palm estates in Kapar. On the one hand, certain *ninik mamak* have used their position to allocate *ulayat* lands to third parties without adhering to *adat* norms. These violations include:

1. The relinquishing of lands by only some of the community's ninik mamak, whereas the *adat* mechanism requires the involvement of all *ninik mamak* and consultation with the whole community. The institution in *Nagari* Kapar that regulates conflict resolution is called the *Pancang Silao*, but it was not involved in negotiations.
2. Based on *adat* rules in Kapar, *ulayat* lands could only be distributed to, and used by, kin. Therefore, land sales with outside parties, such as the government or PT PHP were prohibited. .
3. Although norms exist to transfer **use** rights in *ulayat* lands to outside parties, the *ninik mamak* **sold** *adat* lands in contravention of *adat* law.

There were also violations of aspects of the civil law in the relinquishment of *ulayat* lands. The Indonesian Civil Code requires that valid agreements for the trade of commercial goods be based on:

- The existence of consensus,
- No deception,
- All parties having legal capacity to enter an agreement,
- Legality of transaction.

Given that the agreements to lease *ulayat* lands in *Nagari* Kapar was only conducted by a few of the community' *ninik mamak* they may not be legally valid, as such agreements could only be entered into by the full group of *ninik mamak* representing all the *anak kemenakan* of *Nagari* Kapar. Outside parties wanting to acquire use rights over *ulayat* lands should make agreements with the full group of *ninik mamak* that really represented all *anak kemenakan* in *Nagari* Kapar. It also follows that all subsequent transfers of these *ulayat* lands to third parties are null and void.

The third group of violations relate to criminal law. On 21 January 1990, the *ninik mamak* we shall refer to as BAJL, who held the *adat* title *Jando Lela*, was dismissed by his *anak kemenakan,* thus losing him his position in the *ninik mamak Ampek Didalam*. On 22 January 1990, the clan decided to grant this *adat* title to Ba Bahari, who then transferred his authority as *Jando Lela* to Rosman. Although BAJL no longer had authority related to his previous position as *Jando Lela*, which includes dealing with the allocation of *ulayat* lands in *Nagari* Kapar, he continued to exercise these powers on at least seven occasions over a period of ten years.[174] These actions constitute several violations of the Indonesian Criminal Code (KUHP), including the crimes of counterfeiting and fraud.[175]

Furthermore, BAJL and his group of *ninik mamak* can also be considered guilty of the crime of *Stalionat*, as regulated by Article of 358 of KUHP, which states:

> Anyone who pursues his own or other people's benefit in an illegal manner, by trading, bartering or mortgaging any Indonesian land, which does not belong to him, can be punished with up to 4 years detention.

BAJL and his colleagues relinquished land rights in *Nagari* Kapar without consulting their kin. They operated as if they had authority over the land, when in fact such a sub-group cannot represent all those with an interest *ulayat Nagari* land. Community members further point out that some of the transferred land was in fact *ulayat* clan land, but that some of these clans were not represented by their *ninik mamak* in the land transfer either.

Endnotes:

1 LeBar (1972) refers to the Pesisir as *Orang Abung*. On the other hand, half the community claim that their ancestors were came from the *Skala Brak* area in sub-district of Balik Bukit and say they have lived there for over 450 years ago (Hadikusuma 1989).

2 Boomgard 1998.

3 *Repong damar* has been widely recognized in Indonesia as a sustainable forest management system and the communities were granted the prestigious Kalpataru Award in 1997 in recognition of this.

4 See the MoF Decree No. 47/1998 regarding the Designation of Certain Coastal Forest Areas as a Specific Purpose Area.

5 'Team Eleven' is a team established by provincial government set up to solve the land disputes in Lampung province. The land dispute between the Pesisir and PT KCMU is one of the cases being handled by this team.

6 *Satay* – braised skewered meat – is commonly sold by street hawkers, who are considered to be people of low social status, usually members of the landless poor forced to move to the cities to make a living. The *camat*'s statement was a calculated insult to a proud people living self-sufficiently off their own lands.

7 This is a reference to Team Eleven see footnote 5. Tanjung Karang is the Provincial capital.

8 The supposition that PT KCMU is seeking to acquire lands in the HPK area is confirmed by the statement of *camat* of Bengkunat (Bpk Chairil Azwar) to a workshop on land use planning held in Bengkunat in 2005. He said that PT KCMU had initiated a process to acquire the land but that agreement with the communities had not yet been reached.

9 At the time of the interview the exchange was about IDR 9,500 / US$ 1.00. Compensation with one cow per ha. is equivalent to about US$32 / ha. The interviewee is suggesting that farmers are making only about US$105.00 per ha. per year from lands being controlled by the oil palm company.

10 See a letter of the *Bupati* of West Lampung District No. 643/442/Bappeda-LB/1993 dated 19 November 1993, signed by the *Bupati* of West Lampung District, HS Umpusinga

11 They said that all families in their village agreed to participate in the oil palm plantation. The formation of a village cooperative unit would be decided later. The land should be titled if rights are to be recognized. If local people have finished their loan payments, they would be granted land titles.

12 See the Decree of the Head of BPN in Lampung District No KPBL/401/03.1/SK/93 on 10 December 1993 signed by Head of BPN in Lampung District Dr. M. Syaiful Hajani, which was renewed by another Decree of Head of BPN in West Lampung No. KPLB.401/01/SK/IL/1995.

13 In line with BPN instruction No. BPN.61c/2008/27/94.

14 See letter of the Head of BPN in Lampung Province No. BPN.61c/2008/27/94, on Socialization before the land measurement to be conducted in order to lease the land for PT KCMU, of 31 March 1994.

15 See the Announcement Letter of the *Bupati* of West Lampung District, No. 593/3.499/LB/1994 dated 13 April 1994, signed by the *Bupati* of West Lampung, H.S. Umpusinga.

16 See the Letter of the Director General of Plantations of the Agricultural Department No. HK.350/ b4.172/03.94 on the Approval of Initiation Permit for Oil Palm Plantation covering 8,500 ha. in the Sub-district of South Pesisir, West Lampung, dated 19 March 1994. This permit was to last for 12 months. The area of oil palm plantation mentioned in this letter differs from that in the Approval Letter of the

Investment Coordinating Board (BKPM) No. 448/I/PMDN/1994 of July 8, 2004 which states that the land granted for oil palm plantation in the Sub-district of South Pesisir, West Lampung, covered 10,000 ha..

17 This letter is a response of the *Bupati* of West Lampung to the Letter of Governor of Lampung No. 5503/1678/04/94 dated 14 July 1994 concerning the Plan of Additional Location for Oil Palm Plantation of KCMU Company in Pesisir Sub-District.

18 This letter did not provide any information regarding the status of the 'buffer zone area' or mention that it abutted the Bukit Barisan Selatan National Park.

19 Based on the measurement of lands and mapping agency or SIBHPL in Lampung that has been agreed by the boundary arrangement committee (PTB).

20 See a letter of the sub district head of Lampung Barat No. 522-12/204/Bapp-LB/1994 to Lampung Governor on 16 July 1994 on the utilization of converted production forest in North Pesisir subdistrict (Lampung District).

21 See further in a community letter of June 1, 1994 and their attendance in hearing with the head of provincial BPN office in June 6, 1994 and the head of plantation office and BKPMD in Lampung, June 1994. See also newspaper articles, Merdeka, July 29, 1997 (*Masyarakat Minta Izin Prinsip PT KCMU dicabut; PT KCMU menggusur tanah rakyat secara membabi buta*); Merdeka, July 30 1997 (*Kasus penggusuran Tanah Warga; Pemda Lampung Merasa Diremehkan PT KCMU*); Merdeka July 31, 1997 (*Penyepelean Surat Gubernur, Sikap Arogansi PT KCMU*); a letter to reject the plantation development and expansion were signed by people from Pahmungan village, 16 *Marga* of *adat* communities in Pesisir, Malaya village, Penengahan village. The letter was sent to the Ministry of Forestry and the District government.

22 Team Eleven represented by Khoiri.

23 The RDP report mentioned that the Provincial parliament (DPRD) commission visited these districts (West Lampung, North Lampung and South Lampung) between 20-30 July, 1994.

24 Prior to this the provincial forestry agency had designated the former production forest, covering 6,000 hectares, and the whole of the HPK area, covering 5,690 hectares, as settlements and agriculture areas as well as for various development projects that conformed to Land Use Plan of Lampung Province (District Regulation No. 10 of 1993).

25 See a Recommendation Letter of Lampung Governor No. 503/2116/04/1994, 25 July 1994. See also the letter of the Head of Provincial Forestry Agency No. 3601/Kwl-6/1994in 29 December, 29 1994 (including map and minutes) and instruction No. 22/D.a/I/1995 issued by BPN, 10 January 1995.

26 See the letter of the Head of Provincial Forestry Agency No. 213/Kwl-6/1995 dated 23 January 1995 on the agreement of the oil palm plantation of PT KCMU. This letter was reaffirmed by another letter from letter of the Head of Provincial Forestry Agency dated may 17, 2005 No. 1243/Kwl-6/1995 on the agreement of oil palm plantation of PT KCMU.

27 See the Approval Letter of Head of Village of Suka *Marga* signed by Effendi Husien dated 24 June 1995 and certified by the *camat* of Bengkunat, Dr. Syahril. K.

28 See Minutes of Meeting of *Musyawarah* June 10, 1995. The signatories and named villages were: Village head (*Kades*) Pagar Bukit (Engkon Gunawan), local organization Kota Batu (Purnawardi); Village head Penyandingan (Yubhar Hassan), LKMD Penyandingan (Muhtadin); Village head Kota Batu (Wahabullah), Kadus Pardasuka (Matrosidi); Sekretaris *Desa* Negeri Ratu (Syarif Usman); Village head (Ibnu Rusyid), Kades Negeri ratu (Sujadi); Village head Kota Jawa (Juaher); Village head

Mulang Maya (Choiruddin); Village head Raja Basa (Fatahurrohman); Village head Tanjung Kemala (A.Hamidi); Village head Biha (Nusirwan); Village head Way Jambu (Zainal Abidin); Kades Marang (Johan Samsi); Village head Kades Sumber Agung (Mursid); Village Head Negeri Ratu Ngambur (Syariffudin); Village head Gedung Cahaya Kuningan (Mazkur M).

29 See the Decree of *Bupati* of West No. 188.45/087/TP/1995 regarding Land Consolidation Planning for *Plasma* oil palm plantation, 13 April 1995.

30 See the Decree of *Bupati* of West Lampung No. 188.45/500/BPN/HK/1994 concerning basic land prices, July 30, 2004 and unit prices of crops, building and other rights as regulated in the Decree of *Bupati* No. 188.45/223/HK/93, appendix I & II, dated 3 September 1993. The land leasing agreement between PT KCMU and villagers in Pagar Bukit represented by Sangidi, Suparlan & Sarmain certified by the coordinator of land leasing program for private sectors in the district levels, West Lampung, Engkon Gunawan, in 19 April 1995.

31 See Recommendation of *Bupati* No. 000/297/TP-LB/1995, 22 June 1995 and the Decree of *Bupati* No. 188.45/087/TP/1995, dated June 13 1995

32 See the Decree of *Bupati* No. 188.45/693/TP/1995, dated 23 June 1995 regarding the implementation of land consolidation replacing Decree of *Bupati* No. 188.45/087/TP/1995 dated 13 June 2005.

33 Letters were submitted by government officials from the following villages: Way Jambu (19 people), Marang (20 people), BiHa (15 people), Pardasuka (10 people), Mulang Maya (9 people), Batu (11 people), Pagar Bukit (20 people), Negeri Ratu Ngaras (9 people), Negeri Ratu Ngambur (10 people), Gedung Cahaya Kuningan (10 people), Pekon Mon (9 people), Sumber Agung (10 people), Tanjung Kemala (8 people), Kota Jawa (10 people).

34 See a joint statement of officers from 15 villages representing all villagers in 12-14 July 2005.

35 See joint statement on 30 April 1996, that was certified by the head of district legislature.

36 See joint statement on 30 April 1996, that was certified by the head of district legislature and all of political parties` representatives and Damar farmers of Jejama Beguai (Negeri Ratu Ngaras), Sangen (Pardasuka), Kota Batu Mandiri (Mulang Maya) dan Kilu Andun (Raja Basa).

37 See *Bupati* Decree No. 975/366/DP.II/LB/1997 of 30 May 1997 on transfer fees.

38 See Decree of the Head of BPN West Lampung No. 401/01/SK/IL/1996 of 10 January 1996.

39 Compiled from the report of land arrangement of *Plasma* and nucleus plantation of PT KCMU and BPN in 1997.

40 See the report of land arrangement of *Plasma* and nucleus plantation of PT KCMU and BPN in 1997.

41 See the *Bupati* Decree No. B/235/ Kpts/B-01/1997 on the designation of nucleus and *Plasma* plantation of 11 November of 1997 signed by Dr. H. Indra Bangsawan as Acting *Bupati*. See also Decree of *Bupati* No. B/240/KPTS/01/1997 on the implementation of the designation of nucleus and *Plasma* area of PT KCMU dated 19 November 1997 signed by Acting *Bupati*, Dr. H. Indra Bangsawan.

42 See PT KCMU, 1996, Andal Report.

43 See the letter of Lampung Governor No. 325.28/1640/04/1995 to PT KCMU dated 11 April 1993.

44 See agreement letter between BDNI, KCMU and KUD Karya Mandiri No. 36/80/BDN or 73/KM/05/95 or 20/KUD-KAMI/5-95 dated 8 May 1995.

45 See the letter of head of Bappeda in Lampung Province No. 522.11/2285/BappedaIV/1999 on the proposal of Re-Designation converted production forest area (HPK) in 7 October 1999; a letter of the head of forestry department No. 2056/KWL-6/2000 on 12 August 2000; Letter of the Governor of

Lampung No. 522.11/1753/Bappeda/2000 dated 15 August 2000 regarding forest area re-arrangement in Lampung Province.

46 For a review of the community based forest management options in Lampung see Colchester et al. 2005.

47 See Ministry of Forestry Decree no 256/Kpts-II/2000 on the designation of forest and water area in Lampung province that covers 1.004.735 *hectares*, on August 23, 2000. See consideration part of this decree that also revoke previous Ministry of Forestry decree no 416/Kpts-II/1999.

48 See the Ministry of Forestry Decree no 47/ 1998 on the designation of coastal forest area to be KDTI

49 See a letter of *Bupati* KDH TK II Lampung Barat no 643/442/Bappeda-LB/1.

50 Appendix of letter of Bappeda head, Lampung province, No. 522.11/2285/BappedaIV/1999 on the Proposed Re-Arrangement of Converted Production Forest (HPK) dated 7 October 1999.

51 See the Lampung Governor Decree No. G./283.A/B.IX/HK/2000 on the Establishment of Former HPK land status that covers 145,125 ha.; the Provincial Regulation No 6 /2001 on the change function of former HPK land into non HPK area that covers + 145,125 ha.. This land status change is aimed to give land rights to people. This land status change is a priority of the 'land for people' programme.

52 See Utomo Hajir, Mechsan Sudirman, Akib Muhammad, Wulandari Christine, Kabul Ali Mahi, Mulyaningsih Handi (tim UNILA, 2001); *Peluang dan Tantangan Dalam Pelepasan Kawasan Hutan Negara di Lampung* Province, unpublished document.

53 Radar Lampung, 28-2-2002; *Ribuan Warga Tuntut Penyelesaian Tanah, Terkait pelaksanaan Perda no 6/2001 Propinsi Lampung*.

54 Radar Lampung, 1-3-2002; *Lamteng Didesak Proaktif Tangani Persoalan di Register 08*. By contrats see the statement of Bpk Djuweni Ma'sum. Commission A member, Lampung provincial parliament; Lampung Post 2-3-2002, *Komisi A Panggil Bupati Lamteng*. The Provincial Parliament (Commission A) of Lampung Province argued that the fees of land acquisition should indeed be based on District Regulation No.6 of 2001: namely IDR 100,000/ha for agriculture areas, IDR 400,000/ha. for settlements; IDR 100,000/ha. for commercial buildings and Rp. 250,000/ha. for industries. They also argued that people had settled in State forest not in *adat* forest. In order to respond popular demands, the government argued that the land distribution system should be based on Government Regulation No. 224 of 1961 on land redistribution for settlement and agriculture area . The government also issued the procedure of implementation. See Ministry of Forestry Decree No. 256/Kpts-II/2000 on the designation of forest and water area in Lampung province that covers 1,004,735 hectares, on 23 August 2000. See consideration part of this decree that also revokes the previous Ministry of Forestry Decree No. 416/Kpts-II/1999.

55 Fathullah, Situmorang et al.2004.

56 Profile of Sanggau district quoted from Peluang Investasi di Kabupaten Sanggau, 21 June 2005.

57 Sanggau district vision '*Pada tahun 2010 Kabupaten Sanggau sebagai pusat agribisnis/agro industri, perdagangan yang maju, pertambangan yang ramah lingkungan serta peningkatan pendapatan asli daerah (PAD). Peluang Investasi di Kabupaten Sanggau 21 Juni 2005, Dinas Pariwisata dan Penanaman Modal Daerah Kabupaten Sanggau*.

58 Interview with the head of Sanggau district tourism and investment coordinating board, July 20, 2005.

59 Spatial and Land Use Planning in Sanggau District until 2014.

60 Key informants were Mr. Hamdi, Head of Seribot village and Abdias Yas (LBBT Pontianak) advocacy

activist and legal adviser to this research in West Kalimantan.

61 Their ancestors were from the Dayak indigenous tribe of Jangkang Engkarong in Jangkang.

62 Harian Equator, 28 September 2002, *Kelapa Sawit, Primadona atau Bencana?*

63 Harian Equator, 13 September 2002, *NGO Membedah Kebun Sawit*.

64 The project will affect 5 districts and 15 sub-districts in West Kalimantan, and 3 districts and 11 sub-districts in East Kalimantan and will cover approximately 1.8 to 2 million hectares of forest lands.

65 Casson 1999; ICBS 1997: 88.

66 Casson 1999.

67 Interview with Mr. Sihotang, Head of Estate Crops Office Sanggau District, 2005. The merger was carried out in accordance with the Foreign Investment Act (Law No. 1 Year 1967) and can also be seen as the outcome of a joint agreement between the government of Indonesia and government of Malaysia in 1995, when the parties signed a Memorandum of Understanding at a meeting held in Brunei. (Report of meeting between Sanggau District Officers and PT. MAS Managing Directors, 2002).

68 Executive Summary of AMDAL prepared by PT. Mitra Austral Sejahtera's (PT. MAS), February 2000.

69 Point 5 of Sanggau district head (*Bupati*) Decree No. 525.26/647/Disbun/1996.

70 Laporan Hasil Pertemuan Muspida Kab. Sanggau dengan Direksi PT MAS, Pontianak 15 July 2002.

71 Decree No. 525/1887/BAPPEDA dated May 13, 1996.

72 Letter No. 400-06/IL-41-95; Letter No. 400-13/IL-41-1996.

73 Dayak traditional gardens, community based agroforestry systems, which contain various local crops managed by Dayak indigenous peoples from generation to generation, prevalent in Sanggau district.

74 Ringkasan Eksekutif AMDAL PT. Mitra Austral Sejahtera, February 2000.

75 Proposal Proyek Perkebunan Kelapa Sawit PT. Ponti Makmur Sejahtera, Pontianak August 1996.

76 *Adat derasa* is the term for a customary permission fee payable to gain the use of a piece of land. It implies the transfer of use rights not that the land is not being sold.

77 Interview with Mr. Hamdi in workshop with communities' representatives.

78 *Tael* is a local word used in customary law and represents the amount of fine borne by guilty people who break common rules.

79 This is a customary sanction imposed on anyone ignoring local people's existence and their customary rules, who ignore the norm that permission must be sought through consultation prior to doing something in an area of indigenous people's lands.

80 *Tuak* is made from fermented sticky rice and is a traditional alcoholic drink used in seasonal customary festivals and rituals.

81 Translated by the authors from an article in the *Kalimantan Review* 'Mereka Mencuri di Rumah Sendiri' available at http://www.dayakology.com/kr/ind/2003/100/daerah1.htm

82 Previously registered as PTP VII.

83 Despite formal requests PTPN XIII only provided one interview and declined to provide any data to the research team. Therefore, this research report is written based on primary data from interviews with community and local government officials as well as the available 'grey' literature.

84 Interview on 20 July 2005.

85 Prior to the establishment of regional autonomy (OTDA), all of the business permits of oil palm plantation were issued by central government departments.

86 Interview on 19 July 2005. Following the official banning of the PKI in 1966, after Suharto assumed

executive power, an estimated half a million alleged members of the PKI were exterminated in one of the world's worst incidents of government-sponsored communal violence since the second world war. To this day, those alleged to be 'PKI' suffer persecution, discrimination and are prohibited by law from getting jobs in government service.

87 PTPN XIII is a merged company resulting from the consolidation and re-structuring of previously separated para-statal plantation companies (PTP's), which had developed PIR projects in Kalimantan. These merged assets consist of what were previously PTP VI, VII, XII, XIII, XVIII, XXVI, XXIV, XXV and XXIX. The consolidation process was conducted on 1996 in accordance with Government Regulation (PP) No.18 of 1996, and was implemented by an Act of Establishment before Notary Mr. Harun Kamal, SH No. 46 on 11 March 1996. With a total area 149,429 ha, PTPN XIII has accumulated an estimated value of IDR 100 billion since 1999.

88 Colchester 2005. .

89 The 3::2 formulation is a required procedure that should be fulfilled by a candidate for participation in a PIR project. Project participants are expected to transfer 5 ha. of lands to the scheme of which they will obtain 2 ha. land for oil palm smallholdings (*Plasma*), 0,25 land for their yard, 0,75 ha land for agriculture land. The remaining 2 ha. land will belong to PTPN XIII as the nucleus plantation.

90 Sapardi 1992: 97

91 In accordance to Decree of Minister of Agriculture No. 518/Mentan/VI/1980 on 6 June of 1980 and Decree of West Kalimantan Governor No. 187 on 28 June 1982 regarding Special PIR Project in Parindu.

92 Governor Decree No. 104/1984 on 2 April 1984 (3,000 ha) and Governor Decree No. 525/4531/1997 on 17 December 1997 (10,220 ha).

93 Statement of the Head of BPN in Pontianak Post 1 December 2000 page 7; Sapardi, *the Influence of PIR-BUN Project to Economic Aspect of Household of Peladang, Tesis*, UI Jakarta, page.114.

94 Pontianak Post, 2 December 2005 page 7.

95 Sapardi 1992: 34.

96 Sapardi 1992: 35; Interview with Marius Jimu on 19 July 2005.

97 Sapardi 1992: 39.

98 Sapardi 1992: 64.

99 Sapardi 1992: 65

100 Sapardi 1992: 68; Riwut 1979: 348.

101 Regulation of the Minister of Internal Affairs (*Permendagri*) No. 15 /1975. This regulation has now been replaced by Presidential Decree No. 55 of 1993 and was, in turn, replaced by Presidential Regulation No. 36 /2005. *Permendagri* No.15/1975 did not limit the purposes of land acquisition for both public and private interest.

102 Interviews with Matius Anyi and Marius Jimu, 19-20 June 2005.

103 Lukas 2000.

104 Life support ration (*Jadup*) is a daily food package in the form of coconut oil, rice, and dried fish that is given to transmigrants for one year. The purpose of *Jadup* is to support the transmigrants while they wait for their land to produce.

105 Pon is one of the days in the Javanese calendar.

106 See the Notary Act of PT CNIS issued by Notary Agus Madjid SH, Jakarta, and the Company Business License (SIUP) No. 032/04-01/SIUP/VII/1998 issued by the Head of the Regional Office of

Ministry of Industry and Trade, Riau Province.

107 The Ecologist 1986.

108 See West Kalimantan Governor Decree No. 004 /1979 dated 10 January 1979 regarding the Land Allocation covering 20,000 hectares in the Mukok Village, Blok XVIa/E. So-called 'second stage development' of failing transmigration sites became a favoured World Bank policy from the mid-1980s.

109 Currently, Ministry of Transmigration and Forest Squatters (*Deptran and PPH*) have been dissolved and their duties are consolidated within the Ministry of Human Labor (*Depnaker*).

110 The Recommendation Letter of *Bupati*, the Head of District Region of Sanggau No. 525/1524/EK dated 30 April 1998 regarding Supporting Utilization of Former Transmigration Area and other Recommendation Letter of the Head of Regional Office of Ministry of Transmigration and Forest Squatter No. 1.853.PA.04.13.98 dated 24 March 1998 regarding Supporting Utilization of Former Transmigration Area in former settlement area in Mukok WPP/SKP XVIc/E.

111 See further the Recommendation Letter of the Head of Regional Office of Ministry of Transmigration and Forest Squatter No. 1.853.PA.04.13.98 dated 24 March 1998 regarding Supporting Utilization of Former Transmigration Area in former settlement area in Mukok WPP/SKP XVIc/E.

112 Regional Office of Forestry and Plantation in each province has been dissolved since 1 January 2001. All of its duties have been delegated to Forestry and Plantation Offices in the administration of Regional Governments.

113 Ministerial Decree No. 107/Kpts-II/1999 dated March 3, 1999,

114 According to the PP 34/ 2001 re. forest management, land clearing is not allowed in limited production forest.

115 See the Supporting Letter for Principle Agreement Issuance of the CNIS Company No 503/229/UT.31/III/99 dated 9 March 1999 issued by the Plantation Office of West Kalimantan Province.

116 See the Application Letter for Business Permit No. 271/IX/BHT-8/1999 dated 26 March 1999, issued by Director General of Forestry and Plantation.

117 See the Approval Letter of Minister of Forestry and Plantation (*Menhutbun*) No. 1511 & 1512/*Menhutbun*-II/1999 dated 27 September 1999 regarding the Approval of Plantation Business Permit on behalf the CNIS Company.

118 See the Decree of the Head of Sanggau District No. 400-62/IL-41-1999 dated 29 October 1999.

119 In accordance with West Kalimantan Governor Decree No. 044/1991 dated 10 February 1991 and the Decree of Head of Sanggau District No. 22/1991 dated 6 February 1991.

120 See the Supporting Recommendation Letter of the Head of Village of Kedukul (on behalf of Mr. Hamzah) No. 151/02/2001/XI/2002 dated 13 Nov 2002 regarding The Development of the Factory of Oil Palm (*Pabrik Kelapa sawit*/PKS). See also the Recommendation Letter of the Head of Mukok Sub-district No. 647/014/Ekbang dated 14 January 2003 regarding the Supporting for the Development of Oil Palm Factory.

121 PT CNIS 2003.

122 Act of Incorporation of the Co-operative of *Tut Wuri Handayani* No. 47a/BII/X 5 April 1997.

123 See the Partnership Agreement Letter between the CNIS Company and the Co-operative of *Tut Wuri Handayani* No. 01/KUD-TH/X/98 regarding the Development of Oil Palm Estates under KKPA model as validated by the Notary Act No. 7 dated 9 July 1999 in Pekanbaru, issued by Notary Mr. Fransiskus Djoenardi.

[124] Kusmirtan 2005.

[125] See also Ministry of Forestry letter 1511 &1512/ 1999 on The IUP required PT CNIS to form a joint venture relationship with the community-owned TWH Co-operative by allotting 65 percent of all its shares to the co-operative.

[126] *Nilai Jual Obyek Pajak* is the 'Basic Value of an Object of Tax'. It is determined by the Government and is reviewed annually.

[127] The regulation mentioned is Minister of Agrarian Affairs & Head of BPN Regulation No. 5 of 1999 regarding the *Ulayat* Land Conflict Resolution.

[128] *Babinsa (Bintara Pembina Desa)* is a village level police unit appointed to supervise the public and keep public order at the sub-district and village levels.

[129] *Koramil (Komando Rayon Militer)* is the district level unit of the Indonesian Army charged with 'total people's defense' according to the 'dual function' ideology of the Indonesian armed forces which secures the country against both internal and external threats, a legacy of the dictatorship.

[130] Presidential Letter No. 470/I/PMA Project No. 1110/3115-14-7049 regarding the Approval of Foreign Direct Investment of PT SIA.

[131] All data shown in this part taken from the Environmental Impact Assesment (*Analisis Dampak Lingkungan*/ *ANDAL*) document of PT SIA in 1997.

[132] Letter of West Kalimantan Governor No. 525/3616/II-Bappeda regarding the Land Information for the Oil Palm Estates.

[133] Decree of Head of BPN of Sanggau District No. 400-13/IL/41-1995 issued on October 3, 1995.

[134] Decree of Head of BPN of Sanggau District No. 400-29/IL-41-1996.

[135] Patebang 2000.

[136] PT SIA declined to meet with our research team at their office without prior authorisation from Kuala Lumpur. PT SIA has not responded to follow up emails requesting information about land acquisition and the RSPO principles.

[137] The highland Minangkabau were estimated at more than one million in the early 19th century. The process of expansion into the lowlands also occurred in other parts of Sumatra (Reid 2005: 41-68).

[138] Undri 2004.

[139] These officials were the *Majolelo Di Lubuak Batang,* the *Datuk Jolelo Di Kampuang Jambak,* the *Jolelo Di Aur Kuniang* and the *Panji Alam Di Aie Gadang*.

[140] Provincial Regulation No. 13 of 1983 regarding *Nagari* as units of customary law communities.

[141] Until the issuance of Provincial Regulation No 9 of 2000.

[142] The Law No. 38 of 2003 regarding the Formation of the District of Dharmasraya, South Solok, and West Pasaman in West Sumatra Province

[143] Not all *Nagari* have exactly the same customary laws governing land. In other *Nagari* all lands have now been allocated to clan members and the sense of collective ownership and control of lands is attenuated.

[144] The *ninik mamak Ampek Didalam* includes *ninik mamak* with the roles of *Rajo Mahmud, Jando Lela, Rangkayo Mudo* and *Tuan Ameh* as well as other *ninik mamak* who only represent their clan or sib.

[145] The customary leader representing each clan.

[146] Dobbin date:194

147 In accordance with Law No. 56 of 1958. Unfortunatelly, during the field research, we did not have opportunity to meet the local people in the PTPN VI oil palm estates in the Ophir Mountain area. Local contacts have previously informed members of the research team that the lands managed by PTPN area were *ulayat* land rented to the Dutch. After the Basic Agrarian Law (UUPA) was issued, the agreement between local communities and the Dutch enterprenerus was revoked. *Erfpach* rights were converted into the cultivation use land title (HGU). Further studies to explore this problem are needed.

148 The history of the estates development in Pasaman is based on several interviews with the late Bapak Muhammad Nazif, a former journalist in Pasaman who was knowledgable about the estates development process in Pasaman. Later on, he also joined a political party, the National Mandate Party (PAN), and became one of the decison makers of this party in West Sumatra region. When disputes between people and estates companies occured in 1999 in Pasaman, he was often being interviewed to explain the history of estates in this district for resolving disputes related to *ulayat* lands in this area. One of his piece of writings that becomes the major source of estates history is a letter on the estates history in Pasaman that he wrote on october 11, 1999 for Investigation Team of Provincial Parliament of West Sumatra (DPRD Sumbar), *Forum Cendekia Pasaman, Forum Jihad* and the Head of District Parliament of Pasaman. The letter was written in tandem with the emerging dispute between *Plasma* of Anam Koto Limited Company and people of *Nagari of Aia Gadang*. There the district government played an important role in mediating the conflict. However, when farmers held demonstration to demand equal shares in the *Plasma* estate, police officers shot several protestors.

149 The Decree of Agriculture Ministry No. 350/B4.651/09.92 regarding Principle Business Approval of Oil Palm Estates to PHP Company in Subdistrict of Pasaman, Pasaman District, West Sumatra.

150 In accordance with the Letter of State Minister of Investment/Head of Investment Coordinating Board (BKPM) No. 49 V/PMA/1999 regarding the Status Alteration of Domestic Investment (PMDN) to Foreign Direct Investment (PMA).

151 Letter of State Minister of Investment/Head of Investment Coordinating Board (BKPM) No. 49 V/PMA/1999 regarding the Status Alteration of Domestic Investment (PMDN) to Foreign Direct Investment (PMA).

152 *Kompas Online* May 8, 2001

153 Those arrested included Firdaus, Iwan, Pingai, Acong, Sisyam, Ijen and Ucok.

154 The chronology of Kapar Case, IKRAK-Jaya, 2000

155 This account was assembled from the case files on Kapar held by the legal asistance bureau, LBH Padang, which assisted the community in the subsequent legal cases.

156 The letter was given legal weight by *bupati* Decree No. 525.25/1575/Perek-1992 regarding the Recommendation of Land Allocation for Oil Palm Estates of PT PHP.

157 West Sumatra Governor's Decree No. 525.26/1477/Prod.92 regarding the Principle Approval for Land Allocation for Oil Palm Estates in Pasaman District.

158 West Sumatra Governor's Decree No. 525.26/ 213/Perek-95.

159 BPN Decree No. 402.1144/BPN-1995 regarding the Granting of a Location Permit for PT PHP.

160 Decree No. 402.103/BPN-1998 regarding the Granting of Location Permit for PT PHP.

161 *Adat* leaders, Luak Saparampek Kapar-Syahrun Gampo Alam, Induak Nan Barampek *Luhak* Saparampek Kapar-Azis Rajo Mahmud, Bahar. A Jando Lela, Bahak Udin Rangkayo Mudo & Japar Sutan Ameh

162 *Kronologis Kasus Kapar* (the Chronology of Kapar Case), LBH Padang.

[163] Author translates 'berbingkah tanah' local language to bahasa Indonesia 'kewenangan pengelolaan' close to English 'management authority'

[164] Interview with representatives of Wilmar Group in AMP Bawan Company office, Agam District, on 7 September 2005.

[165] Quoted from the defense of Mr. Yulisman, a Kapar farmer who became the defendant of Kapar Case (LBH Padang).

[166] The Tunas Mekar Institution is a member of a farmers network at the provincial level, called *Persatuan Persaudaraan Tani Nelayan Nusantara* (the Union of Farmers and Fisherman in Indonesia - P2TANRA). The network was formed on 4 July 1999 in Malvinas Tanjung Merawa Selatan Kodya Padang in a workshop of West Sumatra's Farmers. The goals of P2TANRA are to mediate agrarian conflicts experienced by farmers and fishermen, improve farmers' livelihood and struggle for an equitable agrarian system. The meeting was attended by *adat* communities representatives from Talang (Kab. Solok), Lubuk Jambi (RIAU), Malvinas, Guguk (Kab. Solok), Puncak Lawang (Kab. Agam), Ketaping Selatan, Kapalo Ilalang, Kurao Pagang and Batu Basa (Kab. Padang Pariaman). In the meeting, participants discussed the possibility to form a farmer institution to advocate farmers' right in West Sumatra.

[167] Partnership was based on agreement No. 029/PHP-DIR/PK-III/97 and 03/KUD-KAPAR/III/1997 of 15 March 1997.

[168] Interview with representatives of Wilmar Group in PT. AMP Bawan office, Agam District conducted on 7 September 2005.

[169] Willinck cited in Amran 1985: 265-266.

[170] Amran 1985: 265-266.

[171] The Dutch colonial government effectively used this law principle to rent out the lands.

[172] Entrepreneurs afterwards asked that these estates be registered as *Erfpach* rights and, after 1960, sought to have these converted into HGU once the Basic Agrarian Law was enacted. The proposal to ask for an *acta van erfpach* was designed to give legal security to support plantation businesses. Based on the *erfpach* principle, the government of Indonesia then claimed these former estates to be State land

[173] Article 2 of the joint decree of the Agrarian Ministry and the Head of National Land Agency (BPN) No. 21 /1994 on the Mechanism to Acquire Lands for Companies under Investment Schemes.

[174] This included: signing a letter on 29 May 1993 on behalf of Fauzi, claiming he was still a *ninik mamak*; signing a decree of KAN Kapar on 5 March 1994. BAJL claiming he was the head of KAN Kapar; signing a letter that declared his ownership of *ulayat* land on 2 May 1994 on behalf of Indra Krana. In this letter, he claimed that he was a *ninik mamak*; in official letter No. 19/KUD-Kr/I-1997, on 12 October 12 1997, Bahar. A claimed he had becomes the head of KAN Kapar. In fact, up to 1997, the Head of KAN Kapar was Syahrun Gampo Alam. Bahar A kept using the title of the Head of KAN Kapar in following letter; Letter No. 01/UUP/KUD/X/1997 of 27 October 1997; letter No. 08/KA-KR/VIII/2000 of 12 July 2000; and letter No. 02/Pc.*Adat*/L.Kr/2000 of 31 August 3 2000.

[175] Counterfeiting is contrary to Article 263 of KUHP and fraud is contrary to Article of 378 KUHP.

[176] See letter of 6 December 1997 (*Disagreement on Land Relinquishment*) signed by the Head of Keltan RTTS, Keltan Ladang Basamo, Keltan Karya Sepakat, Keltan Muda Sepakat and Keltan Darul Mursydin.

Chapter 5

Legal Analysis

Chapter 3 described the legal frameworks that protect the rights of customary law communities in Indonesia and that regulates land acquisition for oil palm estates and the requisite steps for obtaining investment permits, initiation permits, location permits, business permits and, finally, business utilization leases for these operations, noting how procedures also differ for forest and non-forest areas. Chapter 4 has then examined in considerable detail how these laws and procedures are applied or avoided in practice, and the reactions of local communities to these impositions. We have seen how the constitutional right of *adat* communities to enjoy collective ownership over natural resources, through customary arrangements such as those regulating *ulayat* land, conflicts with other laws designed to promote the commercial development of plantations.

This chapter explores in more detail this contradiction between State laws which promote plantations and customary laws which regulate community rights in land. We do so for two main reasons. First because both State law and *adat* law are respected by *adat* communities as part of their social order and secondly because the Constitution of the Republic of Indonesia recognizes and respects the application of *adat* law in *adat* regions.

The presence of two different legal systems both of which are applied in one particular area or to one single object of law, land, eventually raises a basic problem: which legal system is to prevail when the two conflict? The research findings show clearly that in all six of the case study areas visited the two bodies of law are in collision. The resulting land conflicts are worst when the local *adat* communities and the oil palm estate companies have different interests over the same legal object, *ulayat* land. On one hand, the local *adat* communities are fighting to defend their customary ownership of their *ulayat* lands. On the other hand, the oil palm companies assert the legitimacy of their HGU.

These conflicts have been expressed in various ways through community resistance to the impositions of both the companies and local government. For example, the *adat* community of Dayak Pandu-Ribun conducted demonstrations to protest the action of PTPN XIII that took over their *ulayat* lands for its PIR-BUN project without fulfilling

its promise to hand back part of the land as *plasma* for the community. Likewise the *adat* community of Kapar, in West Sumatra, has tried to reclaim their *ulayat* lands after these were taken over by PT PHP.

The oil palm estates have countered this resistances by the local *adat* communities by reporting those involved to the police, who have then charged the local people with trespassing, theft, damage to company properties and so on. Some people argue that this legal action by the companies constitutes an attempt to criminalize communities for seeking to control what is legitimately theirs - their *ulayat* lands. Certainly the violations of community land rights are contrary to international norms established in international laws such as International Labour Organization Convention 169 and the International Covenant on Economic, Social, and Cultural Rights.

The research findings show that the Republic of Indonesia is negligent in protecting the human rights of *adat* communities by failing to protect *adat* communities' rights during the development of oil palm estates, leading to evident miscarriages of justice. According to the *adat* communities, this negligence is most evident when the State has revoked rights over *ulayat* lands and converted these lands into HGU for the oil palm estates without even notifying affected communities.

5.1. Legal Analysis of Research Findings

One of the main research findings is the very real existence of the two different legal systems (State law and the *adat* law). These two legal systems have their own legal concepts and regulations over natural resources including land. In all three districts, Sanggau, West Pasaman and West Lampung, the research team found strong claims being asserted by *adat* communities, which were urging the oil palm companies and the local government to respect and recognize *adat* law as they apply it in their areas.

The *adat* communities in these three districts have their own existing *adat* laws, including the various Dayak groups' customary jurisdictions in Sanggau District, like the Mayao encountered in the case study of PT CNIS, the Pandu-Ribun facing PTPN XIII, the Tinying found in the PT MAS case and the Sami in the PT SIA area, the Minangkabau, whose *adat* law over *nagari* in Kapar has run into conflict with PT PHP in Pasaman district, and the *adat* laws over the *marga* of Ngambur, Ngaras and Bengkunat, being affected by PT KCMU in West Lampung district. State and *adat* laws both govern land with respect to several main principles relating to ownership of the land, renting and compensation, the power of attorney, and punishments or sanction. We now explore each of these principles in turn.

5.1.1 Land Ownership

As noted, a basic concept relating to land ownership in Indonesian State law is the concept of the controlling right of the State which has three legally distinct components:

1) To regulate and manage the allocation, utilisation, reservation and preservation of the natural resources of earth, water and air;

2) To regulate and determine legal relationships between individuals and the earth, water, as well as air;

3) To regulate and determine the legal relationships between individuals and legal actions related to the utilisation of natural resources in the earth, water, and air.

One of the legal interpretations of this concept is that the State has full authority to issue or revoke land titles given to any eligible legal subject. In this circumstance, communal ownership of land (*ulayat* land) is not recognized by law unless the State has conferred ownership of such areas through specific regulations and decisions.

By contrast, *adat* law validates *ulayat* rights in land, based upon the evidence of community owners. No land can be bought or sold, since *adat* law prohibits trading in land. The only land-related right that can be transferred under *adat* law is the right of utilization, not of land ownership.

5.1.2 Renting and Compensation

The perspective of State and *adat* laws concerning renting and compensation are substantially similar. Both of them identify renting as a temporary controlling right that expires at the end of the period of the renting agreement, which right is obtained by a person who agrees to pay rent to the owner. Nevertheless, unlike the renting and compensation principles of *adat* law, the renting and compensation principles of State law are required to be written in the form of a rental agreement, a difference that often creates problem in practice. The research shows that there are significant misunderstanding between *adat* communities and oil palm estates, particularly with respect to the money that is handed over during the land acquisition process.

On the one hand, *adat* communities consider land acquisition for the oil palm estates purpose to have been performed according to customary renting and compensation principles, which never have any implications for the ownership of land. They perceive that the money, known as *derasa* in the customary laws of the Dayak or *siliah jariah* by the Minangkabau, that was given by oil palm estates companies to be compensation for the

transfer of the land utilization right to the oil palm estates. In their view, the company should give back *ulayat* lands when the plantation's term has been run. The research finding confirms that there was no intention by the *adat* communities to sell their *ulayat* lands. On the other hand, the company considers the land to have been sold and sees the money as payment for the land transfer.

5.1.3 Power of Attorney

Under State law, a letter conferring power of attorney over land acquisition should be written on sealed paper[1], signed by both the provider and recipient of the power of attorney, and should state in clear wording which authorities are being delegated by the provider to the recipient of the power of attorney and which are not, according to laws and regulations, and must ensure that both the provider and the recipient have legal personality under State law.

By contrast, *adat* laws may have quite different notions of which powers can be conferred on community members and may not recognize the concept of the power of attorney. For example, according to the Pandu Dayak, when there is an interaction between an *adat* community and outsiders, the role of the *adat* leaders is merely to communicate agreed decisions made in prior *adat* meetings which generate consensus. Such leaders do not enjoy power of attorney, as under State law. Therefore, according to Pandu *adat* law, a Pandu leader cannot make a decision affecting the future of *adat* community members (including *ulayat* land acquisition) based solely on his or her own discretion.

A somewhat similar distinction is also made by the Minangkabau, when they note that *ninik mamak* are 'custodians of custom' and not 'custodians of the land'. In negotiating over land, they should act according to previously agreed community decisions and not according to their own views and interests.

5.1.4 Imposition of Sanctions

There is also basic difference with regard to the imposition of sanctions under State and *adat* laws. The character of sanction under State law follows the logic of private and criminal law. The main purpose is merely to punish the person who breaches the private or criminal law, not to maintain other ideal conditions such as the social order or the balance of nature. As a consequence, the State will not impose sanctions on any person who damages the social order or upsets the balance of nature if they have not violated any laws or regulations. By contrast, the main purpose of sanctions imposed under *adat* law is to maintain the social order and balance of nature.

We can see these elements in conflict behind the process of oil palm estates development, from the initial phase of spatial planning, through investment, licensing, land acquisition, planting and production. We note the following in particular:

1. The adat community has no option to accept or reject proposed oil palm estates.

When the oil palm companies and local government undertake spatial planning, the local government (*bupati* and local legislature) announce their decision regarding where oil palm estates can be established according to the district spatial plans, without any genuine participation by local people, in particular impacted *adat* communities.

In all the cases studied, no community members acknowledged being involved in the spatial planning exercises that allocate areas for the development of oil palm estates on their *ulayat* lands. They only became aware of these spatial plans later when local government officials informed the communities of the plan for oil palm estate development and of the need to acquire their *ulayat* lands for development purposes. In other words, the *adat* communities are forced to accept the development of oil palm estates. This coercion becomes clearer in those cases where the oil palm companies, with the support of local government and military personnel, physically and verbally pressured community members who reject oil palm.

This coercion has various different expressions, such as the hostile take over of *ulayat* lands, as in the case study of *adat* community of Kapar, and the physical and verbal intimidation of members of the Dayak Pandu Ribun, who were jailed on charges of being members of the (banned) communist party, in the case study of PTPN XIII.

2. Misleading and manipulating information

The oil palm companies have a useful tool in communicating development plans to communities, a process that is known by the Indonesian term 'socialization'. This term is intentionally chosen, as it is understood as meaning that information is merely disseminated to local people after a plan has been decided on by local government. 'Socialization' of an idea thus means that the local people, including the impacted *adat* community, have no option except to accept the plan. 'Socialization' is usually carried out by influencing local government officials from village level up to district level and consists of providing general information about where estates are to be located and the 'too good to be true' benefits that they will bring to the *adat* community.

Often, this 'socialization' results in *adat* community members registering their holdings in *ulayat* lands for estate development and, commonly, involves the appointment of some *adat* leaders by the companies to act as the informers and to answer any questions raised

by community members. In reality, these informers often do not know important details in the development plan, with the result that, day in and day out, community members are given inaccurate information about the implications of oil palm estates in their area. Confused *adat* community members are just told: 'Do not be confused, just sign the papers!'[2]

3. No Consensus

Throughout the interviews, *adat* community members admitted that no consensus building meetings had been conducted prior to deciding to host oil palm estates. They noted that the appearance of oil palm companies in their areas followed the decisions of the local government to develop oil palm estates in their districts. As *adat* communities, they only had the obligation to support such development. The case studies of the PT SIA and PT PHP revealed how the series of meetings conducted by the companies (and supported by the local governments) only consisted of the 'socialization' of the oil palm estates development plan. Furthermore, in tones of instruction, the companies informed the *adat* communities that they were required to transfer their *ulayat* lands to the estates because the project had been approved by the local government. The companies never asked, and did not want to hear, the opinions of the *adat* communities concerning these projects. In any case, especially during the *Orde Baru*, if the communities rejected the project, the company would take over their *ulayat* lands by force.

A similar pattern can also be detected in the processes allocating land for the nucleus and *plasma* elements of estates. Again, the main reason that no process had been allowed to generate local consensus on this issue was that this allocation of land had been stipulated by local government regulations. Thus, whenever *adat* community outgrowers and workers questioned the allocation (for example, the '7.5' scheme), the company responded by stating that this was in accordance with existing local government regulations.

4. Agreements and Infringements

Every oil palm estate development normally involves many types of agreements, either bilateral agreements between the *adat* community and the company or between the company and the local government, or multilateral agreements between the *adat* community, the company and the local government. The companies recognize two models of agreement, as follows:

1. The first model is an agreement in written form on sealed papers, which is signed before the authorities. This model is mostly used if the contents of the agreement will bring benefits to the company. Normally a big party is held following the signature process;

2. The second model is an agreement made orally, without the approval or confirmation of the highest official of the company and without being witnessed by senior local government officials.

According to Indonesian law, these two models have different legal consequences. The first type of agreement, gives the company a strong position in law in case the *adat* community breaches the agreement. Such a written agreement is considered to be valid evidence in cases when the community is held to have infringed the terms of the agreement. By contrast, the second kind of agreement hardy protects the *adat* community because the law gives greater weight to written evidence than oral testimony. These two models of agreement were found in all the case studies. In simple words, no matter what model of agreement was used, the oil palm companies always have a stronger position compared to the *adat* communities.

Endnotes:

1 The latest price of which is IDR 6,000 per sheet.

2 Letters of agreement whereby adat community member agree to give up their land in favour of becoming oil palm estate workers or smallholders.

Chapter 6

Implications and Recommendations

The research substantiates, in considerable detail, the oft-made claim that oil palm plantations have been established in Indonesia without respect for the rights of indigenous peoples and local communities. Yet, international standards, such as those set out in international law, elaborated in international jurisprudence, adopted in 'best practice' codes, consolidated in the United Nations' Declaration on the Rights of Indigenous Peoples, and recently adopted by the Roundtable on Sustainable Palm Oil, do require respect for such rights. Indeed the Constitution of the Republic of Indonesia also requires respect for the rights of customary law communities.

The study reveals that the processes which nevertheless lead to these rights being violated in the development of oil palm estates result from:

- Contradictory laws, which fail to secure indigenous rights while encouraging land expropriation for commercial projects in the 'national interest';
- An absence of regulations, as a result of which procedures for the recognition of the collective land rights of customary law communities are unclear;
- Weak institutional capacity, both in the BPN and in the district bureaucracies, which makes recognition of customary rights administratively difficult;
- National and regional policies and spatial planning processes which favour the conversion of *ulayat* lands and forests into oil palm plantations to increase national and district revenues.

The study has also shown that many oil palm companies operating in Indonesia have acquired land by doubtful means and many have not adhered to legal requirements or procedures, as much due to lax administration by government officials as to poor performance or dishonesty on the part of the companies themselves.

All this implies a big risk for Indonesia's trade in palm oil products. Although the country is on the point of becoming the world's number one producer of crude palm oil, rising international awareness of the real costs of this production, in terms of social and

environmental impacts, could place this huge trade in jeopardy, as retail and processing companies turn to other producers with less questionable or controversial records to supply their needs.

If palm oil production in Indonesia is to meet international standards and regain the confidence of investors and buyers, then major reforms are required in national and local policies, laws, procedures, implementation and enforcement.

6.1 Legal Reform

In fact the National Assembly (MPR), the highest body in the legislature, has already recognised the need for an overhaul of Indonesian laws related to land and natural resources and, in particular, to custom. Legislative Act No. 9 of 2001,[1] instructs the parliament (DPR) to completely overhaul the natural resource laws in order to strengthen the rights of communities and resolve conflicts over resources. When it was initially passed, the Act, which carries near Constitutional authority, was widely heralded as a major advance but its implementation has since been resisted by the various line ministries charged with managing natural resources. However, in 2003, the MPR reiterated its insistence that the natural resource laws be revised[2] and reform of some of these laws is now slated during the DPR's current legal reform programme.[3]

This study suggests that these reforms should pay particular attention to the following.

6.1.1 Reform the State's Controlling Right over Land and other Natural Resources

As described in the previous chapters, problems and conflicts over palm oil plantations are rooted in unclear and conflicting regulations and government policies that govern the ownership, control and management of land and other natural resources. The main legal basis for the State's Controlling Rights *(Hak Menguasai Negara)* is the 1945 Constitution (UUD 1945). This right is further reflected in various sectoral laws and has then been applied by the government through issuing implementing regulations such as Government Regulations, Presidential Regulations, Local Regulations, Ministerial Decrees, and so forth. Our research findings show that the Indonesian government has used this power as its ultimate sanction to assert its authority to control land and other natural resources and, in the context of palm oil development, to smooth the path for the development of large-scale palm oil plantations.

The government has intentionally re-interpreted the 'State's Controlling Right' to be the 'Government's Controlling Right' which then allows it near unfettered discretion in the re-allocation of resources vital to the livelihoods of Indonesian citizens, including indigenous peoples. In so doing, the government stipulates repressive laws and regulations (particularly

in natural resources sectors) that have been designed to legitimate the government's violence in acquiring the *ulayat* land of *adat* people and local communities. As a consequence, *adat* and local communities, who live close to their land and natural resources, are subject to forcible and manipulative acquisition of *ulayat* land and to subsequent human rights violations. To make matters worse, the big palm oil companies also try to benefit from these circumstances by conducting the same forcible and manipulative acquisition of *ulayat* lands from the *adat* peoples and local communities.

The unfortunate circumstances for *adat* peoples and local communities, as mentioned above, is that the State does not have any clear standards or system to control and monitor the application of the State's Controlling Right by the Government. From the perspective of universal constitutional law, every government action should actually be controlled by a 'check and balance' mechanism, a monitoring action that is performed by the three main elements of the State (executive, legislature, and judiciary) and by the public, to control and warn the government when the government has misinterpreted or misapplied laws and regulations. However, in Indonesia, public controls on the government are weak or ineffective due to the lack of a legal basis for freedom of speech, particularly with respect to conflicts over land and other natural resources.

The suffering of *adat* peoples and local communities because of the misinterpretation by the government on how to apply the State's Controlling Right should be ended. One of the solutions is to re-educate Indonesians' understanding of the State's Controlling Right, especially decision makers and those who draft Indonesian laws and regulations. Beside correcting the idea that the Government has a Controlling Right, reform of the State's Controlling Right should take carefuly into account the actual condition of *adat* peoples and local communities as well as the carrying capacity of land, natural resources and the environment.

6.1.2 Eliminate the Conditional Recognition of Adat Communities by the State

There are three important laws which relates to the processes of palm oil plantation development in Indonesia, namely. the Basic Agrarian Law, the Forestry Law and the Plantation Law which need to be reformed if the rights of *adat* communities are to be adequately recognised.

The Basic Agrarian Law (*UU Pokok Agraria*) places a severe limitation on *adat* rights through Article 2 paragraph 4 and Article 3. These articles declare that the implementation of the State's Controlling Right could be delegated to *adat* law communities through exercise of *ulayat* rights or other similar rights, 'as long as those rights still exist', are further set out in local regulations and, most importantly, are exercised in accordance with national and state's interests as well as higher laws and regulations.

The Forestry Law (*UU Kehutanan*): likewise places a limitation on *adat* rights through Article 4 paragraph 3, Article 5 paragraph 3 and Article 67 paragraphs 1 and 2. These state that customary law communities have rights to utilize and manage forest 'if they still exist and their existance is verified in accordance with certain local regulations'.

Finally, the Plantation Law (*UU Perkebunan*) limits *adat* rights in the process of land acquisition for plantation purposes in Article 9 paragraph 2. According to this clause, there are five requirements in which a certain community can be claimed as *adat* law community: (1) *adat* communities still organize themselves exclusively under customary association (*rechtsgemeinschaft*); (2) the presence of structured customary institutions; (3) the presence of a clear legal territory of *adat* communities; (4) *adat* communities still practice their daily activities according to the existing *adat* law and institutions; and (5) the local government has recognised the existence of such *adat* comunities in accordance with any local regulation on such a recognition.

The laws, in effect, give various government agencies discretion to recognise (or not) the existence of *adat* communities and their rights, and thus substantially limit the ability of *adat* communities to exercise their rights over land and natural resources. This kind of recognition weakens *adat* communities' position, particularly when they seek to defend their *ulayat* lands against government or company's expropriation. Regulations on land acquisition therefore should be reformed to ensure effective recognition of *adat* communities and provide legal protection to their *adat* rights.

6.1.3 Protect and Respect Customary Law and Indigenous Peoples' Rights through Issuing a Law on the Protection of Indigenous Peoples (UU Perlindungan Masyarakat Adat)

Up to now, there is no law specifically designed to protect indigenous peoples and their rights in Indonesia, even though the Constitution of Indonesia, particularly Article 18B gives ample scope for having such a law.. Although some district governments have issued District Regulations on *adat* communities, the content of these regulations tend to formalize customary institutions and do not clearly discuss *adat* rights over land and natural resources.

A specific law on *adat* communities has thus been proposed by indigenous peoples' organisations and supportive lawyers in order to clarify and justify the protection of *adat* communities and their customary rights. Thereby, *adat* communities would obtain legal protection and their customary rights would be effectively recognized. This would guarantee the recognition and protecttion of people's rights whenever the government or companies plan development projects on people's lands.

6.1.4 *Revoke Presidential Decree on Land Acquisition to Support Development Projects for Public Purposes.*

As noted above, to date, the Government of Indonesia has issued three regulations on land acquisition for development purposes that include Ministry of Home Affairs Regulation No.15 of 1975 that was replaced with Presidential Decree No. 55 of 1993. The last revision was made in the early 2006 by issuing Presidential Decree No. 36 of 2006 to replace the previous decree. This revision has given rise to controversy and critiques from various stakeholders. Indonesian NGOs have called for a Judicial Review of Presidential Decree No.36 of 2006, claiming that the revised decree was not appropriate and infringes human rights principles, by facilitating both physical loss (financial and natural resources damage) and psychological loss (threatened and unsafe lives, as well as intimidation), loss of properties and even death.

These regulations and decrees are based on the assumption that national interests should be allowed to override individual or group interests. Such an assumption could potentially endanger the enforcement of human right principles. As described in the Article 4 Law No. 39 of 1999 on Human Rights and Article 28I Constitution Law of 1945, the rights to life and the right to protection are non-derogable rights that should be restored.

Hence, laws and regulations that could potentially harm individuals' and peoples' rights should be revoked. Instead, the state needs to formulate regulations on land acquisition for public purposes based on respect for human rights and the principle of Free, Prior and Informed Consent, as well as provide suitable payment and compensation for any losses or damages caused by utilization of people's land for development purpose. Only in this way can development projects in the national interest be made compatible with securing the welfare of local communities.

6.2 Procedural Reform

In addition to reform of the laws and regulations, it is also necessary to reform the procedures related to palm oil plantation development. The following are priorities.

6.2.1 *Stricter Controls on Forest Conversion*

As revealed by the case studies investigated in this research, the majority of palm oil plantations have been established in State forest areas that have been legally converted into non forest areas and then planted as oil palm estates. However, a closer analysis shows that the 'State forest areas', which were then slated for conversion, were only recently designated as 'forest areas' and most have not yet been delineated and gazetted as 'State forest aras' according to legally required procedures. This implies that these areas should

not have been categorized as State land. However, most Initiation Permits (*ijin prinsip*) and Plantation Business Permits issued by the National Land Agency (BPN) and the District Government declare these areas to be State Lands regardless of these procedural irregularities. By labelling certain lands as 'State Land', the state justifies its actions of ignoring or even extinguishing *adat* communities' and local people's rights over their land and natural resources.[4]

These problems would not occur if the State had clearly defined what a 'former forest area' is.

- Where the designation of these areas was based on implementaion of the existing regulations regarding the designation of state forest areas (assignment, delineation, and determination of forest area), then FPIC procedures should have been performed to get consent from impacted communities on the land use change in which forest area is converted into plantation area (estimated at about 14 million hectares to date).
- Or if the forest areas had been designated on lands that are still burdened by the rights of third parties then conversion of these forest areas should not have been carried out as if they were unencumbered State lands. Before carrying out land registration based on procedures stated in Government Regulation No. 24 of 1997, the government should have identified existing rights on these lands. Subsequently, FPIC procedures could then have been performed to obtain people's consent on land utilization and management. (estimated at about 108 million hectares).

In order to monitor the massive conversion of forest areas into palm oil plantations since 1969, no less than 23 million hectares of former forest areas need to be inventoried. It would then be possible to determine which areas that have been designated and which have recently been granted to plantation companies. These data should be made available to the public. This action could then help guarantee protection of *adat* and local rights over lands and natural resources in areas being converted to plantations. According to Forestry Department statistics, up to 2005, only 12 percent (14 million hectares) of 122 million hectares of forest areas have yet been delineated and designated. Thus, the rest of forest areas covering 108 million hectares have not yet been designated as state forest areas. Data collection perfomed by third party needs to be carried out before handing out any permits in these areas.

6.2.2 Engage Indigenous Peoples in Developing, Discussing and Applying Policies on Land Use and Spatial Planning at the National and Regional Levels

Land use policy provides legal guidance for the government to implement development plans. Land use documents consist of government's plans regarding the use and control of land areas. The existing regulations regarding land use planning emphasise the rights of people to use available spaces, to undertand the land use plan, to participate

effectively in the formulation and application of land use plans, as well as obtaining proper compensation for any losses caused by development projects. In reality, however, people are not well-informed about land use planning and are rarely able to get access to the process of formulating, planning and deciding on land use in their areas. Indeed, the Law on Land Use invokes several ideal principles that include accountability, equity, and legal protection in the formulation, discussion, as well as designation, of land use. In reality, these principles are rarely implemented.

As a consquence of the absence of people's participation in the land use planning, development projects are often implemented in ways that geneate conflicts between the communities and the government or companies. It is important, therefore, to formulate policies and mechanims that provide a space for people to effectively participate in the land use planning.

6.2.3 Implement FPIC Principles on Every Stage of Palm Oil Plantation Development

Indeed, throughout all phases of palm oil plantation development, from issuance of a business permit through to the operational phase, palm oil plantation companies do not effectively engage communities so that they can participate in decision-making processes. In some cases, token participation has occurred but in a very manipulative manner. For instance, in the initial phase of proposing plantation business permits, companies are required to formulate Environmental Impact Assesment (*Analisis Mengenai Dampak Lingkungan/AMDAL*) in which communities should be respondents that would be asked their opinions toward the business plan. However, our research findings show that none of *adat* communities understand the formulation of AMDAL. They also confessed that they had never been interviewed by the companies even though the companies run their plantation businesses on *ulayat* lands.

This exclusion of popular participation is found at almost every stage of palm oil plantation development. Therefore, implementation of the free, prior and informed consent (FPIC) principles, as required by the RSPO, is necessary to ensure that people's voices are heard and accomodated in decision-making processes related to palm oil plantation development. Through application of this concept, disputes over *ulayat* land and the emergence of community resistances to unfair and manipulative processes of plantation expansion should be minimized.

In accordance with FPIC principles, oil palm plantation development should apply the principle at several stages:

- During the process when decisions are made on whether or not to include forest areas (if the area is forested)

- At the stage when a plantation business permit is being applied for; this should require fully informing the communities about the plantation business plan that will use communities' lands. The government should then consider communities' concerns or disinclinations on the plantation business plan and only grant the business permits to the company where the communities are in agreement;
- Also prior to the issuance of the Location Permit, ensuring a clear declaration of the extent of the areas to be allocated for plantations, the duration of location permit and a map of location permit area;
- During measurement of the plantation areas, including those located in both forest and non forest area. At this stage, the government and company should involve communities in designating territorial boundaries and they also should inform communities on the extent of areas that have been delineated;
- Issuance of HGU; before issuing the HGU, BPN should listen and consider *adat* communities' concerns toward utilization of their *ulayat* land for plantation purpose. Only where communities confirm their willingness to have their *ulayat* lands used by the companies should HGU be issued. In this way, potential conflicts and other problems should be resolved before the company gets the final go-ahead.

Implementation of FPIC principles should ensure effective recognition and protection of *adat* rights over *ulayat* lands and natural resources as well as reduce social and legal impacts due to injust impositions by the govenrment or by companies. The National Land Agency (BPN), the government agency charged with land matters, should be fully responsible for the process of land acqusition for development purposes in Indonesia. Therefore, the agency should apply FPIC principles and make sure there is full recognition of *adat* rights on communities' lands.

6.2 4 Interim Measures

However, interim measures will also be needed while these legal reforms are pushed through and the institutional capacity to implement them effectively is then developed – something that may take several years. In the meanwhile, government policy on the promotion of oil new palm plantations should be reformed (see following section), while interim conflict resolution mechanisms should be adopted based on mutually agreed mechanisms to deal with the problems in existing plantations.[5]

This 'transitional justice' approach has been advocated by Indonesian NGOs to allow conflicts to be dealt with while broader legal reforms are still underway. The approach seeks to resolve current deadlocks through extra-legal means, as effective government solutions are impossible within the confines of current applicable laws or because, in fact, it is these very laws which are the main source of injustice.

The approach assumes that local communities have the rights to own, use and control their lands and all the natural resources pertaining to them.[6] It starts by taking testimony from affected community members regarding the processes by which their rights were extinguished or violated, and grievances about other violations of rights to land and natural resources as well as accompanying human rights violations. It then advocates restitution of land or the provision of compensation to affected groups in ways that satisfy them. Although such processes cannot easily achieve legal finality, they can bring peace to areas of conflict, but they will only work if other parties (companies and local government) are prepared to accept the legitimacy of customary rights-holders' demands and negotiate with them as such. Exactly such mechanisms are required to achieve compliance with the RSPO standard.

In some oil palm plantations, affected groups are taking collective actions to take back lands that have been forcibly taken from them over the past 32 years. They have been doing this by reoccupying land, destroying company assets like buildings and mills, razing plantations, chasing plantation workers away and so on. Such actions create scope for provocateurs to widen the conflicts and spread social confusion, exacerbating the widespread communal violence (known as 'horizontal conflict') that has become such a feature of reform era Indonesia. The lack of mechanisms to resolve long-standing tenurial disputes underlies many of these troubles.

To resolve these 'time bombs' in the body politic, spokespeople for the agrarian reform movement in Indonesia have proposed the setting up two bodies to deal with them. The first would be a national body, under the direct control of the Office of the President, with the specific function of channelling disputes through a process that first registers them and then seeks to resolve them through negotiation, mediation or arbitration, and which would also recommend policy reforms, where required. The second would be an ad hoc tribunal, established under the Supreme Court,[7] that would take such cases forward and make lawful decisions on them, thereby binding the disputing parties to the agreements they had reached. However, setting up these twin institutions would itself require enactment of a law by the legislature.[8]

6.3 Oil Palm Policy Reform

Oil palm is not an intrinsically damaging crop. It has been a mainstay of rural economies in Africa for thousands of years. It is a fast-growing, productive crop, well suited to tropical conditions. Managed right it can be a useful source of food and income for local communities. The problems come when the crop is imposed on people's lands and lives without respect for their rights and freedoms. When introduced in this way it can reduce previously self-sufficient farmers, in control of their forests, lands and lives, to powerless

estate labourers, out-growers or dispossessed land-owners. Unscrupulous operators can then take advantage of the people's powerlessness, and the lack of protection of their rights, to further exploit them. During the Suharto dictatorship, such abuses were routine and the oppressive political system made it hard for communities to resist. Today, however, communities are more aware of their rights and prepared to confront those who abuse them. The result is increasing popular resistance to imposed oil palm schemes. In these circumstances, further investment in oil palm is likely to become increasingly risky and unattractive to banks and shareholders.

A history of resistance: lessons of the past

In 1825, Diponegoro, Prince of the New Mataram Kingdom of Java fought the Dutch colonial government. Diponegoro was offended that his ancestors' graves were being fenced off with bars of wood, marking where a road was soon to be established across a graveyard. The result was a five year struggle (1825-1830) between Diponegoro, and his followers, and the Dutch colonial government, which led to a long drawn out series of battles on the island of Java. Such wars were a major drain on the Dutch colonial government's treasury and the Dutch sought to resolve future conflicts, such as that which later arose in West Sumatra, with the rise of the Padri movement, by negotiation and disarmament. Diponegoro was resisting the Dutch colonial government's lack of respect for custom and rights, and the land-grabbing that the abuse of his ancestors' graves represented.

Today, there are an innumerable number of 'Diponegoros' rising up in Indonesia, all with different faces but confronting the same underlying problems: land-grabbing and lack of respect for custom and rights. The colonial model of establishing palm oil estates is no longer tenable. The way forward must be through respect for customary rights and through negotiation with local communities, as land-owners entitled to choose what happens on their lands.

Leading members of the palm oil industry, represented through the Roundtable on Sustainable Palm Oil, have now agreed on the need for change. In November 2005, they adopted a new voluntary standard which accepts that oil palm estates must not only be legal but must be established through respect for customary rights, just land acquisition and application of the principle of free, prior and informed consent (and see section 2.1 and Appendix 1).

The findings of this study are that very few oil palm estates in Indonesia are likely to comply with such a standard, in the short term. Indeed the current policy and legal framework encourages a 'colonial' model of land acquisition and estate development quite contrary to the model now being promoted by the RSPO. It denies customary rights,

encourages State-sanctioned land grabbing, and rejects the principle of free, prior and informed consent. If the approach to estate development is not changed, there is a risk that 'unsustainable' Indonesian palm oil will be excluded from international markets. To counter this, the Indonesian government's policy towards palm oil development needs to change.

Sawit Watch : a platform for reform

Sawit Watch is an association of individuals who are concerned with the social and environmental problems related to oil palm plantation development in Indonesia. It works directly with various elements of communities - from smallholder oil palm growers, indigenous peoples, workers, women, government agencies, civil society organisations and others - to promotes social justice and the enforcement of human rights in oil palm plantations in Indonesia.

Sawit Watch was first established in June 1998 as a consortium of NGOs and individuals working on social and environmental issues to counter the adverse impacts of the forest fires of 1997/1998 resulting from uncontrolled forest conversion and land clearance by oil palm plantation development. Since then, these members have been actively working on oil palm issues in the provinces in Sumatra, Kalimantan, Sulawesi and West Papua.

In 2004, Sawit Watch changed its organisational membership from being a consortium of NGO and individuals to become an association of individuals. At the same time Sawit Watch developed its facilitating and mediating efforts in order to strengthen local communities, indigenous peoples, and other impacted groups dealing with the negative effects of oil palm plantation development. In order to strengthen the effectiveness of its international advocacy, Sawit Watch decided, based on the decisions of a national members' forum, to get involved in the processes of the Roundtable on Sustainable Palm Oil (RSPO).

This engagement contributed to the adoption by the RSPO of its 'standard' for 'sustaiable palm oil', the 8 Principles and 39 Criteria of which encompass all facets of sustainability, ensuring that production is economically viable, environmentally appropriate and socially beneficial. The challenge ahead is to ensure that these Principles and Criteria are indeed complied with by RSPO members and that RSPO membership grows steadily, engaging the full range of players involved in the palm oil chain, including retailers and small holders.

Key policies reforms that are required therefore include:

- Respect for international laws;
- No conversion of primary forest and other ecosystems;
- Adherence to the principle of free, prior and informed consent in dealings with indigenous peoples and local communities;[9]
- Respect for customary rights;

- Establishment of open and mutually acceptable mechanisms for the resolution of disputes over contested lands;
- No use of fire in the establishment or maintenance of plantations;
- No violence in the development of oil palm estates.

6.4 Implications for Standard Setting

During our investigation people in community workshops and other interviewees, such as government officials, companies, members of legislatures and local NGOs expressed diverse views about palm oil development and the RSPO standard. Despite this the research demonstrated an encouraging degree of convergence.

- A number of community members and leaders approved of the RSPO principles and criteria, noted that they echoed their own perceptions of what was needed and argued that they could help ensure good development outcomes;
- The principle of Free, Prior and Informed Consent gained widespread support in community workshops and was seen to be compatible with customary systems of decision-making;
- Some company spokespersons did express the view that RSPO standards would be costly to adhere to but these same persons were also opposed to the RSPO in principle;
- Other company spokespersons favoured the RSPO principles, recognised they implied good business practice and felt they could adhere to them;
- Interviewees in both local government and the legislatures favoured RSPO standards, noting that these should ensure better development outcomes for communities, improved business practice, higher revenues to the local administration and less corruption and mal-practice.

'Codes of Conduct', 'Best Practice' standards and certification standards, such as that adopted by the RSPO, are usually 'voluntary' standards against which private sector operators choose to be measured to improve their performance, reputation and access to markets. Verification of compliance thus reviews company operations, practices and paper work, not government practice. Yet the companies operate within, and their operations are shaped by, State policies, plans, laws, regulations and practices, including malpractices.

Indeed, one of the basic requirements in any acceptable standard of sustainable production is that private sector producers should operate in conformity with the law. Compliance with national and ratified international laws is also a requirement of the RSPO standard (Principle 2).

The study, however, shows that application of this standard to oil palm plantations in Indonesia faces a number of contradictory problems:

- Relatively few oil palm estates are fully legal with respect to land tenure, land acquisition and operating permits;
- Many of the failures in compliance are, partly at least, due to failures by government agencies charged with land titling, overseeing land acquisition and permitting;
- Because Indonesian laws are contradictory, compliance with some laws, such as those governing land acquisition, may cause companies to contravene others, notably Constitutional and ratified international law requirements for the recognition of indigenous rights;
- Likewise company compliance with current Indonesian laws regarding land acquisition may lead companies into non-compliance with RSPO criteria which require respect for customary rights and that no land is acquired without the free, prior and informed consent of prior land owners.

These issues can only be finally resolved, first, once and if government policies and national laws are changed, and made consistent with each other, with the Constitution and with Indonesia's obligations under international law. And secondly, once and if, government agencies carry out the tasks it is their duty to perform. This is what we have argued for in sections 6.1 and 6.2. But, as we also note, this will take a very long time. In the meantime, many, perhaps most, Indonesian palm oil producers will not easily qualify for RSPO certificates.

Companies and other private sector operators are bound to object to this situation. Indeed some already have. Why, they ask, should producers be penalised for the fact that the laws are in a mess and government agencies are incompetent and corrupt, or both?

In the interim, producers and purchasers may feel tempted to demand that the RSPO's standards should not be applied in too literal a way in the Indonesian case; that the standard should, in effect, be lowered to take account of national realities. This is bound to lead to further disputes:

- In the first place, **who** is to decide what is the appropriate way for the standard to be modified so it can take account of national realities? How will the interests of marginal groups like indigenous peoples be assured during such a revision process?
- More broadly, is it acceptable that palm oil operations in one country should operate to a lower level of compliance with the RSPO standard than that required in other countries?
- Can, indeed, the RSPO recommend selective compliance with the law?

- If RSPO adopted lowered standards in Indonesia, would this not then provide a disincentive to the legal and administrative reforms that civil society organisations are calling for and that proper adherence to the RSPO standard requires?

These are issues which the RSPO can no longer put off.[10] It is clear that the reform and sound operation of a major sector of national importance such as the palm oil sector cannot be solved only through voluntary, private sector-led initiatives. Issues that are central to the effective application of the RSPO standard - like respect for rights, land titling, land use planning, land acquisition and permitting of operations – cannot be achieved without the State playing its role in a demonstrably fair and just manner.

Endnotes:

1 TAP MPR IX/2001 'Concerning Agrarian Reform and Natural Resource Management'.

2 TAP MPR VI/2003.

3 PROLEGNAS 2005-2009.

4 In addition, forest areas previously used as logging areas (HPH) or forest industry plantations (HTI) are also classified as State Land therby making it easier for the State to control and manage these areas.There are ongoing debates about the definition of Forest Areas and State Forest Area. These controversies have created difficulties for logging companies which have obtain logging concessions (HPH) or industrial forestry plantation concessions (HTI) on undesignated forest areas to obtain eco-label certification. In many cases, these companies are accused of engaging in illegal logging.

5 Working Group on Transitional Justice 2000.

6 Dietz 1998.

7 As part of the State Administration Court (*Pengadilan Tata Usaha Negara*).

8 Fauzi and Kasim 2000.

9 Colchester and McKay 2004.

10 These same issues were raised by Sawit Watch and the Forest Peoples Programme in early 2005 (SW and FPP 2005a) but have yet to be addressed.

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Appendix

Total 8 Principles and 39 Criteria

Principle 1 : Commitment to transparency

1. Criterion 1.1 Oil palm growers and millers provide adequate information to other stakeholders on environmental, social and legal issues relevant to RSPO Criteria, in appropriate languages & forms to allow for effective participation on decision making.
2. Criterion 1.2 Management documents are publicly available, except where this is prevented by commercial confidentiality or where disclosure of information would result in negative environmental or social outcomes

Principle 2 : Compliance with applicable laws and regulations

3. Criterion 2.1 There is compliance with all applicable local, national and ratified international laws and regulations
4. Criterion 2.2 The right to use the land can be demonstrated, and is not legitimately contested by local communities with demonstrable rights.
5. Criterion 2.3 Use of the land for oil palm does not diminish the legal rights, or customary rights, of other users, without their free, prior and informed consent

Principle 3 : Commitment to long-term economic and financial viability

6. Criterion 3.1 There is an implemented management plan that aims to achieve long-term economic and financial viability.

Principle 4 : Use of appropriate best practices by growers and millers

7. Criterion 4.1 Operating procedures are appropriately documented and consistently implemented and monitored.
8. Criterion 4.2 Practices maintain soil fertility at, or where possible improve soil fertility to, a level that ensures optimal and sustained yield.

9. Criterion 4.3 Practices minimise and control erosion and degradation of soils.
10. Criterion 4.4 Practices maintain the quality and availability of surface and ground water.
11. Criterion 4.5 Pests, diseases, weeds and invasive introduced species are effectively managed through using appropriate Integrated Pest Management (IPM) techniques.
12. Criterion 4.6 Agrochemicals are used in a way that does not endanger health or the environment. There is no prophylactic use, and where agrochemicals are used that are categorised as World Health Organisation Type 1A or 1B, or are listed by the Stockholm or Rotterdam Conventions, growers are actively seeking to identify alternatives, and this is documented.
13. Criterion 4.7 An occupational health and safety plan is documented, effectively communicated and implemented.
14. Criterion 4.8 All staff, workers, smallholders and contractors are appropriately trained.

Principle 5 : Environmental responsibility and conservation of natural resources and biodiversity

15. Criterion 5.1 Aspects of plantation and mill management that have environmental impacts are identified, and plans to mitigate the negative impacts and promote the positive ones are made, implemented and monitored, to demonstrate continuous improvement.
16. Criterion 5.2 The status of rare, threatened or endangered species and high conservation value habitats, if any, that exist in the plantation or that could be affected by plantation or mill management, shall be identified and their conservation taken into account in management plans and operations.
17. Criterion 5.3 Waste is reduced, recycled, re-used and disposed of in an environmentally and socially responsible manner.
18. Criterion 5.4 Efficiency of energy use and use of renewable energy is maximised.
19. Criterion 5.5 Use of fire for waste disposal and for preparing land for replanting is avoided except in specific situations, as identified in the ASEAN guidelines or other regional best practice.
20. Criterion 5.6 Plans to reduce pollution and emissions, including greenhouse gases, are developed, implemented and monitored.

Principle 6 : Responsible consideration of employees and of individuals and communities affected by growers and mills

21. Criterion 6.1 Aspects of plantation and mill management that have social impacts are identified in a participatory way, and plans to mitigate the negative impacts and

promote the positive ones are made, implemented and monitored, to demonstrate continuous improvement.

22. Criterion 6.2 There are open and transparent methods for communication and consultation between growers and/or mills, local communities and other affected or interested parties.
23. Criterion 6.3 There is a mutually agreed and documented system for dealing with complaints and grievances, which is implemented and accepted by all parties.
24. Criterion 6.4 Any negotiations concerning compensation for loss of legal or customary rights are dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions.
25. Criterion 6.5 Pay and conditions for employees and for employees of contractors always meet at least legal or industry minimum standards and are sufficient to meet basic needs of personnel and to provide some discretionary income.
26. Criterion 6.6 The employer respects the right of all personnel to form and join trade unions of their choice and to bargain collectively. Where the right to freedom of association and collective bargaining are restricted under law, the employer facilitates parallel means of independent and free association and bargaining for all such personnel.
27. Criterion 6.7 Child labour is not used. Children are not exposed to hazardous working conditions. Work by children is acceptable on family farms, under adult supervision, and when not interfering with education programmes.
28. Criterion 6.8 The employer shall not engage in or support discrimination based on race, caste, national origin, religion, disability, gender, sexual orientation, union membership, political affiliation, or age.
29. Criterion 6.9 A policy to prevent sexual harassment and all other forms of violence against women and to protect their reproductive rights is developed and applied.
30. Criterion 6.10 Growers and millers deal fairly and transparently with smallholders and other local businesses.
31. Criterion 6.11 Growers and millers contribute to local sustainable development wherever appropriate.

Principle 7 : Responsible development of new plantings

32. Criterion 7.1 A comprehensive and participatory independent social and environmental impact assessment is undertaken prior to establishing new plantings or operations, or expanding existing ones, and the results incorporated into planning, management and operations.
33. Criterion 7.2 Soil surveys and topographic information are used for site planning in the establishment of new plantings, and the results are incorporated into plans and operations.

34. Criterion 7.3 New plantings since November 2005 (which is the expected date of adoption of these criteria by the RSPO membership), have not replaced primary forest or any area containing one or more High Conservation Values.
35. Criterion 7.4 Extensive planting on steep terrain, and/or on marginal and fragile soils, is avoided.
36. Criterion 7.5 No new plantings are established on local peoples' land without their free, prior and informed consent, dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions.
37. Criterion 7.6 Local people are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements.
38. Criterion 7.7 Use of fire in the preparation of new plantings is avoided other than in specific situations, as identified in the ASEAN guidelines or other regional best practice.

Principle 8 : Commitment to continuous improvement in key areas of activity

39. Criterion 8.1 Growers and millers regularly monitor and review their activities and develop and implement action plans that allow demonstrable continuous improvement in key operations