

# SUPPORTING CONFLICT SENSITIVE DEVELOPMENT

## Insights from Mediation Practitioners in Indonesia

Forests and Climate Change Programme (FORCLIME)



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Technologie verbindet  
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Practitioners in Indonesia**

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Conflict Resolution Unit  
Indonesia Business Council for Sustainable Development**

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Indonesia Business Council for Sustainable Development

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**Disclaimer:** The views and opinions expressed in this publication are those of the author and do not necessarily reflect the official policy or position of GIZ or the Indonesian Ministry of Environment and Forestry

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We are grateful to reviewers who offered their insights, perspectives and recommendations for how development work can be strengthened or reoriented to better anticipate and address land use and resource management conflicts (Chapter 8). Among the development practitioners and policy makers we spoke with: Farah Sofa (Ford Foundation), Tiur Rumondang (RSPO Indonesia), Usep Setiawan (Presidential Staff Office), Bresman Marpaung (Sub Directorate Conflict Management, Tenure, and Customary Forests, Ministry of Environment and Forestry), Ravin Khrisnan (formerly Musim Mas), Willem Egbert Van Der Muur (World Bank), and Herbert Christ, Georg Buchholz and Stephan Kitzbichler (German International Cooperation (GIZ)). Thank you all for taking the time to read through the case studies and analysis of the seven chapters of this book, and for contributing your perspectives to augment our own experience, and ensure our conclusions are grounded in the voices and perspectives of development practitioners and policy makers.



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## List of Abbreviations

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AMAN	: Indigenous Peoples Alliance of the Indonesian Archipelago
AMDAL	: Environmental Impact Assessment
APL	: Areas designated for alternative uses
BUMN	: State-owned enterprises
CRU	: Conflict Resolution Unit
DKN	: National Forestry Council
DRK	: Desk Resolusi Konflik
Ditjen	: Direktorat General
FIP	: Forest Investment Program
FPIC	: Free, Prior, Informed, Consent
FORCLIME	: Forests and Climate Change Programme
FORTTRANS	: Forum Transmigration
GIZ	: Deutsche Gesellschaft fuer Internationale Zusammenarbeit
HGU	: Business Use Rights
Ha	: Hectare
HL	: Protected Forest
HP	: Production Forest
HPH	: Forest Concession Rights
HTI	: Industrial Plantation Forest concessions
HuMa	: Association for Community and Ecology-Based Law Reform
IBCSD	: Indonesia Business Council for Sustainable Development
IPK	: Timber Utilization Permits
IUP	: Commercial plantation permit
KATR/BPN	: Ministry of Agrarian Affairs and Spatial Planning/National Land Agency
Kopermas	: Community Cooperative
KPA	: Consortium for Agrarian Reform
KPK	: Anti-Corruption Commission
KLHK	: Ministry of Environment and Forestry
KMAN	: Indigenous Peoples Congress of the Archipelago
Komnas HAM	: National Commission on Human Rights
KSP	: Presidential Staff Office
MP3EI	: Master Plan for the Acceleration and Expansion of Indonesian Economic Development
NES	: Nucleus Estate and Smallholders
NGO	: Non-governmental organization
PKTHA	: Directorate of Conflict Management, Tenure and Customary Forests
PSKL	: Directorate General for Social Forestry and Environmental Partnerships
RSP0	: Roundtable of Sustainable Palm Oil
RPJMN	: National Medium-Term Development Plan
RTRW	: Provincial and district spatial planning documents
TN	: National Parks
TORA	: Land for Agrarian Reform
USAID	: United States Agency for International Development
WALHI	: Indonesian Environment Forum



# Introduction

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by Antonia Engel <sup>1</sup>

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<sup>1</sup> Independent senior mediator and consultant for conflict resolution.





## 1.1 The multifaceted face of development

In recent decades, Indonesia has achieved impressive economic growth,<sup>2</sup> with poverty levels reduced to a single digit for the first time in history.<sup>3</sup> Today, Indonesia is the world's fourth most populous nation, the world's tenth largest economy in terms of purchasing power parity, and a member of the G-20. However, economic success has come at significant environmental and social costs.

Public and private corporations are investing in millions of hectares of land in Indonesia to produce timber, pulp and paper, food and biofuels. Expansion of agriculture and timber plantations (both legal and illegal) has been a major source of forest degradation and habitat loss. Land-based activities, including mining, agriculture, and forestry have led to problems such as deforestation, pollution and conflicts over land rights. In the period 2005-2015, Indonesia lost 7% of its forest cover (a total of 1.4 million ha). Since then the level of deforestation has decreased,<sup>4</sup> but remains high compared to other countries. Rapid land-use change and heavy reliance on fossil energy make Indonesia one of the world's largest greenhouse gas (GHG) emitters.<sup>5</sup>

<sup>2</sup> OECD, 2019: Green Growth Policy Review, Indonesia.

<sup>3</sup> 9.4 % in 2019 (World Bank, 2020).

<sup>4</sup> The Indonesian government released its official deforestation numbers in May 2018, showing that the rate of forest loss has been declining from 2015 to 2018. The data reported deforestation of 440,000 hectares in 2018, slightly lower than the 2017 number of 480,000 hectares. Global Forest Watch released similar numbers showing a 40 percent decrease in deforestation in Indonesia's primary forests in 2018, compared to the average annual rate of loss from 2002-2016 (World Resources Institute, 2019).

<sup>5</sup> GHG emissions have increased by 42% since 2000. Conversion of forest and peatland for agriculture and energy use in power generation and industry is the main emission source (OECD, 2019).

The Government of Indonesia has used palm oil as a major vehicle to spur economic growth and to lower the country's unemployment rates (Potter and Lee 1998; Zen et al. 2005).<sup>6</sup> In 2006, the country succeeded in replacing Malaysia as the world's largest palm oil producer<sup>7</sup>, and in 2016 Indonesia's share reached 54 per cent of global production.<sup>8</sup> The expansion of oil palm plantations in Indonesia has been driven by rising national and global demand for vegetable oils. Palm oil imports by China, India and the European Union countries increased from 15 to 19.7 million tons during 2007–2012, and global imports increased from 30.5 to 39.4 million tons during the same period (Rosillo-Calle et al. 2009; USDA 2012). Palm oil consumption is predicted to be around 77.2 million tons by 2050 (FAO 2006), which is a 265% increase from the 2000 figure (Kruse 2010).

This global trend offers Indonesia opportunities to attract foreign and domestic investment, increase agricultural productivity and create jobs, but it also brings potential threats to small-scale producers and indigenous communities. Despite the fact that palm oil production is able to absorb labour in large numbers, it does not follow automatically that the livelihoods of smallholders, plantation workers and indigenous people will be improved. Rapid development and expansion of oil palm plantations have resulted in well documented, undesirable ecological and social consequences, including river pollution, loss of biodiversity, soil erosion, and a growing carbon footprint. In many places, traditional livelihoods are facing increasing pressure, as the lands previously available for hunting and gathering are shrinking in size and declining water quality makes it difficult to find clean water for drinking and bathing.

**"This global trend offers Indonesia opportunities to attract foreign and domestic investment, increase agricultural productivity and create jobs, but it also brings potential threats to small-scale producers and indigenous communities."**

Experts warn that the expansion of oil palm could lead to even more deforestation if left unchecked,<sup>9</sup> and that the rate of expansion by smallholders is increasing faster than that of state-run and private plantation companies.<sup>10</sup> According to data from the Ministry of Agriculture, the total area of farms managed by smallholders increased by 35 per cent between 2013 and 2018, yet their per-hectare yield during that period fell by 4 per cent. Three-quarters of smallholder farmers, managing 3.1 million hectares of land, are not affiliated with any particular company or mill, and they are often

6 Palm oil contributed 17% of Indonesia's agricultural gross domestic product in 2014 (Ministry of Agriculture, 2015a,b).

7 Indonesia has 14 million hectares (ha) of oil palm; its palm oil exports were valued at USD 23 billion in 2017 and USD 21 billion in 2018. In 2017, the export value of palm oil reached USD 23 billion (Reily and Ekarina, 2018; Tim Riset PASPI, 2018).

8 Ministry of Agriculture, 2016.

9 Gibbs et al. (2010) show that during 1980–2000 nearly 60% of new agricultural land in Southeast Asia came at the expense of intact forests.

10 Smallholders are the fastest growing producer group in Indonesia's oil palm sector. The total area cultivated with oil palm by smallholders grew from 2% in 1982 to 26% in 1990 and 41% in 2016, while private companies grew from 30% in 1982 to 41% in 1990 to 53% in 2016. It is expected to grow from approximately 40% of the total national acreage in 2016 of 11.9 million ha to over 60% by 2030. Prof. Dr. Ir. Bungaran Saragih, M.Ec. Palm Oil Agribusiness Strategic Policy Institute (PASPI) World Plantation Conference and Exhibition, 2017 18–20 Oktober 2017.

dependent on intermediaries, have limited support from the government, and lack training in improved agricultural practices. These factors have led to low productivity per hectare, which farmers compensate for by clearing more land for planting, often illegally, through slash-and-burn agriculture.<sup>11</sup> Amid a lack of monitoring and enforcement, as well as inconsistent enforced zoning plans, illegal plantations have proliferated. An analysis of satellite images by the NGO Kehati shows there are at least 3.4 million hectares (8.4 million acres) of illegal plantations – an area greater than Belgium – of which 1.2 million hectares (3 million acres) are managed by local farmers.<sup>12</sup>

The majority of local people in and around oil palm plantations are therefore increasingly faced with the dilemma of how to pursue their livelihoods within this changing natural environment, while still being unable to take advantage of the income-generating opportunities in the palm oil sector. If appropriate policy interventions targeted at the broader social and environmental impacts of land development can be formulated and implemented, there is a chance that oil palm expansion may benefit a large number of rural smallholders. However, the opposite is also true. In Indonesia, land allocation is characterised by a complex political landscape that promotes the transformation of forest assets to other land uses, such as oil palm, often at the expense of traditionally managed lands and livelihoods of local communities.<sup>13</sup>

Two recent government initiatives serve as examples for political reform processes which many activists and observers view as potentially harmful to the livelihoods of local communities and to the environment. First, the so-called “Omnibus Law”, passed by the Indonesian parliament on October, 5 2020. The Omnibus Law on Job Creation, a reflection of President Joko Widodo’s commitment to increasing investment and industrialization in Indonesia, includes a number of disparate measures, coupled with, among others, provisions to simplify business licensing procedures, changes to the existing manpower law, more centralized decision making on environmental

**"The majority of local people in and around oil palm plantations are therefore increasingly faced with the dilemma of how to pursue their livelihoods within this changing natural environment, while still being unable to take advantage of the income-generating opportunities in the palm oil sector."**

11 Fires are considered the cheapest option among all methods to prepare lands for cultivation, or to claim lands in areas with disputes, where land ownership is uncertain and where enforcement is weak (World Bank, 2019).

12 Mongabay Series: Indonesian Palm Oil “Indonesia moves to end smallholder guarantee meant to empower palm oil farmers” by Hans Nicholas Jong on 12 May 2020.

13 CIFOR, 2014: “The impacts of oil palm plantations on forests and people in Papua - A case study from Boven Digoel District” by A. Andrianto, B.F. Sedik, H. Waridjo, H. Komarudin & K. Obidzinski, CIFOR Papers 163.

issues, and a framework for construction of Indonesia's new capital city. The new law is predicated on the assumption that streamlining the processing of licenses and permits, including environmental permits, will further boost economic growth and generate job opportunities. In a recent letter to the Indonesian government, a group that includes 35 global investors, managing a combined \$4.1 trillion in assets, expressed concerns that "... proposed changes to the permitting framework, environmental compliance monitoring, public consultation and sanctioning systems will have severe environmental, human rights and labor-related repercussions that introduce significant uncertainty and could impact the attractiveness of Indonesian markets".<sup>14</sup> In particular, they cited provisions in the Law that might exclude effective consultation and limit the capacity of affected communities and other stakeholders to provide feedback on proposed development projects. This is a reference to the Law's apparent attempt to weaken the environmental impact assessment process, known by its Indonesian acronym AMDAL (Analisis Mengenai Dampak Lingkungan, or environmental impact assessment), which safeguards broad public participation. The Omnibus Law limits participation to those who are "directly impacted" by the action.

**"This is a reference to the Law's apparent attempt to weaken the environmental impact assessment process, known by its Indonesian acronym AMDAL (Analisis Mengenai Dampak Lingkungan, or environmental impact assessment), which safeguards broad public participation."**

Second, a deregulation bill, currently under deliberation in parliament, which stipulates that palm oil companies will no longer be required to allocate 20 per cent of their land for smallholders under the partnership scheme, which was made mandatory in 2007 to ensure that rural communities would benefit from the large plantations near them, through training, supplies of seedlings and fertilizer, guaranteed buyers for their oil palm fruit, and eventual title to the land. The government now sees this regulation as a hindrance to the acceleration of investment.

Jarot Winarno, the head of Sintang District in the province of West Kalimantan, where palm oil is a major driver of the economy, said that the partnership scheme is crucial to empowering small farmers. "*Partnership is a must. Why bother having palm oil plantations if they're not increasing the welfare [of the people]?*" he said. "*The lands [planted by companies] are the lands of our ancestors. So, if there's a bill that doesn't give room for partnership, sustainability and environmental services, then we'll just fight it.*"<sup>15</sup>

There are obvious limits to social harmony given the enormity of these perceived inequities, and, as we try to argue in this book, high on that list of perceived inequities are economic

<sup>14</sup> <https://news.mongabay.com/2020/11/indonesia-omnibus-law-global-investor-letter> on November, 4 2020.

<sup>15</sup> Mongabay Series: Indonesian Palm Oil "Indonesia moves to end smallholder guarantee meant to empower palm oil farmers" by Hans Nicholas Jong on 12 May 2020.



considerations. If we look hard enough, we can see that many of the conflicts that emerge over land use and access are actually a battle for resources or economic gain: timber, land, business opportunities, power.<sup>16</sup>

We are of course aware that the problems and conflicts addressed in this book are not exclusive to the palm oil sector; they exist in similar ways in all other land-based sectors and are thus more a reflection of the precarious land tenure situation and the result of a complex set of governance problems as a whole in Indonesia. However, as palm oil has been promoted as a ‘flagship agricultural commodity’ by the Indonesian government, conflicts in oil palm serve to illustrate the challenges, risks as well as the opportunities for achieving sustainable development, poverty reduction and climate protection.

It is against this background that we now turn to explore in greater depth the causes and effects of contemporary conflicts for sustainable natural resources management in Indonesia.

**"It is against this background that we now turn to explore in greater depth the causes and effects of contemporary conflicts for sustainable natural resources management in Indonesia."**

## 1.2 The causes and effects of conflict in natural resources management

*"Yang Menyelesaikan Konflik Agraria Ini Siapa?"*<sup>17</sup> During the first presidential campaign of Joko Widodo in 2014, this rhetorical question provided the headline for a meeting between the candidate and the national environmental NGO Walhi; it reflects the growing concern, and sense of frustration, over expanding land use conflicts in Indonesia.

Indeed, the lack of clarity over land allocation and law enforcement creates an ambiguous, uncertain working environment at the local level. Forest and land conflicts are the result of a complex set of governance problems: contradictory or overlapping jurisdictions, poor spatial planning processes, an historic emphasis on resource extraction skewed to large-scale corporate investments, and uncoordinated permitting and licensing procedures. According to the KPK Action plan 2015-2016, these problems are further compounded by weak law enforcement and accountability, and widespread corruption throughout the system.<sup>18</sup> Thus, conflicts in the plantation and forestry sector are part of a broader national context for contentious decision

16 D. Ray and J. Esteban: "Conflict and Development". Annual Review of Economics 2017. 9:263–93.

17 Literally – "Who Will Resolve (All) These Agrarian Conflicts?" (Kompas, 12 May 2014: <http://megapolitan.kompas.com/read/2014/05/12/1505423/JokowiYang.Menyelesaikan.Konflik.Agraria.Ini.Siapa>)

18 USAID, 2013, KPK Action plan 2015-2016.

making over land, natural resources, and the environment, and they reflect many political and economic processes at work in Indonesia today.

Increasing awareness of the social, economic and environmental impacts of these disputes has been well documented. The Consortium for Agrarian Reform (*Konsorsium Pembaharuan Agraria*, or KPA), reported 396 cases of agrarian conflict affecting more than 1.2 million ha during 2013, up from 198 cases (300,000 ha) during the previous year. A World Bank study suggests that nearly 25 million ha of all designated forest lands (or *kawasan hutan*) – more than 20 percent of the total forest area, encompassing nearly 20,000 villages – is in conflict due to competing legal claims. In addition, 2015 alone saw 776 conflicts between palm oil companies and local indigenous communities<sup>19</sup>; in 2020, the NGO ‘Sawit Watch’ database lists 1053 conflicts in Indonesian oil palm plantations.<sup>20</sup> According to Abram et al. (2017) these problems arise due to “boundary disputes, illegal operations by companies, perceived lack of consultation, compensation and broken promises by companies”. According to the Anti-Corruption Commission report (KPK, 2016)<sup>21</sup> and UNODC (2019), rampant corruption in the palm oil sector, from the local to the national level, is an increasing concern for many national and international organizations. In fact, according to USAID’s recent report of the first ever private sector investor survey on land rights, land tenure issues are perceived as the single greatest risk and deterrent for investment.

**" In fact, according to USAID’s recent report of the first ever private sector investor survey on land rights, land tenure issues are perceived as the single greatest risk and deterrent for investment."**

More recent studies have shed light on the economic and social costs of these conflicts, both to corporations investing in oil palm and pulp and paper plantations, as well as to the individuals and communities who are in the path of this development. A 2017 study on the costs of conflict in the oil palm sector concluded that “*the cumulative costs of social conflict are significant, undervalued and can pose a serious risk to investment return.*”<sup>22</sup> The direct costs of these conflicts, resulting from construction delays, interruption of operations, compensation payments, and other disruptions, ranged from USD 70,000 to USD 2,500,000 per site, equal to 65% of total operational costs per hectare, or 132% of annualized investment costs on a per hectare basis. The report also notes that intangible, or “hidden” costs (e.g., reputational damage, recurrence or escalation of conflict, violence to property, and violence to people) range from USD 600,000 to USD 9,000,000 per conflict event. For communities, disputes may

19 Kevin Iskandar Putra & Mia Dunphy, ASEAN Studies Center, Faculty of Social and Political Sciences, Universitas Gadjah Mada, 2018.

20 For further information see: [www.tanahkita.id](http://www.tanahkita.id)

21 “Since 2004, 88 officials were convicted for corruption at the provincial level, including 52 district heads (bupati) and deputy district heads (wakil bupati), 23 mayors and vice-mayors, and 13 governors. Most of these cases involved taking bribes in relation to licensing approval and procurement.”

22 Barreiro, V. et al., 2017. *The Cost of Conflict in Oil Palm in Indonesia*, Daemeter, Bogor.

seriously jeopardize their livelihoods, cultural identity and personal security. The minimum irreducible household-level costs incurred as a result of conflict at USD 2,795.00 per household per year, with slightly higher figures (USD 3,456.00/year) for smallholder households participating in plasma programs.<sup>23</sup>

Nevertheless, there are also many positive, hopeful signs. Within the Indonesian government there is widespread, and growing acknowledgement of these conflicts, and a wide array of policies and institutions are being developed to address these disputes, including a priority emphasis on agrarian reform.<sup>24</sup> Several national agencies, such as the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (KATR/BPN) and the Ministry of Environment and Forestry (KLHK) have recently established special directorates for addressing agrarian and natural resource management conflicts within those sectors.

In various regions in Indonesia, a number of local conflict resolution initiatives have been established, including the Conflict Resolution Desk (DRK) of Kapuas Hulu District, West Kalimantan, and the Task Force for the Acceleration of Resolving Agrarian and Natural Resources Conflicts (SP2KA SDA) in Musi Banyuasin District, South Sumatra.

Plans for establishing a national agency for resolving agrarian and natural resource conflicts have been encouraged by, among others, the National Commission on Human Rights (Komnas HAM), the Agrarian Reform Consortium (KPA), the Indonesian Environment Forum (WALHI) and several civil society organizations that advocate for agrarian reform and environmental conservation.

In the private sector, recent corporate commitments from large plantation and pulp and paper companies (e.g., Sinar Mas Group, Unilever, Nestle, Cargill) are a response to national and international pressures to meet performance standards for more sustainable business practices. The Roundtable on Sustainable Palm Oil (RSPO) supports a Dispute Settlement Facility that requires members to adhere to its Code of Conduct, and stakeholders are encouraged to file objections through RSPO's Complaints System. The International Finance Corporation's (IFC) Compliance Advisory Ombudsman (CAO) has also sponsored mediations as a response to

**"Nevertheless, there are also many positive, hopeful signs. Within the Indonesian government there is widespread, and growing acknowledgement of these conflicts..."**

23 R.Y. Zakaria, et al. 2017. Studi Biaya Konflik Tanah dan Sumber Daya Alam dari Perspektif Masyarakat, Indonesia Business Council for Sustainable Development, Jakarta.

24 Notably, these efforts include the Constitutional Court Decision 35/2013 on customary peoples' rights, the rolling out of Forest Management Units for conservation, protection and production forests (e.g., Director General Decree 5/2012), village development planning, village boundary-setting (e.g., Ministry of Home Affairs Decree 46/2016), and an ambitious social forestry program, which targets 12.7 million hectares for redistribution to farmers and communities, which is a 750 % increase from the 1.7 million hectares in 2016.

complaints of breaches in performance standards in the oil palm industry (see Rofiq and Hidayat, 2012; IPAC, 2014). The Conflict Resolution Unit (CRU), an initiative of the Chamber of Commerce and Industry (KADIN), was established to improve the climate of land-based investment and natural resources through efforts to reduce the risk associated with these conflicts. CRU was established in 2015 under the Indonesia Business Council for Sustainable Development (IBCSD), to become the leading mediation service institution in Indonesia, providing effective, independent and reliable support for resolving land and natural resource management conflicts.<sup>25</sup>

Government efforts to address sustainability within the palm oil industry have included Presidential Instruction (Inpres) No. 8 of 2018 regarding Moratorium of New Permits for Oil Palm Plantation and Inpres No. 6 of 2019 regarding the National Action Plan on Sustainable Palm Oil for the Period of 2019-2024. According to Tiur

Rumondang, the Indonesian country director for the RSPO, it is important that this government policy is indeed beneficial, *"...meanwhile, we want to push our palm oil to be considered suitable for the global market, to be considered sustainable."*<sup>26</sup>

The licensing moratorium, signed by President Joko Widodo in September 2018 and expected to remain in force for a maximum of three years, has resulted in the withholding of permits to clear a combined 16,000 square kilometers (6,200 square miles) of forest areas for plantations. The moratorium also calls for government ministries and regional governments to produce baseline data including a massive review of existing licenses, since many are known to have been issued in violation of procedures.

Also worth noting is the work of countless NGOs in building community capacity to press their claims and seek social justice; some of them (e.g., Scale Up, Warsi, HuMa) are now focused more directly on conflict resolution and mediation. New alliances have been formed between corporations and environmental groups to achieve higher industry standards; researchers are actively documenting local disputes and building national databases that show these patterns across the country.

The above initiatives and developments show that the issues reflected in these conflicts are becoming part of the national political discourse. Addressing Indonesia's natural resource

**" CRU was established in 2015 under the Indonesia Business Council for Sustainable Development (IBCSD), to become the leading mediation service institution in Indonesia, providing effective, independent and reliable support for resolving land and natural resource management conflicts."**

<sup>25</sup> Over the period 2016 to 2019, CRU has managed a total of 56 cases in the forestry and plantation sectors and in varied locations – Jambi, West Kalimantan, South Kalimantan, East Kalimantan, East Java, South Sulawesi, Southeast Sulawesi, West Nusa Tenggara, and Papua. Of these 56 cases, 23 cases were successfully settled, with parties signing agreements to resolve the conflicts. Twenty-two cases in Southeast Sulawesi have been elevated from site-based tenurial conflicts between communities and an oil palm plantation company to full public policy mediations, due to the overlap in spatial designations between the transmigration and forestry sectors.

<sup>26</sup> <https://news.mongabay.com/2019/11/rsपो-indonesia-palm-oil-plantations-moratorium>

conflicts is a pressing issue for the country as it continues its transition to a democratic society. One of President Joko Widodo's priority goals during his second term is to increase Indonesia's competitiveness in the global economy through improving investment climate. It is widely understood that an accelerated effort to resolve agrarian and natural resources conflicts is an important prerequisite for achieving this goal.

### 1.3 Rationale for this book

This book is based on case study research and analysis jointly conducted by two institutions (IBCSD-CRU and GIZ-FORCLIME) who decided to collaborate in order to reflect critically on the experiences of mediating natural resource-related conflicts in Indonesia. The results of this analysis have already been published in a longer, more detailed Indonesian language version, *Seka Sengketa*, with additional case studies, analysis, and reflections on lessons learned from this experience. The book in your hands is an abbreviated and edited English language version, targeted for international organizations, donor agencies, policy makers, and researchers who share an interest in finding innovative approaches for addressing these conflicts through facilitated negotiation and mediation.

In developing this work, we drew upon social science traditions within case study analysis to unpack the reasons for and manifestations of conflict without resorting to singular causal explanations. Strong emphasis is placed on insight from mediation practitioners to inform development interventions. With this perspective, we are not aiming for grand explanation or theory, but rather to move inductively from empirical phenomena observed within the case studies to an analytical understanding that facilitates cross-case identification of actions and recommendations. The goal, then, is to support the transformation of conflict from a negative, destructive course to a focus on political and socio-economic reform. In doing so, we share the perspective of various conflict management practitioners who believe that site-based mediations can do more than merely resolve localised disputes. Critical reflection and identification of lessons learned can help point out the roots of complex development problems such as contradicting regulations and policies, and flaws in their implementation. As such the book aims to help build an awareness and understanding of

**"This book is based on case study research and analysis jointly conducted by two institutions (IBCSD-CRU and GIZ-FORCLIME) who decided to collaborate in order to reflect critically on the experiences of mediating natural resource-related conflicts in Indonesia."**

conflict resolution efforts as important sources of information that can help improve regulations and legislation to anticipate and prevent conflicts, including improved cross-sectoral efforts in handling cases of public policy conflicts.



## 1.4 Purpose of this book

This book was developed for donors, international agencies/institutions and decision makers within the Indonesian government, as Indonesia continues to be a main destination for rural development, protection of indigenous rights, biodiversity conservation, and global climate investment. However, common goals such as sustainable natural resource management, poverty alleviation, protection of human rights, and reduction of greenhouse gas emissions are not likely to be achieved without addressing and resolving the underlying conflicts of land allocation practices and other critical governance issues. As such international donors and development agencies have a particularly important role to play in supporting the Indonesian government in its long-term commitment to agrarian reform and equitable development. This is because the roots and dynamics of many conflicts are political in nature, i.e., they are the result of political decision-making processes about the nature and use of public authority, as well as the allocation of public resources. The nexus between deforestation, poverty alleviation and land tenure security may be complex, but the linkages to conflict are very clear. Not only are donors and international agencies/institutions influential actors in themselves, but they also make wide-ranging programmatic decisions and, through their funding, have tremendous influence on the programs implemented by government agencies, and by national and local NGOs. Development support can exacerbate conflict, but it can also work to prevent and even resolve conflict. As such, donors and international agencies/institutions have an opportunity, as well as a responsibility, to promote conflict sensitivity, both in their own strategies and in those of their implementing partners.

## *Definition: What is conflict-sensitivity?*

Conflict sensitivity is an approach to development intervention that seeks, at minimum, to avoid causing harm and, at a maximum, to contribute to positive social change. The starting point for conflict sensitivity is the assumption that no development intervention is neutral. Any development initiative (e.g. policy/programme/project) has unintended consequences, positive or negative, direct or indirect. The designation and design of conservation areas, for instance, while intended as a contribution to biodiversity conservation and climate change adaptation could lead to conflict, if the designation displaces local, indigenous communities who rely on this land for their livelihoods. A conflict sensitive approach seeks to anticipate and mitigate such negative consequences. To ensure that the designation of a protected area does not lead to social conflict, a preliminary conflict assessment can detect sources of tension ex-ante and involve, for instance, representatives of the indigenous communities in the planning and implementation process. This brief illustration omits, however, the wide spectrum in ambition of conflict-sensitive approaches. There exists a minimalist and a maximalist position. A minimalist position aims to avoid making negative situations worse (the precautionary principle - "at first, do no harm"). That is, it seeks to mitigate the potentially negative consequences of a planned intervention and seek means for safeguarding against, for example, violation of human rights and land rights. A maximalist position, by contrast, aims to contribute to addressing the causes of conflict. It seeks to promote and support agrarian reform in order to overcome and resolve the structural causes for natural resource conflicts. The resolution of these conflicts is seen as an inseparable part of efforts to encourage the advancement of sustainable economic, social and environmental development goals.

### **What can donors and international agencies/institutions gain from promoting and adopting conflict sensitivity?**

- **An investment friendly business climate:** As mentioned above, conflicts pose considerable risks and costs for any land based investment and development. Conflict analysis and prevention therefore pays off, not only in the economic sense.
- **A "general opportunity" towards a just society and stable future:** Tensions and conflict can be seen as early warnings for the accumulation of various governance issues that have not been adequately addressed in the past.
- **Reduction of costs and risks associated with development interventions:** Conflict can very quickly reverse hard won developmental gains, and its impacts can take many years to recover from. By paying sufficient attention to the roots

of natural resource conflicts, donors and international agencies/institutions can avoid becoming part of the problem, causing unintended side-effects.

- **Increased chances of successful project implementation:** Effective resolution of land and natural resource conflicts is not only a key factor in achieving national goals of equitable and sustainable development, but is also an important element in achieving Indonesia's emission reduction targets, as stated in its Nationally Determined Contribution (NDC) commitments to the Paris climate accord.

## 1.5 How this book is organized

In this introductory chapter, we explore the links between development and conflict, provide an overview of the multiple factors that lead to conflicts, as well as the social, economic, and environmental impacts of natural resource related conflicts in Indonesia.

Chapter 2 offers an analysis of the political economy and the culture of bureaucracy in Indonesia. We discuss the factors that shape political decision-making, the nature and use of public authority, as well as the allocation of public resources. The chapter includes an analysis of customary and state law related to land tenure and natural resources management, with special emphasis on the palm oil industry.

Chapters 3 to 6 present the analysis of four case studies that illustrate conflict dynamics in the forestry and plantation sector. The cases were written by professional mediators who were directly involved in seeking approaches to resolve these conflicts. Each follows a distinct trajectory in dealing with the causes and impacts of these disputes.

Chapter 7 provides a cross case analysis of reflections and lessons learned from the conflicts. The analysis is based on ongoing monitoring and evaluation of the cases, including extended discussions with participants and observers.

Chapter 8 offers specific recommendations that can serve as a foundation for developing a stronger conflict-sensitive approach, one in which conflict assessment, prevention and management can be integrated into the fabric of future development programs. This section was developed through additional discussions with experienced practitioners and representatives from donors, international agency/institutions<sup>27</sup>, building upon the insights from case study authors and program participants.

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<sup>27</sup> Ford Foundation, the British Embassy, World Bank, plantation companies and industry support groups, the Ministry of Environment and Forestry, Presidential Staff Office, and the German Development Agency for International Cooperation (GIZ).







# Land and Resource Management Conflicts in Indonesia: The Policy Context

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by Arief Wicaksono <sup>1</sup>

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**I**N Indonesia, agrarian and natural resource management conflicts often find their source in the dizzyingly complex, often overlapping array of regulations and public policies, in particular those related to forestry, plantations, spatial planning, transmigration, land, and village development. This is particularly true during President Joko Widodo's administration, which has prioritized accelerated economic growth through policies streamlining licensing and investment, expanding employments, and extending development to remote areas through infrastructure development. In this rapidly changing public policy context, agrarian and natural resource management conflicts are virtually inevitable. Efforts to resolve these conflicts must begin with a careful assessment of this challenging, and changing regulatory framework, as one confronts the impacts of these governance issues in specific locations.

Two perspectives are important in this policy assessment process. First, the upstream context, where regulations at the national and provincial level become a source and trigger for conflict. And second, downstream, where policy interpretation, implementation, and adaptation provide the necessary guidance for agreements to end conflict between disputing parties. Both perspectives are key elements of effective conflict resolution approaches.

The upstream context is shaped by the political dynamics of national and regional administration, through the process of democratic contestation. Political leadership at both the national and regional levels drives the direction of development policy. These dynamics create interesting tensions that can lead to significant uncertainty in policy implementation, and this is especially true for land tenure, particularly for permits for the use of land, forests, and natural resources. This uncertainty provides fertile ground for the seeds of conflict to grow.

Downstream, at the sites where these conflicts occur, there is a need to uphold the regulatory decisions that affect the sustainability of agreements reached through mediation. This is important not only for building stakeholder trust for these initiatives, but also to demonstrate to regional officials the importance of integrating conflict resolution approaches into the implementation of equitable, inclusive and sustainable development.

Analysis of this overall regulatory framework is challenging given the fact that land and natural

**"The upstream context is shaped by the political dynamics of national and regional administration, through the process of democratic contestation. Political leadership at both the national and regional levels drives the direction of development policy."**

resources in Indonesia are managed by several different ministries or agencies. National agencies with authority for spatial management, land use and natural resources include the Ministry of Environment and Forestry,<sup>2</sup> Ministry of Agriculture, Ministry of Agrarian Affairs and Spatial Planning/National Land Agency,<sup>3</sup> Ministry of Maritime Affairs and Fisheries, Ministry of Energy and Mineral Resources, and the Ministry of Tourism and Creative Economy. Meanwhile, the agencies responsible for cross-sectoral coordination of these issues include the Ministry of Home Affairs, the National Development Planning Agency, the Ministry of Villages, Development of Disadvantaged Regions, and Transmigration, and the Ministry of Law and Human Rights.

In sum, spatial planning, land use and natural resources management represents a “regulatory wilderness”, to borrow a term coined by Joyo Winoto, the Director of BPN during the Yudhoyono Administration. Policies over land and natural resources are often overlapping, inconsistent, and contradictory, so it is difficult to determine the legal primacy of these regulations. This fact is further complicated by the dynamic nature of policy development, i.e., the frequent policy shifts that occur with each change of leadership, particularly since the fall of Suharto’s New Order.

These regulatory issues have intensified given the orientation of the national economy, as development became increasingly dependent upon the need for land. Since the beginning of the Suharto regime, Indonesia has followed a strong growth-oriented development model, which has emphasized the rapid increase in the export of natural resources, in the form of both raw materials and final products. Agencies responsible for regulating export trade have crafted an array of regulations and policies that are at times of questionable utility, and sometimes even contradictory to one other.

Given this economic growth model, rapid regulatory change, and the complexity of Indonesia’s bureaucracy, land and resource management conflicts are inevitable. Conflicts can occur between community groups, between communities and private or state-owned enterprises, between communities and State institutions, and even between State institutions at the same level or at different levels of authority.

Careful analysis of policies and regulations is critical for understanding the underlying causes of conflict, an assessment of the feasibility of mediation, and the potential choice of solutions. This understanding also requires an assessment of the historical context of agrarian and natural resource management policies in Indonesia, particularly since the New Order.

**"These regulatory issues have intensified given the orientation of the national economy, as development became increasingly dependent upon the need for land."**

- 2 The merger of these two ministries – the Ministry of Environment and the Ministry of Forestry – was initiated in 2015 by President Joko Widodo.
- 3 The Ministry of Spatial Planning, which now includes the National Land Agency, was established by President Joko Widodo. During the administration of Susilo Bambang Yudhoyono, responsibility for spatial planning was under the jurisdiction of the Ministry of Public Works.

## A Brief History of Agrarian and Natural Resources Management Policies in Indonesia

In the early days of Suharto's New Order government, agrarian issues were regulated through the Basic Agrarian Law (UUPA).<sup>4</sup> The UUPA eliminated access to land based on ethnic or customary categories defined by the Dutch colonial government, and created a single national land law that reflected the general nature of agrarian reform laws developed during that period. The main component of this law was national land reform.

However, the Soeharto government applied the law selectively, emphasizing elements that supported the State's right to appropriate land for development projects on the basis of "national interest". Sections dealing with the social functions of land for livelihood and land reform were largely ignored. Law No. 1 of 1967 concerning Foreign Investment (PMA Law) subsequently provided the foundation for the emergence of sectoral regulations, which still apply today. These sectoral regulations bypass the UUPA legal framework, which was intended to serve as the principal regulation for agrarian reform and natural resource management.

Since 1969, the Suharto government promoted its national development policies using a five-year planning period, called the Five-Year Development Plan (*Repelita*). Under *Repelita* guidelines, massive evictions were used to acquire land for development needs. During the New Order, growth-oriented development was marked by major infrastructure projects, urban development, and industrialization, mostly centered on Java and several cities on the outer islands (Sumatra, Kalimantan, Sulawesi and Bali).

During the New Order era, major changes were promoted in forest management, particularly between 1982 and 1999. The Ministry of Forestry mapped and designated the national Forest Estate as National Parks (TN), Protected Forests (HL), Production Forests (HP), and Forest Park Conservation Areas (Tahura).<sup>5</sup> During this time, many of the Production Forests were leased to corporations holding Forest Concession Rights (HPH) through Timber Utilization Permits (IPK).

**"During the New Order, growth-oriented development was marked by major infrastructure projects, urban development, and industrialization, mostly centered on Java and several cities on the outer islands (Sumatra, Kalimantan, Sulawesi and Bali)."**

<sup>4</sup> Law Number 5 of 1960 concerning Basic Agrarian Principles, or *Undang-Undang Pokok Agraria* (UUPA).

<sup>5</sup> The Ministry of Forestry has classified 144 million ha of land as within the Forest Estate, which is 75% of the total land area of Indonesia.

The New Order government also promoted policies to achieve more equitable population distribution through the national transmigration program. Transmigration targeted poor, landless families from densely populated areas on the islands of Java, Bali and Madura, and they were sent to sites in Sumatra, Kalimantan, Sulawesi, Maluku and Papua, since these islands were perceived to have more abundant and under-utilized land areas. In addition to its stated goal of alleviating poverty and landlessness, the transmigration program was designed to benefit the nation by increasing the exploitation of natural resources on these less densely populated islands. Politically, the program sought to unify the country by creating a single Indonesian national identity, displacing regional identity politics. In reality, however, the transmigration program triggered tensions and conflicts between transmigrants and indigenous communities.

During the Post-Suharto period of Reformasi, under the leadership of President B.J. Habibie, significant socio-political changes occurred throughout Indonesia, a time that is often referred to as *Reformasi*. The period was marked by extraordinary policy reversals, most notably the transition from a once highly centralized government

with an unusually strong span of control to more regionally driven development. These explosive changes also included the transfer of authority in the agrarian and natural resources sectors, with the locus of authority devolving to local (district) governments.

The combination of this rapid reform and serious impacts of the financial crisis of 1998 triggered a wave of land occupations by peasant communities in various regions, where large-scale forest and plantation concessions had been previously controlled by commercial entities.

When Abdurrahman Wahid replaced President Habibie in 1999, the new Administration issued MPR Decree No. IX of 2001 concerning Agrarian Reform and Management of Natural Resources (TAP MPR). Soon afterward, in March 1999, the Indigenous Peoples Congress of the Archipelago (KMAN) formed the Alliance of Indigenous Peoples of the Archipelago (AMAN), a critical juncture in the development of an organized movement advocating for the restoration of customary rights for indigenous communities.

Fundamental changes in agrarian and natural resources management policies were promoted by each subsequent administration,<sup>6</sup> especially during extended discussions surrounding a draft bill (RPP) on Agrarian Reform. The bill was scheduled for passage in January 2012, but it was ultimately never approved.

**"The combination of this rapid reform and serious impacts of the financial crisis of 1998 triggered a wave of land occupations by peasant communities in various regions, where large-scale forest and plantation concessions had been previously controlled by commercial entities."**

6 Anonymous, "PP Reforma Agraria Sampai Dimana?", Bina Desa, 5 Oktober 2013. URL: <https://binadesa.org/pp-reforma-agraria-sampai-dimana/>. Dikunjungi: 8 Maret 2020.



The policies that emerged during President Yudhoyono's second term were in large measure contradictory to previous approaches to Agrarian Reform, since they focused on expanded industrialization, encapsulated in the Master Plan for the Acceleration and Expansion of Indonesian Economic Development (MP3EI). The MP3EI was predicated on four key initiatives: the National Logistics System (Sislognas), the National Transportation System (Sistranas), regional development planning (RPJMN/RTRWN), and Information and Communication Technology (ICT). The total projected value of MP3EI projects was estimated at IDR 828.7 trillion, with 48% of its capital derived from the private sector, 32% from state-owned enterprises (BUMN), and 20% from the national budget. Many expressed concerns that the Master Plan was designed as a red carpet for domestic and foreign financial investments, some of which had the potential for significant negative social and environmental impacts and human rights violations, given the increasing demand for land for large-scale development projects.

## What is Public Policy?

James Anderson defined public policy as a “choice of action or inaction that is planned for a specific purpose by an actor or a series of government actors in dealing with problems of concern”.<sup>7</sup> This definition suggests some basic characteristics for understanding public policy:

- Public policy is not random but has specific aims
- Public policies are conceived by authorities in the public interest
- Public policy consists of patterns of actions taken over time
- Public policy is the product of demand, government-directed action in response to pressure about some perceived problem
- Public policy can be positive (planned action with a specific purpose) or negative (a planned decision not to take action).

Although MP3EI was abandoned by President Joko Widodo (Jokowi) after he was sworn in as president, the same plans, policies and programs are still being implemented, albeit under different names. Under Jokowi, MP3EI has been re-packaged into populist policy initiatives, such as “Developing the Margins,” “Forging an Equitable Economy,” “Infrastructure for the People,” “Land Redistribution”, “The Maritime Axis”, and other elements of *Nawacita*, Jokowi's nine point development priorities pledged during the election campaign. Jokowi outlined his economic

<sup>7</sup> Anderson, J. E. (1994). Public policymaking : An introduction (2nd ed.). Houghton Mifflin.

programs in the 2015-19 RPJMN, which included a major emphasis on national connectivity to accelerate economic development.

Nevertheless, during President Jokowi's first term (2014 – 2019) public policies related to agrarian reform and natural resource management were relatively populist compared to previous administrations. Agrarian reform is a central component of Jokowi's "Just Economy", one of his highest priorities for development. This policy fostered numerous regulatory and structural changes in national and regional governance, including support for ensuring land rights for customary communities. Through this policy, state administrators intend to redistribute control over 21.7 million hectares of land, the equivalent of about 12% of the entire country. Of that area, 16.8 million ha, or 77%, is within the Forest Estate.

Current agrarian reform programmes consist of two main components, Land for Agrarian Reform (TORA) and Social Forestry. The Land for Agrarian Reform programme has targeted nine million ha for distribution and ownership certification for landless farmers or smallholders, while the Social Forestry Programme provides forest margin communities with utilization and management rights over state land within the designated forest zone, with the goal of 12.7 million ha of coverage by 2019. The Presidential Staff Office (KSP) serves a coordinating role to encourage relevant agencies in the implementation of these programmes.

The Jokowi government has also instituted grievance procedures for reporting land and resource management conflicts throughout the country. Whether or not there are concrete actions to resolve these disputes, at the very least the government appears committed to acknowledging contentious issues over local communities' land rights.

**"Whether or not there are concrete actions to resolve these disputes, at the very least the government appears committed to acknowledging contentious issues over local communities' land rights."**

Another significant recent structural change was the merger of the Ministry for the Environment (KLH) and the Ministry of Forestry (Kemenhut) into the Ministry of Environment and Forestry (KLHK). In this new ministry, recommendations from the National Forestry Council (DKN), e.g., resolution of land tenure conflicts, recognition of customary forests, and social forestry programs – were adopted and integrated into the new administrative structure. This includes the creation of a new Directorate General for Social Forestry and Environmental Partnerships (Ditjen PSKL), which oversees the similarly new Directorate of Conflict Management, Tenure and Customary Forests (Dit PKTHA). In addition, within the newly constituted Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (KemenATR/BPN), management of agrarian conflicts was also raised to the Directorate General level, with the establishment of the Directorate General of Agrarian Affairs, Spatial Planning, and Land.

Of the 43 conflict cases handled by CRU between 2017 and 2019, the four cases described in this book provide compelling illustrations of this changing policy context. Of these four cases, two involve the forestry sector, i.e., land tenure conflicts in Jambi and West Nusa Tenggara involving disputes between local communities and companies holding Industrial Plantation Forest (HTI) concessions. The other two cases are within the plantation sector, specifically oil palm estates in Southeast Sulawesi and Papua.

## Causes and Options

From the downstream perspective, the forestry sector generally provides alternative to conflict through the social forestry program. Companies with HTI concessions are required to reserve a portion of their concession area to be managed collaboratively with local communities. However, in many of the cases CRU has mediated, social forestry programs rarely conform with the expectations and demands of the conflicting parties.

As one example, in North Lombok, West Nusa Tenggara Province, in a conflict between an HTI concession holder and five neighboring villages, the company discovered, during their initial site assessment, that most of the concession area was already under local cultivation. The HTI permit had made no mention of communities living and farming within the concession area.

Meanwhile, although the communities clearly understood that they were cultivating designated forest lands, they were completely unaware of the concessions granted by the government. In the communities' view, the land had been cultivated for generations, long before Indonesian independence (1945). They could not understand how their cultivated land had been gazetted as Production Forest by the New Order government, and they understood even less when, in 2011, the government transferred concession rights to a private company. The communities therefore felt, initially at least, that their conflict was not with the company, but rather with the government. They had no information or insight about the changes in regulations and in the status of the forest area, and this included not knowing about the company's responsibility to collaborate with communities through the social forestry programme.

**"Companies with HTI concessions are required to reserve a portion of their concession area to be managed collaboratively with local communities. However, in many of the cases CRU has mediated, social forestry programs rarely conform with the expectations and demands of the conflicting parties."**

The issue over access to information about the policy and regulatory framework is also manifested in the conflict over land between indigenous peoples and HTI concession holders in Jambi. In this case, the mediation team found that the conflict was further exacerbated by deliberate attempts to limit access to this information. The prolonged conflict in Jambi would likely not have occurred if these policies and regulations had been understood by the parties.

But these dynamics are certainly not exclusive to North Lombok and Jambi. In fact, shifting policies regarding land use and forest management are a common source of conflict throughout Indonesia, and disclosure and access to this information is a key prerequisite for effective forest governance. And in terms of efforts to resolve these conflicts, the learning that occurs through greater transparency and more equal access to information should be viewed as a necessary pre-condition for successful resolution of these disputes, in addition to the obvious opportunities for prevention.

Admittedly, the establishment of the PKTHA Directorate represents a breakthrough in the Jokowi administration. However, the fact that the source of most of the conflicts that find their way to PKTHA is within the jurisdiction of a separate directorate general, represents a significant challenge, and a major flaw within the national forest management system. In many situations, it is difficult to engage the government as a party in conflicts involving concessionaires and the communities, because the roles and functions of the relevant units within KLHK are isolated and often poorly defined. For this reason, proactive engagement by conflict resolution practitioners is absolutely necessary, not only to unravel the complex circumstances that triggered the conflict, but also to secure policy protection guarantees so that an agreement to end the conflict between the parties can be authorized and implemented over the long term.

**"In fact, shifting policies regarding land use and forest management are a common source of conflict throughout Indonesia, and disclosure and access to this information is a key prerequisite for effective forest governance."**

### Site-based and Supply Chain Conflicts

In contrast to conflicts in the forestry sector, agrarian conflicts in the plantation sector, especially those related to oil palm plantations, have two essential features. The first involves overlapping claims between local communities and companies; the second relates to the production supply chain of fresh fruit bunches (FFB).

CRU cases involving oil palm plantations have largely centered on communities' limited information about concession boundaries granted through the Business Use Rights (HGU) permit. Government policies that restrict public access to information on HGU licenses have contributed significantly to these conflicts.

The lack of disclosure of spatial information related to HGU permits has also generated conflicts over overlapping claims of forest areas. Most of these disputes involve local communities, who see palm oil production as an economic opportunity and choose to participate in partnership arrangements with plantation companies. KLHK policy tends to reject these partnerships with palm oil companies in favor of cooperative agreements with forest concessions. However, for palm oil plantations that have already been established within the forest zone, KLHK relies upon a government regulation that allows companies to continue their operations, but limits them to a single cropping cycle.

The issue of overlapping claims is not only limited to forest areas, as it also intersects with unresolved issues over villages' administrative boundaries, as there are still many villages in Indonesia that do not yet have definitive boundaries. Because palm oil plantations are often established in areas designated for alternative uses (*Areal Penggunaan Lain*, or APL)<sup>8</sup>, based on provincial and district spatial planning documents (RTRW), an understanding of regional spatial planning policies is also important for untangling these conflicts.

As to conflicts associated with supply chains, government regulations on plantation partnership schemes with independent smallholders are also important in understanding the gap between formal regulation and the reality in the field.

The total area devoted to palm oil plantations in Indonesia reached 14.2 million ha at the end of 2019. At the same time, the area cultivated by individual smallholders was around 5 million ha, with the remainder controlled by large private plantation companies and State-managed plantations. Smallholders are further divided into plasma farmers<sup>9</sup> and independent farmers. The partnership arrangements between companies and plasma farmers began when Indonesia's national plantation scheme was initiated in 1977. From 1977 to 1986 a policy on smallholder-corporate partnerships was introduced through the Nucleus Estate and Smallholders (NES) or PIR Perkebunan (PIR-Bun) program. This policy mandates every company, both private and State, to act as a nucleus estate,

**"The issue of overlapping claims is not only limited to forest areas, as it also intersects with unresolved issues over villages' administrative boundaries, as there are still many villages in Indonesia that do not yet have definitive boundaries"**

8 Alternative Use Area, covering 64 million hectares (about one third of the land mass of Indonesia), includes both state and private land, and are under the administration of the National Land Agency (see Siscawati M, Banjade MR, Liswanti N, Herawati T, Mwangi E, Wulandari C, Tjoa M and Silaya T. 2017. *Overview of forest tenure reforms in Indonesia*. Working Paper 223. Bogor, Indonesia: CIFOR).

9 Under a plasma scheme, farmers sell fresh fruit bunches to the company, usually at a predetermined price, and in return, the company provides assistance to the farmers and also improves overall plantation management (see: <https://thepalmscribe.id/palm-oil-premium-for-plasma-farmers/#:~:text=Under%20the%20scheme%2C%20plasma%20farmers,and%20operation%20of%20their%20plantations.>

supporting smallholders as participant producers. The stated intent of the program was to improve the welfare of farmers and their families by increasing productivity and income, by channeling improved inputs, providing technical training for improved management practices, and offering support for processing and marketing functions through these arrangements. President Suharto supported an additional *PIR* policy specifically designed to enhance the transmigration program through Presidential Instruction (Inpres) No. 1 of 1986.

Plantation partnerships are mandated through Ministerial Regulation No. 7 of 2017 (Permen ATR/BPN) concerning the Regulation and Procedures for Establishing Business Use Rights (HGU). This regulation requires *HGU* holders to allocate 20% of the land area in the form of these plasma partnerships.<sup>10</sup> The regulation also obligates *HGU* holders to adhere to recommended practices on social and environmental responsibility.

However, implementation of these regulations is often ignored, and violations occur frequently, due to the power imbalances and the authority and access reflected in companies' strong position of influence.<sup>11</sup> Conflict often arises because of the communities' weak legal standing and their limited access to the policy making process, especially in regard to tenure, which renders the word 'partnership' virtually meaningless.

**"However, implementation of these regulations is often ignored, and violations occur frequently, due to the power imbalances and the authority and access reflected in companies' strong position of influence."**

In the North Konawe case, the concept of partnership was even used to justify the company's control of land within the community, most of whose residents are transmigrants, encompassing an area of nearly 6,000 ha, the minimum area required to establish an integrated oil palm plantation and palm oil mill (PKS) to produce an adequate supply of Crude Palm Oil (CPO).<sup>12</sup> For palm oil entrepreneurs, their primary focus has been on building the mill. Minister of Agriculture Regulation No 98/2013 requires the construction of a mill in order to establish a sufficient-sized plantation, so the company collaborated with the community to secure their land through the partnership agreement.

The above case was initially considered unsuitable for mediation because Minister of Agriculture Regulation No.5/2019 stipulated that a commercial plantation permit (*Izin Usaha Perkebunan*, or IUP) was illegal if the company had not been issued a HGU, a complicating factor because portions of the company's land were still considered designated forest

<sup>10</sup> Article 40, k.

<sup>11</sup> H. Winardo and N. D. Retnandari., 2017. Political Economy of Oil Palm Partnership Policy. Yogyakarta: Gadjah Mada University.

<sup>12</sup> Sumardjo, 2011. Model of Community Empowerment and Social Conflict Management in Oil Palm Plantations in Riau Province, Presented to the Workshop on Integrated Environmental Management of Sustainable Palm Oil Plantations in Riau Province: [Http://Care.Staff.Ipb.Ac.Id/Files/2011/05/Model-Pemberdaya-An-Masyarakat-Dan-Peng-Manajemen-Konflik-So.Pdf](http://Care.Staff.Ipb.Ac.Id/Files/2011/05/Model-Pemberdaya-An-Masyarakat-Dan-Peng-Manajemen-Konflik-So.Pdf).

area. Apart from concerns over the complex, and changing regulatory framework, the case shows how the concept of “partnership” is often used as a smokescreen to justify large-scale plantation leases.

In the end, the North Konawe case was elevated to a public policy mediation because it addressed the misuse of forest for transmigration settlements. During the assessment, the mediation team discovered that transmigrants were given land that was explicitly within designated forest areas.<sup>13</sup> Following a series of consultations with the Southeast Sulawesi Provincial Forest Service, the Southeast Sulawesi Office of Transmigration and Manpower, and the Director of PKTHA, it became clear that the confusion over land use in these sites has been a frequent occurrence, and this is particularly true in designated forest areas. The Transmigration and Manpower Office acknowledged that the real source of the dispute was linked to the fact that earlier policies had not been updated to address more recent regulatory changes.

**"In the end, the North Konawe case was elevated to a public policy mediation because it addressed the misuse of forest for transmigration settlements. "**

## Spatial Planning and Agrarian Conflict

Guidance on land use in Indonesia is articulated in spatial planning documents (*RTRW*) at the national, island, provincial and district levels. However, spatial planning documents frequently trigger land use conflicts, primarily because they are developed as top-down policy direction, often based on ambitious and unrealistic targets for national economic growth.

The overall inconsistency, and the competing nature of land use policies in Indonesia is a frequent source of discord and confusion. The *RTRW*, a static document, is often outdated and at odds with the current pace and pressures of development, and land use decision making is therefore frequently based on guidance viewed as irrelevant. The extended process of drafting and gaining approval for the *RTRW* also presents significant opportunities for land use conflicts to occur.<sup>14</sup>

CRU's experience in the North Konawe case underscores the critical role of spatial planning in many land use conflicts in Indonesia. Apart from the problems inherent within the *RTRW*, the trend toward expanding administrative areas is often a contributing factor in these disputes. New administrative districts frequently face challenges in reconciling *APL* and forest lands that were delineated by the previous administrative unit. Newly established districts often feel pressured to demonstrate

<sup>13</sup> Transmigrants have the right to manage three types of land: I, home gardens, II, food crops, and III, plantations.

<sup>14</sup> B. Wirawan et al. 2019. Policy Brief: Spatial Planning, Land Tenure, and Increasing Conflicts over Land Claims in Sumatra and Kalimantan: Economic Development, Policy Dynamics, and the Pace of Investment. Urban and Regional Development Institute. Jakarta, Indonesia: IBCSD-CRU.

their ability to generate revenues, which in most cases depends on private investment in land-based industries, and these, as noted above, require legal certainty. This situation is further compounded by the influence of corruption that permeates licensing procedures.

Public policy conflicts must be resolved with the aim of promoting more durable solutions to these conflicts, with a wider range of benefits. At the individual site level, it is important to explore outcomes that address policy inconsistencies at various levels, e.g., those related to forest concession permits and village boundaries. The public policy mediation approach is a useful option since it engages policy makers at multiple levels, encouraging them to work together to achieve more integrated, constructive, and sustained solutions.

### Some modest conclusions

An understanding of the context and background of land use and natural resource management conflicts from a policy perspective, is critically important as a foundation for successful mediation efforts. This understanding is a necessary starting point in the search for creative settlement options that are realistic, implementable, and long-term in nature. Conflicts over land and natural resources must be analyzed within this complex regulatory framework, the realities on the ground, and the upstream and downstream linkages.

This understanding of the sources of land and resource management conflict is pivotal to the design of international development projects in Indonesia, especially

those related to sustainable development, natural resource management, and climate change, both at the national level and for those projects implemented in various regions. This awareness will not only increase the likelihood of successful project implementation, but will increase stakeholders' sense of ownership of the project planning process and its outcomes. Conflict is inevitable in the development process; therefore understanding, anticipating, and addressing these potential policy conflicts, both at individual sites and through regulatory and policy reform, should be a common consideration for all development planning efforts.

Although policy review has always been an important part of the project planning process, it is rare that the analysis includes an attempt at understanding historic or current conflicts, or anticipating potential future disputes in areas that will become intervention sites. The strategic value of this conflict-sensitive planning lies not only in guaranteeing a "clean and clear" starting point for the project, especially in more isolated

**"An understanding of the context and background of land use and natural resource management conflicts from a policy perspective, is critically important as a foundation for successful mediation efforts."**



regions, but also as an effort to optimize outcomes for beneficiaries. This approach is readily integrated into the tools that are commonly applied to international development projects, such as the requirement to conduct an analysis of social and environmental impacts. Geospatial analysis of land and natural resource management issues, and an assessment of existing, or pending land use plans (contained in the Regional Spatial Planning (RTRW) document), should be integrated into the project planning cycle.

On the technical side, project planning and design can utilize several helpful assessment tools, such as the Strategic Environmental Assessment (SEA), Knowledge Attitude and Practice Survey (KAP), Cost-Benefit Analysis, and others. The use of these tools can help in the early identification of the potential seeds of conflict, such as disagreement over territorial boundaries and overlapping tenure claims. In addition, an analysis of affected stakeholders' perceptions of the cost of conflict (both material and intangible) can help promote greater awareness of both the need for, and the potential benefits of conflict resolution initiatives.



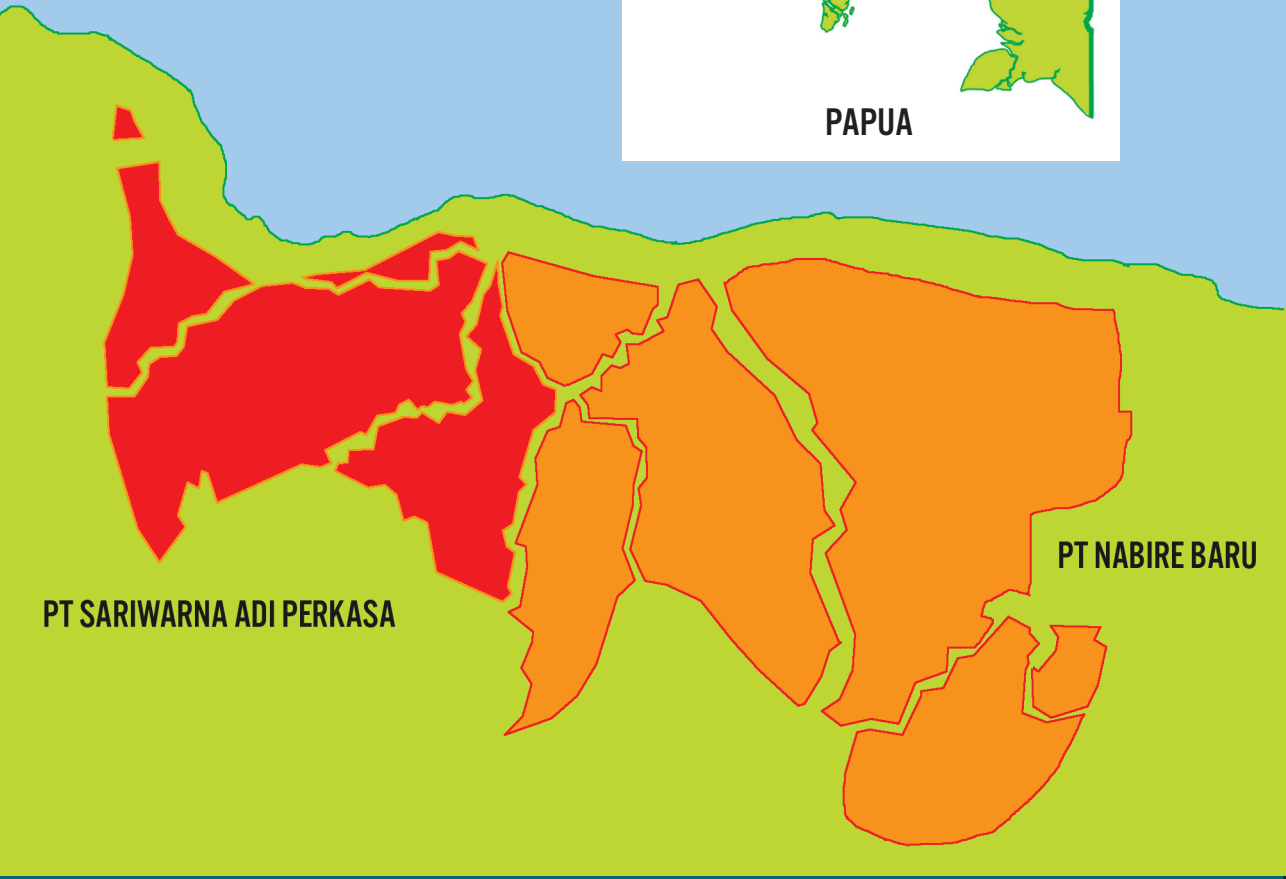
# The Company and the Tribe: Land Use Conflict in Nabire District, Papua

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Figure 1.  
Map of location of concession company, PT Nabire Baru



## Introduction

The ancestral land of the Yerisiam Gua tribe is located in and around Sima, Nabire District, in Papua Province. The tribe is divided into four sub-groups, or clans: the Waoha, Akaba, Koroba, and Sarakwari.

Sima is located along the coast of Cenderawasih Bay. The land is generally forested and has long attracted the interest of commercial logging companies. The forests contain *merbau*, or ironwood, a hardwood species that is highly valued for its timber. From 1990 to the early 2000s, companies holding forest concessions (*Hak Pengusahaan Hutan*, or HPH) and Timber Utilization Permits (*Izin Pemanfaatan Kayu*, or IPK), have conducted logging operations in the area. Local communities have also exploited the forest's resources through a Community Cooperative (Kopermas).

But the arrival of the timber companies introduced new challenges to the people of this previously isolated region. Tensions erupted between local people and laborers brought in from the outside. Several conflicts exposed the weaknesses of local leadership and divisions within the community over the appropriate response to this corporate presence. Disappointment festered over company promises that were never fulfilled, and there were even incidents of violence when company security guards clashed with local people to protect their operations.

But after the timber resources were largely exhausted, the companies' concession rights were terminated, and the timber companies abandoned the area. The government then issued a new concession permit for a palm oil plantation<sup>2</sup>, once again transferring access rights to land considered by the Greater Yerisiam Tribe to be their ancestral territory. The new concession holder was PT Nabire Baru, a subsidiary of Goodhope Asia Holding Ltd., owned by Carlson Cumberbatch PLC in Sri Lanka.

Conflicts then broke out between the community and this newest corporate presence. The company used heavy equipment to clear the land, and this included the tribe's traditional sago groves, which the clans regard as sacred. Subsequent floods were attributed to the extensive land clearing, and several local labor disputes led to physical violence against tribal members, attributed to excessive use of force by law enforcement.

**"But after the timber resources were largely exhausted, the companies' concession rights were terminated, and the timber companies abandoned the area."**

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<sup>2</sup> Papua Governor Decree No. 142, dated December 30, 2008, regarding the granting of a Plantation Business Permit (IUP) to PT.Nabire Baru.

Up until mid-2017, local community leaders attempted to resolve these issues themselves. They filed formal complaints and sought opportunities for dialogue with the company. They reported concerns to the local police and complained to the Nabire District Parliament, requested support from the Nabire Coalition for Victims of Palm Oil Exploitation (KPK-SN), and even challenged the company's Business Use Permit (HGU) in the State Administrative Court (PTUN), with the assistance of the Jayapura Legal Aid Institute. None of these efforts produced meaningful results.

The Court ruled that the communities' lawsuit had expired because it exceeded the 90 day appeal period. A subsequent appeal to the Federal Court in Makassar was also rejected. The District Parliament formed a Special Committee (*Pansus*) that conducted an investigation into the case, but that too, yielded nothing tangible.

Following the failure of these efforts, the tribe sought assistance from the PUSAKA Foundation.<sup>3</sup> On 19 April 2016 the Foundation, on behalf of the Greater Yeresiam Gua tribal communities, filed a grievance with the Roundtable on Sustainable Palm Oil (RSPO), a multi-stakeholder platform supporting sustainability initiatives within the palm oil industry. In their report, the Foundation outlined five points of concern:

- **Conflict over land.** The concession was reportedly issued without prior consultation with the Greater Yeresiam Gua community. The land transfer (on October 15, 2008) was initially designated for *merbau* timber harvest, but was later changed to a permit for oil palm development. The community also cited the lack of clarity over the total area covered in the permit, and complained that compensation for land transfers had yet to be paid.
- **Use of violence by law enforcement.** Several incidents were noted in which police had used excessive force against community members in dealing with local disputes.
- **Deforestation and environmental damage.** The community claimed that the company had deforested high value conservation areas, and that this had been carried out without a formal Environmental Impact Assessment (AMDAL). The community also reported that, due to the extensive damage to the forest, they had lost a significant source of their livelihood, and that the forest degradation had led to severe flooding in Sima.
- **Clearing of ancestral sago groves and sacred forests.** The company was reported to have cleared a sacred forest and two sago groves, specifically in Jarae and Manawari. The community noted that they had filed a complaint with the District Parliament in February, 2016, asking that the sago groves be exempted from the plantation area; the company nevertheless proceeded, with the protection of hired security. The community demanded compensation for these losses.

<sup>3</sup> The PUSAKA Foundation is a non-profit organization that focuses on advocacy research, documenting and promoting indigenous peoples' rights, capacity building, education and empowerment. PUSAKA is an acronym for Center for the Study, Advocacy and Documentation of Indigenous Peoples (see: <https://pusaka.or.id/topik/publikasi/>).

- **Lack of transparency, limited prior consultation with the community.** The complaint letter reported that the company had refused to provide adequate information, or conduct consultations with the community about their license and their proposed operations. As a result, the community never had the opportunity to review and discuss the plans for the plantation, or have input to its operations.

The letter asked RSPO to immediately launch an investigation into these issues, seek means of resolving the conflicts with the Greater Yeresiam Gua Tribal community, and, if these violations of RSPO policies were confirmed, RSPO should revoke its certification of the company and insist that PT Nabire Baru provide appropriate compensation to Greater Yeresiam Gua tribal communities.<sup>4</sup>

Following their protocols for grievance procedures, RSPO sent an investigative team to the concession site, gathering information through interviews with local community leaders, PUSAKA Foundation staff, and with PT Nabire Baru staff. Based on their findings, on September 19, 2016 the RSPO Complaints Panel approved the case for formal mediation. In February 2017, the RSPO Secretariat drafted a work plan and began contacting mediators with the appropriate experience and skills to handle the case. In April 2017, RSPO referred the case to the Conflict Resolution Unit (CRU) in Jakarta.<sup>5</sup>

## Agreement to Mediate

CRU spent the next full year working on the Nabire case (from September 2017 to September 2018). As a first step, CRU visited the site, introduced itself to the parties, and began collecting preliminary information about the main issues of the dispute. During this first visit, CRU also spent time educating the parties about the concept of mediation and the stages of the process that would likely be required if they decided to proceed. CRU organized a series of meetings, both with Yeresiam Gua residents in Sima, and with company staff at the PT Nabire Baru field office in Yaur Sub-District. The CRU team also communicated regularly with the PUSAKA Foundation, given their ongoing interest in the dispute.

CRU also used this introductory stage to secure formal agreement from the parties to participate in mediation. Representatives for each of the parties agreed to the arrangements and protocols outlined in CRU's consent form, which described their respective roles and responsibilities.

**"CRU spent the next full year working on the Nabire case (from September 2017 to September 2018)."**

<sup>4</sup> Summarized from PUSAKA Foundation correspondence with RSPO dated 19 April 2016, from Y. L. Franky, Operational Director of the PUSAKA Foundation to the RSPO Secretariat in Kuala Lumpur, Malaysia

<sup>5</sup> This information is taken from the RSPO Case Tracker - <https://www.rspo.org/>. The monitoring report from the PT Nabire Baru- Greater Yeresiam Gua case can be found at: <https://askrspo.force.com/Complaint/s/case/50090000028Es0JAAS/detail>

## Assessment

CRU then proceeded to recruit a capable assessment team. Since CRU was at that time still in its early stages of development, with limited full time staff, the recruitment of experienced assessors was conducted through a procurement process, by issuing a Request for Proposals, accepting submissions from qualified practitioners, and selecting the three most competitive teams.

In keeping with best practice in mediation, the RSPO-CRU cooperation agreement stipulated that the three final candidates would be reviewed and approved by the disputing parties. Therefore, CRU shared the candidates' submissions, and arranged for representatives of the three teams to travel to Nabire to meet with the parties and present their credentials. Prior to these meetings, CRU prepared guidelines on how to evaluate potential assessors, and provided the parties with simple scoring sheets to help them with their decision.

After the interviews with the candidate teams, there was intense discussion within and between the parties, but both parties did ultimately agree on a common choice.

The selected team quickly mobilized for the assessment. Using the five issues in the PUSAKA complaint document as a framework, they conducted individual and small group meetings with community representatives, held discussions with company staff, and visited some of the key field sites, including the disputed sago groves.

A month later, in November, the assessment team reported its findings and recommendations. Their report generated immediate criticism and disagreement. Some protested because they felt the results did not adhere to the approved study design, while others were disappointed because they felt the report did not characterize the issues as they perceived them; still others were disappointed because they felt their views were not adequately reflected in the report.

To address these objections, and avoid having the parties' attention diverted into questioning the report rather than focusing on efforts to resolve the dispute, the team edited the report, simplifying it and omitting many of the contentious details that could have undermined subsequent negotiations.

**"A month later, in November, the assessment team reported its findings and recommendations. Their report generated immediate criticism and disagreement."**

## Developing the agenda

The final assessment report again focused on the five core issues outlined in the original complaint document. And although both parties had initially agreed that all five issues would be resolved through mediation, during a subsequent community meeting, some denounced the approach, and demanded that some of the issues (i.e., violence by law enforcement, environmental impacts, and lack of transparency)



be addressed through direct negotiations between the parties, without the presence of a mediator. Although the reasons for these concerns were never clarified, the mediation agenda was adapted accordingly.

Nevertheless, during a subsequent CRU visit to Sima, community members organized a discussion in the Tribal Hall to express their disagreement with the previous decision. They now insisted that all issues of the dispute be resolved through mediation, and drafted a formal statement reasserting this position. However, the leaders who had asked for direct negotiations with the company were not present at this meeting.

**"Nevertheless, during a subsequent CRU visit to Sima, community members organized a discussion in the Tribal Hall to express their disagreement with the previous decision."**

## Parallel Negotiations with RSPO

In February 2018, the edited assessment report was submitted to the RSPO Secretariat, as documentation for the Complaint Panel's review, and recommendations on how to proceed. Since RSPO retained authority and oversight for the mediation, CRU and the parties were required to await the RSPO response before proceeding.

In July, while still awaiting the RSPO decision, the CRU Team made another visit to Sima to meet with the parties, as a simple gesture to maintain momentum and trust. During this informal visit, many community members, although still eager to proceed, raised questions about the status of the process.<sup>6</sup> During these discussions, several additional issues were raised with the CRU team, e.g., concerns about the local cooperative (particularly its finances), issues over land allocation within the oil palm plasma scheme, company plans for a palm oil processing mill, and complaints of corruption in the community. CRU listened and documented these concerns, but reminded people that these issues were outside the scope of the mediation agreement, and would therefore not likely be included in the agenda.

## Questionable Success

In August 2018, CRU received information from a community member that PT Nabire Baru and the Greater Yeresiam Gua community had already met directly to negotiate, and they had in fact reached agreements resolving all of the main points of the dispute between them. The negotiations took place in mid July, and the text of the agreement was approved and signed

<sup>6</sup> Note that during this visit, CRU was unable to meet with PT Nabire Baru staff, as schedules did not align.

in Sima on 7 August, 2018, and later witnessed and recorded by a Notary.<sup>7</sup> On 21 August, the community sent a letter to the PUSAKA Foundation, with a copy to the RSPO, requesting that their complaint be withdrawn.

The agreement to resolve this longstanding dispute through direct negotiations between the parties should have been considered good news, and celebrated as a major achievement. For the CRU Team, however, the agreement seemed anti-climactic, and left several unanswered questions about the overall process, particularly CRU's role and function in the mediation. But also, more importantly, about the terms of the agreement.

These concerns became moot when, in January, 2018, RSPO responded to the PUSAKA Foundation, the Greater Yeresiam Gua Tribe, and Goodhope Asia Holdings Ltd. (PT Nabire Baru's parent company), acknowledging that "the Complaints Panel hereby dismisses this complaint against PT Nabire Baru." The letter explained in detail how each issue had been resolved by the parties.

## Debrief and Evaluation

As the agreement had been signed and accepted by the parties, and by RSPO, CRU obviously concluded that the case should be officially closed. CRU could now focus on conducting a final evaluation and an analysis of the lessons learned from the experience, and take its leave from the parties.

The final meeting with company representatives was brief but productive. PT Nabire Baru's general manager explained that the company had been frustrated by the delay in RSPO decision making. He felt they needed to move forward, take the initiative, and negotiate directly with the community. He granted that the decision to

proceed was certainly made easier because of the good interpersonal relations that had been developed through the initial CRU facilitation. But the issue for the company had become the long waiting period between stages, which seemed to unnecessarily prolong the mediation process. The general manager concluded, "To work with business, you have to work at business speed."

Discussions with the community, on the other hand, were somewhat unsettling. Community members expressed disappointment. Many felt that CRU had abandoned the process, which they still considered incomplete. Participants then shared a number of surprising revelations:

**"As the agreement had been signed and accepted by the parties, and by RSPO, CRU obviously concluded that the case should be officially closed."**

<sup>7</sup> Dispute Resolution Agreement for the Greater Yeresiam Gua Tribal Community and PT Nabire Baru, No. PTNB/C/212.6, witnessed and signed by Agustina S.H., Notary in Nabire District on Thursday, 9 August 2018 with Waarmerking Number 50/Gew/2018.

- On August 7, PT Nabire Baru invited the community to a meeting in the Yeresiam Gua Tribal Hall. At this meeting, a prepared agreement was presented to tribal leaders, and hastily signed by the tribal chief, heads of the various clans, the tribal secretary, and several community leaders, along with representatives from PT Nabire Baru. The company then distributed IDR 2,000,000,000 (two billion rupiah) to clan leaders.
- The text of the agreement referred to an accord between company representatives and the Greater Yeresiam Gua tribal community, yet the community reported that they had not been notified of the agreement prior to the meeting. Community members who witnessed the signing ceremony said that the document had been negotiated and approved in separate meetings outside the village, and few community members were even aware that an agreement had been reached. Several felt that the community had been manipulated. One person asserted, “We were cheated with money.”
- The tribal chief himself admitted that he had not been involved in negotiations with the company, and even at the signing ceremony was unaware of the text and content of the agreement. He reported that he had wanted to postpone the signing to review the agreement, but was pressured to sign it by others, to avoid divisions within the community.

**"When one or more parties are unwilling to participate, or, as was the case in this situation, when the parties found a separate path to an agreement, then the mediator is no longer needed. "**

While conflicted over these statements and what had transpired, the CRU Team could only reiterate that mediation was a voluntary process and that the mediator's fundamental responsibility is to serve the parties at their discretion. When one or more parties are unwilling to participate, or, as was the case in this situation, when the parties found a separate path to an agreement, then the mediator is no longer needed. In this case particularly, CRU's role was stipulated under an agreement with RSPO. As soon as RSPO declared the case to be resolved, CRU's mandate was automatically revoked.

## Reflections and Lessons Learned

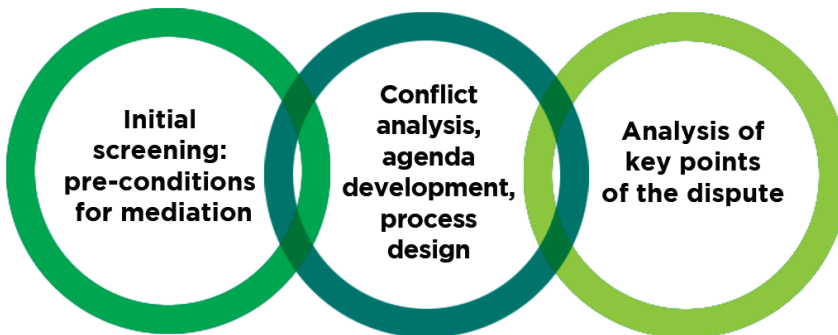
Since this was CRU's very first case, the experience offered numerous lessons and insights, and certainly influenced many later decisions on subsequent case management. Five key lessons still seem to resonate from the Nabire experience:

## 1. The importance of initial assessment

Effective case management is dependent upon a solid understanding of the issues and the inter- and intra-party dynamics. A good assessment reveals the internal architecture of a dispute and prepares the mediator, and the parties, to approach the process with greater objectivity, wisdom, and diplomacy. A preliminary assessment report must not only be accurate and unbiased, but must also be conveyed with a balanced sensitivity to the parties' experience and perspective. An assessment team must gain a thorough understanding of the dynamics of the conflict, using a range of skills, tools, and knowledge that often eludes social science researchers.

An assessment must be predicated on careful design work, with clear objectives, methodologies and approach. Unfortunately, in the Nabire case, the purpose of the assessment was not always clear to the parties, because the assessment team had not adequately articulated their objectives or communicated them effectively. Post-mortem reflection suggested that the assessment would have benefited from a three stage approach (see Figure 1 below) – 1) a preliminary study to determine the credibility of available information, and based on more accurate information, an evaluation of the case's suitability for mediation, 2) an analysis of the conflict itself, in order to develop a framework and agenda for negotiations and an overall process design, and 3) a more focused assessment of the key points of dispute, as a foundation for planning and problem solving. These stages may be continuous and overlapping, but each part of the assessment should be clear, both to the assessment team and to the parties to the dispute.

Figure 2. Integrated stages of a conflict assessment



## 2. Representation

One of the more important considerations in mediation is the designation of representatives who will speak for their constituents' interests at the negotiating table. Individuals chosen to represent the parties must be committed to speaking

on behalf of their constituents, they must fully understand the issues, be able to negotiate with confidence, and they must be prepared to consult regularly with the people they represent. Only then will the parties truly feel bound to the agreement as it is formulated. While formal elected leaders are often asked to represent their constituencies, it is not necessarily the case that these leaders can negotiate effectively on behalf of their parties. In this case, as we have seen, the issues were settled outside of a formal mediation process, and the agreements were achieved with somewhat questionable participation, and without the preferred oversight and accountability to the interests of the wider community.

The company, as an outside entity, took a more pragmatic approach, negotiating directly with individuals in the community who shared their perspective and were eager to reach a settlement. And, indeed, there is no reason for companies like P.T. Nabire Baru to take responsibility for deciding who represents the community, particularly when people emerge who claim to be leaders or are seen to have influence in the community. Claims to representation in opposing parties are not generally challenged by other stakeholder groups, as they may have neither the insight nor the right to determine appropriate representation from their opposing parties.

Another important consideration during the preparatory phase is the readiness of the parties to participate effectively, again, including the selection and preparation of the negotiating team. In this case, the PUSAKA Foundation served as an informal legal aid agency, supporting the tribe in preparing appropriate documentation, and advocating on their behalf. Unfortunately, in this case divisions within the community posed a persistent challenge for them in gaining the broad agreement and cohesiveness that could have better served them in negotiations.

### 3. The Moral Compass

A mediator's perspective and decision making are rooted in the concepts, values, and attitudes that are common features of professional mediation. These include the principles of neutrality, impartiality or non-discriminatory attitudes, voluntary participation of stakeholders, and a commitment to maintaining trust and safeguarding confidentiality.

In addition, mediators should be guided by their own personal sense of responsibility in helping parties achieve best possible outcomes, a concept promoted by Professor Lawrence E. Susskind in his book *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*<sup>8</sup>. This means that even if the disputing parties reach agreement, if the mediator believes that there are better options (fairer, more profitable, and more effective), then he/she has the moral imperative to ask the parties to reassess the agreement and/or suggest other options that better serve the parties'

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<sup>8</sup> Lawrence E. Susskind and Jeffrey Cruikshank, *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*, Basic Books, 1987.

interests. Susskind emphasizes that a “better agreement that benefits all parties” will be a more enduring agreement, one with a higher likelihood of implementation.

In this case, the CRU mediation team never actually participated in the negotiations, so had little influence on facilitating the discussions or crafting the agreements. The mediator did, however, advocate for mediation between the parties as a more effective way to achieve good outcomes for both sides, and certainly had a pivotal role in preparing the parties, and perhaps in encouraging them to seek a settlement. At the same time, the case illustrates the limits of a mediator’s influence, and the corresponding need to respect parties’ autonomy and the principle of voluntary participation. If the parties choose *not* to proceed with mediation, then the mediator must accept this decision and withdraw.

The RSPO, using the power of its authority over its membership, can help lead disputing parties to the negotiating table. Indeed, there are several instances where efforts to resolve dispute have been pursued directly by the parties, either through negotiation or through the justice system, to satisfy RSPO concerns. However, mediation is not always successful, and RSPO certainly does not force parties to mediate. Before proceeding, extensive communication took place between the PUSAKA Foundation, RSPO, the Complaint Panel, CRU, the community, and the company. It certainly appears that one of the reasons companies are willing to participate in the mediation is the perception that RSPO has the ability to affect the company’s image and its markets. So one can indeed ask the question whether the company’s participation in this case was still truly voluntary.

## 4. The Tendency for Business to Want to Move Quickly

For companies, the old adage that “time is money” often applies. Many companies look for practical ways to speed up the process because they are pressed for time.

Delays can result in constraints in achieving their goals. Time is viewed as a limited resource, so efficiency – in overall time frames, and in individual meetings, is often an important consideration. In this case, for example, the company’s plans to build a palm oil mill, if delayed, would have resulted in diminished harvests and lost profits as fresh fruits cannot be kept for more than a few hours and must be processed immediately.

For commercial interests, time management is often seen as a critical performance criteria, especially in ensuring the achievement of company goals, production targets, and profits. However, time isn’t the only consideration. They may consider other factors, such as expenses, contract commitments, reputation, and shareholder or public pressure.

**"For commercial interests, time management is often seen as a critical performance criteria, especially in ensuring the achievement of company goals, production targets, and profits."**

Of course these considerations also apply to CRU as a service institution, seeking to provide high quality and efficient mediation support, and to build a reputation in the field. The duration of a mediation has a direct impact on its overall cost, in terms of demands on staff, as well as in the opportunity costs of handling other cases. CRU must balance carefully the need of some parties to move quickly, and the concerns of other parties to work more slowly and deliberately. Ultimately it is a matter of judgement to find the optimal sequence and pace of the process, one that meets parties' needs, but is adapted to the perceived (and perhaps changing) circumstances along the way. In this case, hindsight suggests that CRU may have bent too far in seeking to accommodate parties' needs, and not encouraging them to work toward a more efficient process.

For the Greater Yerisiam Gua tribal community, time is clearly viewed as more fluid, and the mediation was seen as one aspect of their broader social and economic lives. The scheduling of mediation events had to take into account many other activities and priorities in the community – church meetings, traditional ceremonies, farming and other livelihood activities, and extended family and clan-related events often took precedent over the schedule proposed by the company or the mediation team. In these communities, time is not always regarded as a limited resource, and time management is much more flexible and elastic.

Numerous delays occurred in each stage of the process, and constant adjustments were made to the schedule to accommodate the parties. Nevertheless, it was sometimes difficult to maintain parties' focus and attention. The scheduling of each meeting required significant back and forth communication, and many times sudden, unexpected changes were required.

In practice, these delays can affect the parties' willingness to participate in the process. The company seeks a defined schedule, and meetings that are structured to solve problems, and solve problems quickly. In contrast, local communities are more accustomed to a shifting and less linear sense of time, and discussions where informal conversation, and relationships among participants, are viewed as just as important as the substance being discussed.

The choice of direct negotiations over mediation was viewed as a shortcut to accelerate the decision making process. However, while direct negotiation led to quicker outcomes, the decisions achieved may result in a less robust, and perhaps a more fragile agreement. At the same time, it should be noted that there is no guarantee that mediation would have resulted in a more durable agreement. In any case, the pace and flow of any agreement-seeking process

**"The choice of direct negotiations over mediation was viewed as a shortcut to accelerate the decision making process."**

should, in principle, be based on the needs and the willingness of the participants, not on the demands placed on them by outside entities.

## 5. Social and Cultural Context

It is critically important that the mediator understand the social and cultural context of the area where the dispute has occurred. All of Sima's residents are from the Greater Yerisiam Gua tribe. In Papua, this tribe is located in two regions; the northern area centers around the village of Sima, while the southern area encompasses Lake Yamor, Erega, Etahima, Mairasi, and Etna Bay, in Kaimana Regency.

The tribe is largely communal, with decision-making authority vested in the tribal and clan chiefs. The chiefs respond to events and grievances as they arise; they regulate and maintain the territorial boundaries of the clans, and they oversee the management of sago groves, fruit orchards, sacred sites, and other places of special significance. Also included in their authority is the granting of management rights to outside parties (for example, investors) within the tribal territory, the settlement of disputes over customary lands, as well as the organizing traditional rituals or other traditional matters.

**"All of the above has implications for mediation in terms of approach and design. The assessment is a means for answering a series of questions, including who are the key actors, what are the relationships between them, what are their interests..."**

All of the above has implications for mediation in terms of approach and design. The assessment is a means for answering a series of questions, including who are the key actors, what are the relationships between them, what are their interests and positions in the conflict, and what are their sources of power and influence. But this broader social and cultural context must provide the foundation for how the mediator engages with the community and structures the deliberations during the process.

The case described above was the very first case accepted by the newly established CRU. Naturally, given the limited experience and understanding of these dynamics, and certainly in hindsight, one can see the many mistakes in approach and implementation. Indeed, CRU's first few cases were referred to as "pilot" or "study cases", and the subsequent reflection and analysis discussed in these cases has clearly been invaluable as a foundation for CRU's, and its partners', subsequent learning and development. CRU gained a great deal from these first few cases, from all the imperfect decisions and approaches, and the organization has relied on these insights to adapt and improve its approach to mediation. Other cases and reflections in this book seek to further underscore the importance of this learning and reflection, and the value of sharing these lessons to others who are interested in resolving these complex, seemingly intractable conflicts.



Tabel 1. Chronology of the dispute between the greater Yerisiam Gua Tribe and PT Nabire Baru

19 April 2016	PUSAKA Foundation files formal complaint with RSPO.
26 September 2016	RSPO field visit and meeting with the parties (community, PT. Nabire Baru).
19 Desember 2016	Complaints Panel RSPO formally accepts the case for resolution.
22 Februari 2017	RSPO Secretariat accepts the parties' request to resolve the issues through mediation.
19 April 2017	RSPO determines that a neutral, third party assessment is necessary; CRU is requested to provide these services.
13 Juli 2017	MoU signed between RSPO dan CRU.
18 Jul 2017	Visit to Nabire; meetings with the community, PT. Nabire Baru/Goodhope, PUSAKA Foundation, and Forest Peoples Programme.
Agustus 2017	CRU begins recruitment of the assessment team.
September 2017	Assessment team candidates reviewed and selected by the parties.
Oktober 2017	Initial assessment begins.
November 2017	Preliminary report to parties.
Januari 2018	Editing and completion of final report.
Februari 2018	Report delivered to RSPO Secretariat and translated for discussion within the <i>Complaint Panel</i> .
Februari –Juni 2018	Internal deliberations within RSPO
Juli 2018	Direct negotiations between PT. Nabire Baru and community representatives.
Agustus 2018	Meetings of the parties in Sima; signing of the agreement and recording with a Notary Public.
September 2018	CRU evaluation sessions.
31 Januari 2019	RSPO issues the Complaints Panel's Decision related to PT Nabire Baru. The case was viewed as resolved and was formally dismissed.



# Collaboration on the Edge of Conflict: Land Use Conflict in Lombok, West Nusa Tenggara

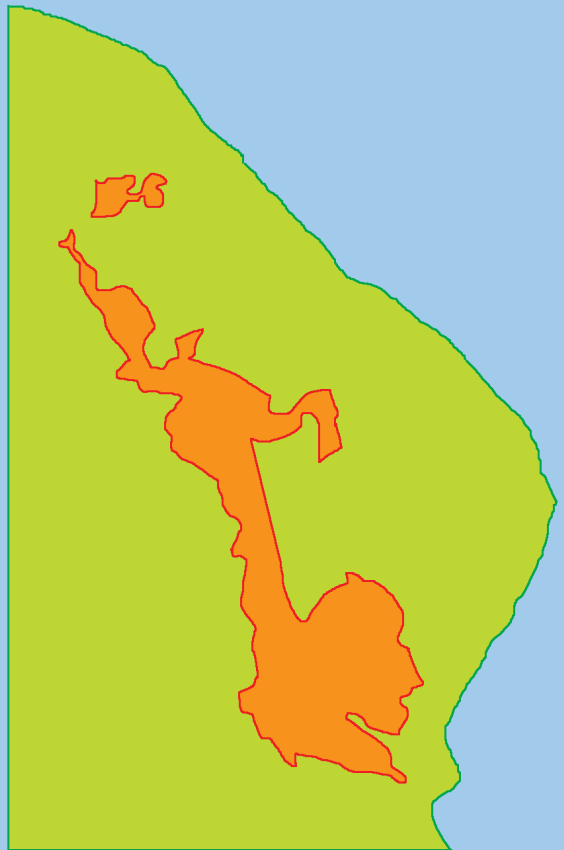
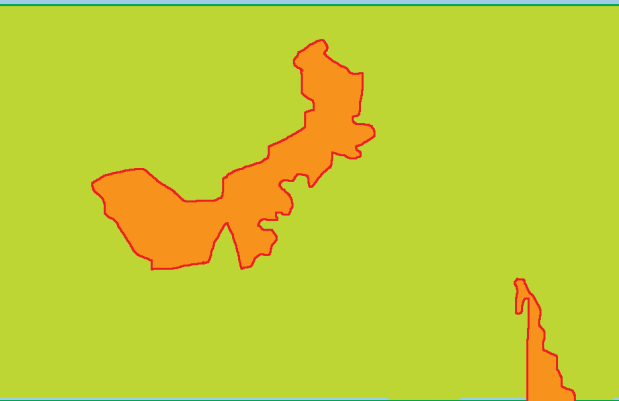
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by Agus Mulyana <sup>1</sup>

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Figure 3.  
Map of location of concession company,  
PT Sadhana Arifnusa



**P**T Sadhana Arifnusa (PT SAN) holds a forest concession in Lombok, West Nusa Tenggara Province, issued by the Ministry of Forestry in 2011.<sup>2</sup> The concession, covering 4,053 ha, is split into seven management blocks, two in North Lombok, three in East Lombok, and two in Central Lombok.<sup>3</sup> The company supplies firewood for tobacco drying in local cigarette factories.

However, PT SAN's concession area has long been occupied by local residents, most notably in North Lombok District, in the villages of Sambik Elen, Bayan, Loloan, and Baturakit. According to PT SAN reports, more than 1,200 ha (95%) of land in this area is under use for farming, housing, and livestock pens. In East Lombok, in the village of Sambelia, farmers occupy more than 600 ha. In total, more than 1,000 families are dependent upon land within the PT SAN concession area, planting coffee, cacao, vanilla, a variety of fruit trees, and annual crops such as corn and rice. In addition to providing important land for farming, the PT SAN concession is considered the only place where farmers can collect fodder to feed their livestock. According to the Head of Pademare Hamlet, in Sambik Elen, every day more than a ton of grass is cut from land in his village.

The disputed land represents significant economic value to local farmers and their families. In Loloan and Bayan, for example, residents report their income is between IDR 3,000,000 and IDR 5,000,000 per month, with earnings increasing significantly during the vanilla and cacao harvest seasons. These sources of livelihood enable families to build their homes and pay for their children's education.

The area also has significant social and spiritual value. In communities that still uphold traditional beliefs and practices, these forest sites constitute important locations for implementing the *jinah* ritual, a ceremony celebrating the harvest season. Within the forest are sites that also affirm the history and existence of their ancestors, and are still celebrated today.

The entire concession area is located in the upper watershed, so it also serves important environmental functions. A number of springs provide critical sources of clean water for communities, and given the importance of irrigated agriculture (especially for paddy rice cultivation), farmers are acutely aware of the value of soil and water conservation. One obvious manifestation of this is the widespread use of soil conservation practices, such as bench terracing, to mitigate the impacts of erosion.

**"In communities that still uphold traditional beliefs and practices, these forest sites constitute important locations for implementing the *jinah* ritual, a ceremony celebrating the harvest season."**

2 The license is officially termed an Industrial Plantation Product Utilization Permit (IUPHHK HTI). The PT SAN concession was issued by Ministerial Decree No.256/Menhut-II/2011, 12 Mei 2011

3 Summary Annual Work Plan, 2017-2018, for IUPHHK HTI PT Sadhana Arifnusa

The springs, and in some places, waterfalls, plus the growing interest in adventure hiking on the slopes of Mount Rinjani National Park (MRNP), represent a potential for eco-tourism development.

Conflict over land-use has intensified since PT SAN obtained its permit in 2011. Various initiatives have been attempted to prevent these conflicts, including overtures to community and religious leaders, participatory planning efforts, the formation of various working groups, community participation in reforestation activities, and proposed new partnership arrangements. Despite these efforts, conflict has continued to escalate.

At times when there seemed to be hope for a solution, proposals tended to focus on dealing with symptoms rather than addressing the real root of the problem. Many felt that these initiatives undermined the relationship between the parties, creating new problems, false hopes, and unfulfilled promises.

## A Tangled Web of Tenure

During the Dutch colonial administration, the area was classified as *Gouvernement Grand* (government land, or “GG” in local usage), but was mostly left to local community management and oversight. Following Indonesian independence (1945), and with the establishment of the national Ministry of Forestry, the land was mapped under the Consensus Forest Use planning process (TGHK) and considered part of the National Forest Estate, but until recently, the remoteness of the area meant that communities still exercised considerable control and enjoyed regular access to the land and its resources. As the Ministry of Forestry assumed a more active management of its forests, struggles over boundaries, access, and rights emerged. Although the area had been utilized by these communities for generations, the national government rejected requests for land ownership titles, since the area was

formally within the national forest system. For this reason, many local residents believed that their conflict was with the government, not with PT SAN.

The community’s view of the change in the status of their GG land was articulated by one of the Bayan community leaders, “This was our GG land during the Dutch times. I don’t know what happened, but during the Soeharto era it was suddenly turned into a forest managed by companies.” Most villagers felt the same. “We only know that this is government land that we’ve been allowed to cultivate from generation to generation, long before the company arrived. So we have a right to work the land.” In Loloan and Bayan, traditional leadership and customary laws were still widely respected; access to land was regulated by the *Loka* (the village head)

**"The community's view of the change in the status of their GG land was articulated by one of the Bayan community leaders,..."**

under agreements with the government that dated back to the 1930s. Some residents still have documents that they refer to as “*Pipil Garuda*”, a tax payment receipt bearing the image of the Garuda bird issued by the Government of Indonesia.

Local memory lasts long, and these historical perspectives, and the tensions that have escalated over recent changes in tenure status, have been passed on to the current generation, latent and smoldering in some places, now and again suddenly erupting into open conflict.

In 1991, demonstrations led to the arrest and imprisonment of a Bayan farmer, and 90 people from Loloan were arrested and taken to the local police station for questioning. At the time, cultivating the land was seen as a criminal offense. Two years later, farmers returned to work the abandoned land, and they once again faced repressive actions from law enforcement. This time the authorities burned a small farmhouse located at one of the farming sites, as a warning to others.

During the New Order era, portions of the land were incorporated into the newly created Mount Rinjani National Park, while other segments were gazetted as Protected Forest (HL), Production Forest (HP), and Forest Park Conservation Area (Tahura). Production Forests were administered by the Ministry of Forestry and often leased to concession operators through Timber Utilization Permits (IPK).

In the 1990s the forests of Sidutan, Kokok Putik, and Monggal were licensed to a timber company. The company logged the area aggressively, and although the permit required that the company reforests the site, the company disappeared, leaving it to open access. People from nearby villages, as well as outsiders from other parts of Lombok, moved in to harvest the remaining trees. Many felt that this additional phase of forest clearing was a form of protest or retaliation against government policies. As one local farmer cynically remarked, “If the company is allowed to cut wood, why can’t we, the ones who have managed the forest all these years?”

After the remaining trees were cleared, the land was mostly abandoned. During the dry season, the cover of shrubs and grasses dried and led to frequent fires. Over time, farmers returned to again cultivate the land. Ten years later, in 2011, the site was included in a new concession permit issued to PT SAN.

Initially, people ignored the rumors that the farms they had been cultivating would be included within the company’s concession area. This attitude quickly changed when PT SAN began planting its first rows of trees. Local

**"After the remaining trees were cleared, the land was mostly abandoned. During the dry season, the cover of shrubs and grasses dried and led to frequent fires. "**

residents openly sabotaged the sites, and there were several incidents of physical clashes with law enforcement. Since then, the relationship between the communities and the company has further deteriorated, marked by mutual suspicion and distrust.

## Managing grievances

Between 2011 and 2017, the government's response to the conflict alternated between neglect, persuasion, threats, and periodic acts of enforcement. However, there were no forced evictions, and local farmers continued working their farms. Then, in 2017, PT SAN requested assistance from the newly created Directorate for Conflict Management, Land Tenure, and Customary Forests (PKTHA), within the Ministry of Environment and Forestry (KLHK).<sup>4</sup> PKTHA forwarded the case to the Conflict Resolution Unit (CRU), a third-party organization with growing experience in mediating these kinds of land-use disputes.

After an initial feasibility study, CRU determined that the case seemed conducive for mediation, given the commitment of the parties and the interest of key individuals and agencies in supporting the process. At that time, CRU was still in the early stages of its development, so the case also displayed some unique features that suggested it would be an important learning opportunity.

Then, in late July to early August 2018, a devastating series of earthquakes (average 6.4 on the Richter scale) rocked the island of Lombok. North Lombok suffered extensive damage; the District government evacuated its offices and moved to temporary buildings. Disaster response and regional recovery efforts became the immediate priorities. The situation forced CRU and the parties to postpone their plans for mediation.

As recovery efforts addressed the most urgent needs, and life returned to a semblance of normality, CRU was contacted by the East and West Rinjani Forest Management Units (FMU) and encouraged to re-initiate mediation with the parties. CRU still believed that the communities needed time for psychological recovery from the impact of the earthquake, and worried that the situation was not yet conducive for negotiations. However, in subsequent discussions, community representatives themselves underscored the importance of moving quickly to resolve the dispute. The earthquake had also undermined the company's operations, as they depended upon regular access to the concession area. So, these developments became a point of common ground for the parties, providing further impetus for moving forward.

**"However, in subsequent discussions, community representatives themselves underscored the importance of moving quickly to resolve the dispute."**

<sup>4</sup> In 2014, newly elected President Joko Widodo merged the Ministry of Forestry with the Ministry of Environment to form the Ministry of Environment and Forestry (Kementerian Lingkungan Hidup dan Kehutanan, or KLHK).



In November 2018, the West Rinjani FMU organized an independent meeting between PT SAN and community representatives from Bayan District, North Lombok. As it had been the case with previous facilitation efforts, the two days of dialogue failed to produce an agreement. Fundamental differences remained, most notably the government's unwillingness to participate as an active party to the conflict, even though they openly acknowledged that their policies had been the original cause of the dispute. Despite these admissions, the government was unable to gain trust as a neutral third party, and the negotiations again collapsed.

**"Several participants recognized the opportunity that mediation represented as a path toward change. "**

While this attempt failed to produce an agreement, the effort was important in showcasing the critical role of an independent third party in convening and facilitating negotiations. Several participants recognized the opportunity that mediation represented as a path toward change. Following these unsuccessful meetings, the Provincial Forest Service encouraged the parties to work with CRU in their search for a solution.

## Establishing a Joint Mediation Team

CRU opted for a decentralized approach to the mediation, given the unique post-disaster circumstances, the heightened need for efficiency, as well as CRU's own organizational goals in building out its network of experienced mediators. CRU, therefore, partnered with a local NGO, the Mitra Samya Institute for Participation, Economics, and Democracy Studies (Mitra Samiya), given their considerable experience working with communities throughout North, West, and East Lombok. In total, the mediation team consisted of 17 people, including senior CRU mediators and interns, plus Mitra Samya staff. CRU dedicated two months of advance training and mentoring to ensure that all team members gained a sufficient understanding of mediation, and to encourage a stronger sense of teamwork and collaboration. The mediation team was then divided into groups and assigned to five villages, Sambik Elen, Baturakit, Bayan, Loloan, and Sambelia.

## Assessment and Preparation of the Parties

The pre-mediation phase included initial visits to field sites, a full assessment of the issues, preparation of a report and presentation, and, using the assessment report's findings and recommendations, discussions with the parties to prepare them for mediation. The assessment is important in developing a deeper understanding of

the conflict and the dynamics among the parties, gaining a sense of the feasibility of mediation, and building initial rapport with the parties. Through this process, and with the concurrence of the parties, the team was able to draft a proposed process and schedule for the mediation.

The mediation team conducted informal interviews with key figures in each village, organized focus group discussions with smaller groups, and held larger plenary meetings to validate findings and vet preliminary recommendations. Separate conversations were held with PT SAN leadership and staff. Through this series of dialogues, team members were able to introduce themselves, share their experience, and demonstrate their commitment to a fair and neutral process.

The information obtained during these discussions was summarized in a draft report that provided a starting point for the negotiations, as well as a reference throughout the process. Advance work also included the formation of negotiating teams to represent each of the villages. Finally, the CRU-Mitra Samya team asked participants to sign a formal agreement affirming their commitment to the mediation, including a Memorandum of Understanding outlining general protocols and ground rules for the process.

## Support and Feasibility

Communities initially rejected mediation as an option. From their perspective, there were only two viable options – resistance, or hoping that the situation would resolve itself. One community leader, who had been imprisoned for resistance in 1991, concluded, “It’s better for us to die than to have to go to prison again and hand over our land to the company.”

However, throughout the assessment and after extended discussions in the communities, four villages indicated their willingness to move forward. In Loloan, on the other hand, people were doubtful that negotiating with the company could produce a favorable settlement. The Village Head of Loloan and several community leaders maintained that their issues were with the government (in this case, the West Rinjani FMU). In addition, despite repeated requests, the community had never seen the company’s forest utilization permit, and they doubted the legitimacy of the company’s operations. Although suspicious of the process, the Loloan Village Head asked if village representatives could attend the proceedings as observers. After consultations with other participants, the CRU-Mitra Samya team agreed to this arrangement.

Eventually, of the five villages implicated in the dispute, only three participated in negotiations – Sambik Elen, Baturakit,

**" In Loloan, on the other hand, people were doubtful that negotiating with the company could produce a favorable settlement."**

and Bayan. Leaders in Sambelia had insisted that a pre-condition for their involvement was a commitment from the company to exclude their land from the concession area, a demand that was deemed unacceptable.

## Embracing Collaboration

Prior to the first meetings, the CRU-Mitra Samya team drafted a process design and facilitation strategy, prepared a draft document to frame the negotiations, established basic ground rules, and decided on the division of roles for each member of the mediation team. The team also met with relevant government agencies, e.g., North Lombok District, to gain support for the process and implementation of any agreements achieved.

A preliminary meeting, on March 8, 2019, focused on the memorandum of understanding and the basic protocols for the mediation. These initial discussions and agreements set the tone for civility and trust, creating a momentum for the parties to work together effectively.

Four negotiating teams (Sambik Elen, Baturakit, Bayan, and PT SAN) participated in the negotiations, along with observers from the West Rinjani FMU, the North Lombok, and Bayan district governments, Loloan and Akar-Akar village officials, and representatives from the Provincial Forest Service. Following a formal address by the District Head of North Lombok, the mediation team presented an overview of the proposed mediation process, along with individual session plans. Each of the negotiating teams met separately to discuss the memorandum of understanding and the basic ground rules for the mediation, then met together to approve the documents. But even at this stage, despite all the preparatory activities, some misunderstandings threatened to undermine the mediation.<sup>5</sup>

**"Each of the negotiating teams met separately to discuss the memorandum of understanding and the basic ground rules for the mediation, then met together to approve the documents."**

## The Bayan team withdraws

The first round of negotiations started the next day (March 9, 2019), with the same participants in attendance. This was the first real opportunity for the parties to communicate, clarify, and openly discuss their priority issues and offer proposed solutions. The village teams then held separate, individual conversations with the PT SAN team.

<sup>5</sup> As one example, the Bayan team spokesman misinterpreted the memorandum of understanding as a form of settlement agreement, and he objected to what his team decided were pre-conditions that denied community rights. After extended discussion and clarification, the Bayan team did finally understand the nature of these provisions, and they approved both the memorandum of understanding and the ground rules.

The discussions between PT SAN and Sambik Elen, and between PT SAN and Baturakit went well, with constructive discussion and information exchange between the teams. They outlined some of the pre-conditions for change, including basic changes in attitude, and these conversations appeared to strengthen their determination to acknowledge each other's rights and coexist as good neighbors. The dialogue centered on two key points: 1) parties' need for safeguards and legal certainty over their land-use rights, and 2) their common interest in the application of sustainable land-management practices.

Meanwhile, the meeting between PT SAN and the Bayan team did not go well. The Bayan team spokesman made an impassioned presentation, but without printed handouts, despite the agreed-upon ground rule that presentations would include written documentation, submitted to the other team in advance for their review. The mediator gently reprimanded the Bayan group for this violation, but this rebuke was ignored.

The Bayan spokesperson rejected PT SAN's right to the forest concession, as they had not sought permission and approval from the community and had ignored the community's rights to the land. The spokesperson, a candidate in the pending North

Lombok legislative election, had also filed a lawsuit to force PT SAN to return the area to community control, and he was reported to have distributed the concession permit widely within Bayan to mobilize opposition. The mediation team's reprimand for this second offense was also ignored. The atmosphere was deteriorating, leading to a situation that got increasingly difficult to control. The mediation team ended the session prematurely and arranged for the two negotiating teams to hold separate, private conversations.

In caucus discussions, CRU mediators challenged the Bayan team for these violations of the basic rules. Two Bayan community leaders then apologized for the indiscretions of their colleague and stated that they did not condone it as they were surprised by his behavior. The culprit maintained an unapologetic attitude, insisting that negotiations had to continue in front of the entire community of Bayan.

PT SAN rejected this demand. The mediation team agreed that the process should adhere to the previously agreed protocols, in particular to conjuncture that the negotiating teams had been selected to represent their constituencies, and could therefore negotiate on their behalf. The mediation team suggested that the Bayan group return to their village and again consult with their community. Several days later, the Bayan team sent word that they were withdrawing from the mediation.

**" PT SAN rejected this demand. The mediation team agreed that the process should adhere to the previously agreed protocols, in particular to conjuncture that the negotiating teams had been selected to represent their constituencies, and could therefore negotiate on their behalf. "**

## Agreement achieved

The second round of negotiations focused on discussions between PT SAN and the Baturakit and Sambik Elen teams. The parties seemed to have already gained a better understanding of the opportunities for collaboration, and the overall tone of the negotiations had become much more constructive and substantive.

Through these discussions, the parties identified three potential options: 1) the release from the forest area, 2) government approval of land titles for farms within the concession area, and 3) development of a social forestry partnership. Negotiations quickly focused on the third option. The parties agreed that social forestry was most likely to accommodate the needs of all the parties, especially their common interests in obtaining greater security and recognition over land-use, in safeguarding continued access to their farmlands and the forest. For the company, this would mean that they could continue to operate its concession. The parties also discussed in greater detail their ideas on sustainable land-management practices.

After extended discussions, punctuated with occasional moments of high tension, the parties ultimately agreed to focus on the development of a social forestry program. Two key principles emerged: a) both parties must mutually acknowledge their rights to the land and its resources, and b) they would seek strong legal protection for the social forestry partnership. The village teams agreed to assess the potential number of farmers willing to participate in the social forestry program within their communities. Thereby the total area of land required for the partnership would be determined.

## Signing the Agreement

The third series of negotiations centered on fleshing out the key elements of the agreement. The two teams maintained their commitment to choosing the collaborative path, with the hope that this new approach, and the agreement, would result in a better outcome for their communities.

The parties agreed on several key points: 1) ending the conflict and fostering cooperative approaches in dealing with their common problems; 2) mutual acknowledgement of rights and interests; 3) joint support for a new social forestry initiative; 4) development of a joint work plan; and 5) ongoing monitoring of the agreement. The social forestry portion of the agreement outlined a 35-year management plan

**"The two teams maintained their commitment to choosing the collaborative path, with the hope that this new approach, and the agreement, would result in a better outcome for their communities."**

in which local farmers could develop their farms in accordance with agroforestry systems.

The agreement was outlined in two formal documents – a peace agreement declaring an end to conflicts over land and resources, and a more detailed cooperation agreement describing the terms of the collaboration. The two documents were signed by the parties, the mediation team, and observers in a closing ceremony witnessed by the North Lombok District head (Bupati), the Director of PKTHA, the Directorate General of Social Forestry and Environmental Partnerships (PSKL), NTB Forest and Plantation Service, Director of the West Rinjani FMU, Director of CRU IBCSD, Director of Mitra Samya, and several other attendees. When it was finally approved, the agreement was hailed as a “collaboration on the edge of conflict”, because of the ongoing disputes in other villages, and continued pressure for the Baturakit and Sambik Elen teams to withdraw from the mediation.

## Ensuring Accountability

Monitoring and evaluation were included as key elements in the agreement, as the parties understood that the entire process was prone to become futile if they were not held accountable to their commitments. Periodic monitoring would be carried out by the parties themselves, but they would remain open to involving outside entities, specifically the CRU-Mitra Samya team, in monitoring the implementation progress of the agreement.

Four months after the agreement was signed, the CRU-Mitra Samya team visited locations in Sambik Elen and Baturakit. The team met with local farmers and leaders, and with representatives from PT SAN. It was concluded that most of the aspects

of the agreement had been successfully implemented, including inventory and mapping of the cultivated land, development of joint management plans, and support for eco-tourism. Prior to the visit, the parties had prepared a detailed Cooperative Agreement (NKK), and this document was reviewed by CRU and the Provincial Forest Service before it was submitted to the Minister of Environment and Forestry for formal approval.

Coordination and communication mechanisms were being developed through regular meetings and field visits. Discussions with the community indicated that communication with PT SAN was now more fluid and more open, with a growing level of confidence on both sides. PT SAN staff now regularly visited village field sites. Mitra Samya was also working intensively with the communities to strengthen local institutions and increase local capacity for entrepreneurship.

**" Coordination and communication mechanisms were being developed through regular meetings and field visits. "**

The success in Sambik Elen and Baturakit did not go unnoticed in neighboring villages. After the agreement was signed, several villages requested CRU assistance in resolving their disputes. Sambik Elen farmers have themselves been asked to help address land-use conflicts in villages outside the PT SAN management area. Meanwhile, the North Lombok district government has provided additional support to the community in the form of water supply projects, eco-tourism development measures, and road construction.

Nevertheless, challenges remain, including the ongoing need for law enforcement and issues related to restricting access for outsiders who continue to seek land within the forest, the settlement of longstanding issues related to resolving land titles located in concession areas, and linking cooperative agreements with government development policies.

## Lessons Learned

The experience in Lombok was a pivotal early challenge for CRU and led to much reflection and analysis within the CRU-Mitra Samya mediation team and within the CRU leadership. Some of the key lessons that emerged from this analysis are highlighted below.

### 1. Leadership – a critical factor in the success

Good relations and the development of mutual trust between the mediation team and stakeholders were certainly important in the achievement of a successful outcome in this case. However, key individuals were critical in determining this success. Strong leadership pioneered a change in perspective within the negotiation teams and within their wider constituencies, resulting in a change from confrontation to a more collaborative approach. As the stakeholders came to believe that mediation was their best option for improvement of their situation, leaders, both within the communities and in the company, demonstrated the courage to recognize and respect each other's rights and needs and to speak out and influence others. Because of this bold leadership, the parties were able to achieve and implement an agreement well beyond what the mediator team had originally imagined.

**"Strong leadership pioneered a change in perspective within the negotiation teams and within their wider constituencies, resulting in a change from confrontation to a more collaborative approach. "**

## 2. Collaborative learning

The mediation proceeded despite the limitations of available data and information, the relative inexperience of the mediator team and the parties, the perceived power imbalances among the parties, their limited resources, and time constraints. To overcome these challenges and limitations, mediators promoted a collaborative learning strategy, in which each stage of the mediation included strong support for listening to and learning from one another and regular efforts at educating and building capacity within the teams.<sup>6</sup>

The collaborative learning strategy assumes that land and natural resource conflicts are fraught with complexity, change, and uncertainty. Managing such difficult dynamics of disputes requires teamwork with a clear allocation of tasks and roles. This begins with the mediation team, who must themselves model an open-mindedness and the ability to listen, learn, and adapt to new information and opportunities. This present example helped to instill these qualities in the parties throughout the mediation process.

## 3. Leadership bias

Despite every effort by the mediation team in each of the communities, Sambelia withdrew from the mediation before negotiations began, Loloan refused to participate, and Bayan eventually decided to withdraw during the mediation process. The team tended to rely on recognized, established leaders, led by the assumption that these leaders would represent the views of their communities and that they would be broadly supported by their constituencies. This turned out not to be the case. Several leaders framed the issues based on personal agendas, and with limited consultation with their communities; they spoke out of turn, and inappropriate behavior to advance their personal perspectives and goals. Some of these leaders selected their teams to reinforce their personal views, rejected other opinions, and discounted the best interests of their communities. In hindsight, these issues could have been avoided through more careful assessment work, greater oversight in the selection of negotiating team members, and in facilitating more regular consultation with the affected communities.

**" The team tended to rely on recognized, established leaders, led by the assumption that these leaders would represent the views of their communities... "**

<sup>6</sup> For more information on the collaborative learning model, see: Daniels, S.E. and G. B. Walker, 2001. *Working Through Environmental Conflict: The Collaborative Learning Approach*, Westport, Conn., Praeger.



#### 4. Rules that are not enforced will not be respected

To foster transparency and good faith, the mediation team invited representatives from two villages (Loloan and Akar-Akar) that had decided not to participate in the mediation to attend the proceedings as observers. The team had hoped that this exposure would have a positive effect – that the observers would see the potential of mediation, and that this might lead to subsequent efforts in their communities. But these observers proved to be a disruption to the process. Outside of the mediation proceedings, these communities continuously tried to influence, even to undermine the process, by pressuring active participants to withdraw from the mediation. The observers turned out to have a strong influence on at least one of the negotiating teams, which refused to submit the necessary documentation for their position, even though this was a previously agreed rule. This violation, which was initially ignored by the mediation team, led to other violations of the ground rules, including personal attacks against other parties. At this point, the mediation team called for a break and invited the negotiating team to a closed caucus session. But the damage had already been done: some participants felt that the ground rules were not sufficiently enforced, which undermined the integrity of the process and resulted in other participants questioning their own ability to participate effectively. The lesson learned here is that if ground rules are not agreed upon and enforced, and basic principles are not upheld consistently, then parties may take advantage of the situation, believing that the rules are negotiable.

#### 5. Strategies for overcoming power imbalances

Addressing power imbalances – the advantages some parties have in terms of their financial resources, access to data and information, moral or social support, or by virtue of their formal position – is an important consideration in mediation design. In this case, the communities perceived themselves to be the weaker, more vulnerable party, with limited resources, access, and influence, and they viewed the company as having greater financial resources, better access to formal power structures, and a generally

**"In this case, the communities perceived themselves to be the weaker, more vulnerable party, with limited resources, access, and influence, and they viewed the company as having greater financial resources, better access to formal power structures, and a generally stronger negotiating position. "**

stronger negotiating position. The time constraints of the mediation presented a serious challenge in overcoming this perception. Proper preparation through the assessment, an emphasis on collaborative learning and capacity building, an explicit effort to address these issues in the process design, as well as attention to a balanced and neutral facilitation, are all important elements in overcoming power imbalances, whether perceived or real.

## 6. Affirmative action

In the pre-mediation stage, CRU underscored the importance of designing a process that showed respect for the role of women and other underrepresented segments of the communities. To include those views in the negotiations, as they may be affected by their outcome, and as they may contribute to better solutions. In Sambik Elen, Baturakit, and Bayan, the mediation team worked with local women's groups, and with community leaders, to gain support for including women throughout the process. Women were thereby invited to participate in every meeting and deliberation. More importantly, women were encouraged to participate actively and given the opportunity to express their views, views which many later acknowledged were more representative of the real interests of the community. Therefore, the benefits that can be gained in applying a gender affirmative approach are not only able to accommodate the aspirations and interests of women's groups but also to find and represent the true interests of a community as a whole.





# Mediation for Transformation

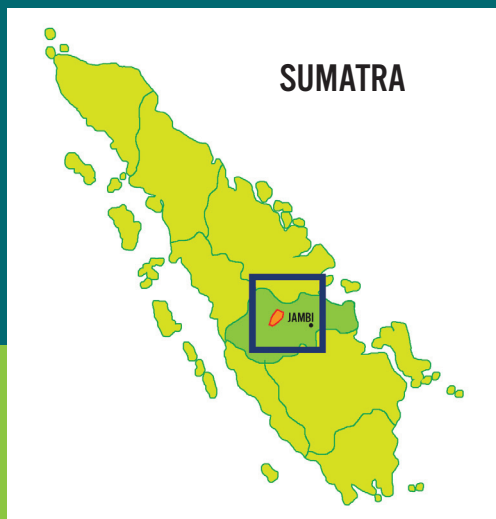
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by Ambrosius Ruwindrijarto <sup>1</sup>

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Figure 4.  
Map of location of SAD Muara Kilis  
and PT WKS Distrik VIII.



●  
PT. WKS DISTRIK VIII

**F**ROM the earliest times, land has been a source for conflict throughout the Indonesian archipelago, particularly after the Dutch colonial government decreed that land and forests were the domain of the State.<sup>2</sup> The government of Indonesia has continued this policy.

In Jambi, southern Sumatra, indigenous communities live and derive their livelihoods from lands that have been designated as part of the Forest Estate or zoned as Alternative Use Areas (APL). These lands have been granted as concessions to forestry, plantation, or mining companies.

The Suku Anak Dalam Tribe in Wanarejo, Muara Kilis Village, Tebo District, reflects the impact of these concession grantings. The SAD Muara Kilis Tumenggung Apung group (SAD Muara Kilis), as this group is called, after the name of its leader, believes that their ancestors originally came from Karambia, in West Sumatra. Their predecessors at one time decided to settle and make their living from the forest, periodically moving from one place to another. Over generations, this semi-nomadic lifestyle became part of their tradition and identity, with their home-range extending to the borders of West Sumatra and Riau. Their main sources of income have come from rattan, *jernang* resin, honey, turtles, and balsam sap.

The advent of the plantation companies has restricted their living space and reduced the forest areas that have been their principal source of livelihood. In 2004, the Government of Indonesia relocated the SAD Muara Kilis community, along with other indigenous community groups, in Sungai Inuman as part of the national transmigration program. However, their new settlement was soon abandoned due to limited sources of livelihood. The group moved to the Jelapang River, and then, in 2012-2013, back to their original forest area in Muara Kilis Village. The settlement, consisting of just 50 households, covers an area of 130.4 hectares (ha), including seven ancestral cemeteries.

This area is now classified as Production Forest (HP), and in 2009 an Industrial Forest Plantation (HTI) permit was granted to PT Wirakarya Sakti (PT WKS). Since then, disputes between SAD Muara Kilis and PT WKS over access to this land have escalated into open conflict.

## Request to CRU

PT WKS contacted the Conflict Resolution Unit (CRU) to seek assistance in resolving this dispute. At that time, CRU was a newly established program under the Indonesia Business Council for

**"Over generations, this semi-nomadic lifestyle became part of their tradition and identity, with their home-range extending to the borders of West Sumatra and Riau."**

<sup>2</sup> In the Dutch East Indies agrarian law (*agrarische wet*) of 1870, *Domein Verklaring* (Law of Eminent Domain) stipulates that all land whose ownership cannot be proven is the property of the state (*eigendom*).

Sustainable Development (IBCSO). PT WKS was represented on CRU's Technical Advisory Committee, and since CRU was looking for potential pilot projects that would offer good early experience in managing these kinds of land-use disputes, it was thought that this case presented a unique opportunity.

In its request for assistance, PT WKS characterized the case as a conflict over "encroachment of SAD residents into the company's concession area." The company noted that the Tebo District government had already facilitated some degree of problem-solving with the parties, and as a result, 130 ha had been recognized informally as community managed, although without formal documentation. PT WKS was concerned that SAD Muara Kilis would expand its cultivated area by extending further into its concession area, damaging tree crops, clearing land, and building additional settlements.

PT WKS also reported regular interruptions to the company's operations, for example, through community-led demonstrations and blockades to company traffic, threats or violence against employees, and the imposition of fines on the company or its employees for incidents that SAD Muara Kilis regarded as violations of their customary law.

In May 2018, with CRU support, PT WKS and SAD Muara Kilis signed a Memorandum of Understanding that outlined their commitment to seek resolution for these issues. Both parties also signed the CRU Consent to Mediation Form, designating CRU as convener of the mediation process. However, from the beginning both parties (PT WKS and SAD Muara Kilis) explicitly asked that CRU not use the terms "conflict" or "dispute", but simply "problems" or "challenges". Both parties indicated that they were uncomfortable with the idea of conflict and wanted to focus on what they viewed as more practical "problem-solving efforts."

## Assessment and Pre-Negotiation Phase

CRU deployed an assessment team to review all relevant documents, conduct interviews with key stakeholders and resource persons, organized focus group discussions, and visited field sites to get an impression of the local conditions. Through this process, the team developed an understanding of the main issues, the inter- and intra-stakeholder dynamics, and the broader social, cultural, economic, and environmental context. The assessment helped to clarify the parties' positions and interests and supported the drafting of the preliminary process design. The approach and results of the assessment are briefly discussed in the following sections.

**"In May 2018, with CRU support, PT WKS and SAD Muara Kilis signed a Memorandum of Understanding that outlined their commitment to seek resolution for these issues. "**



## Problems and Challenges

Throughout the assessment, the CRU team listened carefully to the various issues raised by both parties, to gain a deeper understanding of their scope and complexity. PT WKS, for example, disclosed the challenges they faced, not only with SAD Muara Kilis but with dozens of other indigenous and immigrant communities. Some of these disputes appeared even more pointed and urgent. For example, one of their concession sites had been occupied by thousands of migrants from various parts of Sumatra.<sup>3</sup>

## Wirakarya Sakti Corporation

The Wirakarya Sakti Corporation (PT WKS), a subsidiary of PT Sinar Mas, is a forest products company that since 2004 has operated in five districts in Jambi Province. PT WKS' total concession area is 293,000 ha, which is largely planted with acacia, and it has considerable operational infrastructure, including an extensive base camp.

The concession area is divided into eight units. The dispute with SAD Muara Kilis is located in District VIII (in Tebo District), and comprises an area of approximately 20,000 ha. The PT WKS concession area was previously managed under a permit held by other corporations (PT Lokarahayu, PT Sadarina, and PT Inhutani V).

PT WKS has its own Conflict Management division, with staff in District VIII covering the Muara Kilis community. In addition, PT WKS has a Community Development unit that works also with communities adjacent to the concession area.

In addition to these community groups, PT WKS is also involved in disputes with other forest product companies, due to overlapping permit claims, as well as ambiguity in the delineation of the concession boundaries. Conflicts also arose due to the construction of government facilities within the concession boundaries, including public health clinics, administrative offices, and housing units. By some estimates, at least 40% of the total concession area is occupied, thus rendering it uneconomic for cultivation.

<sup>3</sup> See, among others, *Hundreds of Batanghari Residents Occupy PT WKS Land* (<https://metrojambi.com/read/2018/04/28/31639/ratusan-warga-batanghari-duduki-lahan-pt-wks>); *PT WKS Security Post Burned, Two Security Guards Injured* (<http://www.jambiexpress.co.id/read/2018/06/22/24642/pos-pengamanan-pt-wks-dibakar%20A0dua-security-terluka/>); *District VIII PT WKS Reportedly Attacked by Community Group* (<https://www.portaltebo.id/2018/11/distrik-viii-pt-wks-dikabarkan-diserang.html>).

Also SAD Muara Kilis' problems are varied and challenging, from the most pressing – earning a basic livelihood – to the more general and existential challenges to the group as people with a distinctive culture, value system, and lifestyle. SAD Muara Kilis is not legally recognized as an indigenous people, even though the name attached to them, the Anak Dalam (or “Inner Tribe”), contains specific references to ancestral origins, customary lands, and their traditional way of life. These issues assume even greater importance for SAD Muara Kilis because they have recently decided, with Tumenggung Apung's leadership, to settle permanently in Muara Kilis and cultivate their land. This transition, from a semi-nomadic life in the forest to permanent agriculture, involves significant challenges, in particular, with regards to assurance of rights over their farms and settlements, including their ancestral gravesites, places of mourning<sup>4</sup>, hunting grounds, and places where they collect *jernang* resin and honey.

In 1987 the Government of Indonesia declared all forests to be state-controlled forest areas and delineated the Forest Estate through a national Consensus Forest Use planning process (TGHK). The designation of these forest boundaries was, however, largely determined unilaterally by the Ministry of Forestry, without the consultation or consent of community groups that live within and adjacent to these forest areas, including the community of SAD Muara Kilis. A small portion of the SAD Muara Kilis territory was gazetted as Bukit Tigapuluh National Park, but most of the

area was designated as Production Forest and permitted for commercial logging. After extensive clearing operations, the concession was then transferred to companies for Industrial Forest Plantations (HTI), including the one obtained by PT WKS. In addition, a considerable part of the SAD Muara Kilis territory was granted to oil palm plantations under alternative use permits (APL).

The remaining land encompasses only about 130 ha, but in 2018, the area was further selected as a social forestry project site for the Sepenat Alam Lestari Cooperative. Therefore, SAD Muara Kilis was not only in conflict with PT WKS, but with several additional parties, including the national government (now the Ministry of Environment and Forestry), other concession holders, and the Cooperative. And beyond these issues over land, SAD Muara Kilis, as a community, was struggling to deal with basic livelihood issues, access to potable water, education and health services, and most importantly, the challenges of organizing themselves administratively.

Although individuals still hold the titles of Tumenggung (Chief) and Customary Leader in SAD Muara Kilis, in truth

**"In 1987 the Government of Indonesia declared all forests to be state-controlled forest areas and delineated the Forest Estate through a national Consensus Forest Use planning process (TGHK)."**

4 The term *melangun* describes a tradition of abandoning places of mourning for the Anak Dalam, Rimba, and Kubu tribes, in Jambi and Riau. When a family member dies, the surviving relatives will move to another place. Neighbors whose homes are close to the deceased may also leave their homes, as they believe the place could cause misfortune (<https://id.m.wikipedia.org/wiki/Melangun>).

the community's structure and institutions are disappearing, along with their loss of access to the forest and their living space. Much of this is due to larger socio-cultural, political-economic, and religious influences from the outside, but the overall result is deteriorating social and structural capacity. Longstanding traditions are no longer sufficient to sustain the community, while new social structures have been insufficient, despite the designation of government-mandated leadership (e.g., elected officials at the hamlet and village level) and the emergence of religious institutions (mosques and Islamic organizations).

## Discovering Common Interests

The issues between PT WKS and SAD Muara Kilis turned out to be much more complicated than initially reported. The assessment phase is designed to gain broader and deeper insight into this context, and CRU used the assessment to identify core issues and determination of an appropriate framing, and scale, for the problem-solving process. Narrowing the focus of the process is critical for early design work, and it was an important consideration in terms of CRU's resources and capacity. But the most important reason for limiting the scope of the effort is to ensure that the parties' expectations are realistic and that there are a clear sequence and structure for the effort.

Limiting the scope of the mediation was also important because, for CRU, this effort was viewed as a demonstration, or pilot project, with a specific budget, time frame, and expectations. Comprehensive policy reform, for example, policies related to land tenure, forest management, or the recognition of indigenous rights, were therefore considered beyond CRU's scope and capacity.<sup>5</sup>

Through the assessment process, the parties were able to identify common concerns over land rights. For PT WKS, this meant establishing legal clarity over the concession's boundaries, well-defined delineation of these boundaries, and joint recognition and respect for the boundaries by all parties. In short, PT WKS sought *operational security*.

SAD Muara Kilis' key objective was gaining formal acknowledgment for the land that they had settled and managed, including their territorial boundaries and rights, and the understanding that these rights would be respected by all parties.

These common goals – recognition and respect for land rights – proved to be a solid foundation for the mediation.

**"Limiting the scope of the mediation was also important because, for CRU, this effort was viewed as a demonstration, or pilot project, with a specific budget, time frame, and expectations."**

<sup>5</sup> For more detailed discussion of these issues, see the discussion in Chapter 2 of the national policy context.

# Role of government

It became obvious during the assessment that the primary issue between the company and the community centered on the scope of government policy and authority. So, why shouldn't the government itself be considered a party to the mediation? In this case, the Forest Service was at the negotiating table but declined to be considered a party to the dispute. Instead, Forest Service officials asked to serve as host and convener to the negotiations.

In conflict resolution theory, all stakeholders must be actively engaged to achieve a suitable and sustainable outcome. Government agencies, both the Forest Service and other branches of government, have obvious interests to be addressed, and they are a key part of any potential solution. In this case, the government positioned itself as the regulator and law enforcement agency, not as a negotiating party.

Even so, as host to the discussions, government representatives listened, considered the information, and frequently responded to the questions, suggestions, and demands from SAD Muara Kilis and PT WKS. Throughout the mediation, the government cautiously changed its position on several important policies. In other words, although not officially acknowledged as one of the disputing parties, the government did participate actively in the mediation and strongly influenced the outcome.

## Bridging Different Worlds

One of the major challenges of this case centered on the drastically different experiences and perspectives of the parties – the concept of property rights, the management and ownership of land and natural resources, customs, and views about the quality of life, even their language and ability to express themselves. Nevertheless, their interests and challenges were ultimately quite similar – the need for recognition and clarity over land rights. Despite the intention by the SAD Muara Kilis to become a more modern society, by settling, farming, embracing a new religion, and becoming Indonesian citizens, with all of the inherent consequences, their transformation of had only just begun.

Initially, it seemed impossible to facilitate balanced negotiations between the parties, given the mentioned differences. In circumstances like this, it is common practice to invest time in capacity-building efforts, particularly for the disadvantaged party, to better prepare them for the negotiations ahead. However, the term capacity-

building itself can be biased and carries various interpretations.<sup>6</sup> Aside from the ideological questions, on a practical level, there was simply not enough time or resources to ensure that SAD Muara Kilis could develop similar linguistic, conceptual, organizational, and negotiating skills.<sup>7</sup>

To bridge these differences, the CRU assessment team listened to the hopes and concerns, the frustrations and joys, the interests, demands, and proposed solutions of each of the parties, and these views were shared discreetly with the opposite parties, encouraging each to understand the other, to explore possibilities and to test solutions. In the end, the negotiations merely formalized the agreements that had been negotiated throughout the assessment. Thus, the mediation team acted as intermediary and interpreter, bringing together the two worlds and their worldviews.

## Balancing the Information Base

The CRU assessment team found that SAD Muara Kilis did not have the same access as other parties to important information, for example, documentation related to land tenure status.

The 130 ha of land occupied and cultivated by SAD Muara Kilis had been removed from the PT WKS concession area in January 2018. The area was included within the Social Forestry Area Indication Map (PIAPS) and based on this land-use classification, a cooperative, Sepenat Alam Lestari, had obtained a social forestry permit. This decision was either an oversight or the result of simple neglect. In addition, it was apparent that SAD Muara Kilis had little understanding about government regulations on the recognition and protection of indigenous peoples, agrarian reform, social forestry, corporate social responsibility, and the government's obligation to provide health care, education, infrastructure, and other public services. People in positions of authority had taken advantage of SAD Muara Kilis's limited understanding of these issues.

Mediation practice is predicated on issues of social justice and the spirit of free, prior, informed consent (FPIC). Therefore, the CRU mediation team spent considerable time conversing with the SAD Muara Kilis leadership about these issues, providing important information for them, including information about PIAPS and the concession permitting process.

**"People in positions of authority had taken advantage of SAD Muara Kilis's limited understanding of these issues."**

<sup>6</sup> Balancing power dynamics is an important element of mediation theory and practice, but there is ongoing debate within the field about the mediator's ability to mitigate power through compassion, empathy, and kindness. See, for example: <http://www.ub.edu/duoda/diferencia/html/en/imprimible5.html>.

<sup>7</sup> For SAD Muara Kilis, a practical option is to use a "jenang" as an advisor and representative in mediation. A *jenang* is a person from outside the community who is appointed by SAD leadership as an intermediary in relations with the outside world. Due to disappointment over recent incidents, SAD Muara Kilis decided not to utilize a *jenang* in the negotiations.

## Planning, preparation, implementation, and monitoring

In evaluating the feasibility of mediation, CRU looks for the overall clarity of issues under dispute, whether the parties have realistic expectations of outcomes and their level of commitment to resolve these issues through mediation. A decision in favor of mediation is usually based on the parties' previous experience, in particular when previous efforts did not succeed. Mediation presents a viable option when all these issues have been analyzed, and it appears likely that facilitated negotiations with an independent mediator gives the parties a high likelihood of reaching and implementing an agreement.

CRU presented their assessment findings in a report that was shared and discussed independently with each of the parties. Discussion of the report is not only required for validation of the information and analysis, but also for establishment of a common perception of the problem, to explore options for resolution, and generally preparation of the parties to build agreement through mediation.

During discussions, PT WKS and SAD Muara Kilis recognized the need to include other stakeholders as observers and witnesses – the NGO Pelita Kita, representatives of the Tebo District Government the Jambi Provincial Forest Service. The Muara Kilis village government had originally planned to serve as a member of the SAD Muara Kilis negotiating team but later decided that they would participate only as an observer. CRU and the parties agreed that the East Tebo Forest Management Unit would serve as convener for the negotiations.

### PT WKS's Strategy

PT WKS was strongly motivated to resolve the issues with SAD Muara Kilis. The previous settlement attempts had failed to offer an acceptable solution, and the company and its employees were involved in numerous other similar land conflicts. PT WKS' District VIII office was also concerned that the SAD Muara Kilis group might be evicted from their area of control given the Cooperative's proposed social forestry

program, and this might result in the group encroaching into other areas within the PT WKS concession. PT WKS expressed support for SAD Muara Kilis's plan to develop into a permanent agricultural settlement. For PT WKS, mediation appeared to be a promising way to build a more constructive relationships, and as a viable role-model for addressing conflicts with other community groups within its operational area.

As preconditions to the mediation, PT WKS asked that SAD Muara Kilis cease any land clearing, farming, or home construction within the concession area and that they agree to participate in improved land management and economic

**"CRU presented their assessment findings in a report that was shared and discussed independently with each of the parties."**

development programs. The company also insisted that SAD Muara Kilis refrain from any further demonstrations, blockades, or disruption of company operations.

But PT WKS didn't just issue a list of demands. They also offered assistance – for social forestry projects, agriculture and fisheries programs, and health and education services. And they offered to establish a permanent, regular communication forum with the community.

## SAD Muara Kilis's Strategy

SAD Muara Kilis, facing a plethora of serious challenges, hoped that at least some of their issues could be resolved through this mediation. They reasoned that if an agreement with PT WKS could be achieved, they could then work together as neighbors and that this would free up resource to resolve issues with other parties, such as the cooperative, the local government, and other community groups.

SAD Muara Kilis focused on two priorities – gaining certainty over land rights, and through that security, the opportunity to pursue their agreed-upon path to economic development. During the preliminary negotiations, SAD Muara Kilis asked the company to issue a formal statement that their land would not be included within the PT WKS concession area; they also asked that the company support them in their application for a social forestry permit. Finally, SAD Muara Kilis requested the company to help them seek additional land for the future and to support the group's agricultural and fishery projects.

As a sign of good will in the opening of the mediation, SAD Muara Kilis also agreed to cease any interference in company operations, refrain from cultivating land within the PT WKS concession area, and to work with the company to monitor forest fires and encroachment.

## Reaching Agreement

Formal negotiations took place in Muara Tebo in early August 2018. A six-person CRU team mediated the discussions. CRU and the East Tebo Forest Management Unit served as organizers and hosts, provided the venue, arranged transportation and accommodations for the participants, handled information needs, correspondence, and other technical and logistical needs.

Over a day and a half of negotiations, the two parties succeeded in crafting an agreement covering a wide range of issues: the mutual recognition of

**"People in positions of authority had taken advantage of SAD Muara Kilis's limited understanding of these issues. "**

land rights, cessation of any obstruction or interference, cooperation on SAD Muara Kilis development programs, support for social forestry, and the formation a regular forum for communication, coordination, and consultation. The parties also agreed to develop a more detailed plan for implementing the agreement, with assistance from the CRU mediation team in monitoring compliance.

In mid-August, the parties drafted an Agreement Implementation Plan, detailing a schedule of activities and listing the responsible parties and individuals. The Implementation Plan served as a reference to hold the parties accountable for follow-up activities, and it also provided indicators and milestones for monitoring implementation of the agreement. The monitoring and reporting protocols outlined communication, site visits, meetings, and discussions for the first year of implementation.

## Transformation

As a result of the agreement, both SAD Muara Kilis and PT WKS also recognized the need for internal change. SAD Muara Kilis began by re-registering its membership, formalizing various management and leadership systems, and consolidating its plans for transitioning to a permanent agricultural community. PT WKS's transformation started with changes to its internal management structures, including budget allocation and personnel policies, company approaches to working with community groups, a review of its social and environmental responsibilities, and other improvements.

The agreement also affirmed the parties' commitment to their responsibilities as good neighbors. The obvious manifestation of this commitment was in the establishment of a Forum for Cooperation, with a regular schedule of meetings and the stated intention of consulting on every issue, plan, or activity that might have an impact on their relationship. The Forum has resulted in the formation of joint security patrols, freedom of access for SAD Muara Kilis vehicles on roads inside the PT WKS concession area, local residents' engagement in fire prevention measures, and PT WKS support for health and education programmes.

The 130 hectares of land controlled and managed by SAD Muara Kilis had been mapped in 2015. However, the community claimed an additional five hectares, and this area was subsequently demarcated by the parties. PT WKS also printed and distributed its concession area boundaries, based on a more recent decree from the Minister of Environment and Forestry.

The collaboration succeeded in identifying an additional area of approximately 115 hectares that could be managed by SAD Muara Kilis for agriculture, enterprise development, public facilities, cemeteries, and other uses. This land is

**"The agreement also affirmed the parties' commitment to their responsibilities as good neighbors. "**



adjacent to SAD Muara Kilis, is outside the PT WKS concession, but is within the designated Social Forestry area. PT WKS helped identify the site and cleared the land for cultivation by the SAD Muara Kilis community. The site was then jointly mapped by PT WKS, SAD Muara Kilis, and the East Tebo Forest Management Unit.

PT WKS worked with SAD Muara Kilis to complete a community development survey, which outlined plans for agricultural development, fish farming, water supply, and sanitation effort, teacher training, and a community health program.

Through a series of post-negotiation meetings and discussions involving representatives from PT WKS, the East Tebo Forest Management Unit, and the CRU team, SAD Muara Kilis decided to join the Sepenat Alam Lestari Cooperative in their application for a social forestry permit. The agreement included several provisions to safeguard their sources of livelihood, including the allocation of additional land.

## Lessons Learned

The SAD Muara Kilis/PT WKS case shows the power of mediation to transform relationships between community groups and the private sector. CRU refers to this process as Mediation for Transformation<sup>8</sup>, a twist on the concept or theory of Transformative Mediation.<sup>9</sup> The focus of mediation between PT WKS and SAD Muara Kilis was not necessarily on *solutions* to the dispute, but rather in bringing the parties together to seek *transformation* in their relationship. Through this new alliance, the parties can work together, support one another, and collaboratively address their problems.

Certainly, the greater transformation occurs within the SAD Muara Kilis group, from being indigenous hunter-gatherers to become sedentary villagers who live, cultivate crops, raise livestock, and includes their path to citizenship status, whereby they may later become merchants, civil servants, or teachers. For SAD Muara Kilis, change is happening quickly, and they are discovering new ways to manage this change. At the age of 60, Tumenggung Apung, the SAD Muara Kilis leader, has only lived a settled existence during the last 10 years. The places where his group formerly explored the vast forest reserves in Sumatra have

**"Through this new alliance, the parties can work together, support one another, and collaboratively address their problems."**

<sup>8</sup> This term is used to distinguish it from established concepts, such as Transformative Mediation (see for example [https://en.m.wikipedia.org/wiki/Transformative\\_mediation](https://en.m.wikipedia.org/wiki/Transformative_mediation)) or Conflict Transformation (see for example [https://en.m.wikipedia.org/wiki/Conflict\\_transformation](https://en.m.wikipedia.org/wiki/Conflict_transformation)).

<sup>9</sup> See Bush, R. A. B., & Folger, J. P. (1994). *The promise of mediation: Responding to conflict through empowerment and recognition*. San Francisco, CA: Jossey-Bass. The CRU itself, as far as the author knows, does not or has not discussed this concept or theory as a model, nor does CRU explicitly use this approach in case management.

now become part of a national park, production and protection forests, and oil palm plantations, so this lifestyle change was inevitable.

Facing these changes, the agreements with PT WKS represent a significant initial capital – the opportunity to learn new farming methods (planting oil palm, chilies, vegetables, and other food crops), aquaculture, and modern poultry management, and stewardship of their water resources. SAD Muara Kilis members are also learning to read and write (Indonesian, Arabic), and are learning basic science and math skills.

For PT WKS, change is also of some urgency, considering the number of conflicts they face, something that is all too common to concession holders in Indonesia. As noted above, and in other chapters in this book, agrarian conflicts often stem from the many inconsistent laws, regulations, and policies related to land tenure, and to a rapidly evolving economic and political system that affects life at every level of society.

Nevertheless, the resolution of this dispute was somewhat unique in that the initiative to resolve the problem through mediation came from the company, not the community or an advocacy organization. There is a new awareness within PT WKS, and with some Sinar Mas corporate staff, of the need for this change in approach. However, PT WKS is a small piece of a very large corporation; it is one of the hundreds of Sinar Mas' subsidiaries, representing only 260,000 ha of the millions of hectares of land under Sinar Mas' control.

This success has created some momentum for PT WKS to work on addressing other conflicts; it has certainly increased their level of confidence in mediation as a

promising option for resolving these kinds of disputes, and it has encouraged the company to investigate new approaches to community empowerment programs throughout their concession area. The case is also a good learning model for NGOs in assisting communities in these kinds of disputes, given their general reliance on advocacy and direct-action approaches. In situations where appropriate pre-conditions are found, mediation should be seen as a viable option to more confrontational approaches.

Following the completion of this case, PT WKS asked CRU to mediate other disputes within its concession area. For CRU as well, this has therefore been an important step in gaining experience, establishing its reputation, demonstrating the effectiveness of mediation, and building a portfolio. The case allowed CRU to position itself as an effective intermediary and convener, bringing two parties together, structuring the process, and facilitating the negotiations toward change.

**"The case allowed CRU to position itself as an effective intermediary and convener, bringing two parties together, structuring the process, and facilitating the negotiations toward change."**

Based on a collective evaluation, synthesizing input from many sources, including the parties and observers to the negotiations, these are among the key lessons learned from the PT WKS – SAD Muara Kilis case:

**Working at an appropriate scale:** Through the assessment process and based on an agreement by the parties, the mediator must seek the appropriate framing of issues, and determine the scope of issues to be addressed through mediation. Narrowing the issues, and determining a manageable scale for the process is a key factor for success. In this case, it became clear that resolving a few core problems provided a basis for increased confidence by the parties' to solve other, broader problems that were not included in the initial negotiations.

**The importance of access to information:** Equal access to information is a critical precondition that allows all parties to participate on an equal footing, with the confidence that they have sufficient understanding of the problems they are facing to craft a mutually acceptable agreement. Mediators must have good judgement in determining what information should be provided to the parties, and how this information should be utilized in the negotiations.

**Preparation is everything:** In mediation, the preliminary assessment is not only an opportunity to gather information about the dispute. If done correctly, it is an opportunity to build trust, gain initial agreement on information and facts, and facilitate informal (preparatory) negotiations to explore potential solutions. During the assessment, the mediator has space and freedom to conduct shuttle diplomacy, encourage the parties to develop creative solutions, and begin building communication channels and improved relationships, all of which also leads to enhanced trust in the mediator's neutrality and ability to facilitate a fair and balanced process.

**The importance of neutrality:** One particular challenge for mediators is in maintaining neutrality, especially when there are large differences between parties in terms of perspectives, culture, values, language, economic status, and perceived power. Like everyone else, mediators have natural biases because of their own experiences, perspectives, and motives. To be effective, however, a mediator must be perceived to be fair - if not neutral - and to be a trusted facilitator of a process where all parties are equally valued and respected. Confidence in the mediator's neutrality helps to create an atmosphere of trust that positively affects the negotiations and the search for common ground solutions.

**"The SAD Muara Kilis/PT WKS case shows the power of mediation to transform relationships between community groups and the private sector. CRU refers to this process as Mediation for Transformation"**

## Epilogue

As this case was completed, in mid-September 2019, monitoring of the agreement between PT WKS and SAD Muara Kilis reported that all of the key decision points had been implemented, most notably the approved status of SAD Muara Kilis' 130 ha settlement area, along with the acquisition of an additional 115 ha, improved communication between the parties, and PT WKS support for various health and education programs. The outstanding exception was the community empowerment program, as PT WKS officials reported that the budget for this program had not yet been approved by headquarters in Jakarta.

Only time will tell whether PT WKS and its affiliated corporate units have transformed into companies with sufficient social and environmental awareness to prevent and more effectively manage land-use and social conflicts. Meanwhile, SAD Muara Kilis continues to face its challenges in adaption to contemporary society, within their now secured - but limited - living space, where they are bordered on all sides by concessions, commercial agriculture, and settlement expansion. The mediation agreement between PT WKS and SAD Muara Kilis is a positive, though insufficient, step on this long path of transformation, as both parties navigate changing political and policy dynamics, social change, and environmental pressures.





# Between a Rock and a Hard Place: Justice and Pragmatism in North Konawe, Southeast Sulawesi

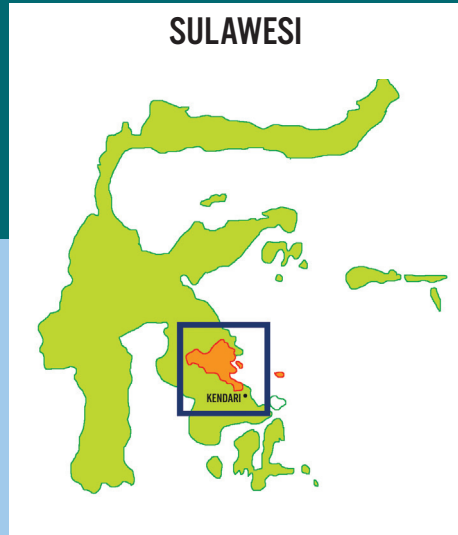
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by Arief Wicaksono <sup>1</sup>

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Figure 5. Location of North Konawe district





## Introduction

On November 14, 2019, parties negotiating over a land-use conflict at the Claro Hotel in North Konawe District, Southeast Sulawesi, sat stunned and bewildered. They had just learned that PT Damai Jaya Lestari, a palm oil company embroiled in this extended dispute with local landowners, had never secured a formal business license (HGU), rendering their entire operation illegal.

Up to this point, the negotiations had more or less followed a similar pattern to other mediation efforts: the mediator conducted an assessment, convened the parties, helped them frame the issues and understand each other's expectations and demands, and proceeded through facilitated negotiations, followed, if an agreement could be reached, by a formal settlement and implementation. But this case was different. All of the affected stakeholders were struggling to chart a path through a very unique complement of issues, affecting the lives of more than 1,000 families in 22 villages in this region of Southeast Sulawesi.

The fact that the company had been operating without a business license was revealed as the Conflict Resolution Unit (CRU) assessment team reported on its mapping and analysis of 6,000 hectares of disputed land, covering three sub-districts, i.e., Wiwirano, Langgikima, and Landawe. The communities had demanded changes to their partnership agreement with the plantation company, PT Damai Jaya Lestari (PT DJL), because they felt they were being cheated out of their land and saddled with unanticipated debt for the construction of a palm oil processing mill (PKS). The partnership, which had been all but forced upon the landowners by the district government, committed the 22 villages to all aspects of financing for the plantation, including initial investment costs, operational expenses, workers' salaries, and construction of the mill. All costs were packaged in the form of debt to the company, requiring a 40% commitment by landowners.<sup>2</sup>

**"All of the affected stakeholders were struggling to chart a path through a very unique complement of issues, affecting the lives of more than 1,000 families in 22 villages in this region of Southeast Sulawesi."**

How did this all come about?

<sup>2</sup> This community-borne debt, manifested in the partnership agreement, outlined a 60:40 profit sharing arrangement. In reality, landowners did not receive 40% yield because a portion of the overall value (30%) was claimed by the company as replacement for estate investment funds of approximately IDR 24 to 28 million per hectare (ha). In the end the community only realized about 10% of the profit, an estimated income of approximately IDR 200,000 - 300,000 per month.

## History of Land Conflicts in North Konawe District

North Konawe was recently divided from Konawe District. With a population of 62,403 people, the area encompasses a series of islands, an extended coastal plain, and reaches from the lowlands into the mountains. The District's total area is 5,100 km<sup>2</sup>, with 54.4% devoted to dryland agriculture, 0.74% for irrigated rice, and the remaining 43.9% for non-agricultural uses such as housing, roads, and related infrastructure.<sup>3</sup>

PT DJL began operations in the area even before the new district was established. They secured a permit for 16,000 ha from the District government, 600 ha of residential land, 2,500 ha of transmigration lands, 8,125 ha of Production Forest (HP), and 7,875 ha Conversion Production Forest (HPK). The permit conformed to Konawe District's spatial planning guidance (RTRW).<sup>4</sup>

In early 2006, with their permit in hand, PT DJL approached local elected officials at the sub-district and village levels. Their overture received a positive reception from local authorities, who formed two teams, one of government officials, and a second of community leaders. The teams were tasked with completing an inventory of current landowner certification and facilitating the approval of titles (SKT) for land that had not previously been registered. The teams found that many landowners were unfamiliar with procedures for securing ownership titles. As those teams completed their work, PT DJL began clearing the land, but without prior consultation of local communities.

This triggered strong reactions from local farmers, who questioned the basis of the company's claims since portions of the land were considered privately owned.

Sub-district and village government officials intervened to mitigate the strong reaction. They explained that PT DJL would focus on improving community welfare by leasing the land and by creating new livelihood opportunities through the plantation's operations. The company also offered a 60:40 profit-sharing arrangement, implemented either through a plasma scheme<sup>5</sup> or another form of partnership.

Given the economic pressures, especially the limited access to financing and markets, the company's promises persuaded the farmers to drop their initial suspicions. Villagers were willing to overlook the fact that their titles had been issued by sub-district and village government officials.

Although North Konawe District was formally established in 2007, the first official election for District Head (Bupati) was only held in 2011. The new Bupati's major development

**"Given the economic pressures, especially the limited access to financing and markets, the company's promises persuaded the farmers to drop their initial suspicions."**

3 Central Bureau of Statistics, Konawe Utara District, *Kabupaten Konawe dalam Angka 2019*.

4 Nusantara Agrarian Reform Association, *North Konawe Case Study Report*, 2019, submitted to CRU-IBCSA.

5 Under a plasma scheme, farmers sell fresh fruit bunches to the company, usually at a predetermined price, and in return, the company provides assistance to the farmers and also improves overall plantation management (see: <https://thepalmscribe.id/palm-oil-premium-for-plasma-farmers/#:~:text=Under%20the%20scheme%2C%20plasma%20farmers,and%20operation%20of%20their%20plantations.>

priority was to accelerate economic growth, with a particular emphasis on palm oil production. The District government issued a Plantation Business Permit (IUP) to PT DJL, even though at the time the District had not yet an approved spatial plan (RTRW).

Most of the land cleared by PT DJL belonged to transmigrant farmers, who had been granted two hectares of land per family when they were moved from other parts of Indonesia. Portions of the land included designated development and conservation areas, as well as nationally gazetted forest conservation lands. Based on interviews with community members, the assessment team estimated that transmigration land in Wiwirano District covered 1,422 ha, in Langgikima District 2,105 ha, and in Landawe District 780 ha. The remainder included 1,278 ha of private land which belonged to local farmers. Of the total partnership area of 5,586 ha, most of this was considered productive farmland. The area supports 5,344 transmigrant families who had become palm oil producers, spread across 22 villages in the three sub-districts (see Table 2)

Table 2. Smallholder Palm Oil Farmers in Konawe Utara District<sup>6</sup>

Wiwirano Sub-District		Langgikima Sub-District		Landawe Sub-District	
Village	# families	Village	# families	Village	# families
Lamonae	129	Kel. Langgikima	316	Matabenua	107
Padalere	193	Tobimeita	430	Kuratao	133
Lamparinga	313	Sarimukti	517	Kolosua	171
Tetewatu	69	Mekar Jaya	525	Tambekua	73
Culambatu	420	Alenggo	528	Polopolora	160
Wawoheo	377	Pariama	231	Matabaho	240
Landawe	137	Polora Indah	61	Hialu Utama	109
				Laumoso	108
<b>Total</b>	<b>1.638</b>	<b>Total</b>	<b>2.608</b>	<b>Total</b>	<b>1.101</b>

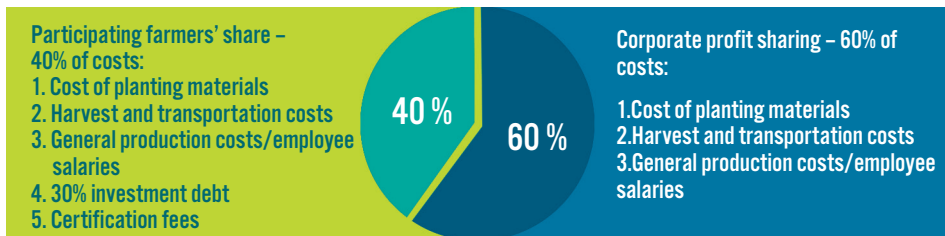
The PT DJL plantation site, 99% of which is owned by local landowners, began production in 2011. The company worked with the community to draft a Memorandum of Understanding, subsequently called the Palm Oil Plantation Partnership Cooperation Agreement (PKKPKS). However, the agreement would be more accurately be described as a cost-sharing arrangement rather than a profit-sharing partnership. The company explained that they did not rely on bank loans, but instead used their own capital (IDR 500 billion), while the land was owned by local residents. Therefore, PT DJL argued, construction of the palm oil processing mill (PKS) was more accurately a joint-venture between the company and the communities.

<sup>6</sup> Based on interviews conducted by the assessment team (April 2019).

The communities had little choice but to cooperate with PT DJL, given that their land had already been planted with oil palm. They became increasingly aware of their limited ability to sell fresh fruit bunches (FFB), which must be processed within eight hours of harvest. With no other options, they were forced to partner with PT DJL, the only company in the area with a palm oil mill.

The company's offer to the communities is summarized below in Figure 6.

Figure 6. Cooperation Agreement between PT DJL and smallholders



It only became obvious later that, after obtaining a site permit from the previous District government, PT DJL had also applied to the National Land Agency (BPN) for an HGU license. However, their application there couldn't be issued as the status of the land was not clean-and-clear. As noted above, the site proposed by PT DJL is located within designated national forest lands, in Production Forests (HP), Conversion Production Forests (HPK), and Protection Forests (HL). As far back as 2012, the Ministry of Forestry (now the Ministry of Environment and Forestry/KLHK) had terminated PT DJL's license, because their proposed site was located within designated forest zones. As it turned out, the transmigration area allocated for PT DJL's plantation was squarely within national forest land. The plantations overlapped with 2,223 ha of Conversion Production Forest (HPK), 3,609 ha of Limited Production Forest (HPT), and 173 ha of so-called Alternative Use Areas (APL).

In addition to concerns over their HGU license, the company had, since 2012, been facing angry reactions from smallholder farmers, dissatisfied with the profit-sharing payments (IDR 60,000 per ha), given that they had been promised an amount closer to IDR 1,000,000 per ha. The company tried to justify this discrepancy by referring to the uncertain price of palm oil, in addition to the problems they were experiencing in securing their site permit. Additionally, the company faced increasing criticism for limited absorption of local labor, low wages for daily contract workers, the termination and transfer of employees, violations of women workers' rights (i.e., lower salaries and denial of maternity and menstrual leave), and uncertainty around performance standards and employment contracts.

This mounting list of unresolved issues was a ticking time bomb that finally exploded in 2014. Farmers aligned with student groups to protest the company, demanding improved compensation and revision of the partnership agreement. The

demonstrations led to factory closings and the burning of security posts and ended with the arrest of several farmers and students. Print and online media covered the events. The media also reported that a key figure behind PT DJL turned out to be D. L. Sitorus, a native from North Sumatra notorious for his involvement in illegal logging activities, although he was somehow always able to avoid legal problems.

The conflict reached a peak in mid-2015 when it gained the attention of the National Commission on Human Rights (Komnas HAM). The Commission expressed interest in alleged offenses by both the company and the government. Komnas HAM's investigation and the visit to North Konawe provided a unique and high-profile attempt to resolve the conflict, but they were ultimately unsuccessful.

Yet, the Commission's initiative was later continued by the North Konawe government through their Palm Oil Monitoring, Supervision, and Evaluation Team. This Team also produced little in the way of results, as their proposed settlement focused only on compensation for violations of the partnership agreement. The company insisted they had adhered to the stipulations of the agreement, while farmers complained that the company had not fulfilled its obligations, as outlined in the partnership agreement, as well as basic labor-related issues.

Protests erupted again in 2017. Farmers in Langgikima sub-district blocked roads to the PT DJL palm oil mill. Community leaders reported that frustration was high because their lands had already been planted with oil palm and as they were tied to an unfair arrangement they couldn't withdraw from the plantation, because the company held their land titles, and they were bound to the partnership agreement.

By 2018 - 2019 the conflict in North Konawe had received wide national attention, especially because of extensive advocacy conducted by non-governmental organizations (NGOs) such as the Indonesian Forum for the Environment (WALHI). However, these advocacy campaigns proved ineffective, and the company refused to initiate any changes. At this point, the North Konawe Smallholder Farmers Forum, through the Nusantara Agrarian Reform Association (PRANA), submitted a request to the Conflict Resolution Unit (CRU) to take on their case.

CRU was established by the Indonesian Chamber of Commerce and Industry (KADIN) in 2015, and it was designed to focus on tenure, land-use, and natural-resource management conflicts, be it two-party or multi-party. At the time CRU was approached by the North Konawe Smallholder Farmers Forum, CRU had handled several conflicts

**"Komnas HAM's investigation and the visit to North Konawe provided a unique and high-profile attempt to resolve the conflict, but they were ultimately unsuccessful."**

already. Mostly in the forestry sector, including cases in North Lombok (in West Nusa Tenggara Province, NTB), in Tebo and Batanghari Districts (Jambi Province), but CRU had previously managed only one case in the plantation sector (see *The Company and Tribe*, Chapter 3). The request from Konawe Utara was of interest to CRU, since, as a newly established organization, CRU was looking to expand its case portfolio in terms of sector, geography, complexity, and by taking on particularly challenging cases, could further strengthen its staff capacity for managing diverse cases.

## Preliminary Assessment

Before taking the definitive decision to accept the case, the CRU leadership conducted a preliminary analysis of PRANA's request. A series of email and WhatsApp text messages and telephone calls followed: CRU raised questions about the urgency of the case, the impact of the conflict, as well as a range of questions related to CRU's established pre-conditions for a successful mediation.<sup>7</sup> Based on this preliminary analysis, CRU decided to begin work with PRANA, forming an initial assessment team that would take the time to validate this information and gain a deeper understanding of the conflict and the dynamics among stakeholders. For coordination of this assessment CRU assigned a senior mediator.

Since 2018, given its nascent status, CRU has followed a policy of careful evaluation for each stage of case management, combining systematic research and documentation, learning and capacity building, and a foundational commitment to best practices. CRU has also recognized the importance of mentoring new, prospective mediators,

to expand the network of practitioners in Indonesia. So, in addition to working closely with PRANA, CRU also invited several "veterans" from the just-completed work in North Lombok (see Chapter 4, *Collaboration on the Edge of Conflict*).

The assessment team also included four residents of Wiwirano Sub-district as key resource persons, who were especially helpful in mapping the relationships and power dynamics among the actors, at the village, sub-district, and district level, but also within the communities and in PT DJL. One of these collaborators happened to work in the North Konawe Statistics Bureau, strategically located to obtain relevant basic data and information.

To ensure the efficient use of time and resources, the assessment team was divided into two groups. The first

**"Before taking the definitive decision to accept the case, the CRU leadership conducted a preliminary analysis of PRANA's request."**

<sup>7</sup> Between 2016 and 2018, CRU developed a case management and tracking system, based on approaches used by several international conflict resolution organizations. CRU's structured approach to case screening uses several important criteria for determining both degree of complexity and feasibility for mediation. One of the most important of these criteria is a presence/absence of criminal or civil offenses, since mediation is clearly not relevant under these conditions.

group analyzed the North Konawe Plasma Farmers Forum through site visits to the communities, while the second team focused on interviews with district and provincial-level officials. Both teams relied on semi-structured individual interviews and focus group discussions, and they read through all available documentation of the case. At the same time, CRU commissioned professional mapping experts to review the spatial data and information contained within the Southeast Sulawesi Provincial RTRW, including the demarcation of the disputed forest boundaries, and to track the company's HGU licensing requests. This initial assessment took approximately three weeks. In early April 2019, the assessment teams completed their reports and submitted them for review by CRU.

## Between a Rock and a Hard Place

As noted in the opening paragraph, the meeting at the Claro Hotel, which was organized to evaluate the results of the conflict assessment and geospatial analysis, highlighted concerns that were both serious and surprising. The combination of these preliminary study reports proved that PT DJL had not secured the necessary permits for their operations, since the site was located within a protected forest zone. The team also presented evidence that PT DJL had been marketing its palm oil to several member companies of the Roundtable for Sustainable Palm Oil (RSPO).

According to assessment findings, between 2011 and 2016, the palm oil mill reached a reported daily production capacity of 24 tons. The finding also suggests that the mill was the community's primary reason for not demanding the return of their lands, but instead focused to resolve claims for compensation based on the signed partnership agreement.

The assessment also uncovered the fact that the land ownership certificates issued to the transmigrants were not valid, despite being approved by the Director of the Kendari Municipal Land Office in the 2000s. From 2004 to 2009, village governments had issued ownership documents for land located within designated forest boundaries. In short, PT DJL wasn't alone in violating the law; there were several inconsistencies on the site of village and sub-district government officials as well.

The assessment report clearly revealed that the North Konawe case was unsuitable for mediation because the company had violated several laws and regulations, including Plantation Law No. 39 of 2014 and Forestry Law No. 41 of 1999. In addition,

**"The assessment also uncovered the fact that the land ownership certificates issued to the transmigrants were not valid, despite being approved by the Director of the Kendari Municipal Land Office in the 2000s."**

the communities, especially transmigrant settlers, were in an extremely untenable position, since their farmland was illegally situated within the forest zone. These issues seemed best to be resolved in the courts, not through facilitated negotiations.

However, the assessment raised unsettling questions about the fate of more than 1,000 families. It also created potential reputational damage for RSPO, since one of their member companies was involved with supply chains that were not clean and clear, that they were purchasing palm oil from unlicensed mills, and that they were exploiting the community. Another fundamental question remained: What was the basis for the decision to resettle people from Java, East, Nusa Tenggara, and Bali, and provide them with land within the forest zone?

While the assessment team awaited a response from the conflict parties, CRU leadership met with RSPO in Jakarta. This meeting offered little in terms of advancing the case. First, because RSPO has no real punitive power, apart from threatening companies to revoke their membership if violations are found. Moreover, RSPO was unable to take explicit action against PT DJL, because not only were they not a formal member of RSPO, but they also had not secured an HGU license. Even if RSPO could somehow recommend prohibiting the sale of palm oil from violating members (e.g., to European markets), it could not guarantee that PT DJL would be affected by the ban, since the company could continue selling to other markets (for example to buyers in India, China, or other countries) without going through RSPO.

The situation put CRU between a rock and a hard place. If it continued to mediate this case, it would appear as if CRU was overlooking the company's illegal actions. On the other hand, if CRU rejected the case, it would seem to tolerate the company's abuses in the 22 villages. Local residents, most of them transmigrants, would be abandoned to an uncertain fate, given that they were farming illegally within a designated forest zone.

**"The situation put CRU between a rock and a hard place. If it continued to mediate this case, it would appear as if CRU was overlooking the company's illegal actions."**

## Public Policy Mediation

Discussion between the assessment team and CRU management was at an impasse; while there were strong views expressed, there seemed to be no clear path forward. CRU then proposed a unique approach for a potential breakthrough through a process called public policy mediation, a strategy that had been pioneered in the United States: In their article, "Public Policy Mediation: Best Practices for a Sustainable World" (2014), Howard S. Bellman and Susan L. Podziba reported that this approach had been successfully applied to a variety of policy challenges, particularly in difficult upstream regulatory disputes.<sup>8</sup> Although mediation involving conflicting interests

8 Bellman, H. and S. Podziba, 2014. Public Policy Mediation: Best Practices for a Sustainable World, 20 Disp. Resol. Mag. 22 (2013-2014)



is not always a viable strategy in policymaking, public policy mediation can ensure that a structured negotiated process involving all key stakeholders is focused on the broader public interest, rather than on the different positions of stakeholder representatives.<sup>9</sup> CRU management was eager to explore the use of public policy mediation in Indonesia, and the approach seemed to offer a way out of the dilemma faced by the parties in North Konawe.

The decision to move from conventional mediation to a public policy mediation approach was based on several important considerations: most importantly that the transmigrants had been inappropriately settled within the forest zone. This concern was linked to another key finding of the assessment, because in early 2019 the North Konawe District government had proposed another transmigration project site of 4,262 ha, also within the forest zone. But in this case, the land use classification was to be changed to land slated for agrarian reform (TORA). This fact suggested that the District government was prepared to resolve the existing dispute through a similar policy mechanism. In a related development, a recent Ministerial decree (LHK SK. 2382/Menhua t-VI/BRPUK/2015) had designated the North Konawe sub-districts of Langgikima, Landawe, and Wiwirano for HTI development, social forestry, and ecosystem restoration. Collectively, these initiatives suggested opportunities to resolve the dispute not through traditional mediation, but through a guided and systematic attempt to seek resolution through alternative policy instruments within the government's regulatory framework.

In a series of follow-up discussions, PRANA suggested that CRU meet with the Association of the Children of Indonesian Transmigrants (PATRI). PATRI, an organization formed by transmigrants in 2004, is part of the historic work of the Transmigration Forum (FORTRANS), PATRI includes a special division that handles land issues in transmigration sites, and it works closely with the Ministry of Villages and Transmigration (Kemendestrans).<sup>10</sup>

In July 2019, CRU met with PATRI's Chairman, Pramono Budiman, to explore opportunities for

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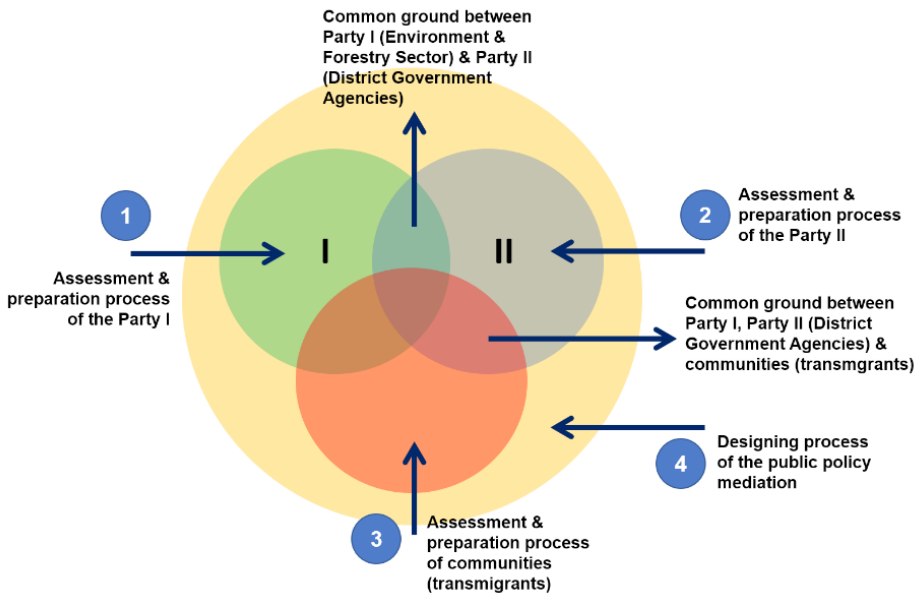
9 Ellen Kandell, Public Policy Mediation: Deliberating for Democracy in Alternative Resolution, 5 January 2015, <https://www.alternativeresolutions.net/2015/01/05/public-policy-mediation/> (diakses pada 15 Februari 2020).

10 Sunu Pramono Budi, "Potensi Organisasi Kemasyarakatan dalam Pengembangan Komunitas Kreatif: Kasus Organisasi Anak Keturunan Transmigran Republik Indonesia" (The Potential of Social Organizations for Developing Community Communities: The Case of Organizations of Children with the Association of Children of Indonesian Transmigrants), *Jurnal Dinamika Masyarakat* Vol.VI, No.2., Agustus 2007, hlm 1218-1234.

cooperation on the North Konawe case. As it turned out, PATRI was already managing numerous similar disputes over land issues in various regions of Indonesia, but with limited tangible results so far. CRU proposed the idea of utilizing public policy mediation to resolve the North Konawe case, and received enthusiastic support from Chairman Budiman, who readily provided PATRI contacts in Southeast Sulawesi.

Soon after the meeting in Jakarta, CRU organized a discussion in Kendari with the assessment team and the General Secretary of the Southeast Sulawesi PATRI unit. The group agreed to experiment with the public policy mediation approach and produced an updated process design (see Figure 7).

Figure 7. Process Design for Public Policy Mediation in North Konawe



The discussion also explored the question of the community's role in the process. All agreed that local government institutions were the key parties to the mediation since they had the authority and responsibility for public-policy decision making. Furthermore, it was agreed that the discussions, and any breakthroughs that might arise, would have to be confidential. At the same time, the group acknowledged that the community had an important role and voice, given that they were the party most affected by these policies. Eventually, they agreed that the communities, represented by PATRI, would participate only if an initial agreement could be reached between the District and Provincial governments.

Because of the time lag between the assessment and the decision to move forward with public policy mediation, most members of the assessment team had already committed to other projects. CRU quickly assigned another senior mediator and

initiated collaboration with the Kendari-based Southeast Sulawesi Law and Policy Study Development Foundation (YPSHK). As soon as this new team was constituted, they met in Jakarta with the General Chair of PATRI Southeast Sulawesi, YPSHK, and with other CRU senior mediators. This group agreed on a more detailed work plan, as well as a terminology that would be used throughout the process, to avoid confusion, misunderstandings, or potential sensitivities.

## Support from the Provincial Government

In mid-October 2019, YPSHK Southeast Sulawesi presented the assessment findings and recommendations to selected agencies within the Southeast Sulawesi Provincial government. The two agencies with the most direct involvement in these issues, the Provincial Manpower and Transmigration Office and the Provincial Forest Service were both represented at this meeting. Both agencies accepted the assessment findings, and acknowledged the problems associated with land allocation to transmigrants. They agreed that a solution would be better achieved at the policy level, rather than through case by case negotiations. However, they suggested that solutions would best be pursued at the district level; that if the District government recommended converting the forest to an Alternative Use Area (APL), the Provincial Forest Service could follow through with this conversion, consistent with applicable rules and regulations. They agreed on several points of a follow-up plan, including CRU and YPSHK's role in facilitating subsequent discussions at the District level. One representative of the Provincial Forest Service summed it up best, "The fate of the community has been hanging in the balance for far too long. The District government needs to take a strong and decisive step in resolving the issue."

## District Level Dialogue

While discussions continued at the Provincial level, PATRI was working intensively to consolidate its local membership, forming a North Konawe District branch unit, an important step in mobilizing their constituents for the dialogue and decisions ahead. PATRI also completed its study of issues within the 22 villages, sharing its findings with CRU and YPSHK in preparation for the public policy dialogue at the District level.

Meanwhile, YPSHK met with the North Konawe District government, and specifically with the District Secretary (Sekda), the highest-ranking bureaucratic position at the District level. The

**"The fate of the community has been hanging in the balance for far too long. The District government needs to take a strong and decisive step in resolving the issue."**

Secretary was aware of the issues related to the conflict and understood the urgency for taking action. He was looking beyond the disputes in the three sub-districts since land tenure issues were a common problem throughout the District. The Secretary instructed three District units (Transmigration and Manpower, Plantation and Horticulture, and Agriculture and Food) to support the process.

YPSHK and CRU convened a second District-level policy dialogue in Kendari in November 2019. These discussions included Provincial units (Forest Service, Transmigration) and District-level representatives from Transmigration and Manpower, and Plantation and Horticulture (missing, however, were representatives from the Department of Agriculture, who felt the case was outside of their jurisdiction).

YPSHK prepared well for the meeting and their presentation of assessment findings received a positive response from the District-level officials, who affirmed YPSHK's findings and recommendations. Staff from the Transmigration and Manpower Office acknowledged that these disputes were a constant threat to local livelihoods, in both the plantation and mining sector, and that other companies, including a State-Owned Enterprise (BUMN), were facing similar issues. An official from the Plantation and Horticulture Office explained that previous efforts to address the conflict had been obstructed by company stalling tactics. He urged immediate action because of their potential for wider social conflict.

During these discussions, participants from Manpower and Transmigration and the Forest Service suggested applying the agrarian reform program (TORA) as an option for resolving the issue. CRU's assessment had already presented a geospatial analysis, using TORA condition criteria, that indicated the area was indeed eligible for this designation.

The dialogue succeeded in narrowing the discussion scope and achieving several key points of agreement: 1) the North Konawe District government agreed to

submit a proposal to the appropriate provincial offices to change the tenurial status of land in the three sub-districts, recommending that the area be re-designated for TORA status, 2) YPSHK and the North Konawe District government would work with communities to gather additional information about the affected area, and 3) YPSHK, with CRU support, would monitor progress on these agreements, and report regularly to the provincial and district governments.

**"During these discussions, participants from Manpower and Transmigration and the Forest Service suggested applying the agrarian reform program (TORA) as an option for resolving the issue."**

### Lessons Learned

The *downstream* issues raised by transmigrant farmers, including unfair partnership schemes and cost-sharing agreements, land tenure and titling issues, and compensation from oil palm plantations, are often rooted in problems in

*upstream* policy inconsistencies – in this case, the obvious lack of coordination in the implementation of transmigration policies, and those of the forestry sector. As a result, downstream, these jurisdictional discrepancies result in conflicts that cannot be resolved in the situations where they occur.

The agreements reached during these two rounds of public policy dialogue presented unique opportunities for government action to restore the rights of transmigrants and indigenous people in the three sub-districts of North Konawe District, but these were just the first two steps in a much longer journey. In reality, the decision to change the tenurial status to TORA involves a long, complex process that requires numerous bureaucratic actions and approvals, any one of which, if not fully executed, would have the potential to nullify the effort. This includes, among other actions, the as yet unfinished confirmation of forest boundaries, final approval of village administrative boundaries, and the implementation of Indonesia's national One Map Policy (Kebijakan Satu Peta, or KSP).<sup>11</sup>

It is also important to acknowledge that the situation within each of the communities is not static, and it has continued to evolve, for example, in terms of absence of ownership, and dealing with lands whose management has changed hands. In these cases, local residents have no actual rights to the land because it is located within the state forest zone. Further fieldwork is needed to document these issues so that the agreements that have been reached will not become new source of conflict in the future.

The North Konawe case is particularly complicated because it involves parties at several layers of government decision-making and is spread over a long period of time. The case illustrates the complexity of dealing with multiple, competing demands with a unique history involving regional expansion, changing leadership, evolving and often inconsistent land-use policies, competing jurisdictions, and program priorities, and the considerable influence of the private sector, particularly the palm oil industry. The lessons here are important not only for mediation practitioners, but for decision-makers responsible for drafting policies, developing and financing program initiatives, to ensure that these plans are carefully coordinated across the bureaucracy. These management decisions must apply foresight and sensitivity to the social,

**“ In these cases, local residents have no actual rights to the land because it is located within the state forest zone.”**

11 Changes in forest boundaries in relation to TORA refer to Minister of Environment and Forestry Regulation No. 42 of 2019 concerning Procedures for the Release of Forest Areas and Changes in Forest Area Boundaries for Land Resources for Agrarian Reform Objects, which are the implementing instruments of Presidential Regulation No. 86 of 2018 concerning Agrarian Reform. Meanwhile, the assignment of village boundaries is regulated through Permendagri No. 45/2016. The two legal bases require the harmonization of maps across Ministries and Institutions, as regulated in Presidential Regulation No. 9 of 2016 (accelerating KSP implementation at the mapping scale of 1:50,000).

economic, and political realities in the regions where these policies and programs are implemented.

The North Konawe case also offers important lessons about broader agrarian reform issues. Indonesian land tenure issues are deeply enmeshed in market and trade dynamics, particularly those related to the plantation sector - especially palm oil, which has over the past ten years become the nation's highest priority commodity - resulting in a much higher level of complexity, influence, and, ultimately, decisions that have resulted in increasingly intensified agrarian conflict.

For professional (or aspiring) mediators, the most important point of reflection lies in our sense of social justice, the point beyond neutrality where a commitment to think and act creatively, to persevere in seeking alternative process options for improved outcomes to solve these disputes.

The North Konawe case is the tip of the iceberg for agrarian conflicts that have their source in competing government policies and jurisdictions, and/or the inconsistencies in the implementation of land-use policies. There are numerous reported incidents of licensing violations by plantation companies and many other forms of illegal activity and corruption related to land-use decision making. This reality must be understood by mediators, and certainly by development agencies and practitioners, as they seek to promote sustainable and equitable development. Most importantly, as we have seen particularly in this case, collaboration is at the core of efforts to unravel these complex issues. Engaging all affected stakeholders - local communities, corporate interests, NGOs, researchers, and government agencies - is of critical importance in gathering and validating information and in working through a well-structured, multi-stakeholder decision-making process to find innovative and enduring solutions to these seemingly intractable problems.







# Managing Land and Resource Management Conflicts: Reflections and Lessons Learned

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by Ilya Moeliono <sup>1</sup>

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**T**HE cases described in this book constitute some of the very first cases managed by the Conflict Resolution Unit (CRU) and GIZ-FORCLIME, and they were pivotal in defining both organizations' early direction and its emerging definition of practice. All of the cases have been extensively analyzed and evaluated, by the involved mediators and senior program staff, often also with participation by stakeholders. Many hours were spent evaluating what was learned from each case and set of circumstances - the things that went well, the practices and approaches that were most effective, and where mistakes were made that should be avoided in the future. This chapter seeks to summarize these findings into a set of core lessons that have served both, CRU and GIZ-FORCLIME, in handling subsequent cases and sensitizes donors for support in conflict management related activities. It is our hope that these reflections will be of value to practitioners, policymakers, and organizations that are conducting conflict resolution efforts.

Four characteristics are common to all of the featured cases: (1) all of the conflicts involved disputes between corporate entities and community members, (2) relationships between parties were characterized by considerable power imbalances, (3) in all conflicts the principle dispute was centered around land, and (4) all of the conflicts involved competing claims for the same land. At the same time, the cases are diverse: location, historical and cultural context, issues of dispute, level of complexity, number and distribution of stakeholders, as well as the composition and size of the mediation teams.

## Key lessons

### 1. Managing a Mediation “Project”

Like many non-profit organizations, CRU manages mediation activities as part of donor-financed “projects”. This project approach, as a management model, offers several strengths, such as the establishment of clear objectives, a project scope, performance measures, a projected implementation schedule, and a clearly defined budget. These objectives and performance measures, schedule and budget then became the basis for monitoring and evaluation, and the accountability that is central to this approach.

However, experience with managing the complex land- and resource-management conflicts described in this book suggests that these processes do not easily conform to a project management model, for some important reasons:

**"These objectives and performance measures, schedule and budget then became the basis for monitoring and evaluation, and the accountability that is central to this approach."**

## The Cost of Mediation: Who Pays?

In addition to the direct costs of formal negotiation meetings and fees for the mediation team, all of the cases required considerable preparatory work, and significant expenses for the initial assessment, caucus meetings with each of the disputing parties, joint fact-finding activities, and the regular communication and shuttle diplomacy that occurred before and between meeting events. Operational costs associated with these activities – transportation, accommodations, space, equipment, plus management and communication support – add up over time, and given the uncertain nature of these processes, often don't conform to initial plans and budget projections. Ultimately, however, the question becomes, "who should bear these costs"?

The simple answer to that question would be "the disputants", because they are the most directly affected by the conflict, and they have the greatest stake in achieving a mutually beneficial outcome. And indeed, in some cases, the companies involved in the disputes were willing to bear these costs. The motivation for this should be obvious: the costs already incurred, coupled with potential future losses from a conflict, far outweigh the costs of mediation. However, many companies are unwilling to shoulder these costs because they have little faith in the process and low expectations for success. This is certainly understandable given the limited experience and demonstrated results of these alternative approaches to resolving land use disputes.

But even if the company is willing to pay, what about other stakeholders? In most cases, local residents or community-based organizations cannot bear the considerable costs of mediation. If much of the cost is paid for by the companies, inevitably, the parties (including, perhaps, the company itself) may perceive, and act, as if they should have greater influence over the process and its outcome. In short, the objectivity and neutrality of the mediators, and the process, may be called into question.

Nevertheless, given the power imbalance between communities and corporate interests, it is difficult to imagine an equal cost-sharing scenario, although in most land- and natural-resource disputes in Indonesia the losses and burdens borne by communities are proportionately greater than those of the private sector.

This is why it has been important for donor organizations, NGOs or government agencies to cover these costs because they have less of a direct stake in the outcome, but see the broader public interest. In other words, resolving disputes is an investment that yields positive impacts on society –

**"But even if the company is willing to pay, what about other stakeholders? In most cases, local residents or community-based organizations cannot bear the considerable costs of mediation."**

improved business climate and investor confidence, secure livelihoods and social justice for rural communities, and benefits the environment.

For the conflicts managed by CRU and GIZ-FORCLIME, these initial pilot projects could be justified as an investment in innovation and learning, an investment that is expected to become the foundation for expanded adoption of these approaches. In the long run, of course, other, more sustainable financing arrangements must be explored, financing which must still pass the test of neutrality and independence in both the source of this funding, as well as on how decisions are made in using these funds effectively and the flexibility to react on delays and unexpected changes.

## Scope of the Mediation

One of the key challenges in framing a mediation effort is in defining the scope of issues to be included in the negotiations. Seeking a manageable, realistic scale is often an important part of early negotiations between the mediator, the disputing parties, and especially the sponsoring agency. Decisions over the scope of mediation are an important practical consideration since the mediation must often be adapted to the capacities and constraints of the parties and their resources.

In practice, these discussions and decisions are pursued during the preliminary assessment, as the mediators and the parties determine an appropriate framing and scale for negotiations. As a consequence, they may set aside some issues, even though these issues may be important and even connected in some ways to the main dispute at hand. In the Jambi case, for example, negotiations focused on land issues between company and community, while horizontal conflicts between SAD Muara Kilis and other community groups were eliminated from the agenda.

These decisions carry some risk because an eventual agreement may not be optimal or sustainable if these related issues are not addressed and included in the mediation process. But there are trade-offs in terms of time, effort, and the overall sequence and strategy for addressing what are often very complex, multi-faceted disputes. Once again, this means that although each case is managed as an individual “project”, the overall design requires a high degree of flexibility and judgment, to accommodate the parties and appropriately frame the mediation.

**"Once again, this means that although each case is managed as an individual “project”, the overall design requires a high degree of flexibility and judgment, to accommodate the parties and appropriately frame the mediation."**

## Shifting focus

If the problem has been identified and goals are set, then a project timeline and work plan can be outlined and then implemented. But what if things change along the way, i.e., the issues in dispute, the stakeholders, the scope and scale, and the approach and strategy must change to address these shifting dynamics? The North Konawe conflict was a case in point. Originally presented to CRU as a dispute between a company and communities about their cost-sharing agreement, the assessment revealed a more fundamental conflict concerning overlapping policies over the tenurial status of land between different agencies at the district, provincial, and even national levels. The initial work plan, which was thought to be short and simple, thereby turned into an extremely complicated and extended public policy mediation.

## Reporting Success: Evaluation Criteria

In project management, reporting and accountability mechanisms are part of a basic agreement between the funding and the implementing organization. Mediation organizations may be asked, “How many disputes have you managed?”, “How many of the cases have been resolved?”, or “How can you quantify the benefits from your approach?” – in other words, “Do you provide decent value for money?”

Such questions should be asked, and should be answered as a basis for accountability - however, in reality, they are not always easy to answer because of the diversity in the nature of the disputes. Some conflicts involve large, complex disputes that require considerable preparation and extended negotiations; some conflicts may at

first appear more localized and less complicated, but later turn out to require considerable time and effort. One of the key lessons in managing land-use and natural- resource management disputes is that they can be deceptively unpredictable, and the mediator cannot necessarily predict the path to resolution.

Reporting on the number of disputes also raises questions. Multiple, inter-related disputes are often embedded within a given case, for example, issues related to territorial boundaries, compensation for damages, inequity in profit sharing, access to land, communication, etc. Should we count such cases as one dispute or multiple disputes? When a company is involved in a dispute with several communities, even if the conflict is over the same piece of land, should each of these disputes be counted as separate and distinct cases? Systematic case intake and tracking system can address some of these questions, but it is often difficult to determine accurate counting and performance measures.

**"Such questions would be asked, and should be answered, as a basis for accountability - however, in reality, they are not always easy to answer because of the diversity in the nature of the disputes. "**

Questions about cost-effectiveness (value for money) should also be addressed as a key indicator in assessing the performance of an organization and its programs. If counting the number of disputes handled is not considered a useful performance measure, another way must be found, e.g., through post-mediation evaluations about agreements reached and implemented, stakeholder satisfaction, benefits to the community, and the environment. This too, is challenging, since many of the results anticipated in agreements may take considerable time to evaluate.

## Flexibility in Scheduling

A well-designed project should have a clear start and endpoint. However, for conflict management cases this is often an unrealistic expectation. When a preliminary assessment indicates that a dispute is worth mediating and has a reasonable likelihood of success, there are still many unknowns, and the process may not neatly follow the initial design. In many projects, peoples' schedules and availability become an issue, for example, when local company leaders are summoned to the head office for meetings, when government officials are focused on other priorities, or when community members may be distracted with community or ceremonial events in their villages. Disputing parties make decisions to attend to other more pressing interests that are an inevitable part of their lives. As a result, despite efforts to hold the parties to a defined schedule of activities and commitments, participants' schedules change regularly, forcing mediators to constantly adjust to these developments.

## When Is a Case Considered Closed?

The question of closure for a given case is yet another issue that challenges our notion of the term "project". Completion of a case means that the responsibilities of the mediation institution or team have been fulfilled, and thus the organization can complete its evaluation and reporting requirements and re-deploy its staff to other assignments.

There is, in fact, a great deal of debate about this question, which is often encapsulated in two very different statements:

- A dispute can be considered resolved if an agreement is reached among the parties. This is perhaps the most common view. However, as we have seen in several of the cases, even when the disputants reached an agreement, the case was not fully resolved because the agreement had not yet been implemented.
- A dispute can be considered resolved when all of the terms of the agreement have been implemented. This may seem a more reasonable perspective; however, it is often the case that the timeframe for implementing the agreement can be quite long, extending over several years.

The question then pivots to "to what extent is a mediator responsible for fully resolving a dispute?" It may seem unrealistic for the mediation team to be responsible for this

high standard of success which includes the full implementation of all agreements, but the answer is important because it helps determine the scope of work and the limits of mediators' responsibilities. The compromise answer may be that a dispute case is considered closed if:

- ... an appropriate agreement is reached, implementation is planned, and the mediator team feels confident that the parties can fulfill their mutual obligations. In this scenario, the mediation team may decide, based on an agreement with the parties, to work with stakeholders to monitor the implementation of the agreement for a year or longer.
- ... the parties "agree to disagree" or opt-out of the mediation. This means that parties are at an impasse and are willing to accept the status quo, or they have found other means to address their concerns, for example through direct negotiations, or through the court system. This may also be viewed as an "agreement", and there may be no need for further follow-through by the mediation team.

Although the conventional project management model presents many problems in the context of dispute resolution efforts, this doesn't imply that careful planning, the setting of clear objectives, coverage, and outcomes should not be pursued. Mediators should work hard to develop a detailed work plan and decide on reasonable budget allocation. Performance measures and schedules should provide the basis for monitoring and evaluation, as well as accountability.

However, all of this must be understood and agreed upon as a general framework in which the managers and implementers of dispute management projects can still adjust, adapt and innovate in dealing with the dynamic nature, and the frequent unpredictability of these cases. A more flexible, anticipatory, and adaptive project format is required, and this is only possible if there is an understanding in advance between implementer and sponsor, that project decision making must consider the mediation team's experience, professional ethics, moral compass, and, ultimately, the responsibility to the disputants and stakeholders.

## 2. Prioritizing

In its early days, CRU had little difficulty to determine which cases it would take on. Back then, before CRU had established a reputation as a national clearinghouse, requests from disputing parties were, of course, few and far between. However, through an active partnership with the Directorate General of Social Forestry and Environmental Partnerships (PSKL), particularly with the Directorate for Conflict Management, Tenure, and Customary Forests (PKTHA) - there were so many conflicts presented to CRU, on a wide array of issues, and in places throughout the country. In addition, as CRU demonstrated managed to successfully in mediate company-community conflicts, more and more companies invited CRU.



Table 3. Conventional Project Management vs. Dispute Resolution Case Management

	Project	Dispute Resolution Case
<ul style="list-style-type: none"> <li>Objectives</li> </ul>	<ul style="list-style-type: none"> <li>Clear and measurable</li> </ul>	<ul style="list-style-type: none"> <li>Objectives may be more general, divided into an assessment to identify conflicts, gaining agreement to mediate, development of an agenda, and successful negotiations, leading to an agreement and implementation. Specific objectives depend upon the characteristics of the conflict, which may not be well understood at the project planning stage.</li> </ul>
<ul style="list-style-type: none"> <li>Project scope</li> </ul>	<ul style="list-style-type: none"> <li>Clearly defined/ limited.</li> </ul>	<ul style="list-style-type: none"> <li>The scope of work may expand during the process if other conflicts arise or new stakeholders join the negotiations.</li> </ul>
<ul style="list-style-type: none"> <li>Implementation</li> </ul>	<ul style="list-style-type: none"> <li>Schedule set for implementation and completion</li> </ul>	<ul style="list-style-type: none"> <li>A schedule is heavily dependent on the process design, which can only be developed after an intensive assessment and agreement from the parties to proceed.</li> <li>A timetable is often continually negotiated and adapted, as parties have many other agendas and demands on their time.</li> </ul>
<ul style="list-style-type: none"> <li>Budget</li> </ul>	<ul style="list-style-type: none"> <li>Discreet budget, limited flexibility</li> </ul>	<ul style="list-style-type: none"> <li>Budgets must be flexible to accommodate previously unplanned activities and/or extended time frames, as needs arise during the process, e.g., joint fact-finding, village mapping efforts, collaborative learning,</li> </ul>
<ul style="list-style-type: none"> <li>Pre-conditions</li> </ul>	<ul style="list-style-type: none"> <li>The pre-conditions or eligibility criteria for project implementation have been identified in the feasibility study.</li> </ul>	<ul style="list-style-type: none"> <li>In many cases, the pre-conditions must be developed to ensure successful mediation. These preparatory activities may require more staffing and funding than the mediation itself.</li> </ul>
<ul style="list-style-type: none"> <li>Agreement</li> </ul>	<ul style="list-style-type: none"> <li>Agreement between the disputants is just the beginning of a dispute resolution process.</li> </ul>	<ul style="list-style-type: none"> <li>Agreement between the disputants is just the beginning of a complete dispute resolution process.</li> </ul>

Faced with these choices, the question of selection criteria and priority became a subject of debate, i.e., how to select cases when there are so many requests. In discussions among CRU staff, and with its Technical Advisory and Steering Committees, several considerations emerged:

## Selection Criteria

During initial case screening, it is important to determine, as far as possible, the likelihood that the issues can be resolved through mediation. This initial screening will save considerable time and effort, both for the parties and for the mediators. It should also lead to a higher success rate and greater credibility for the organization and substantiate mediation as an effective approach. In situations where too many cases are worthy of mediation, especially, several additional criteria are used:

- The **case profile** is an important initial consideration. Early on, CRU established a set of criteria (see Creating the Preconditions, below) to evaluate both the *complexity* of the case, as well as the *likelihood* of a successful outcome. Both considerations are essential in terms of using limited staff and budget resources effectively, and were crucial in establishing CRU's confidence and reputation during its early stages of development.
- **Strategic importance:** Even though all dispute cases seem urgent to the stakeholders involved, given the limited resources available, the question of its strategic value becomes an important consideration. Cases that are considered to have strategic value include disputes which, if resolved, can result in significant impact, in terms of the number and distribution of the disputants who will benefit from the resolution of the case, the potential for environmental and social justice impacts, and the possibility that the case may serve as a precedent for similar cases. Thus, the potential to serve as a model is another important consideration – many conflicts with strategic value, such as the North Konawe case, involve policy-level conflicts that can have implications from the local to the national level, and thus have the potential for being applied more broadly.
- **Learning value:** Mediation has not been widely applied to multi-party land-use conflicts in Indonesia, and the individuals and agencies working in this field are still relatively inexperienced. CRU recognizes that it is somewhat of a “new kid on the block” in this regard, and has a great deal to learn, so the opportunity to gain experience from a case, in terms of its issues and stakeholder dynamics, is another important consideration. And this learning is not only for CRU and its staff, as the analysis and documentation of these cases is important for stakeholders and agencies facing similar

"During initial case screening, it is important to determine, as far as possible, the likelihood that the issues can be resolved through mediation."

disputes. The hope is that these cases offer important insights and lessons, and if they can be resolved properly, they can offer a precedent and success that can be of learning and promotional value. This book is part of that learning.

### 3. Creating the Pre-conditions for Success

Not all dispute cases are suitable for mediation, and it is important to decide early on about the appropriateness of mediation for a particular conflict. To make this decision, a preliminary assessment has to be carried out to ensure that the case has a high likelihood of success, which helps save precious resources and avoids disappointment and loss to all parties involved.

CRU and its partners developed the following selection-criteria:

1. Conflicts related to land, land-use, or natural resources management
2. Key stakeholder interests can be identified, including appropriate representation and clarity on internal decision making
3. Parties' acknowledgment of the conflict
4. Issues of the dispute can be clearly articulated
5. Parties' willingness to work together to support the mediation effort, and agree to stop all other forms of pressure and influence
6. Resources (time, staff, funding) are available and can be adjusted to meet changing needs
7. Sources of information are both sufficient and credible
8. There is a process for gathering, validating and interpreting information
9. There is room to negotiate (reasonable "decision space")
10. Parties have realistic expectations of the mediation process and the mediator, and have a clear understanding about the objectives of the mediation and the indicators of success

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11. There are no outstanding legal issues (civil, criminal), i.e., the dispute is not being litigated in court
12. Parties have access to credible and adequate technical support (for example: mapping, legal, economic, social, cultural, forestry, and natural resources aspects)
13. If an agreement is reached, the results can be implemented, and there are mechanisms for monitoring and accountability
14. There are support and political will from the ultimate decision authority (government)

However, based on early experience, CRU found that virtually none of the case requests fulfilled these 14 eligibility criteria at the same time. In the Indonesian context, there are several reasons for this:

- **The broad tradition of intuitive decision making:** Stakeholders – whether companies, governments, or communities – may not be accustomed to collecting and using data as a basis for decision making. Therefore, the information base on which to make a decision for, or against mediation, becomes a significant challenge.
- **Differences in perception about the dispute:** In the cases in this book, some stakeholders were aware of their problems with other parties, but could not necessarily define the nature of the dispute; in many cases, stakeholders had different views about the focus of the dispute. In North Konawe, for example, community members initially stated that an unfair profit-sharing agreement was the focus of the dispute. During the assessment, it turned out that land was a more important driver, in particular, previous policy decisions on land-use and allocation.

**"Stakeholders – whether companies, governments, or communities – may not be accustomed to collecting and using data as a basis for decision making."**

- **Lack of familiarity with facilitated negotiation:** In the Indonesian context, the phrase *"musyawarah untuk mufakat"* (deliberation that leads to consensus) is an important reference point for disputing parties, as consensus-building, in its many forms, is a tradition throughout the country. Nevertheless, these traditions may not meet the challenges of modern-day disputes, both in terms of scale and in accommodating the complex administrative jurisdictions and legal issues.

- **Positional bargaining:** It is not uncommon for one or more parties to put forward various demands before it has been determined what interests they are pursuing. In land disputes, for example, parties often contend over boundaries, without really thinking about the interests and implications of these positions, and before considering other potential

alternatives (e.g., changed land-use classification or rights of access) to achieve their demands.

- **Policy-related conflicts:** Some conflicts between companies and communities stem from policy issues – either inappropriate policies, inconsistent implementation of policies, or differences in interpretation of policies. These cases are difficult to resolve at the point of the dispute. However, this does not mean that the dispute is unsuitable for mediation; it may mean changing the way the dispute is framed, and often requires more active engagement of policymakers and decision authorities.

These five factors often mean that all the 14 pre-conditions are rarely fulfilled during case screening. The decision, then, is not necessarily to reject the case but to do the important pre-work necessary to try to address them. Thus during the preliminary assessment, the question to be asked is not “have the eligibility criteria been met?”, but “how can we create the necessary pre-conditions for a successful mediation?”

In other words, the pressure during the assessment is to determine the potential to meet these requirements by considering the time, energy, and resources that are required to address the above question. If these issues can be identified during the preliminary assessment, then the analysis, in addition to seeking data and information, must also include a determination of the kind of assistance needed by the disputants to address these gaps before the actual mediation. This assistance might include: building a common understanding about the nature of the dispute; improving relations among the disputing parties to create a more conducive atmosphere for negotiations; helping the parties to become better organized internally, conducting, or commissioning studies to build a stronger information base for decision-making during negotiations. For this reason, mediation institutions and other supporting entities need to evaluate their capacity for providing these services or seek out other organizations who can provide this support.

#### 4. Consent and Voluntary Participation

When the preliminary assessment determines that mediation as a measure to solve a dispute case can move forward, the next step is to obtain a written statement from the parties that affirms their commitment to the process. This is following the principle

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of free prior informed consent (FPIC), i.e., that there will be a higher probability for success if parties understand what they are committing to. Experience shows that until this statement of commitment is secured, a more complete assessment, and any other steps toward mediation, should not be undertaken.

Early on, CRU worked with legal advisors to craft this “agreement to mediate” statement. Its contents included, among other things, a formal request by the disputants for CRU services, a list of general principles (e.g., the voluntary nature of mediation, the mediator’s neutrality, the parties’ obligation to maintain confidentiality), details about what information should be considered confidential, protection (for CRU) against all claims due to losses that may be incurred by disputants incurred by the mediation, and stakeholder acceptance of CRU-appointed assessors and mediators.

Although they may have verbally agreed to participate in the mediation, some parties still refused to sign the agreement because they did not understand its content, and feared unanticipated consequences. Other parties were willing to sign, even though it was later discovered that they had not understood the contents of the document.

The lesson here is that the objectives of the process must take precedence over arcane legal concerns. While this initial agreement is still an important expression of commitment and its form and content must be adapted to the situation at hand, most importantly the needs of the disputants, and their level of understanding of its substance. The agreement statement can be formulated as a simple expression of understanding between the parties and CRU about the nature of the conflict and the goals of mediation.

**"In many cases, mediation is not the parties' first choice to resolution. In all of the cases in this book, the request for mediation originated from outside parties, not from the disputants themselves."**

## 5. Educating the parties

In many cases, mediation is not the parties' first choice to resolution. In all of the cases in this book, the request for mediation originated from outside parties, not from the disputants themselves. This is not necessarily because mediation is considered inappropriate, but likely because either the parties were unwilling to acknowledge the conflict, they were unaware of mediation as a viable option, or because there was no trust among the parties – required to agree on a mediation agency. Below are some experiences of disputants that tried to resolve their own disputes:

### Short cuts

In some cases, the first choice in dealing with a dispute is not negotiation or mediation but short-term actions intended to quickly change the dynamic of the conflict, i.e., to affect

capitulation or agreement from the opposing party. Communities may launch protest demonstrations, while companies call on law enforcement, or rely on compensation payments, to settle the issues. Efforts like these merely obscure the complexity of the issues and simply “kick the can down the road”, hoping that these actions provide at least a temporary respite to the conflict. The situation may change if the parties become aware of the transitory nature of these actions, are genuinely intent on building good relations, and are willing to sacrifice short-term opportunities to find long-term solutions.

## Legal perspectives

Companies often feel they are in a strong position in disputes with communities because they hold the required permits with all the necessary documentation. They may believe that, even if something goes wrong, it is ultimately the responsibility of the government authority that issued the permit. They may also believe that other parties, including local communities, should respect the government’s decision to issue their permit. In these conflicts, there is often the assumption that communities do not respect the company rights and the government’s authority, so that they are seen as a “nuisance” that must be overcome. Because of this view, the company may feel that the conflict is non-negotiable.

The company’s view may, however, not reflect the reality on the ground, which may be quite different from the description presented in official documents. The company may have secured all the official permits, but that does not automatically mean that they can ignore the perspectives and needs of local communities. This may be especially hard to grasp by company executives in Jakarta, as they are isolated from these dynamics in various parts of the country.

In contrast, communities often reject the notion of a company’s rights (and the government’s authority) over land in their traditional area of influence. Communities may feel that mediation may only serve to weaken their bargaining position.

## Instant Mediation

Many disputes have been initially referred to government officials for mediation. This often happens when the case is viewed as important, or escalates to the point that government officials step in to control the situation. There are frequent reports of cases being mediated directly by senior District-level officials.

**"Many disputes have been initially referred to government officials for mediation. This often happens when the case is viewed as important, or escalates to the point that government officials step in to control the situation."**

In these instances, government officials frequently summon parties to a meeting, anticipating swift resolution of the dispute. Negotiations are conducted on the spot, often accompanied by significant pressure from the authorities, even though the parties may feel ill-prepared to negotiate. In addition, community members and company staff who are assembled for these hasty negotiations may not be the best choice of representation, and they may not have a mandate from their constituents or even an understanding of their needs. Sometimes negotiations occur without reference to basic information that is crucial to effective deliberations. Quite often, these cases end up with the official imposing his/her will on the parties, who may feel compelled to agree to whatever decision is offered.

Not all officials possess a sufficient understanding of the principles and methods of mediation, and it is often the case that given their sense of responsibility and authority, they feel empowered to force an agreement on the parties. Even if a consensus is reached, the agreement may be viewed as temporary, and may not be implemented. The limited follow-up and oversight reinforce the fragile nature of these agreements.

Unfortunately, this kind of “instant” mediation becomes a reference point for the parties. The unfavorable experience makes them less trusting of mediation efforts. This view of mediation as a hurried process with imposed decisions has all too often been a challenge for mediators who are subsequently called into a dispute. The mediator must then first work to overcome parties’ skepticism over their previous experience with this kind of “mediation”, educating the parties about core tenets and best practices during their initial assessment.

**"The reality is that managing disputes is complex, multi-stakeholder conflicts are not at all a linear processes with sequential steps in a neat, orderly sequence."**

## 6. An Iterative Process

Many mediation handbooks provide instructions on the steps and stages of mediation. This may convey the impression that in managing disputes we need only follow these systematic, linear steps to arrive at a resolution. The reality is that managing disputes is complex, multi-stakeholder conflicts are not at all a linear processes with sequential steps in a neat, orderly sequence. The stages of a given case are often difficult to distinguish from one another because the process is iterative and the stages may converge.

As an example, the assessment stage is often described as a preliminary feasibility study that helps determine whether a case can be mediated or should follow a different path. The assessment should be viewed as an integral part of the actual mediation, since as soon as the assessor begins interacting with the parties, negotiations, however informal and confidential, will likely begin. In addition, “assessment” may



be an ongoing activity that continues throughout the mediation. As new information becomes available, there is often the possibility that the issues may need to be reframed, new parties engaged, and various adaptations may be needed to the overall process design.

In short, although mediators may try to work systematically, following the best-informed process design, flexibility and adaptation are critical considerations for an effective process.

## 7. Assessment – More than Half the Work

In all the cases described in this book, the assessment phase (both the preliminary screening and the more detailed case assessment) consumed a great deal of time, effort, and funding. If the assessment were only focused on the conflict itself, i.e., understanding the nature of the dispute and its history, stakeholder dynamics, and the broader environmental and policy context, it would have been a shorter and less complicated process. However, as has been noted above, much of the effort during the assessment involves developing the necessary preconditions for successful negotiations.

A thorough assessment requires not just the *gathering and analysis* of information, but also the *validation* of its reliability, since the same information may be interpreted differently by different stakeholders, and disagreement over information is often a significant factor in disputes. Assessors need adequate time not only because of the challenges in obtainment and verification of information but also because the review process itself becomes a platform for interaction to build rapport and trust with stakeholders. In short, the assessment is not merely a fact-finding exercise, but also an important opportunity for learning and relationship building.

### Participatory Assessment

With these multiple objectives in mind, the best assessments are those that use more participatory methods, engaging the disputing parties themselves in collection, validation, and interpretation of information. In this book, participatory assessments are described in both the Kapuas Hulu and North Lombok cases.

CRU's experience so far suggests that participatory assessments are a more effective approach in

**"With these multiple objectives in mind, the best assessments are those that use more participatory methods, engaging the disputing parties themselves in collection, validation, and interpretation of information."**

land-use conflicts within the Indonesian context. CRU has sponsored assessments completed by academic research teams, as well as assessments conducted by non-governmental organizations (NGOs). In general, the NGO teams' assessment contained richer, more comprehensive information. Moreover, the NGO teams were more successful in building relationships with parties, particularly with local communities.

Academic researchers relied on more formal and structured methods, for example, the use of interview guides and prepared focus group discussions. Researchers maintained their distance and tended e.g. to stay in hotels in the city, rather than in the communities. After each day of fieldwork, the research team returned to the city.

Meanwhile, the NGO teams were more informal and fluid, and more adaptable to local circumstances. Team members stayed in communities, relying on more on social interaction and observation, and more open, semi-structured interviews and discussion sessions, rather than depending on pre-determined assessment instruments. Given their extended presence in the communities, the NGO assessors were more likely to participate in informal discussions and conversations, and thereby were better able to develop personal relationships, to create an atmosphere of openness and trust, and often gain access to information that might not otherwise be accessible.

Information gathered through these more participatory assessments often led to discussions about alternatives to solving the problem at hand. As a result, when the process entered the mediation stage, the parties had already considered options that had been discussed and vetted, and sometimes even agreed upon. This has often helped accelerate the process of reaching an agreement.

This experience suggests that the quality of the information obtained is directly proportional to the relationships built between the assessor and the parties. And these relationships tended to strengthen over time of interaction. An effective assessment requires extra time due to these multiple goals of gathering information

and building relationships of trust – where parties are treated more like active participants than mere respondents. The concept and value of a participatory assessment is not new, but its application in the context of dispute resolution is an important consideration that deserves greater attention in the field of mediation.

### Assessment Coverage

Another reason for assessments to require considerable time is that the scope of the analysis can be quite broad. In the first cases handled by the CRU, assessments focused on general aspects, such as identifying stakeholders, analyzing relationship patterns and power dynamics, understanding

**"Another reason for assessments to require considerable time is that the scope of the analysis can be quite broad."**

the dispute itself, as well as the location, history, and the interests and positions of the stakeholders. The broader context of the dispute was often overlooked.

However, experience has shown that understanding this broader context – geographic, social, political, and institutional – is extremely important. The main issue of conflict between companies and communities may be identified as a dispute over land. However, when analyzed more deeply, these land disputes may stem from more complex policy challenges, e.g., overlapping permitting procedures, inconsistent guidance over spatial-planning, history of (trans-) migration and community settlements, as well as other issues. As emphasized in Chapter 2, understanding the wider policy context is essential; the assessment should therefore include in-depth spatial analysis and policy review as part of the design.

## Disputes within Disputes

The broader analysis discussed above can often lead to an entirely different conclusion about the nature of the dispute, and can change the way the conflict is understood and framed in subsequent negotiations. The North Konawe case provides a good example. It was initially reported as a dispute over the distribution of profits from palm oil production. Following the assessment, the mediation focused first on resolving historic problems in land allocation involving the Provincial Forest Service, the District Government's Transmigration Office, and the National Land Agency. In another case, in East Java, a dispute over natural resource management policies between a State-Owned Enterprise (BUMN) and the Ministry of Environment and Forestry (KLHK), was eventually resolved at a lower level through mediation over a conflict between community groups.

Apparently many disputes are not single-issue conflicts, but a series of intertwined conflicts.

Through the assessment process, the mediation team works to determine the most strategic point of intervention, a point of departure that may connect to other issues. One approach is to start "from above", namely mediating disputes over policy implementation before dealing with conflicts at the site level between community members and companies, while another approach is to start "from below", mediating horizontal disputes between communities, which creates the momentum for addressing related disputes.

**"The broader analysis discussed above can often lead to an entirely different conclusion about the nature of the dispute, and can change the way the conflict is understood and framed in subsequent negotiations. "**

## 8. Teamwork and capacity building

CRU has found that mediation of land-use disputes is best addressed through teams of mediators since collectively they can achieve greater coverage in a shorter amount of time. Working in teams also provides a greater diversity of experience and skills that are crucial in the understanding and the addressing of the dispute. In practice, mediation teams are not permanent entities but are tailored to the needs of individual cases. Core team-members are experienced mediators, but the team may include spatial or geospatial experts, legal scholars, and other members who are knowledgeable about land-use policy, administrative matters, or other relevant topics. For cost-effectiveness considerations, as well as CRU's interest in mentoring a new generation of future mediators, the team's duties were supported by apprentices, i.e., junior mediators who stand to learn a great deal through such experiences.

### Internships

The commitment to involve emerging mediators in these cases stems from the fact that the profession is still in its early stages of development in Indonesia, and the number of mediators, and mediation organizations, is quite limited. The extraordinary extent of land-use and natural-resource management conflicts in Indonesia requires a concerted effort at developing both the number and capacity of mediators. Several national institutions have organized accredited mediator trainings with a standardized 40-hour curriculum, approved by the Supreme Court. However, these short basic

training courses are insufficient in preparing mediators to manage the level of complexity involved in land-use and resource-management conflicts.

With this in mind, CRU and GIZ/FORCLIME established a specialized internship program for mediators, inviting junior mediators (whether certified, or not) to participate directly in mediation processes, under the guidance of experienced professional mediators. Interns were involved in all stages, including assessment, identification and preparation of stakeholders, negotiations, drafting agreements, as well as the implementation and monitoring of the agreements. This direct engagement allows interns to gain the necessary practical knowledge, the experience, and the confidence to be able to handle their own cases in the future.

Although there has been strong interest in those internships, several constraints proved challenging, particularly transportation costs, which are significant given the geographical distances, and the number of required visits to keep the apprentices engaged in the cases. In addition,

**"CRU has found that mediation of land-use disputes is best addressed through teams of mediators since collectively they can achieve greater coverage in a shorter amount of time."**

the presence of the apprentices does prove an additional burden for senior mediators - because preparation, debriefing, and reflection sessions have to be added to the normal demands of case management.

## Engaging Local Institutions

CRU has sought to develop collaborative working arrangements with several local institutions in areas where disputes occur, because it is virtually impossible for one organization to handle the number and distribution of land-use and natural resource-conflicts in Indonesia. These partner organizations have been able to provide logistical and administrative support for various meetings and events, e.g., communication with participants, site preparation, transportation and accommodations, process documentation, and reporting. This cooperations are also important in building capacity in these institutions, including involvement of their staff as apprentice mediators.

In some cases, local institutions have been well responsive to these opportunities, and they have taken advantage of these unique learning opportunities, by demonstrating their potential to become future mediation service providers. They have also provided valuable inputs in mediation design and implementation, facilitated by their familiarity with the local conditions.

In other cases, local partners proved disappointing, as they were slow to respond and showed limited interest in learning from the experience. Frequently, this sub-optimal performance led to disruptions in case management that raised questions about the value of these partnerships.

CRU had identified these local partners through personal networks, recommendations from colleagues, and preliminary visits to the organizations. The overall experience, especially given the disappointments with several local partners, highlights the need for a more careful evaluation of potential partner organizations.

## 9. Addressing Power Imbalances

Power dynamics between disputing parties are always an important consideration, because it influences the process and outcome of negotiations.

The cases in this book involved disputes between plantation companies and communities located

**"The overall experience, especially given the disappointments with several local partners, highlights the need for a more careful evaluation of potential partner organizations."**

in and around concession areas. Companies have access to institutional strength, human resources, political and economic influence, financial resources, information resources, and can mobilize significant legal support when necessary. In contrast, the strength of the community lies in their village-level institutions (formal and customary), local knowledge and experience, a deep, historic relationship with the object of the dispute (land, water, forests), and the moral strength and conviction in defending what they believe to be their inherent rights. Local communities are sometimes assisted by NGO advocacy groups, which bring their own technical and legal skills, as well as their ability to mobilize both the communities and broader public perception.

Companies' weaknesses frequently include a centralized bureaucracy with a wide span of control, limited insight into local conditions, proscribed authority for local staff, and limited experience in collaboration with communities. Communities may be weakened by loosely defined social structures that become obstacles in collective decision making, limited financial resources, limited political influence, limited access to information, poorly defined village and jurisdictional boundaries, and little experience collaborating with companies. These aspects of power dynamics are summarized in Table 4 below.

**Table 4. Comparison of Strengths and Weaknesses for Companies and Communities**

	Companies	Communities
Strengths	<ul style="list-style-type: none"> <li>● Institutions are well organized, with clear a structure and functions</li> <li>● Significant financial resources; ability to allocate funding to address local disputes</li> <li>● Political and economic influence at the district, provincial, and even national levels</li> <li>● Educated, well-trained staff who are committed to the company</li> <li>● Ability to access and analyze critical information</li> <li>● Legal status (HGU or HTI permits) supported by the state</li> </ul>	<ul style="list-style-type: none"> <li>● Formally recognized institutions</li> <li>● Spatial proximity to the location of the dispute</li> <li>● Extensive local knowledge and experience</li> <li>● Strong historic connection to place</li> <li>● Communal values of cooperation</li> <li>● Often support from NGOs (human rights, social justice, or environmental groups)</li> </ul>

	Companies	Communities
Weaknesses	<ul style="list-style-type: none"> <li>● Paid staff have limited duties/ responsibilities</li> <li>● Centralized bureaucracy with a wide span of control</li> <li>● Decision making is often far from the site of the dispute, based on limited information and insight</li> <li>● Local staff, who better understand the details of the dispute, do not have decision authority</li> <li>● Limited experience in collaboration with local communities</li> <li>● Corporate Social Responsibility (CSR) activities are incidental and often not targeted to community needs</li> </ul>	<ul style="list-style-type: none"> <li>● Loosely defined social structure that may prove challenging to collective decision making</li> <li>● Limited staffing and financial resources</li> <li>● Limited formal education, resulting in limited language facility and ability to understand complex technical and legal issues.</li> <li>● Scattered priorities, i.e., livelihoods, community responsibilities, religious practices, that limit their ability to focus full attention on the dispute</li> <li>● Limited access to information</li> <li>● Limited experience in collaboration with companies</li> <li>● Village boundaries and administrative jurisdictions may be unconfirmed; limited recognition of indigenous peoples' rights</li> </ul>

Note that the above matrix is only a generalized model to underscore the power imbalances between companies and communities. The diversity between companies and communities, and the conflicts between them, implies that the generalizations above have many exceptions.

Being aware of these power imbalances, is an important consideration. One way to overcome imbalances is through strategies that do not necessarily rely on parties' strength. In theory, the Indonesian State provides a judicial system that is committed to the proposition that "all citizens are equal before the law", and thus the power of disputing parties in court should be equal. However, for communities, litigation is not a realistic option. The community could only bring their case to court with the support of outside parties, such as NGOs or Legal Aid Institutions (LBH), but only if their case would be of interest to an external organizations. In that case, the community members would only chose mediation after they have lost in court.

Some believe that negotiations are feasible only if these power imbalances can be addressed. Although to some extent this is true, in reality, companies are not always as powerful as they believe, and communities are not necessarily as weak as they think they are. Although the power imbalances constitute a factor, it is often not possible for one side to impose a unilateral solution on the other side. Nearly all disputes between companies and communities are chronic and multi-faceted, meaning that both parties have enough power to keep disputes going, but not quite enough to resolve them. Disputes are often most conducive for mediation when the disputants realize they are facing a dead-end and have no other reasonable options.

In addressing power dynamics head-on, mediators have utilized a variety of approaches:

- Providing support for awareness-raising and skill-building efforts, including internal organization for greater cohesiveness, coaching of parties in interest-based negotiation, and providing comprehensible information to all parties.
- Developing awareness that negotiations based on strength seldom lead to the best outcomes, i.e., that excessive pressure to settle can undermine the search for more durable solutions.

**"Some believe that negotiations are feasible only if these power imbalances can be addressed. Although to some extent this is true, in reality, companies are not always as powerful as they believe, and communities are not necessarily as weak as they think they are."**

- Engaging the relevant government authority to serve as observer or convenor to the mediation: The involvement of government agencies can be a balancing influence that prevents parties from exercising their superior strength.
- Inviting other institutions or individuals as observers to the negotiations: The presence of outside observers can lend additional credibility and neutrality to the process, potentially mitigating undesired exercises of power.

In many cases, several of these strategies were employed simultaneously. Due to regular constraints in time and resources, there are always limitations to what mediators can accomplish in the management of individual cases.

## Assistance to the Parties

In all cases, mediators spend time for preparing the parties for negotiation. The mediation team helps parties to understand the principles of negotiation and mediation, works with their negotiating teams, frames the main points of the dispute, builds an information base for the deliberations, develops and proposes multiple options, etc.



However, the provision of such assistance can be problematic: First, it can be extremely time consuming, a resource that is very precious for mediators. Second, the communities' need for this support is often more pronounced than that of the companies, and, if the company feels it needs this assistance, it is often capable to recruit consultants to assist them in preparing for negotiations. It is also true that negotiation has become fairly commonplace for company managers, while, for many communities - especially in more remote areas - negotiations with outsiders are often well beyond their knowledge and experience. Despite these obvious disparities, if the mediation team devotes significantly more time to the community, then there is a risk of the perceived bias, i.e., that the mediator is siding with the community and not living up to neutrality.

On the other hand, if not for the mediation team, who else can provide this support to the community? And if the support would not be provided, will the mediation then be truly fair and balanced?

An alternative option for communities are NGOs, many of which advocate for human rights and social justice, aligning themselves with rural and indigenous communities, who are struggling with sobering odds in gaining access to land and resources. And indeed several of the cases in this book describe the role of NGOs in supporting communities by highlighting and seeking approaches to resolving disputes. The problem is that many of the NGOs have their own agendas, have limitations in the range of activities they can support, or they may be confrontational in their approach to advocacy.

In short, the need for community assistance, for organizing, selecting representatives, and inadequately preparing for mediation, is a need that remains difficult to fulfill.

## Indigenous Communities

Two cases in this book deal with disputes between companies and indigenous community groups, i.e., the Yeresiam Gua tribe in Papua and the Suku Anak Dalam (SAD) in Jambi. A generation ago, these people still lived traditionally, dependent on hunting, gathering, and subsistence farming. They lived semi-nomadically and moved freely through the forest within the home-ranges of their ancestors.

However, during the last few decades, the way of life of these communities changed, in some ways dramatically. Many factors are driving this change - including greater interaction with the outside

**"In short, the need for community assistance, for organizing, selecting representatives, and adequately preparing for mediation, is a need that remains difficult to fulfill."**

world, the growing need for cash income, access to media and education, and the impact of various government development projects. These communities are now faced with an even more immediate challenge – the advent of corporate plantations and the loss of (or at least restricted) access to their traditional lands. How can they deal with such profound and sudden change?

Meanwhile, company staff, especially management level decision-makers, are mostly modern urban residents, highly educated. Obviously, these constitute significant differences in worldviews. For companies, indigenous land claims may be seen as a nuisance to be dealt with expeditiously, while for traditional communities the dispute is a matter of life, livelihood, and identity.

Those situations are frequently complicated by reciprocal stereotypes. Company staff may regard tribal groups as backward and irrational. In the Papuan case, although communities asserted that their sago groves were sacred, one company staff remarked, derisively, *“It’s just a bunch of trees, right?”* When SAD residents left their settlement, a company staff pointedly asked, *“What’s the point of wandering in the forest?”*

On the other hand, community members often believe that company staff doesn’t care, that they are evil and greedy and have limitless amounts of cash. Given these perceptions, they often feel justified in demanding that the company pay them “compensation fees” or any other payments as the opportunity arises.

This means that a mediation process that seeks to build relationships between stakeholders must also bridge cultural gaps and overcome these stereotypes through cross-cultural mediation, or at least, culturally sensitive mediation.

**"On the other hand, community members often believe that company staff doesn't care, that they are evil and greedy and have limitless amounts of cash."**

## 10. Role of Government Agencies

In the cases described in this book the role of government as a party to negotiations has not featured too prominently. Nevertheless, in all of the cases, the government is still an actor in the disputes, and in some situations, has a decisive presence. Some of the lessons that can be learned from the varied way that government agencies have affected these conflicts include:

### Government as Stakeholder

Disputes between companies and communities must be resolved within the existing regulatory framework. However, many disputes occur precisely because of overlapping regulations, inconsistent application of regulations, or conflicts of interest triggered by these regulations. For

example, land disputes that occur because community land has been included within the company's concession area is often caused by non-involvement of communities in the licensing process.

Since the dispute often has its origins -and also its potential solutions -in specific policies, mediators try to include relevant government agencies as party in the negotiations. These requests have frequently been denied. The reason most often cited is that "government must stand above individual interests and therefore cannot be a party in the dispute." The real concern is often the discomfort, uncertainty, and doubt on their role in the conflict and their ability to negotiate with the parties.

The compromise often reached is for government officials to participate as observers or resource persons, respectively as host and convenor. In these roles, officials may be asked from time to time to offer technical input or to express their professional opinions, but their potential lack of engagement may undermine the effectiveness of the mediation process.

Regulatory control is necessary not only to protect the interests of the disputing parties, but also for the wider public interest, e.g., soil and water quality, biodiversity conservation, ecosystem function, carbon sequestration, or climate change. For this reason, relevant government agencies should be encouraged to participate in some way or another to safeguard these broader interests.

## Government as Convenor

In some of the cases presented in this book, government agencies have served as convenor to the negotiations, by inviting and bringing together the disputing parties. These agencies thus provided oversight and legitimacy for the process, using the influence of its authority and jurisdiction. For disputes related to forest lands, for example, the local Forest Management Unit (KPH) served as host and convenor. For land-use conflicts related to plantations, the Plantation Service played a similar role.

However, because the success of mediation depends on authority, the agency must remain true to the convenor's role – neutral and objective -and it must resist the urge to meddle in the negotiations and decision making.

**“Regulatory control is necessary not only to protect the interests of the disputing parties, but also for the wider public interest, e.g., soil and water quality, biodiversity conservation, ecosystem function, carbon sequestration, or climate change.”**

## Regulatory Agencies as Counterweight in Conflict Resolution

In mediation theory, it is generally believed that balanced power between disputants produces better outcomes. Weaker parties may not have sufficient incentive to negotiate, since they feel they can only lose. Stronger parties may feel that they don't need to negotiate because they can impose their will on weaker opponents. The regulatory agencies can play an important role in compelling parties to the negotiating table and keeping them there until they reach an agreement.

In the cases described here, the regulatory agencies that mitigated this power imbalance were both the Government (among others, the Plantation Service and the Forest Management Unit), and the industry group, the Roundtable on Sustainable Palm Oil (RSPO). Although membership in the RSPO is voluntary, the RSPO can be considered a regulatory body when it comes to making rules and enforcing them within the palm oil industry. If a company is willing to comply with regulations and negotiate with other parties within this regulatory framework, it can be said that the regulatory agency has, either deliberately or unwittingly, "lent" its power to the disputants and thereby helped balance the power between them.

## Public Policy Mediation

In almost all of the disputes discussed in this book, the root of the problem can be traced to inconsistencies in policy implementation, or at least to a lack of coordination in policy-setting and implementation. This includes, the granting of concession permits in existing settlement areas, land-use allocation that is in conflict with spatial planning documents, and unclear boundaries and jurisdictions.

The dilemma then is whether to mediate such localized disputes where these policy anomalies have occurred, seeking solutions that may compromise existing regulations, or put public officials and company representatives in awkward, sometimes legally compromising positions. If creative solutions are pursued, where policies are adapted to address these situations, the mediator may also be considered instrumental in justifying violations of laws and regulations committed by the parties. The ultimate risk is that the agreement may at some point be ruled null and void when the law is enforced.

Another option is to by-pass the problem by avoiding lower-level units enmeshed in these problems and seeking solutions at a higher level of authority. This may lead to risky

**"The mediation sought to bring together representatives from all the relevant policy-making and -implementing institutions to coordinate their policies and agree on common, corrective action."**

political gamesmanship which is beyond the capacity of many mediators and their institutions.

A more plausible option is policy mediation or mediation focused on reinterpretation of how policies are implemented, an approach described in the North Konawe case. In that case, the mediation sought to bring together representatives from all the relevant policy-making and -implementing institutions to coordinate their policies and agree on common, corrective action.

## 11. Local context

Mediation does not take place in a vacuum. A range of local circumstances can affect the mediation process and should be factored into the process design. Some of these local influences may include:

- **Local politics:** In several locations, the mediation was hampered by local elections. During regional elections, candidates for public office have made unrealistic promises (for example, to secure land titles) or inflammatory and divisive statements, which have affected stakeholders' views and their willingness to participate in the mediation.
- **Conflicts of interest:** This occurs when the government sides with one of the parties, either openly or surreptitiously, whether justified or for more nefarious reasons. Among other things, government officials may be motivated to increase local tax-revenue by supporting companies' interests, or they may seek personal benefits because they own company share, or through indirect contributions.
- **Institutions may "benefit" from ongoing disputes:** Some parties may see advantages to maintaining the dispute, for example, political leaders who sow fear, or support a particular party in the interest of securing votes, or NGO groups that use the conflict to pursue other, broader objectives.
- **Internal disagreements:** Many stakeholder groups struggle with internal dissension, historic or interpersonal conflicts, or from a simple lack of leadership. These factors can prevent parties from selecting an appropriate representative, or presenting a unified position during the negotiations.

Those aspects mentioned above must be factored into the mediation design and management, and these things can already be explored during the

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assessment phase. As underscored in Chapter 2, also the understanding the policy context is of critical importance, because formal laws and policies provide the central framing for decision making.

## 12. Agreements, Planning, and Resolution

During mediation, the attention of parties is primarily focused on reaching an agreement. The signing of an agreement becomes a moment for celebration and mutual congratulation. However, it usually doesn't take long for parties to realize that the agreement doesn't necessarily constitute the end of the process.

This awareness becomes particularly obvious when parties are faced with drafting a detailed operational plan to ensure that the agreement becomes implemented. The hope is that with good operational planning – by defining clear objectives and through stipulation of who will do what, when, where, and at what cost - there is a greater chance that the agreement will be successfully implemented.

**It is important to underscore this point and make sure that the parties understand that a dispute is only resolved when the agreement is fully implemented.** The mediation team can assist with creating these accountability mechanisms (i.e., monitoring protocols, sanctions) within the settlement agreement, monitoring its implementation, and facilitating regular discussions to encourage joint evaluation and ongoing discussion about emerging issues.

## 13. Conflict Sensitive Planning

It is generally assumed that conflict inevitably occurs in any development effort, especially those in which land-use and resource-extraction based. Through the experience with managing and observing more than 50 land-use disputes we learned

that if the upstream causes of these disputes had been identified in advance, the conflict and all of the problems that followed could be prevented. Mediators working on site-based disputes often conclude that they may merely be alleviating symptoms without curing the disease. This raises the question of how to integrate dispute prevention approaches into planning and management from the start. Some suggestions in this regard include:

- **Public consultation:** The use of free prior informed consent (FPIC) should be actively promoted as established procedure by donors and development agencies/institutions as a means to provide stakeholders with an adequate understanding about the development interventions during the design phase. Open, transparent sharing of project plans and project impacts, and public consultations with affected

"It is generally assumed that conflict inevitably occurs in any development effort, especially those in which land-use and resource-extraction based."

communities and stakeholders is highly recommended to anticipate and prevent misunderstandings and potential conflicts.

- **Participatory planning:** This approach brings stakeholders into the early planning process, serves as a complement and methodological approach towards FPIC. By using stakeholder input from the start, the interests of each party can be integrated into the project planning and design process, thereby reducing the potential risk for future disputes.
- **Multi-stakeholder coordination:** This issue is close to the points mentioned above about public consultation and participation, i.e, the importance of engaging all affected stakeholders in the planning process. The challenge here is that the “multi-stakeholder” formula often neglects the imperative of true participation – those so-called weaker stakeholders may not be prepared to participate effectively, that their involvement may be largely pro-forma. The key is the preparation and empowerment for less well-organized stakeholder groups to negotiate from a position of equal strength with more dominant stakeholders.
- **Dispute management systems:** Many companies and government agencies, become increasingly aware about the costs and impacts of conflicts – for their clients, their programs, their shareholders, and their reputations – and thus have institutionalized conflict management systems within their organizational structures. These units, given that they have proper support and are well-positioned within their organizations, and if they have capable staff, can be the first line for a more effective management and prevention of disputes as they arise.





# Recommendations for the international development partners

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by Larry Fisher, Antonia Engel, Arief Wicaksono, and Ilya Moeliono



**T**HIS book was envisioned as a resource for donors, international agencies/institutions and decision makers within the Indonesian government. Collectively, these institutions have significant influence over decision making in planning, managing, funding, and evaluating critical programs targeted for agrarian reform, land use and natural resources management, and poverty alleviation. As noted in many points in our analysis, development assistance can exacerbate existing conflicts, or even create new ones, but with thoughtful, deliberate, and informed planning, development aid can be a force for preventing, mitigating, and even resolving conflict. As such, the development community has an opportunity, as well as a responsibility, to promote a conflict-sensitive approach, both in their own program strategies and in those of their implementing partners.

To augment our own experience, and ensure our conclusions are grounded in the voices and perspectives of development practitioners and policy makers, we spoke with experienced representatives from an array of agencies: Ford Foundation, the British Embassy, World Bank, plantation companies and industry support groups, the Ministry of Environment and Forestry, Presidential Staff Office, and the German Development Agency for International Cooperation (GIZ).<sup>1</sup> Each of the participants was able to read through the case studies and analysis of the previous seven chapters of this book, and offer their insights and recommendations for how international development assistance can be strengthened or reoriented to better anticipate and address land use and resource management conflicts.

We offer here a synthesis of their perspectives, coupled with our own experience, into specific recommendations that can serve as a foundation for developing a stronger conflict-sensitive approach, one in which conflict assessment, prevention and management can be integrated into the fabric of future development programmes.

### 1) Understand the context:

- **Consider the scales of interventions:** In the Indonesian context, development practitioners and policy makers recognize the multi-layered context in which conflict unfolds. While the main drivers of conflicts frequently have their origins in national level policies, the multiple jurisdictions and

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1 Participants were selected for their direct experience with agrarian reform, plantations, forest management, or other rural development programs, and for their experience with multi-stakeholder conflict management efforts. As background, they were provided with the first seven chapters of this book, including the four case study chapters, and asked to identify some of the major insights, lessons, and recommendations for their agencies and for the development community as a whole.

the inconsistent interpretation and applications of these policies is where the opportunity for conflict often arises. As we have seen in the case studies, poor spatial planning processes and lack of coordination in permitting and licensing procedures between national, provincial, and district levels, often result in flawed policy implementation, misunderstanding, disagreement, and conflict. While national level efforts such as the One Map Policy seek to address many of these inconsistencies, and create a common foundation for decision making, this initiative faces numerous structural and institutional challenges and will continue to take time and perseverance. One must recognize from the beginning that effective policy implementation requires relentless coordination between different levels of government, as well as continued outreach and communication with key parties – communities, NGOs, and the private sector.

- **Assessing the policy framework:** In Indonesia, agrarian and natural resource management conflicts often find their source in the complex, overlapping array of regulations and public policies. Efforts to resolve these conflicts must begin with a careful assessment of this challenging regulatory framework, as one confronts the impacts of these governance issues in specific locations. Two perspectives are important in this policy assessment process. First, the upstream context, where regulations at the national and provincial level become a source and trigger for conflict. And second, downstream, where policy interpretation, implementation, and adaptation provide the necessary guidance for agreements to end conflict between disputing parties. Both perspectives are key elements of effective conflict resolution approaches. Although policy review has always been an important part of the project planning process, it is rare that the analysis includes an attempt at understanding historic or current

conflicts, or anticipates potential future disputes in areas that will become intervention sites. The strategic value of this conflict-sensitive planning lies not only in guaranteeing a “clean and clear” starting point for the project, especially in more isolated regions, but also as an effort to optimize outcomes for beneficiaries. In addition, an analysis of affected stakeholders’ perceptions of the cost of conflict (both material and intangible) can help promote greater awareness of both the need for, and the potential benefits of conflict resolution initiatives.

- **Understanding the Cultural Context:** While Indonesia is moving through rapid social and economic change, the character of rural Indonesia remains somewhat isolated and traditional. Each of the case studies highlights the significant differences in the communities where these conflicts occurred, in their cultural norms and values, leadership, social

"In Indonesia, agrarian and natural resource management conflicts often find their source in the complex, overlapping array of regulations and public policies. "

structures, and decision making, and in communities' ability to understand and work within the national laws and policies. More specifically, indigenous communities in Indonesia may not have the capacity to convene community conversations and reach consensus agreements, or to negotiate effectively with outside entities, particularly at the scale at which these conflicts occur. This may be due to broad geographic dispersal of communities, lack of internal cohesion, unfamiliarity with the substantive or legal issues, limited experience dealing with government or the private sector, or basic language or educational barriers. The cases underscore the differences in how these conflicts are manifested in various cultural groups, how different it is throughout Indonesia, how each situation requires deep understanding and insight and sensitivity. Therefore, it is somewhat misleading to simply conclude that the policy context shapes conflicts and that those policies (and their downstream impacts) are uniform, when local *adat* issues are so different wherever these cases arise. An understanding of the local cultural context, and the challenges faced by local communities in pursuing their goals, goes hand in hand with an assessment of the policy and regulatory framework.

- **Understanding the cost of conflict:** Preliminary analysis by CRU has demonstrated the extraordinary cost of conflict – to communities, to the private sector, to the government, and to the public good and the environment. It is critical for development practitioners, as well as the private sector, to be aware of these potential and real costs, both direct (loss of production, income, revenue), and indirect (e.g., opportunity costs, impacts to company reputation and to the overall investment climate). With enhanced analysis and awareness of these costs, it is easier to make an argument that it is ultimately wiser (certainly cheaper!) to engage in prevention and mitigation, and that avoiding or neglecting conflict is, in the long run, more detrimental to the interests of all parties.

### Specific recommendations:

- **Donors and international agencies/institutions should continue to seek ways to conduct comprehensive, systematic pre-project planning assessments to gain insight into design and implementation phases.** Key elements of the assessment would include land tenure and livelihood, environmental and social impact assessments, mapping and

**“It is ultimately wiser (certainly cheaper!) to engage in prevention and mitigation, and that avoiding or neglecting conflict is, in the long run, more detrimental to the interests of all parties.”**

spatial analysis, and cultural assessments, but most importantly, enhanced sensitivity to existing or potential conflicts.

- **National and international agencies/institutions should work with local development partners – NGOs, local universities and research institutions – to ensure that these assessments can achieve a deeper understanding of local conditions.**
- **Assessments should be reviewed and validated through consultations with key stakeholders involved in programme implementation.**
- **Integrate land and resource tenure risk assessments into project and investment decision-making processes** to identify the types of risks and possible mitigation actions.
- **Apply free, prior informed consent (FPIC) protocols** in ensuring that all stakeholders, especially local communities, have a clear understanding of the risks, potential impacts, and challenges of project implementation.
- **Use appropriate vocabulary to engage with stakeholders and promote conflict sensitive development:** Many stakeholders continue to view conflict as a stigma, or reputational threat, so there is often a great deal of resistance in acknowledging their dispute, or using the words “conflict” or “dispute” or other equivalents. As ‘every problem is an opportunity in disguise’, it is often helpful experimenting with less threatening vocabulary and promoting approaches more focused on problem-solving and enhancing stakeholders’ motivation for engaging in dialogue for change.

- **Conflict prevention is critical!** Once the conflict arises, everyone feels the impact – government, companies, and communities. Therefore, finding ways to anticipate and mitigate conflict before it arises is critical. Many ongoing efforts that seek to anticipate and mitigate conflict are worthy of support, including the One Map Policy, improvements to spatial planning processes, land titling programs, efforts at delineating village boundaries, social forestry programs, and improvements to permitting and licensing procedures.

**"Given the nascent state of conflict management practice in Indonesia, there is much to do in terms of capacity building, at both the individual and the institutional level."**

## **2) Invest in knowledge and capacity-building**

Given the nascent state of conflict management practice in Indonesia, there is much to do in terms of capacity building, at both the individual and the institutional level. The development of service-oriented organizations, partnerships with government and the private sector, and support for

regional and national practitioner networks must be as much a part of this strategy as the individual training, mentoring, and capacity building for emerging mediators in managing disputes, building agreements, and safeguarding their implementation. And this capacity building should not be limited to emerging dispute resolution practitioners. In all of the cases cited here, stakeholders have shown limited ability to participate effectively in facilitated negotiations, to systematically assess their situations, mobilize their constituents, develop effective alternatives, and move effectively toward joint-gains outcomes. Capacity building is generally viewed as a foundational strategy that should be woven into all aspects of development practice, but the frontier aspect of land and resource management conflict requires a more deliberate and concerted investment, particularly at this critical moment in time.

### Specific recommendations:

- **Provide core funding for emerging conflict resolution organizations**, to ensure operational sustainability.
- **Sponsor national and regional training initiatives** to support emerging mediation practitioners and provide improved understanding and skill building for NGO, community, corporate, and government staff.
- **Support the development of national and regional networks of mediation practitioners** to encourage peer learning and sharing opportunities, increase visibility and credibility for mediation practice, and ensure greater response capacity for local dispute resolution activities.
- **Encourage more active and engaged public-private partnerships** to identify opportunities where case-based and public policy mediation can be more readily applied. Work with the private sector to develop best practice business models that guarantee access to information, encourage stakeholder participation, and facilitate access to court processes, as stipulated in the 10th principle of the United Nations' Rio Declaration on Environment and Development (1992).
- **Support active research, analysis and documentation of conflicts and conflict resolution practice** to identify and make available a broad range of proven methods and practices for the Indonesian context, and to identify future priority program opportunities.

**" In all of the cases cited here, stakeholders have shown limited ability to participate effectively in facilitated negotiations, to systematically assess their situations, mobilize their constituents, develop effective alternatives, and move effectively toward joint-gains outcomes."**

### 3) Improve project management and evaluation

In the previous chapter, we discussed the many challenges of squeezing conflict management initiatives into the traditional project planning and management model. Many conflict resolution cases do not easily conform to the conventional project planning model, as it is difficult to assess the scope and complexity of a dispute, evaluate the readiness of stakeholders to participate in facilitated negotiations, determine benchmarks for success, and, if an agreement is reached, see the effort through to implementation. The greater uncertainty and, quite often, the changing dynamics of a dispute have significant implications for the project planning, scheduling and budgeting process, and present additional challenges in evaluating and reporting outcomes.

One of the greatest challenges for mediation practitioners is the question of how to evaluate when a case is completed, when success has been achieved, and when the mediator's presence is no longer needed. There is no simple timeline for facilitating agreements, and certainly no easy way to determine whether the mediation has been truly successful. While mediators and stakeholders continuously work toward more efficient agreement-seeking processes, we have seen, in many cases, that parties will rush to hasty agreements due to a variety of pressures, or simply as means of avoiding the stigma of conflict. Nevertheless, the old adage – 'that agreements are the mid-point, not the end, of a dispute resolution process', continues to hold. The illusion of agreement must not blind us to the fact that resolving these disputes requires persistence and perseverance; the mediator's job should not be considered complete until the parties collectively agree that their agreements have been implemented and their problems effectively resolved.

This often requires donors to adapt more problem-solving, iterative, and adaptive ways of working, and approaches that are politically smart and adapted to local conditions. Apart from a sound understanding of the political context and culture, this requires intensive investment in building relationships around common interests, long-term commitment and continuity of staffing, flexible funding arrangements that are not driven by external spending targets, strategic use of aid to support needs as they emerge, and a willingness to trust local partners to take the lead.

**"One of the greatest challenges for mediation practitioners is the question of how to evaluate when a case is completed, when success has been achieved, and when the mediator's presence is no longer needed."**



## Specific recommendations:

- **Invest time and effort in building relationships with a broad range of stakeholders.** This is crucial to understanding both their individual and collective interests, spotting opportunities to build on common interests, and creating trust.
- **Support longer-term commitments that allow for experimentation and adaptation,** which will make it worthwhile for local partners to invest time, effort and reputation in conflict resolution initiatives.
- **Seek improvements in monitoring, evaluation and learning.** Interventions that are more iterative, adaptive and locally-led require the development of new approaches that capture intermediate processes of change as well as tangible results, and that support ongoing learning with a range of stakeholders. This means revising procedural guidance (business cases, logical frameworks, monitoring and evaluation processes, financial procedures), but also making it clear that the quality of outcomes is more important than meeting project milestones or spending targets.
- **Allocate significant upfront time and resources for assessment and preparatory work,** including opportunities for systematic engagement of stakeholders, capacity building activities, and efforts to achieve preliminary agreement among the parties to proceed (or, in some cases, *not* to proceed) with conflict resolution efforts.
- **Build greater flexibility and adaptability into the project management approach, allowing for justifiable extensions in project implementation, budget reallocations, and varied evaluation procedures to track and assess project outcomes.**
- **Use varied indicators to assess progress** in conducting assessments, building stakeholder engagement, facilitating negotiations, and in achieving and implementing agreements.
- **Continue to refine and apply case selection criteria (pre-conditions for success) to ensure higher probability that cases are conducive to mediation.** Careful assessment and case screening can help determine if the necessary pre-conditions have been met, which ensures a higher likelihood of successful mediations. At the same time, identifying which pre-conditions are lacking provides guidance in

**" Careful assessment and case screening can help determine if the necessary pre-conditions have been met, which ensures a higher likelihood of successful mediations. "**

doing the important pre-work necessary to create or improve these necessary pre-conditions and increase the chances for successful outcomes.

- **Ensure that analysis is not a one-off exercise but becomes integral to decision making across all sectors** (not just governance programs), and is constantly refreshed.

#### 4) Support dispute-resolution processes

As an emerging discipline and profession in Indonesia, conflict resolution initiatives, in their current state, are woefully inadequate given the obvious need, as indicated by the number, scale, complexity, and the continued expansion of land use and natural resource management conflicts. As such, the challenge is to ensure that efforts such as those described in this book will not only serve to resolve these individual cases but also provide a foundation with the potential to build confidence in these methods and approaches, along with the individual and the institutional capacity to further promote and expand the field of conflict resolution in Indonesia.

#### Specific recommendations:

- **Build trust, support parties in mediation and joint problem-solving actions.**

As a voluntary process, mediation and other approaches for resolving conflicts are processes based on trust - trust in the mediator, in the process, and most importantly trust among conflicting parties. However, building this trust is a gradual process that must be fostered and reconfirmed at each step along the way. Development agencies, as sponsors for mediation efforts, can be instrumental in providing the framework for trust that encourages parties to commit to what may be extended and uncertain mediation efforts.

- **Monitor implementation of agreements.** One of the important lessons underscored in the cases and reflections is that reaching an agreement should be seen as the *midpoint*, not the endpoint, of conflict resolution processes; i.e., unless the agreements are fully implemented the conflicts cannot be said to be fully resolved. Monitoring the implementation of agreements should be considered part-and-parcel of the conflict resolution process. Ideally this monitoring would be incorporated into the agreement, and viewed as a joint effort and responsibility of the parties, which provides an opportunity to hold each other accountable for the fulfillment of each other's commitments. Continued engagement of the mediator

"As such, the challenge is to ensure that efforts such as those described in this book will not only serve to resolve these individual cases but also provide a foundation with the potential to build confidence in these methods and approaches."

or mediation organization, and support from the sponsoring agency, can help strengthen the process by providing the oversight that ensures continued cooperation of the parties through to implementation.

- **Support coherence among related initiatives.** Agencies involved in the emerging field of conflict resolution in Indonesia have tended to limit themselves to their own specific interests and expertise. Some organizations focus on case management, others on providing Supreme Court Certified Mediation Training; some universities have adopted natural resource management conflict into their programs of study and have begun conducting research in this field. Government ministries, among others the Ministry of the Environment and Forestry and the Ministry of Agrarian Affairs and Spatial Planning/Land Administration Agency have established conflict resolution units at the directorate level. Several district-level governments, with support from national and international organizations, have also developed programs to deal with the growing number of land and plantation disputes. Resolution of agrarian conflicts has even become a priority of the Presidential Staff Office.

Further development of the field of conflict resolution within Indonesia will require a concerted effort to build strong connections and regular coordinating among these diverse institutions and initiatives. Cooperation among those various initiatives is indeed already happening; for example, CRU works closely with the Directorate for Tenurial Conflict Resolution and Customary Forests, and several mediation organizations are providing basic mediator trainings in collaboration with the Indonesian Supreme Court. Development agencies can be helpful in encouraging these kinds of partnerships, supporting national networks, and regular meetings and exchanges among programs, to strengthen the national infrastructure of organizations and build support for a common strategic direction for pursuing national institutional goals.

- **Support public policy mediation.** So far much of the work in conflict resolution has focused on individual case-based project settings, dealing with these conflicts in specific locations. However, since we have seen that many land use and resource management conflicts are rooted in, or generated by flawed or inconsistently implemented public policies, the logical progression of conflict resolution

**Further development of the field of conflict resolution within Indonesia will require a concerted effort to build strong connections and regular coordinating among these diverse institutions and initiatives.**

initiatives is to move upstream and engage related agencies in conflict resolution efforts that address broad-scale public policies. Public policy mediation has the potential of improving policies or their application, resulting in the avoidance or prevention of many localized conflicts downstream. Nevertheless, public policy mediation requires a different perspective, orientation, and approach than site-based mediation, and it will require further training, capacity building, experimentation, and analysis to move this work to the policy level. The focus for this work would not only be on particular land use or resource management policy decisions, but also on making government complaint mechanisms more accessible and responsive, encouraging government officials to represent their agencies in mediation efforts as an active disputant, ensure recognition and speedy follow up of regulatory agencies to agreements reached by disputants, and other related initiatives.

## 5) Working with government

In general, international assistance is most effective when aid programs align with priority national government policies, and in Indonesia, all assistance is the product of ongoing coordination with the national government. At the same time, aid agencies themselves are charged with demonstrating tangible success within a given time frame; their support is targeted at mitigating climate change, reducing deforestation, preserving biodiversity, improving public health conditions, etc. Most international development agencies are aware that they cannot achieve these goals without addressing some of the difficult policy issues and the conflicts that are the result of poorly implemented policies and many complex governance issues. International agencies must work within, navigate, and find ways of improving the legal and regulatory framework, and the institutional capacities of their government partners.

Since local agrarian conflicts are a “tip of the iceberg” phenomenon - the accumulation of various governance issues that have not been adequately addressed in the past - it is imperative that international organizations integrate conflict analysis into the project pre-planning process. The results of this analysis are critical for establishing a “clean and clear” starting point, a baseline that provides the foundation for program planning and for evaluating future hoped-for success.

“It is imperative that international organizations integrate conflict analysis into the project pre-planning process.”

### Specific recommendations:

- **Conflict resolution efforts require the support and political will of national authorities.** International agencies/institutions should work closely with the Ministry of Foreign Affairs, Ministry of Home Affairs, and the National Planning Agency (BAPPENAS), to build broad

support for conflict sensitive approaches, including mitigating issues related to the compartmentalization of conflict by ministry, geography or sector.

- **International agencies/institutions should continue to establish clear mandates and accountability mechanisms, consistent with national laws and policies.** In the event that these laws and policies can be directly linked to conflict, or demonstrated to be ineffectively implemented, opportunities exist to enable dialogue and occasion reform, including greater efforts at capacity building so that laws can be more effectively applied.
- **International agencies/institutions should incentivize Indonesian government partners to ‘lead by example’ and adopt and consistently apply a conflict-sensitive approach.** Seen from the official viewpoint of government representatives, there are a number of compelling arguments donors and international agencies/institutions can use to promote mediation initiatives. As reflected in the investors’ survey on land rights conducted by USAID in 2018 “local community land disputes” were rated by international investors as the primary risk for investment.<sup>2</sup> Research on the cost of conflict, particularly in the plantation and forestry sector, has consistently underscored the high costs and risks of dealing with conflict. International agencies/institutions must find ways to promote the consistent message that pro-active investment in conflict prevention (e.g. improving the regulatory framework as well as in the development of fair, responsive and effective dispute resolution mechanisms) is considerably more cost effective than neglecting the resolution of existing conflicts.
- **International agencies/institutions must be cognizant of the limits of their influence.** The practical application of mediator-supported negotiation processes differentiates between site-related procedures and public policy mediation. Although both merit donor support, upstream attempts to address the policy and regulatory framework are most often the sources and triggers for conflict. As such, international organizations/institutions, through collaboration with national agencies, can help identify and facilitate policy dialogues to develop new policy approaches and legislative initiatives, and the negotiations that accompany them (“regulatory negotiation”).

**" As reflected in the investors' survey on land rights conducted by USAID in 2018 "local community land disputes" were rated by international investors as the primary risk for investment."**

<sup>2</sup> USAID, 2013, KPK Action Plan 2015-2016.

- **Effective engagement with relevant government agencies is needed to build their understanding of effective and credible conflict resolution.** For mediation to be more effective in the future, government authorities and officials need to understand their role and the difference between authoritative and bureaucratic decision-making and mediation. In most natural resources conflicts government officials cannot mediate the disputes as they are not perceived to be impartial regarding the issues in question. However, government officials have a very important role in convening these mediations and in assuring that the process is used to achieve fair decisions and compliance and not used as a means to coopt particular stakeholders' interests. Another important role of government officials is to conduct consistent monitoring and inspection to assure compliance with agreements and regulations.







# Summary



**I**N the Indonesian context, many land and natural resources management conflicts have their source in competing government policies and jurisdictions, and/or the inconsistencies in the implementation of land-use policies. Based on experience in managing and observing more than 50 land use disputes, we have concluded that if the upstream causes of these disputes had been identified in advance, the conflict, and many of the problems that followed, could have been prevented. The challenge thus becomes how to avoid 'alleviating symptoms without curing the disease' or, in other words, how to integrate dispute prevention approaches into planning and management from the start. Understanding this reality and the sources of land and resource management conflict is pivotal for the following reasons:

1. Land and resource management conflicts are often reflections of critical governance challenges, rising social inequality, and gaps in social protection. As such, these conflicts carry the implicit message that broader common goals such as sustainable natural resource management, poverty alleviation, protection of human rights, and reduction of greenhouse gases are not likely to be achieved without addressing and resolving the underlying causes of conflicts. International donors and development agencies have a particularly important role to play in supporting the Indonesian government in its long-term commitment to agrarian reform and equitable development.
2. Any development initiative (e.g. policy/programme/project) has unintended consequences, positive or negative, direct or indirect. By ignoring underlying problems, the development community may thus exacerbate existing tensions, or even create new ones, whereas by thoughtful, deliberate, and informed planning, development interventions can be a force for preventing, mitigating, and even resolving conflict.
3. Land and natural resources tenure issues are perceived as the single greatest risk and deterrent for land-based investment and development. The cumulative costs of conflict are significant, undervalued and can pose a serious risk, both to corporations investing in oil palm and pulp and paper plantations, as well as to the individuals and communities who are in the path of this development. This reality must be understood by development agencies and institutions, and certainly by policy and decision makers as they seek to promote sustainable and equitable development.

**" Land and resource management conflicts are often reflections of critical governance challenges, rising social inequality, and gaps in social protection."**

This book is based on case study research and analysis jointly conducted by two institutions (IBCSO-CRU and GIZ-Forclime) that decided to critically reflect on their experiences mediating natural resource-related conflicts in Indonesia. The results of this analysis have already been published in a longer, more detailed Indonesian language version, *Seka Sengketa*, with additional case studies, analysis, and reflections on lessons learned drawn from this experience. The book in your hands is an abbreviated and edited English language version targeted for international organizations, donor agencies, decision and policy makers, and researchers.

The four cases selected for this edition provide compelling illustrations of the changing policy context in Indonesia. Of these four cases, two involve the forestry sector, i.e., land tenure conflicts in Jambi and West Nusa Tenggara provinces between local communities and companies holding Industrial Plantation Forest (HTI) concessions.

The other two cases, in Southeast Sulawesi and Papua, are within the plantation sector, specifically oil palm estates.

In developing this work, we drew upon social science traditions within case study analysis to unpack the reasons for and manifestations of conflict without resorting to singular causal explanations. Strong emphasis is placed on insights from mediation practitioners to inform development interventions. To augment our own experience, and ensure our conclusions are grounded in the voices and perspectives of development practitioners and policy makers, we spoke with experienced representatives from an array of agencies.<sup>1</sup> We offer here a synthesis of their perspectives, coupled with our own experience, into specific recommendations that can serve as a foundation for developing a stronger conflict-sensitive approach, one in which conflict assessment, prevention and management can be integrated into the fabric of future development programs.

As conflict resolution practitioners, we have seen in all of the cases that the most important point of reflection lies in our sense of social justice. Commitment to these values requires support from donors, international agencies/institutions as well as policy and decision makers in the Indonesian government, to think and act creatively, and to persevere in seeking alternative ways for anticipating and resolving conflicts and for producing more inclusive development outcomes.

**" Commitment to these values requires support from donors, international agencies/ institutions as well as policy and decision makers in the Indonesian government, to think and act creatively, and to persevere in seeking alternative ways for anticipating and resolving conflicts..."**

1 Ford Foundation, the British Embassy, World Bank, plantation companies and sustainable palm oil platform, the Ministry of Environment and Forestry, Presidential Staff Office, and the German Development Agency for International Cooperation (GIZ). Each of the participants was able to read through the case studies and analysis of the previous seven chapters of this book, and offer their insights and recommendations for how international development assistance can be strengthened or reoriented to better anticipate and address land use and resource management conflicts.

## Main Takeaways and Key Recommendations:

### 1) On Understanding Context

- **Conflict prevention is critical!** Once the conflict arises, everyone feels the impact – government, companies, and communities. Therefore, it is imperative to seek opportunities to identify, anticipate, and mitigate conflict before it arises. Many ongoing efforts that seek to anticipate and mitigate conflict are worthy of support, including the One Map Policy, improvements to spatial planning processes, land titling programs, efforts at delineating village boundaries, social forestry programs, and improvements to permitting and licensing procedures.
- **Create awareness about the cost of conflict:** Studies on the costs of conflict as mentioned in the introductory of this book, clearly show that it is ultimately wiser, and certainly cheaper to engage in conflict prevention and mitigation. An analysis of affected stakeholders' perceptions of the cost of conflict (both material and intangible) can help promote greater awareness of both the need for, and the potential benefits of conflict resolution initiatives.
- **Use appropriate vocabulary to promote conflict-sensitive development:** Many stakeholders continue to view conflict as a stigma, or reputational threat, so there is often a great deal of resistance in acknowledging their dispute, or using the words “conflict” or “dispute” or other equivalents. As ‘every problem is an opportunity in disguise’, it is often helpful experimenting with less threatening vocabulary and promoting approaches more focused on problem-solving and enhancing stakeholders’ motivation for engaging in dialogue for change.
- **Integrate land and resource tenure risk assessments into project planning and investment decision-making processes:** Apart from policy review, a thorough preliminary assessment needs to analyse historic and current conflicts, and the potential for future disputes, as well as the types of risks and possible mitigation actions in areas that will become intervention sites. To ensure that these assessments can achieve a deeper understanding of local conditions, national and international agencies/institutions should

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work with local development partners – NGOs, local universities and research institutions to review and validate the assessment through consultations with key stakeholders involved in program implementation.

- **Apply free, prior informed consent (FPIC) protocols consistently** to ensure that all stakeholders, especially local communities, have a clear understanding of the risks, potential impacts, and challenges of project implementation.

## 2) On Knowledge and Capacity Building

- **Build capacity for conflict resolution:** Sponsor national and regional training initiatives to support emerging mediation practitioners and provide improved understanding and skill building for NGO, community, corporate, and government staff, and provide core funding for emerging conflict resolution organizations, to ensure operational sustainability.
- **Strengthen learning and exchange networks:** Support the development of national and regional networks of mediation practitioners to encourage peer learning and sharing opportunities, increase visibility and credibility for mediation practice, and ensure greater response capacity for local dispute resolution activities.
- **Public-private partnerships:** Encourage more active and engaged public-private partnerships where case-based and public policy mediation can be more readily applied. Work with the private sector to develop best practice business models that guarantee access to information, encourage stakeholder participation, and facilitate access to court processes.
- **Support active research, analysis and documentation:** To enhance conflict resolution practice and make available a broad range of proven methods and practices for the Indonesian context, and to identify future priority program opportunities.

"To enhance conflict resolution practice and make available a broad range of proven methods and practices for the Indonesian context, and to identify future priority program opportunities."

## 3) On Project Management and Evaluation

- **Enhance the likelihood of success through strategic conflict-sensitive planning:** In guaranteeing a “clean and clear” starting point for investments and development projects, the likelihood of successful implementation can be considerably increased. This approach will also increase stakeholders’ sense of ownership of the project planning process, and thus optimize outcomes for beneficiaries.

- **Project management and evaluation:** Support more problem-solving, iterative, and adaptive ways of working, and approaches that are politically smart and more suitable to local conditions. Apart from a sound understanding of the political context and culture, this requires intensive investment in building relationships around common interests, long-term commitment and continuity of staffing, flexible funding arrangements that are not driven by external spending targets, strategic use of aid to support needs as they emerge, and a willingness to trust local partners to take the lead.
- **Seek improvements in monitoring, evaluation and learning:** Conflict-sensitive planning often requires donors to adapt project management and evaluation, i.e. capture intermediate processes of change as well as tangible results, and support ongoing learning with a range of stakeholders. This means revising procedural guidance (business cases, logical frameworks, monitoring and evaluation processes, financial procedures), but also making it clear that the quality of outcomes is more important than meeting project milestones or spending targets.
- **Public consultation:** The use of free prior informed consent (FPIC) should be further promoted and firmly established among donors and development agencies/institutions as a means to provide all project stakeholders (i.e. beneficiaries) with an adequate understanding about the development interventions during the design phase. Open, transparent sharing of project plans and project impacts, and public consultations with affected communities and stakeholders is highly recommended to anticipate and prevent misunderstandings and potential conflicts.
- **Participatory planning:** This approach brings stakeholders into the early planning process, serves as a complement and methodological approach towards FPIC. By using stakeholder input from the start, the interests of each party can be integrated into the project planning and design process, thereby reducing the potential risk for future disputes.
- **Multi-stakeholder coordination:** This issue is similar to the points mentioned above about public consultation and participation, i.e., the importance of engaging all affected stakeholders in the planning process. The

**"Open, transparent sharing of project plans and project impacts, and public consultations with affected communities and stakeholders is highly recommended to anticipate and prevent misunderstandings and potential conflicts."**

challenge here is that the “multi-stakeholder” formula often neglects the imperative of true participation – the so-called weaker stakeholders may not be prepared to participate effectively, and their involvement may be largely pro-forma. The key is the preparation and empowerment of less well-organized stakeholder groups to negotiate from a position of equal strength with more influential stakeholders.

#### 4) On Dispute Resolution Processes

- **Support public policy mediation:** Nevertheless, public policy mediation requires a different perspective, orientation, and approach than site-based mediation, and it will require further training, capacity building, experimentation, and analysis to move this work to the policy level.
- **Expand the field of conflict resolution:** As an emerging discipline and profession in Indonesia, the challenge is to ensure that conflict resolution initiatives will not only serve to resolve the numerous individual cases but also provide a foundation with the potential to build confidence in these methods and approaches, along with the individual and the institutional capacity to further promote and expand the field of conflict resolution in Indonesia.
- **Build trust, support parties in mediation and joint problem-solving actions:** As a voluntary process, mediation and other approaches for resolving conflicts are processes based on trust – trust in the mediator, in the process, and most importantly, trust among conflicting parties. Development agencies, as sponsors for mediation efforts, can be instrumental in providing the framework for trust that encourages parties to commit to what may be extended and uncertain mediation efforts.
- **Monitor implementation of agreements:** Monitoring the implementation of agreements should be considered part-and-parcel of the conflict resolution process. Continued engagement of the mediator or mediation organization, and support from the sponsoring agency, can help strengthen the process by providing the oversight that ensures continued cooperation of the parties through to implementation.
- **Support coherence among related initiatives:** Further development of the field of conflict resolution within Indonesia will require a concerted effort to build strong connections and regular coordination among these diverse institutions and initiatives. Development agencies can be helpful in encouraging these kinds of partnerships, supporting national networks and regular meetings and exchanges among programs, to strengthen the national infrastructure of organizations and build support for a common strategic direction for pursuing national institutional goals.

"Public policy mediation has the potential of improving policies and their application, resulting in the avoidance or prevention of many localized conflicts."



## 5) On Working with Government

- **Conflict resolution efforts require the support and political will of national authorities.** International agencies/institutions should work closely with the Ministry of Foreign Affairs, Ministry of Home Affairs, and the National Planning Agency (BAPPENAS), to build broad support for conflict-sensitive approaches, including mitigating issues related to the compartmentalization of conflict by ministry, geography or sector.
- **International agencies/institutions should continue to establish clear mandates and accountability mechanisms, consistent with national laws and policies:** In the event that these laws and policies can be directly linked to conflict, or demonstrated to be ineffectively implemented, opportunities exist to enable dialogue and occasion reform, including greater efforts at capacity building so that laws can be more effectively applied.
- **International agencies/institutions should incentivize Indonesian government partners to ‘lead by example’ and adopt and consistently apply a conflict-sensitive approach.** International agencies/institutions must find ways to promote the consistent message that pro-active investment in conflict prevention (e.g. improving the regulatory framework as well as in the development of fair, responsive and effective dispute resolution mechanisms) is considerably more cost effective than the resolution of existing conflicts.
- **International agencies/institutions must be cognizant of the limits of their influence:** International organizations/institutions, through collaboration with national agencies, can help identify and facilitate policy dialogues to develop new policy approaches and legislative initiatives, and the negotiations that accompany them (“regulatory negotiation”).
- **Effective engagement with relevant government agencies is needed to build their understanding of effective and credible conflict resolution:** For mediation to be more effective in the future, government authorities and officials need to understand their role and the difference between authoritative and bureaucratic decision-making and mediation. Government officials have a very important role in convening these mediations and in assuring that the process is used to achieve fair decisions and compliance and not used as a means to co-opt particular stakeholders’ interests. Another important role of government officials is to support consistent monitoring and inspection to assure compliance with agreements and regulations.

**" Another important role of government officials is to support consistent monitoring and inspection to assure compliance with agreements and regulations."**





# SUPPORTING CONFLICT SENSITIVE DEVELOPMENT

## Insights from Mediation Practitioners in Indonesia

The Indonesian-German Forests and Climate Change Programme (FORCLIME) supports the Indonesian Government and relevant public and private actors in developing and implementing the institutional and regulatory framework, methods and services for sustainable forest management, nature conservation and the reduction of greenhouse gas emissions from deforestation and forest degradation.

FORCLIME in collaboration with the Conflict Resolution Unit initiated a project to document the experience and learning of multi-party mediation in efforts to manage and resolve agrarian conflicts in Indonesia. The document records lessons learned from experiences with mediation processes supported by FORCLIME and the Conflict Resolution Unit (CRU). The analysis has been developed into an Indonesian language book, "Seka Sengketa". Many argued that an abbreviated English language version was needed, so FORCLIME and CRU collaborated on a process to include some of the key cases, and distill the major lessons learned from this experience, with the aim of reaching an international audience. The translation, review, and additional analysis included in this English language version was organized and fully supported by FORCLIME, and is based largely on the content of Seka Sengketa.

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