

Indigenous Peoples and Oil Palm Plantation Expansion in West Kalimantan, Indonesia

Martua T. Sirait

May 2009



Author: Martua T. Sirait
with contributions from Sujono, Herbet Pane, Emerikus Icin (SPKS),
Elias Ngiuk (ID) and Norman Jiwan (Sawit Watch)

May 2009

This report has been commissioned by the Amsterdam University Law Faculty and financed by Cordaid, The Hague. Academic supervision by Prof André J Hoekema (a.j.hoekema@uva.nl)

Indonesia Country Report

prepared for the study:

Environmental degradation, natural resources and violent conflict in indigenous habitat in Kalimantan-Indonesia, Bayaka-Central African Republic and San Marcos-Guatemala

Acknowledgements

The author would like to thank the following individuals and institutions for their help and collaboration in carrying out the study. Firstly to Prof. André J. Hoekema from the UvA and Eelco de Groot from Cordaid for their supervision of the study, to my colleague Joris van de Sandt and Patrice Etoungou, who do the similar research on environmental degradation, natural resources and violent conflict in indigenous habitat in San Marcos-Guatemala and Bayaka-Central African Republic. Thank you also to my collaborators Sujono, Herbet Pane, Emerikus Icin (SPKS), Elias Ngiuk (ID) and Norman Jiwan (Sawit Watch) that helped me in doing the data collection as well as those who contribute their thought and their writing in this report. Especially to John Bamba the director of Institute Dayakology and Rudy Lumuru as well as Abetnego Tarigan from Sawit Watch which also gave comments on the earlier draft. Thanks for those who gave input during the collaborators workshop in Pontianak 2008; Nico Andasputra (ID), Abdias Yas (LBBT), Laili Khainur (Gemawan), Sekundus (GRPK), Alexander Cion (SPKS Sanggau), Ibu Rini (SPKS Sanggau), Yohanes RJ (CU Keling Kumang), Aloysius Surjani (AMA-Kalbar), Julia (ID) etc. Thanks to all the resource persons; Nova Sirait/Bappeda Kalbar, Paulus Hadi/Vice Bupati Sanggau District, Mona/Biro Hukum Sanggau District, Ilahang/DAI, Bonifacius/CNIS, Siswomiharjo, Albertus Awin, Raji Mulyono, Sutomo, Diman and Margono from Tokang Jaya village, Marsan and Ruth from Sei Rosat and Serinus from Sei Kodang, Rio Rompas, Nursianus and Nur Jiwan from SPKS Sanggau, Saban Stiawan/Walhi Kalbar, Gamal Pasya/ICRAF-SEA, Sandra Moniaga/HuMa-Learning Centre as well as Andiko from HuMa.

Thanks for Patrick Anderson who help me in editing the English version of the report as well as Mia Badib who translated the report to Indonesian language. To Astrid Frey and Raoul Syrier and Elly Rijnierse from Cordaid who helped make this publications happen. It was also supported by large number of individuals and institutions too numerous to mention here. I take the opportunity of thanking them all for their support.

Acknowledgements	iii
Content	IV
List of Tables	VI
List of Figures	VII
List of Boxes	VIII
List of Abbreviations	IX
Foreword	XI
Executive Summary	XII

1	Introduction	1
----------	---------------------	----------

2	Trends in Oil Palm Plantation Expansion and the Consequences for Indigenous Peoples in West Kalimantan	5
----------	---	----------

3	Framework for understanding environmental conflict	11
----------	---	-----------

3.1	Transformation in Rural Areas; Learning from the Past	13
------------	---	----

4	Policy setting (international, national and local)	15
----------	---	-----------

4.1	International Policy Setting	16
------------	------------------------------	----

4.1.1	Human Rights Instruments related to Indigenous Peoples rights in Indonesia	17
--------------	--	----

4.1.2	Indonesia's Sovereignty vis-à-vis Declarations and Reservations	19
--------------	---	----

4.1.3	Jurisprudence on indigenous peoples	20
--------------	-------------------------------------	----

4.2	National Policy Setting	22
------------	-------------------------	----

4.2.1	The legal setting of sectoral laws	25
--------------	------------------------------------	----

4.3	Local Policy Setting	27
------------	----------------------	----

4.3.1	West Kalimantan Policies	27
--------------	--------------------------	----

4.3.2	Sanggau District policies	27
--------------	---------------------------	----

5	The Permitting Procedure for Oil Palm Plantation development	31
----------	---	-----------

5.1	Oil Palm Plantation Business Permits	34
------------	--------------------------------------	----

6	Conflict and Collaboration in the Case Study Areas	37
----------	---	-----------

6.1	The Indigenous Peoples (Adat) Institution and its Land Tenure System	38
------------	--	----

6.2	The Hibun and Sami communities in relation to oil palm plantations	43
------------	--	----

6.3	The Relationship between Masyarakat Adat Jangkang, Javanese Transmigrants and the Oil Palm Company	50
------------	--	----

6.4	The Pompang Indigenous People at threat of extinction	55
------------	---	----

7	The Consequences for Indigenous Peoples	59
7.1	Impact on ancestral lands	60
7.2	Impact on Indigenous Natural Resource Management Practices	61
7.3	Impact on means of subsistence	63
7.4	Survival, integrity and gender issues	64
7.5	Reconstruction of indigenous Peoples	66
7.6	Risk of Violence	70
8	Environmental Peace-building Processes	73
8.1	The Roundtable on Sustainable Palm Oil Initiatives	74
8.2	IFC-World Bank Ombudsman process	75
8.3	Complaint Mechanism using the International Convention on the Elimination of All Forms of Racial Discrimination	76
8.4	SPKS Engagement in the Oil Palm District Taskforces	78
8.5	SPKS and District Adat Board and a Mechanism for FPIC	79
8.6	SPKS efforts to gain control over Company Cooperatives	79
8.7	AMAN, AMA Kalbar & PILNET support the court case	80
8.8	Revitalization of Adat by ID and AMA Kalbar	81
8.9	The role of the church in passing on the message	81
8.10	Multi-media in Support of Peace-building Processes	83
8.11	Alternatives to Oil Palm	86
9	Conclusions & Recommendations	89
	Recommendations to stakeholders	91
	References	94



List of Tables

Table 1. UN Conventions Ratified by Indonesia	19
Table 2. Reservations and Declarations	20
Table 3. Comparison of Earning in the Oil Palm/Non Oil Palm Plantation	63

List of Figures

Figure 1.	Price of CPO 2003-2008	6
Figure 2.	Oil Palm Related Conflict in Indonesia	7
Figure 3.	The Distribution of Oil palm plantations in West Kalimantan Province up to 2006	8
Figure 4.	Ethnic distribution in West Kalimantan	9
Figure 5.	IPs Engagement with oil palm plantation schemes	10
Figure 6.	Structure of TP3K	29
Figure 7.	Cycle of an oil palm plantation	32
Figure 8.	Plantation Business Unit (IUP) and Bussines Utilization Rights (HGU) Processes	35
Figure 9.	General Structure of the Dayak Bidayuh Indigenous People Institution in Sanggau District	39
Figure 10.	Ethnic distribution in Sangau district	41
Figure 11.	Mr. Abdias	43
Figure 12.	Mrs. Rini, Spokesperson for SPKS from Kampuh Village	45
Figure 13.	Blockade, Demonstration against PT MAS II in Bonti sub District	46
Figure 14.	Mrs Rini's (center) meets with CEO of Synergy Drive in KL	47
Figure 15.	The SPKS leaders from Bonti sub-district Facing Criminal Charges	48
Figure 16.	Landscape changes on the Hibun and Sami Communal Lands (1995- 2008)	49
Figure 17.	Mr. Siswomiharjo	51
Figure 18.	Mr. Albertus Awin	51
Figure 19.	Mr. Raji Mulyono	52
Figure 20.	Landscape changes on Jangkang Communal Land (1983-2008)	53
Figure 21.	Mr. Sutomo	53
Figure 22.	Mr. Diman	54
Figure 23.	Mr. Bonifacius	54
Figure 24.	Mr. Marsan	56
Figure 25.	Mrs. Ruth from Sei Rosat	56
Figure 26.	Landscape Change of Pompang Communal Lands (1976-2008)	57
Figure 27.	Mr. & Mrs. Margono, Javanese transmigrants from Tokang Jaya village	62
Figure 28.	Mr. Serinus from Sei Kodang	65
Figure 29.	Replanting area in Pompang & Pandu Ancestral Lands	67
Figure 30.	Land Acquisition Task Force Modus Operandi	69
Figure 31.	Join statement expressed in Poster	82
Figure 32.	Multimedia Publication in Indonesian language that support IPs understanding of their rights and efforts in negotiation.	84
Figure 33.	Multimedia Publication that share the knowledge of the IPs, in English and Indonesian languages	85

List of Boxes

Box 1. Dingit vs. Hutan Mahligai Timber Plantation	18
Box 2. Adat Land Registration Policy and its Implementation	24
Box 3. The First Generation of Oil Palm Plantation, Inti Murni Scheme	33
Box 4. The Second Generation, Plasma-Inti Scheme	33
Box 5. The Third Generation of Oil Palm Plantation, KKPA Scheme	33
Box 6. The Fourth Generation of Oil Palm Plantation, Akuan Scheme	34
Box 7. Gaining back the Cooperative	44

List of Abbreviations

ADB	Asian Development Bank
AMA Kalbar	Aliansi Masyarakat Adat Kalimantan Barat (Alliance of West Kalimantan Indigenous Peoples)
AMAN	Aliansi Masyarakat Adat Nusantara (Indigenous Peoples Alliance of the Archipelago)
AMDAL/EIA	Analisis Mengenai Dampak Lingkungan (Environmental Impact Assessment)
APDS	Association of Periaus of Danau Sentarum
BAL	Basic Agrarian Law
Bappeda	Badan Perencanaan Pembangunan Daerah (Regional Development Planning Board)
BFL	Basic Forestry Law
BMK	Badan Musyawah Kampung (West Kalimantan's Village Legislative Body)
BPN	Badan Pertanahan Nasional (National Land Agency)
BPS	Badan Pusat Statistik (National Statistic Bureau)
CAO	Compliance Advisor Ombudsman
CEDAW	Convention on the Elimination of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
CPO	Crude Palm Oil
CRC	Convention on the Rights of the Child
CWG	Criteria Working Group
DVD/VCD	Digital Video Disc/Video Compact Disk
EB	Executive Board
ELSAM	Lembaga Studi dan Advokasi Masyarakat (Centre for Community Study and Advocacy)
FL	Forestry Law
FoE EWNI	Friends of the Earth England, Wales and Northern Ireland
FPIC	Free, Prior and Informed Consent
FPP	Forest Peoples Programme
GAPKI	Gabungan Pengusaha Karet Indonesia (Indonesian Rubber Entrepreneurs Association)
GRPK	Gerakan Rakyat Pemberdayaan Kampung
HGU	Hak Guna Usaha (Plantation Permit to use State Land)
HRBA	Human Rights Based Approach
HRC	Human Rights Council
HuMA	Perkumpulan Untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis (Association for Community and Ecology based Law Reform)
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social, and Cultural Rights
ICRAF	International Centre Research in Agro Forestry currently World Agroforestry Centre
ICS	Internal Control System
IFC	International Finance Corporation
IFM	indigenous swidden fallow management system
ILO	International Labor Organization
IP	Indigenous People
IPs	Indigenous Peoples
IUP	Ijin Usaha Perkebunan (Plantation Estate Permit)

KAMAN	Kongres Aliansi Masyarakat Adat Nusantara (the Congress of the Alliance of Indigenous Peoples of the Archipelago)
KKPA	Koperasi Kepemilikan Perkebunan bagi Anggota (Primary Cooperative Credit for its Member)
KOMNAS HAM	Komisi Nasional Hak Asasi Manusia (National Commission on Human Rights)
KR	Kalimantan Review
LBBT	Lembaga Bela Banua Talino (Institute for Legal Resources Empowerment)
MoU	Memorandum of Understanding
MPR	Majelis Permusyawaratan Rakyat (the Peoples Assembly of the National Parliament)
NGO	Non Governmental Organisation
NPV	Net Present Value
NTFP	Non Timber Forest Product
OPT	Organisme Pengganggu Tanaman (invasive organisms)
Pamswakarsa	Pengamanan Swakarsa (Private Security)
PEL	Plantation Estate Law
Perda	Peraturan Daerah (District Regulation)
PILNET	Public Interest Lawyers Network
PPP(3P)	Private Public Partnership
PPSDAK	Pemetaan Pengelolaan Sumber Daya Alam Kerakyatan (Participatory Community Mapping)
PSE	Komisi Sosial Ekonomi (social economic commission)
PT	Perusahaan Terbatas (Propriety Limited)
PT CNIS	PT Citra Nusantara Inti Sawit (Indonesian Private Company)
PT MAS	PT Mitra Austral Sejahtera (Malaysian Company)
PTPN XIII	PT Perkebunan NusantaraXIII (Indonesian State Own Company)
PT PMS	PT Ponti Makmur Sejahtera (Indonesian Private Company)
RSPO	Roundtable on Sustainable Palm Oil
SARA	Suku, Agama, Ras & Antar Golongan (Ethnic Group, Religion, Race and Social
SATGAS	Economic Class) Satuan Tugas (task force at the sub-district level)
SATLAK	Satuan Pelaksana (executing team, village level)
SHM	Serifikat Hak Milik (Individual Land Certificate)
SP	Satuan Pemukiman (unit of settlement)
SPKS	Serikat Petani Kelapa Sawit (union of oil palm farmers/peasants)
TL	Tenancy Laws
TP3KTL	Tim Pengawasan dan Pembinaan Perkebunan Kabupaten (task force for land acquisition, district level)
UN	United Nations
UNDG	United Nations Development Group
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UU	Undang-Undang (national law)
WALHI	Wahana Lingkungan Hidup Indonesia (The Indonesian Forum for Environment, Friends of the Earth Indonesia)
WB	World Bank
WWF	World Wide Fund for Nature

Foreword

Herewith I proudly present the report “TITLE”. The increasing scarcity of natural resources and the relationship with violent conflict has been widely investigated. But the relationship of these two phenomena with environmental degradation and their implication for indigenous peoples is less understood. In July 2006, Cordaid started a first investigation into the relation between the exploitation of natural resources, environmental degradation and violent conflict and its specific impact on indigenous peoples. This resulted in a pilot study on the oil palm exploitation in Indonesia and Colombia.

This pilot study not only raised interest from our partners and the local populations, but also in academic and political circles. The project “Environmental degradation, Natural resources and Violent Conflict in Indigenous Habitats” in collaboration with the University of Amsterdam was born.

Two in depth case studies were executed in Indonesia (Kalimantan) and Guatemala. Cordaid has a long-term experience in Kalimantan regarding the oil-palm exploitation and the implication for the Dayak people. Cordaid is also involved in Guatemala regarding the gold-mine exploitation and the implication for the Maya’s, in co-junction with CIDSE’s Extractives and Poverty in Latin America (EPLA) program. A third case study was conducted for the timber-logging effects in the Central African Republic for the Pygme population, but due to unforeseen circumstances this study has not been finalised.

Under supervision of prof. mr. André Hoekema of the University of Amsterdam, an expert on plurality of law and interlegality, the two studies have been conducted and published in English, respectively in Bahasa Indonesia and Spanish. I sincerely hope that these studies strengthen the cause of the local people struggling for survival as a distinct people. I also hope that this English version contributes to further insight on the ancient conflict between tradition and modernity, which intensifies at high speed in current times. I am convinced these studies will call for fruitful discussions and perspectives to act in our *Communities of Change* for a better world.

Eelco de Groot

Senior Program Officer

Cordaid

Executive Summary

Oil palm plantations have expanded rapidly in Indonesia in the last decade. They cover more than seven million hectares and are managed by more than 600 companies and one million small farmers. An additional eleven million hectares of forest land was allocated to the oil palm industry but never planted; after cutting and selling the wood, the companies simply abandoned the lands. Local and provincial governments have plans to issue licenses for an additional 20 million hectares of oil palm plantations. It is expected that most of the permits will be issued in forest areas, as the timber obtained from forest conversion can pay for plantation establishment costs.

West Kalimantan is planning to expand oil palm plantations by five million hectares, more than any other province in Indonesia, followed by Riau and Papua provinces both with expansion plans of three million hectares. Forest areas and smallholder agricultural lands without official land title are often classified by the government as “non productive lands” or “bare lands” and are targeted for conversion to oil palm plantations. According to the NGO Sawit Watch, West Kalimantan has the second highest level of land conflict related to oil palm plantations in Indonesia, after South Sumatra.

Three case studies of four ethnic subgroups of the *Dayak Bidayuh* indigenous people (*Hibun, Sami, Jangkang* and *Pompong*), describe and explore conflict and collaboration between these communities in West Kalimantan in relation to the expansion of oil palm plantations over their customary territories. This study does not attempt to estimate the quantitative scale of the conflict, such as number of people affected in terms of communities or households or the amount of indigenous land that has been taken over by the palm oil companies. Instead, the study explores qualitative aspects of the conflict, such as the feelings of members of these indigenous communities about the conflict, their ways of resolving conflict, and the impact on indigenous peoples’ institutions and their customary lands. Although the study is not necessarily representative for the whole of West Kalimantan, it provides a fairly complete picture of how, in West Kalimantan, people in the villages confront the large scale palm oil plantations and how they cope with the opportunities but also with the conflicts caused by the way these plantations are started and implemented. The cases concern different stages and conditions in the conflict between oil palm plantations and IPs which together are indicative of the situation for IPs in other areas of Kalimantan. In my opinion, similar conflicts over land stimulated by oil palm plantations took place in Sumatra in the 1970-1980s and similar conflicts over land will likely take place in the near future in Sulawesi, Papua and small islands in Eastern Indonesia as the oil palm industry expands eastwards.

The study collected a substantial amount of data, mostly from interviewing informants from a number of social and economic backgrounds as well as secondary data from reliable sources and showed that:

1. There is a clear trend that only few IPs, and mostly only their elites, benefit from engagement in oil palm plantations. Most ordinary members of indigenous communities end up nearly landless and must pursue livelihoods through off farm activities, temporary or permanent migration, often leaving behind their children and elder generations in the village.

2. A consequence of being engaged in oil palm plantation activities is that IPs become more detached from their environments and their customary systems of natural resource management. Individuals also become detached from their customs and culture due to the individualization of ancestral lands, individualization of descendant group lands and individualization of household lands. This process of land acquisition through the Task Force creates conflict and bad feeling among families, person to person etc, which damages the solidarity and local institutions as a foundation for resolution of horizontal conflict. Plantation companies capitalize on horizontal conflict to continue expanding their operations.
3. From the study sites it is clear that once an IP joins an oil palm scheme, either *Plasma-Inti* (see box 4), *KKPA* (see box 5) and *Akuan* (see box 6), it is hard for them to pull out even if there are great hardships, due to the attachment of individuals, families and communities to their ancestral lands. The study shows that it is easier for Javanese transmigrants to pull out from an oil palm scheme and cultivate rubber and mixed farming on their remaining piece of land. The IPs from the sites studied have shown that they go further in engagement with the oil palm companies, firstly through giving up some land, and then their capital (as credit) and their labor. The study also shows that nearly landless IPs or those who only have a few pieces of land have no bargaining position to reject oil palm plantations. Only a few well off IPs can contribute a small proportion of their land (up to half), and therefore keep the rest for traditional economies and activities. This phenomenon indicates that it is hard for IPs in West Kalimantan to be committed both to traditional livelihood practices and concomitant ecosystem management and at the same time run oil palm businesses. There is a tendency over time to invest more and more land, labor and capital in oil palm plantations, especially to have plots of palms with different ages, to guarantee the sustainability of the product when the older sites need to be replanted. Commitment to maintain their traditional knowledge and systems of ecosystem management as well as to learn about improved fallow management is mainly shown by IPs who are not engaged in oil palm plantations.
4. There is a variety of conflict resolution approaches that have been used and are further needed by IPs to assist them in their efforts to retain part of their land, labor and capital from absorption into the oil palm sector. Conflict resolution efforts should take place along with three other strategies to assist IPs:
 - a. Strengthening government policies at local, provincial and national level that could protect IPs from further deprivation.
 - b. Supporting IPs engaged with oil palm concessions to strengthen their bargaining position through highlighting their basic rights and the rights of indigenous women, so as to slow down the process of loss of livelihood options for women and marginalized members of IPs that often follows from oil palm expansion.
 - c. Develop alternatives to oil palm plantations that could assist IPs to maintain economic livelihoods on their ancestral land. Alternatives could include rubber mix gardens and producing other non-timber forest products that maintain and improve the IPs fallow management.

The planned expansion of up to five million hectares of oil palm in West Kalimantan is so vast that there is a need to reflect on what kind of rural society will be created as a consequence. Sharpening differentiation in land holdings within and between ethnic groups in the interior of West Kalimantan is creating a situation that can easily deteriorate into violent conflict. There are strong justifications to delay further expansion of the oil palm industry until the negative consequences of existing operations are addressed and policies are adopted that will mitigate these problems in any future expansion.



1

Introduction

The study describes and explores conflict and collaboration between these communities in West Kalimantan in relation to the expansion of oil palm plantations over their customary territories. This study does not attempt to estimate the quantitative scale of the conflict, such as number of people affected in terms of communities or households or the amount of indigenous land that has been taken over by the palm oil companies. Instead, the study explores qualitative aspects of the conflict, such as the feelings of members of these indigenous communities about the conflict, their ways of resolving conflict, and the impact on indigenous peoples' institutions and their customary lands. Although the study is not necessarily representative for the whole of West Kalimantan, it provides a fairly complete picture of how, in West Kalimantan, people in the villages confront the large scale oil palm plantations and how they cope with the opportunities but also with the conflicts caused by the way these plantations are started and implemented. The cases concern different stages and conditions in the conflict between oil palm plantations and IPs which together are indicative of the situation for IPs in other areas of Kalimantan. In my opinion, similar conflicts over land stimulated by oil palm plantations took place in Sumatra in the 1970-1980s and similar conflicts over land will likely take place in the near future in Sulawesi, Papua and small islands in Eastern Indonesia as the oil palm industry expands eastwards.

The population of indigenous people in Indonesia is estimated to be between 60 and 120 million people out of a national population of 250 million, comprising some 500 ethnic groups and 600 language groups¹. Indigenous peoples in Indonesia refer to themselves as *Masyarakat Adat*, which is defined as:

Communities that live on the basis of their hereditary ancestral origins in a specific customary territory, that possess sovereignty over their land and natural riches, whose socio-cultural life is ordered by customary law, and whose customary institutions manage continuity of their social life²

Masyarakat Adat in Indonesia find themselves in an ambiguous position in relation to the state and capital. The Indonesian State tends to view the concept of *Masyarakat Adat* as a threat implying disintegration of the Indonesian nation, but *Masyarakat Adat* are seen by themselves and many others as an asset that helps give coherence to the Indonesian nation³. The rights of indigenous communities over *Tanah Adat* or their customary lands and resources have been routinely ignored and violated by the Indonesian governments, which instead treat these resources as national assets that form the basis for industrialization⁴. The terms Indigenous Peoples and *Masyarakat Adat* were rejected by the state during the Soeharto era and are still not fully acknowledged in Indonesia's laws, rules and regulations. As a consequence, laws are interpreted by the state and capital for their own interests without respecting indigenous peoples' rights⁵.

This struggle for recognition is central to the struggle of indigenous peoples in Indonesia today. During the founding congress of *Aliansi Masyarakat Adat Nusantara* (the Alliance of Indigenous Peoples of the Archipelago) in 1999, the participants issued a famous statement:

We will recognize the State, when the State recognizes us!⁶

1 See Colchester, Sirait & Widjarjo 2003. pp 94-105

2 AMAN 1999

3 See Wirajuda. 1998.

4 See Saith Aswani.

5 Djueng, 1997

6 AMAN-World Agroforest Centre-FPP, 2003. p1

The rapid expansion of large-scale oil palm plantations in Kalimantan has placed indigenous peoples at a cross roads; some engage with oil palm plantation schemes and depend on them for their livelihood. Other indigenous peoples engage partially with oil palm plantations but attempt to maintain their cultural and economic integrity. There are also indigenous peoples that completely reject the proposals from oil palm plantation companies seeking to operate on their ancestral lands.

There is a lack of data on the number of indigenous households that engage with or resist oil palm plantation schemes in West Kalimantan. Through case studies of four sub-ethnic groups of the *Dayak Bidayuh* indigenous people (*Hibun, Sami, Jangkang Junggur Tanjung and Pompang*⁷), this research describes conflict and collaboration between indigenous peoples in West Kalimantan in relation to the expansion of oil palm plantations in their *adat* territory⁸. The report is structured as follows: (1) introduction, (2) trends in oil palm plantation expansion and the consequences for indigenous peoples in West Kalimantan (3) framework in understanding the environmental conflict (4) policy setting (international, national and local) (5) the legal procedure for oil palm plantation development (6) conflict and collaboration in the case study areas (7) the consequences for the indigenous peoples (8) peace-building supporting processes, (9) conclusions and recommendations.

7 According to Institute Dayakology research 2001, *Bidayuh* or *Bidoih* is the largest Dayak Ethnic group on the island of Borneo, consisting of 37 sub-ethnic groups mostly located in Sanggau and Sekadau district, West Kalimantan (*Kalimantan Review*, no 134/XV/October 2006, p47).

8 For the purpose of this research the term *Masyarakat Adat* and its variant of terms were simplified and translated as *Indigenous Peoples*.



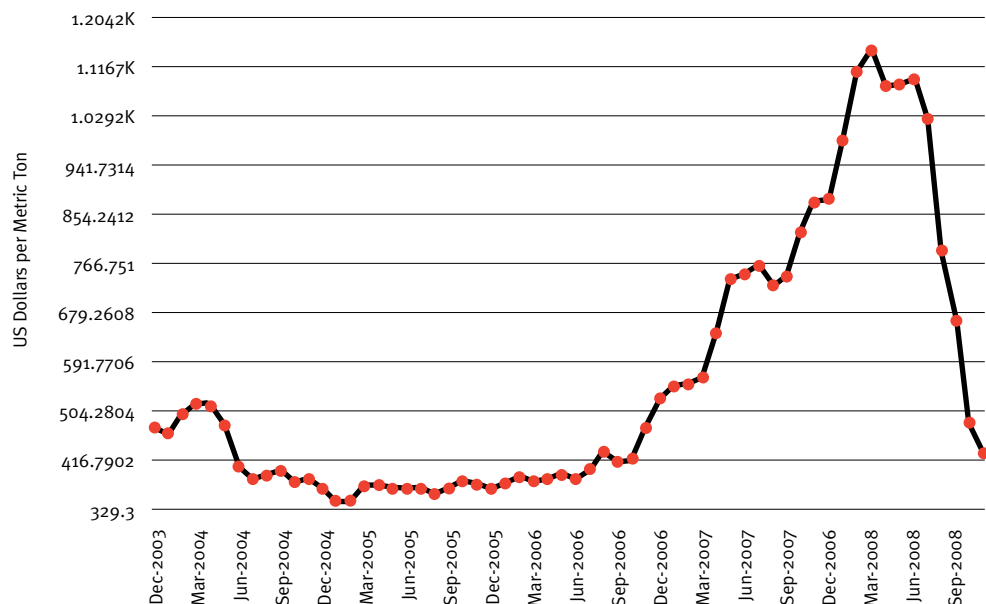
2

Trends in Oil Palm Plantation Expansion and the Consequences for Indigenous Peoples in West Kalimantan

Oil palm plantations have expanded rapidly in Indonesia in the last decade and currently cover seven million hectares, managed by more than 600 companies. An additional forest area of 11 million hectares was allocated to the oil palm industry but never planted; after cutting and selling the wood, the companies simply abandoned the lands. Over the next ten years, local and provincial governments plan to issue licenses for an additional 20 million hectares for oil palm plantations. It is expected that most of the permits will be issued in forest areas, as the timber obtained from forest conversion can pay for plantation establishment costs.

Oil palm has become the most popular plantation crop in Indonesia due to Crude Palm Oil (CPO) prices doubling between 2000 and early 2008 and the prospect of increased CPO markets for agrofuel. The price began to drop in mid 2008 following problems in the market for agrofuel and subsequently dropped again following the global financial crisis, see Figure 1. Price of CPO 2003-2008.

FIGURE 1. PRICE OF CPO 2003-2008



The Net Present Value (NPV) of large scale oil palm plantations (with the price of CPO US\$531 per tonne), is US\$72.62 million per 10,000 hectares. If the companies convert natural forest the NPV of a 10,000 hectare plantation increases to US\$ 93.62 million⁹.

The government decentralization process which started in the year 2000 affected the regulation of the plantation estate sector; the expansion of the oil palm plantations was no longer controlled nationally. The process of land acquisition for oil palm plantations is carried out locally, with political support given by the district government to oil palm plantation companies in exchange for financial support. Local government, local political party elites and their entrepreneur allies (local and national capital) also engage in establishing oil palm plantations, taking advantage of their easy access to oil palm plantation establishment permits. The sector has spawned many instant companies with no background in the industry

9 Manurung, 2001.

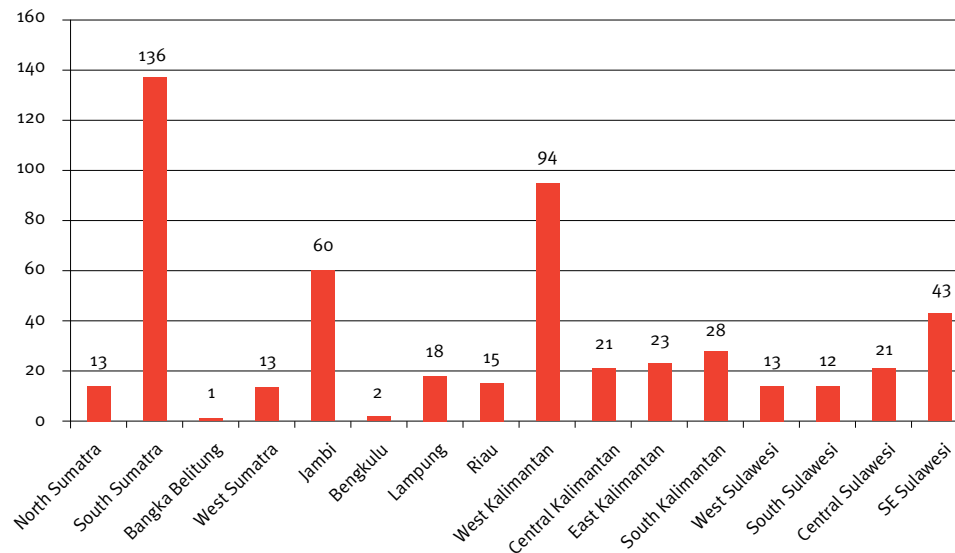
that play the role of brokers, trading in their access to plantation permits and promising prosperity to local communities. Many local companies made large profits from selling the wood obtained from forest conversion, after which the company and its plantation permits are often sold to national or foreign oil palm conglomerates.

To eliminate violent conflict and to smooth the development of oil palm plantations, especially during the land acquisition process (the transfer of control over land from indigenous communities to private hands), many local governments have issued regulations on partnership schemes for oil palm plantations. These are usually based on the model of *plasma-inti*, whereby the plantation company manages the bulk of the plantation (*inti*), and establishes an out grower or *plasma* scheme with communities typically getting two hectares per family.

Local governments are also responsible for establishing the task forces for land acquisition at the district (TP3K), county (Satgas) and village (Satlak) levels¹⁰. These task forces typically include representatives from the military, the police and local government as well as village chiefs and *Adat* leaders. The members of each task force are supported financially through monthly payments from the company seeking to acquire lands for plantations.

Village task forces usually include five members from the local community including the village chief, an *adat* leader and other influential persons who effectively provide a public relations service to the company and “negotiate” with the customary land owners to join the *plasma-inti* scheme¹¹.

FIGURE 2. OIL PALM RELATED CONFLICT IN INDONESIA



Source: Losing Ground, Serge Marti, 2008. FoE EWNI, Life Mosaic and Sawit Watch, p40.

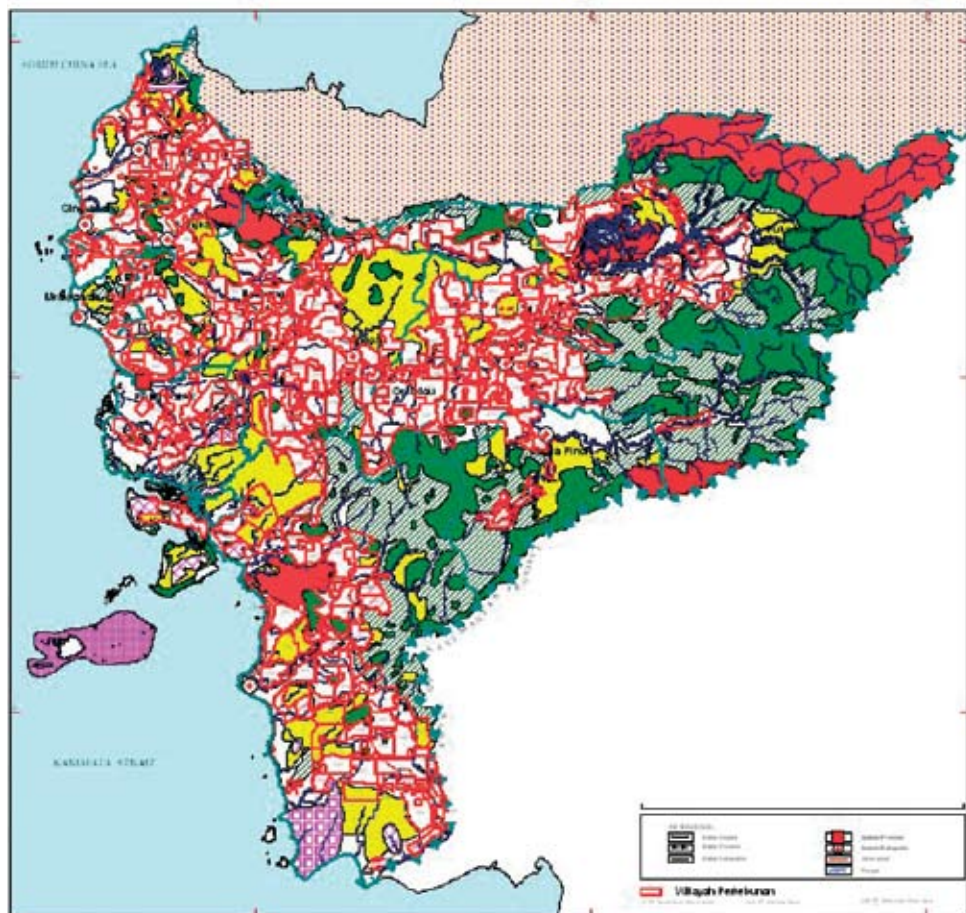
10 See Perda Kab Sanggau no 3 tahun 2004 ttg Penyelenggaraan Perkebunan Kelapa Sawit Pola Kemitraan and SK Bupati no 207/2004 re. Operational Guideline for the Perda 3 no 2004

11 See Surat Keputusan Camat Bonti, no 4/2002 re. the formation of Satlak at Village level for the Oil palm plantation of PT MAS in Sanggau district.

West Kalimantan is planning to expand oil palm plantations by five million hectares, more than any other province in Indonesia, followed by Riau and Papua provinces both with expansion plans of three million hectares. Forest areas and smallholder agricultural lands without official land title are often classified by the government as “non productive lands” or “bare lands” and are targeted for conversion to oil palm plantations. According to a recent study¹², West Kalimantan has the second highest level of land conflict related to oil palm plantations in Indonesia, after South Sumatra. See Figure 1, Oil Palm Related Conflict in Indonesia

By 2005, 152 oil palm plantations had been established in West Kalimantan covering 3.2 million hectares (see Figure 3. The Distribution of Oil Palm Plantations in West Kalimantan Province up to 2006).

FIGURE 3. THE DISTRIBUTION OF OIL PALM PLANTATIONS IN WEST KALIMANTAN PROVINCE UP TO 2006



Source: Bappeda 2006, Inventarisasi Kegiatan Pemanfaatan Ruang Provinsi Kalimantan Barat, Laporan Final, Bappeda-Kalbar, Pontianak.

Note: red lines show boundaries of existing oil palm plantations, yellow areas are production forest, green areas are protected forest, and red blocks are nature reserves

¹² See, Marti Serge 2008. The level of palm oil related land conflict are defines as frequency exposed by the national and local medias.

Almost one half of the oil palm plantations in Indonesia are located in West Kalimantan. Two million people live in cities and towns in West Kalimantan and another two million people live in the country and compete for access to land with oil palm companies, other estate crops and the forestry department (production, protection and nature reserves). Many small scale agricultural lands which indigenous peoples rely on have been taken over by oil palm plantations and forestry activities (see Figure 3.).

Fifty per cent of the population of West Kalimantan (2 million people) live in the coastal area with an average population density of 36 persons/km². The other 50 % of the population live in rural areas with an average density of 20 persons/km². The major ethnic groups in West Kalimantan are as follows:

Dayak (population 1.26 million / 33.75% of the provincial population), which is divided to 223 sub-ethnic groups. Most Dayak live in rural areas and are Christian or practice *Adat* religions or combination of both¹³.

Melayu (1.26 million/33.75%) with many sub-ethnic groups, distributed in the coastal area as well as along the Kapuas River and into rural areas. Most of them have family links to the Dayak but due to their different religion (Islam), they prefer to be classified as *Melayu* and are considered as an indigenous people.

Chinese (0.37 million/10%) distributed in cities and surrounding areas

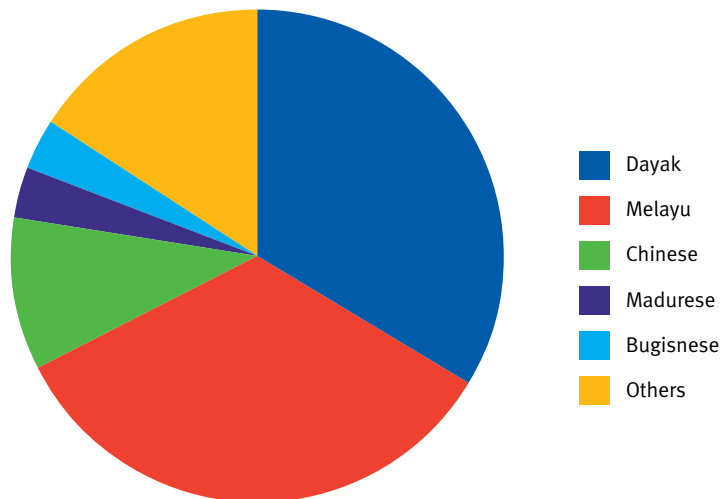
Madurese (0.21 million/3.5%) distributed in the cities as well as in the rural areas

Bugis (0,12 million/3.3 %) distributed in the cities

Others (0.78 million/15.7%) distributed in the cities

See Figure 4. Diagram of Ethnic distribution in West Kalimantan *Source*; Kalimantan Review special Edition 2003

FIGURE 4. DIAGRAM OF ETHNIC DISTRIBUTION IN WEST KALIMANTAN



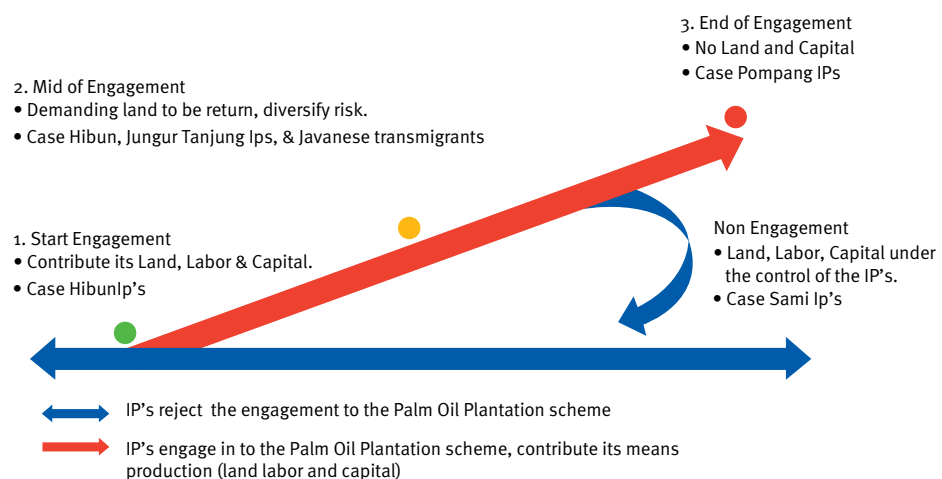
Source: Kalimantan Review special Edition 2003

¹³ The recent Institute of Dayakology book, *Mozaik Kalimantan 2008*, describes that the Dayak in West Kalimantan currently belong to 223 language based ethnic groups, see also *Kalimantan Review*, 15/XVI/Feb 2008, p47)

West Kalimantan province covers 14 million hectares of which nine million hectares (64%) is classified as National Forest. The National Forest area restricts access for local inhabitants, even though most of it has not been legally demarcated. Oil palm plantations can only be developed outside of the National Forest area. There were 0.3 million hectares of oil palm plantations in 2000, increasing to 1.5 million hectares in 2005 and 3.2 million hectares in 2006. The area cleared for oil palm plantations but not yet planted covers another 2.8 million hectares. Data from *Bappeda*, the Regional Development Planning Board, show that *Adat* lands in West Kalimantan were virtually eliminated in a three year period, falling from 6.9 million hectares in 2003 to only 60,000 hectares in 2006. These communal lands are listed in the statistic data as having been converted to private individual land ownership¹⁴. In reality, indigenous communities still manage these lands communally and continue to struggle for their rights over their lands. Who took over the ownership of these lands on paper and expanded their operations on the ground will be described in part 6.

Competition for land between the forestry department and oil palm plantations on the one hand and local inhabitants on the other has become intense, especially for indigenous peoples. *Dayak* and *Melayu* ethnic groups have lost control of much of their ancestral lands in the rural areas due to the aggressive expansion of oil palm plantations. Ancestral communal lands have been and continue to be converted to private lands to be able to join *plasma-inti* oil palm schemes. This study shows that the process of establishing large-scale oil palm plantations is irreversible: indigenous peoples contribute their lands and labor to oil palm schemes but lose sovereignty over those lands and nature resources which are central to their identity as indigenous peoples. Some of them fight to regain control of their lands as oil palm farmers. Some take the risk of losing the opportunity to own oil palm plots and quit from the *plasma-inti* schemes to maintain their existing lands as shifting cultivation and rubber agroforestry areas. Some communities reject oil palm plantation schemes from an early stage and seek to maintain their cultural and economic integrity. See Figure 5. (IPs Engagement with oil palm plantation schemes), which was created based on interviews with several *Dayak Bidayuh* Indigenous People, describing their trajectory of engagement in oil palm *plasma-inti* schemes¹⁵.

FIGURE 5. IPS ENGAGEMENT WITH OIL PALM PLANTATION SCHEMES



14 Bappeda 2006.

15 Similar transformation of local economies and cultures as a consequence of engagement with large-scale developments such as industrial logging, timber estates and mining in Borneo have been described by several authors: Djueng, Krenak, Julipin, Kusni, Widjono, Florus, Andasputra, Ngo, Usop. Topin, 1996, argues that indigenous peoples sometimes have their own social and economic considerations for engaging with large-scale development, perhaps because they like the promises of infrastructure (roads, educational facilities etc). See edited book by Andasputra and Djueng, 1996. P102.

3

Framework for
understanding
environmental conflict

Competing land and resource claims are the basis of latent conflicts in Kalimantan and in all parts of Indonesia, and can easily turn into violent communal conflict. Several views claim that the *amok* culture¹⁶ can be found in most Indonesian ethnic groups as many cultures in the archipelago are not equipped with the tradition of engaging in long processes of peaceful negotiation. Some scholars claim that conflict over the last decade has happened because of permissive government due to the reform euphoria (Jones, 2001). But more and more scholars criticize this view and see that development under *Soeharto* (1966-1998) created unjust social, political and economic structures. A strong authoritarian state took over all local initiatives, affecting all ethnic groups, social economic classes as well as religious groups. The *Soeharto* regime felt threatened by the existence of civil society initiatives. Land conflicts during *Soeharto* regime took place in every district of the nation but were not resolved. In many cases, voicing concerns about previous injustices is still taboo, and is yet to be discussed openly (Aditjondro 2001).

The unjust social, political and economic structures established by the *Soeharto* regime did not change radically after the reform era began in 1998. Development initiatives still led to economic disparity and were based on the unjust *Soeharto* legacy (Suleeman & Ju Lang, 2004). Injustices in land acquisition processes in rural areas were reluctantly revisited by the new government. This further weakened the social capital of local communities to solve its own conflicts peacefully (Tomagola 2006). Even though the reform era widened the political space and gave more opportunities for collaboration between and among civil society groups, it did not end the stigma, negative perceptions and suspicion of government among civil society as the result of state oppression during the *Soeharto* era¹⁷.

Indigenous peoples in West Kalimantan have described the latent conflicts that manifest and sometimes emerge violently as being the result of structural conflicts including cultural conflicts (Bamba 2004). It seems that violent conflict arises in part due to ecological insecurity, that it is often based on ecological conflict (Conca 2006). It is clear that many conflicts are multi-dimensional (structural, cultural, historical and environmental) and the response to these conflicts is multi-dimensional too. The conflict process needs to be examined from below to understand better all the dimensions of local conflict and cooperation, and efforts to avoid conflict becoming violent. Ecological conflict can be understood more clearly at the local level through the concept of ecological resilience (Alcorn 2003):

As population sizes, technologies, incentives, values and social, economic and political conditions change over time, these transformations can cause ecological damage unless the people respond to ecological feedback and modify their management institutions..... ecological resilience depends on the evolving institutions that govern people and their use of natural resources. ..Ecological resilience depends on the decisions made by people using their cultural norms and institutions at different scales¹⁸.

If the transformation process does not restore ecological resilience in a local community through its own internal processes of renewal and reorganization without loss of function and diversity, ecological conflict will emerge and threaten the ecosystem and the livelihood strategies of that community. In this ecological conflict situation, political action needs to be taken. The risk in facilitating ecological conflict resolution is that failure to see stakeholder's relationship to the root of the problem could lead to further conflict at a different scale. This

¹⁶ *Mounting tensions leading to violent outbursts. Amok is one of a few Indonesian words that has become an English word.*

¹⁷ *See Giring, 2004.*

¹⁸ *Alcorn Janis. 2003. p2*

could happen if the problem of inequality between cultural groups such as different ethnicities or religions is misunderstood and the majority group again oppresses the minority group. Poor presentation of official statistics regarding ethnic and religious composition, as happened in West Kalimantan in 2000,¹⁹ contributed to horizontal conflict (conflict between citizens or communities) and weakened efforts at collaboration between different ethnic groups and religions in the area.

3.1 Transformation in Rural Areas; Learning from the Past

The *Dayak* indigenous peoples of Borneo, including the *Bidayuh* ethnic group and its sub-ethnic groups in West Kalimantan, faced a great transformation when rubber seedlings were brought by the Dutch administration to Borneo in the early 20th century. Through propaganda, tax policy incentives as well as other market incentives, the indigenous peoples in the interior of Borneo were convinced to cultivate rubber (*Hevea brasiliensis*). Michael Dove, 1998, noted that: *the Kantu' tribesmen in West Kalimantan said that when their ancestors plant rubber (Hevea brasiliensis) in their swiddens or swidden fallows, the land thenceforth becomes tanah mati (dead land), in implicit contrast to the remaining 'living land' contained in the swidden agricultural cycle. Rubber is not part of this system and, nor can we conclude that rubber cultivation is 'destructive' -for in many respects it is just the opposite of this*²⁰.

The *Dayak* as well as Malay communities in Sumatra and Borneo transformed their relationship to rubber cultivation and adapted it into their agroforestry system so that today its cultivation is a status symbol for the *Dayak* in West Kalimantan. Several researchers have documented the significant contribution that rubber agroforestry makes to the livelihoods of the *Dayak*. Rubber agroforests have become one of the assets of indigenous peoples to construct a livelihood strategy that increases their well being.

This example of rubber as a commodity penetrating the *Kantu Dayak* ecosystem in the early 20th century shows that the *Kantu Dayak* people adapted the rubber cultivation to their own local ecosystem using their own ecological resilience. Their collective identity enabled them to maintain their resilience.

Did oil palm estate expansion contribute to the sustainable livelihood strategies of indigenous peoples especially for the *Hibun, Sami, Pompang, Jangkang* ethnic groups as well as the Javanese transmigrants presented in the study? Did indigenous peoples become detached from their environment as policies, institutions and markets reinforcing oil palm plantations influenced their livelihood strategies? Will it be possible for local communities to remain committed to traditional livelihoods and local practices of ecosystem maintenance, or will their efforts be swamped by oil palm plantation expansion? What kind of environmental conflict resolution is needed to support the IPs in the transformation process? These questions will be explored in the following chapters.

¹⁹ See *Kalimantan Review Special Edition III/2003*. p28; Jin, Sungkar, Yogaswara & Lumenta, 2004. These two publications explore the poor quality of statistical data analysis used in presenting the ethnic composition in West Kalimantan. The official data classified around 1/3 of the population as *Dayak*, 1/3 as *Melayu*, and 1/3 as other ethnic groups.

²⁰ Dove. 1998. pp 19-54



4

Policy setting
(international,
national and local)

The position of *Masyarakat Adat* in relation to state law has been unclear in the Indonesian archipelago since the beginning of Dutch colonization in the 17th century. In the first half of the 20th century, there were two main schools of thought on indigenous peoples' relations with the state in Indonesia; the Leiden school led by Prof. Van Vollenhoven and the Utrecht school led by Prof. Nolst Trenité²¹. Van Vollenhoven and his successors argued that the indigenous peoples of Indonesia, known by his term as *Masyarakat Hukum Adat* (Cultural Law Communities) have their own laws which continue to be important for the communities after the expansion of Western legal systems. Trenité on the other hand argued that the indigenous peoples of Indonesia had no legal system, but only custom, and that was why western law should be superimposed on the native customary system.

The Colonial Government recognized a dual legal system, the indigenous system called *adat* law and western law. During the independence struggle, while recognizing that Indonesia is a multi-ethnic country, Indonesia's founders called for a legal system based on a hybrid of *adat* and western law. In reality Indonesia's legal system is mostly based on western law. These debates continued until Indonesian independence was declared in 1945 and remain unsolved until today regarding maintaining the diversity of law used by indigenous peoples in a unified country²².

A body of international law has emerged over the last two decades which recognizes the rights of indigenous peoples, most recently the United Nations Declaration on the Rights of Indigenous Peoples (2007), which will help to reorient many nation's policies in relation to indigenous peoples.

4.1 International Policy Setting

Debate in the contemporary Indonesian context of indigenous peoples' rights in relation to international norms emerged with ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries which was issued in 1989 and entered into force in 1991, two years before the International Year of Indigenous Peoples (1993)²³. ILO Convention 169/1989 is the revision of the ILO 107/1957 regarding the "Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries" and was adopted by the International Labour Conference in 1957. Governments at the time thought that the best way to protect the health and well-being of indigenous peoples was to assimilate and integrate indigenous peoples with other peoples within their countries.

As its title suggests, ILO 107 made it a duty of governments to integrate indigenous peoples within their countries. ILO 107 was rejected by indigenous peoples around the world who called for the adoption of new standards that would recognise indigenous peoples' right to exist as separate, distinct peoples. Concerning the interpretation of indigenous peoples as distinct groups, the Indonesian Government regarded and still regards this as a sensitive issue (*Sara Doctrine*)²⁴. During the latter part of the Soeharto era, the Indonesian Government argued that all Indonesian people are native and are first and foremost Indonesian nationals. The term

21 See Burns, P. J. (2004).

22 See Frasseur, 2007. pp 50-67

23 See Ministry of Economic Development, Manatu Ohanga
(http://www.med.govt.nz/templates/MultipageDocumentPage_____1955.aspx)

24 See Djueng 1997, on the Sara Doctrine (Ethnic, Religion, Race and social economic class group)

Indigenous does not apply in the Indonesian context as distinct group²⁵. Indigenous peoples' activists in Indonesia saw ILO Convention 169 as an opportunity to protect the rights of indigenous and tribal peoples, and considered that the best term in the Indonesian language for indigenous peoples is *masyarakat adat*. In reality ILO Convention 169 is only useful in countries that have ratified it, and its impact in Indonesia is rather moderate on efforts for the recognition of indigenous peoples' rights. Referring to efforts for ILO Convention 169 to be ratified by the Indonesian Government, Sandra Moniaga & Stephanus Djueng (1994) used the term 'tribal' for *Masyarakat Adat*²⁶. Sem Karoba (2007) argues that the term 'tribal' is equivalent to *Masyarakat Adat* in the Indonesian context and that almost all tribal peoples are indigenous peoples and that almost all indigenous peoples are tribal peoples²⁷.

The terms that had been differentiated in ILO Convention 169 as Indigenous Peoples or Tribal Peoples cannot be used separately in Indonesia. Despite the unclear object of the convention in the Indonesia context, it has contributed a lot in developing the discourse on promoting the rights of indigenous peoples at the level of national law and interpretation of the *Sara Doctrine*²⁸. The most significant jurisprudence which used ILO 169 is the case of Loir Bontor Dingit vs. Hutan Mahligai Timber Plantation. Mr. Loir Bontor Dingit was awarded the Goldman Environment Prize in 1997 (see box 4 Bontor Dingit vs. Hutan Mahligai Timber Plantation case).

4.1.1 Core Human Rights Instruments related to Indigenous Peoples rights in Indonesia introduced during the Reform Era

The human rights referred to in this report are guaranteed under key international human rights instruments to which Indonesia is party, in particular the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Racial Discrimination. (Indonesia is yet to ratify ILO Convention 169, and the UN Declaration on the Rights of Indigenous Peoples does not require ratification.) These international instruments provide a framework whereby the rights of those affected by the development of plantations are protected, allowing communities to protect their culture, to participate meaningfully in decisions about future land use, and ensure that fundamental rights such as the right to clean water, to health and to safety at work are protected. Table 1 below shows the ratification of UN human rights laws and instruments into domestic law by the government of the Republic of Indonesia.

25 Similar arguments were also brought by other countries in Southeast Asia such as Philippines that the dominant group as well as minority groups share the same ethnic background. The Philippines government rejected ILO 169 but introduced its own term, Indigenous Cultural Community (ICC) and issued the Indigenous Peoples Right Act in 1999.

26 Djueng & Moniaga, 1994.

27 See Sem Karoba 2007. p133

28 The unofficial ILO 169 translation into the Indonesian language was published in 1994 by Elsam and LBBT with a foreword from Stephanus Djueng and Sandra Moniaga. This publication was used widely by indigenous peoples and their lawyers during the last years of the Soeharto regime.

BOX 1. DINGIT VS. HUTAN MAHLIGAI TIMBER PLANTATION



“Forests and adat lands are the support and hope for life and livelihood for peoples on the face of this earth. Because of that we, as adat peoples, will always defend the existence of the forests until our bones are white, our last drops of blood are gone.”

The Bentian people, a Dayak group from East Kalimantan in Indonesian Borneo, have a unique traditional system of rattan cultivation. Not only does it provide a source of income, the system also conserves forest biodiversity. In July 1996 **Loir Botor Dingit**, who has spent most of his life as a rattan farmer, was selected by the Bentian Tribal Council to be Paramount Chief. Dingit has been organizing forest dwellers and bringing national and international attention to the plight of these communities whose territories are being seized by timber corporations. He is one of the first leaders to unite the Bentian and to reach out to other Dayak tribes, who were historically at war with the Bentian, in an attempt to protect ancestral forest lands.

Since 1986 Dingit and the Bentian people have been petitioning the Indonesian government for the issuance of land ownership certificates for their forested territories. In 1993 an Indonesian logging company owned by Bob Hasan, a close associate of former President Soeharto, bulldozed a number of Bentian rattan forest gardens and grave sites. Dingit visited the affected families and helped make lists of the crops damaged. According to Bentian tradition, specific plots of land are often named after ancestral farmers. Dingit recorded the lists of over 2,000 damaged trees and 10,000 clumps of rattan, referring to the lands by their ancestral names. When Dingit attempted to report the damage to the company and the government, he became a target of reprisals. Since he had used the names of people who had died (i.e. ancestors) in the documents, he was falsely accused of forgery. The case made a precedent in the court decision on 26 October 1998 when the judge considered that according to the adat law as well as the ILO 169/1989, Dingit was not guilty even though the ILO 169/1989 has not been ratified by the Indonesian Government. This effort was a result of the struggle and collaboration of the Bentian people, international support as well as the momentum of “reformasi” (which led to the end of the Soeharto regime in May 1998).

Sources; Goldman Environmental Foundation, <http://www.goldmanprize.org/node/98> & Moniaga Sandra, 1998; Hak- hak Masyarakat Adat di Indonesia (the rights of Indigenous peoples in Indonesia), paper presented at the Nasional Human Rights Workshop IV 1998, Human Rights Commission, Department of Foreign Affairs & Australian Human Rights and Equal Opportunity Commission, Jakarta, 1-3 December 1998, Jakarta

TABLE 1. UN CONVENTIONS RATIFIED BY INDONESIA²⁹

Treaty	Entry into Force	Ratification or Accession	Entry into Force	Available Procedures
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	4 Jan 1969	25 June 1999	25 July 1999	Reporting, Urgent Action, Follow-Up
International Convention on Civil and Political Rights (ICCPR)	23 March 1976	23 Feb 2006	23 May 2006	Reporting, Follow-Up
International Convention on Economic, Social, and Cultural Rights (ICESCR)	3 Jan 1976	23 Feb 2006	23 May 2006	Reporting
Convention on the Rights of the Child (CRC)	2 Sept 1990	5 Sept 1990	5 Dec 1990	Reporting
Convention on the Elimination of Discrimination Against Women (CEDAW)	3 Sept 1981	13 Sept 1984	13 Dec 1984	Reporting

4.1.2 Declarations and Reservations

There have been long debates and discourses regarding the applicability of international laws to sovereign states, including implementing international norms and treaties which are binding on state parties, as well as non-binding UN declarations, and other international instruments. It is widely accepted that international law on human rights matters prevails over state sovereignty, but states have the right to make reservations when signing and ratifying treaties. Indeed, the government of Indonesia has taken a position on its ratification of UN conventions with reservations in regard to certain articles due to different realities in understanding and interpretation of the conventions as seen in Table 2.

²⁹ This table was provided by Fergus MacKay, Forest Peoples Programme, August 2007, for internal capacity building on international laws and human rights systems for Sawit Watch and networks included in and modified by Norman Jiwan for this writing purpose.

TABLE 2. RESERVATIONS AND DECLARATIONS³⁰

Treaty	Reservation or Declaration
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	Reservation: “The Government of the Republic of Indonesia does not consider itself bound by the provision of Article 22 and takes the position that disputes relating to the interpretation and application of the [Convention] which cannot be settled through the channel provided for in the said article, may be referred to the International Court of Justice only with the consent of all the parties to the dispute.”
International Convention on Civil and Political Rights (ICCPR) & International Convention on Economic, Social, and Cultural Rights (ICESCR)	Declaration: “With reference to Article 1 of the International Covenant on Civil and Political Rights and International Convention on Economic, Social, and Cultural Rights (ICESCR) the Government of the Republic of Indonesia declares that, consistent with the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States, and the relevant paragraph of the Vienna Declaration and Program of Action of 1993, the words ‘the right of self-determination’ appearing in this article do not apply to a section of people within a sovereign independent state and can not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states.”
Convention on the Elimination of Discrimination Against Women (CEDAW)	Reservation: “The Government of the Republic of Indonesia does not consider itself bound by the provisions of article 29, paragraph 1 of this Convention and takes the position that any dispute relating to the interpretation or application of the Convention may only be submitted to arbitration or to the International Court of Justice with the agreement of all the parties to the dispute.”

Application of the conventions is carried out by state parties that have declared themselves parties to the conventions and enforcement is by international bodies recognized under the UN Charter. Citing state sovereignty, Indonesia is only obliged to act as long as measures required in particular conventions can be carried out without undermining security and integrity of the state as shown in the table above.

The reservations and declarations in the table above weaken the power of the conventions in Indonesia, undermining the rights of Indigenous peoples and turning the international treaties into “moral” commitments that the State can very easily ignore.

4.1.3 Jurisprudence on indigenous peoples

Besides the above mentioned conventions, within the UN system there are other non-binding declarations and procedures which are construed as sources of international law and legal interpretation. The most relevant of these are the UN Universal Declaration on Human Rights and UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the UN Special Procedures of the Human Rights Council (HRC), and Guidelines on Indigenous Peoples’ Issues of the UN Development Group. These initiatives and interpretations of the UN standards and rules have

³⁰ This table was provided by Fergus MacKay, Forest Peoples Programme, and Norman Jiwan, Sawit Watch, from an unpublished presentation, August 2007.

been created to pave the way for broader human rights-based approaches and effective implementation of the applicable instruments and existing procedures and mechanisms.

United Nations Declaration on the Rights of the Indigenous Peoples (UNDRIP) is being used to support indigenous peoples' struggles around the world. On September 13, 2007, the UN General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). On October 18, 2007, the Supreme Court of Belize handed down a historic decision that referenced UNDRIP and affirmed the rights of the indigenous Maya communities of Belize to land and resources that they have traditionally used and occupied.³¹ On November 7, 2007, the UNDRIP became law in Bolivia when president Evo Morales, before native leaders and other representatives, announced the passage of National Law 3760, domestic legislation that is an exact copy of the United Nations Declaration on the Rights of Indigenous Peoples.³² These two initiatives are fundamental landmarks for jurisprudence of international law for furthering interpretation and implementation of the UNDRIP into national legislation.

The Special Procedures³³ of the Human Rights Council provides mechanisms where human rights and indigenous peoples' issues are highlighted. In August 2006, the Human Rights Council adopted special procedures on the urgent need to tackle global problems associated with indigenous peoples. Currently there are 28 thematic and 10 country mandates available, and amongst the thematic mandates are several applicable to indigenous peoples in Indonesia.

The Guidelines on Indigenous Peoples' Issues of the United Nations Development Group (UNDG)³⁴ has recently adopted passages on the following issues: (1) self-determination, self-government, autonomy, self-management, (2) lands and territories, (3) natural resources, (4) environmental issues, (5) traditional knowledge, intellectual property, intangible heritage and cultural expressions, (6) administration of justice, indigenous customary laws, (7) health and social security, (8) education, (9) capacity development, vocational training, work employment and occupation, (10) private sector, (11) indigenous women, (12) children and youth, (13) urban indigenous peoples/migration, and (14) data collection and disaggregation.³⁵ These issues are central to the UNDG towards effective promotion and implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in their key areas of activities and interventions.

31 http://www.law.arizona.edu/depts/iplp/advocacy/maya_belize/index.cfm?page=advoc

32 <http://www.indiancountry.com/content.cfm?id=1096416239>

33 *Special procedure mandates usually call on mandate holders to examine, monitor, advise and publicly report on human rights situations in specific countries or territories, known as country mandates, or on major phenomena of human rights violations worldwide, known as thematic mandates. "Special procedures" is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world.*

34 *See articles of the United Nations Declaration on the Rights of Indigenous Peoples that are addressed to the United Nations system...Article 41 'the organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.' Article 42 states 'the United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.'*

35 *United Nations Development Group Guidelines on Indigenous Peoples' Issues, February 2008; http://www.un.org/esa/socdev/unpfii/documents/UNDG_Guidelines_indigenous_FINAL.pdf*

4.2 National Policy Setting

Based on ambiguous laws concerning *Masyarakat Hukum Adat* (indigenous legal communities) in the colonial era, the legal status of indigenous peoples in the current legal setting is still ambiguous, even after the 1998 Reform period. This section describes the approach of the 1945 Constitution (before and after the Amendments) towards *Masyarakat Adat*, as well as the Basic Agrarian Law 1960 (BAL), Tenancy Law 1960 (TL) and the Human Rights Law 1999 (HRL) which are supposed to provide a basis for sectoral laws on Forestry and Plantation Estates.

Amendments to the Constitution during 2001-2003, in particular to article 18, weakened constitutional law concerning the rights of indigenous peoples. The original Constitution 1945 states:

Article 18.

Indonesia should be formed of the existing polities - large and small - including the special administrative regions previously recognized by the Dutch, with their customary rights.

The explanation of article 18 states:

In Indonesian territory, there are more or less 245 *Zelfbesturende Landschappen* and *Volksgemeenschappen* such as *Desa* in Java and Bali, *Nagari* in Minangkabau, *Kampung* and *Marga* in Palembang and so forth. These regions retain their original institutions and are thereby considered as special regions. The National Republic of Indonesia respects the existence of these regions and all these regions' regulations that relate to their original rights. The meaning of Article 18 was changed in Constitutional Amendment 2001 by the addition of Article 18B, which states:

- (1) The State shall recognize and respect entities of regional administration that possess specificity or a distinctiveness that are to be regulated by law.
- (2) The state recognizes and respects customary local communities with their traditional rights, as long as they still exist and accord with development of the society and the principles of the Unitarian State of Republic of Indonesia, as regulated by law.

This amendment to Article 18 weakened indigenous peoples' rights by neglecting to mention specifically what are the relevant institutions, such as the indigenous village institutions mentioned in the 1945 Constitution as *desa*, *huta*, *marga*, *nagari* etc.³⁶ It also weakened indigenous peoples' rights through the requirement that to be recognized, indigenous people should live in accordance with the development of the society and the principles of the Unitarian State of Republic of Indonesia.³⁷

However in Article 28 of the revised Constitution, which concerns Human Rights, the rights of indigenous peoples were strengthened:

Article 28H.

- (4) Each person has the right to own private property and such ownership shall not be appropriated arbitrarily by whomsoever.

Article 28I.

- (3) The cultural identities and rights of traditional communities are to be respected in conjunction with progressing times and civilization.

³⁶ Zakaria, RY. (2000).

³⁷ Moniaga, S. (1996), Soemardjono, M. S. W. (2003).

Besides articles 18 and 28 that aim to protect the rights of citizens, including indigenous peoples, Article 33 in the amended constitution gives legitimacy to the State to control, manage and regulate natural resources:

Article 33 (3). The earth, water, and natural resources are under the control of the State and should be utilized for the maximum welfare of the Indonesian people.

Article 33 (4) The national economic system should be conducted in accordance with the following principles; togetherness, equity, efficiency, sustainability, environmental friendliness, independence, and balancing progress and national economic unity.

The differences in Articles 18 & 28 in contrast to Article 33 in the amended constitution gives the State the ability to make multiple interpretations of how the constitution and laws such as the Basic Agrarian Law 1960 (BAL) and its sector laws determine the rights of indigenous peoples.

According to the BAL, Article 3.

...*ulayat* rights and other similar rights of customary law community (*masyarakat hukum adat*) should be recognized, as long as these communities really exist, and it is consistent with national and State interest, based on the principle of national unity, and it is not in contradiction with this law and higher regulations.

BAL Article 5 states that: Customary law applies to the earth, water and air as long as it does not contradict national and State interests, based on national unity and Indonesian socialism, and also other related provision of this law, in accordance with religious principles.

The explanation of article 5 is:

...The BAL recognizes *ulayat* rights, to ensure that these rights will be respected, so long as the corresponding customary law communities continue to exist...

Because there is no doubt, it is not acceptable for customary law communities (*masyarakat hukum adat*) to invoke *ulayat* rights to oppose business utilization rights, since such concessions are granted in certain regions to serve the wider national interest... These circumstances are the basic reason for the stipulation in the regulation (article 3) mentioned above.

To protect citizens from being exploited in the agrarian context, the state issued Tenancy Law 1960 (TL) as a package with the BAL. This law is to regulate sharing of benefits between land owners and tenants in lowland agriculture as well as fisheries, in order to protect tenants from feudal exploitation. This law highlights the indigenous tenancy system and gives the opportunity for tenants to negotiate the tenancy term, facilitated by local government through a fair and just process. Unfortunately this law only regulates seasonal crops in lowland farming and excludes commodities such as oil palm and rubber as well as forest products.

During the Soeharto regime (1966-1998), sectoral laws were developed which conflict with the tenure system regulated in the BAL. The sectoral laws such as the Forestry Law, the Mining Law etc, were developed to assist industry, which until today does not respect the rights of indigenous peoples. Indigenous peoples were further stigmatized as traditional or backwards (*terbelakang*), isolated and alien peoples (*masyarakat terasing*) and targeted to be “modernized” through government programs such as relocation, transmigration, formal religion and education.

The reform era in 1998 brought momentum to undertake several corrections in the legal setting as well as addressing the stigma of the terms used to describe indigenous peoples. The terms underdeveloped (*terbelakang*), isolated and alien peoples (*masyarakat terasing*) have been revised slightly by term indigenous isolated people (*masyarakat adat terpencil*). The term indigenous people *masyarakat adat*, has become more and more acknowledged in public discourse, such as in the media and academia.

After the *Masyarakat Adat* National Alliance Congress (KMAN) in 1999, there was pressure on the National Land Bureau to allow for communal indigenous people’s land registration, and the

BOX. 2 ADAT LAND REGISTRATION POLICY AND ITS IMPLEMENTATION

The *Adat* Land Registration Policy (National Land Bureau issued Regulation no 5/1999) was established in response to pressure from Indigenous Peoples support groups in Indonesia calling for the state to recognize and respect *Adat* land and *Adat* rights as mentioned in the BAL articles 3 and 5.

In article 1 of Regulation no 5/1999 *ulayat* rights are described as *adat* authority according to the *adat* law to own the natural resources and its land which were used for the welfare of the *adat* community since the time immemorial.

According to article 1.3 an *adat* community are a group of people bound by *adat* law based on the same ancestral land and or genetically. These *ulayat* rights will continue to exist, according to article 2.2 if; a. the society is still bound by and follows *adat* laws; b. there are *adat* lands which still used by the *adat* community; c. there is an institution in the area which still maintains the *adat* laws;

But this policy is only applicable in areas where there are no permits given by the state to third parties, which significantly weakens *adat* rights. Some groups believe that this *Adat* Land Registration was not designed with the spirit to respect, protect and fulfill the rights of IPs for their progress but to accommodate private sector interest to utilize ancestral lands under the control of the IPs (Firmansyah & Arizona, 2008,p43).

The central government as well as the respected local government (West Sumatera Province and Kampar, Lebak, Nunukan Distrcits) only recognize *adat* communities that have been recognized through a local government regulation and so far only four *adat* communities in Indonesia the *Kampar*, *Baduy*, *Lun Dayeh* and the *adat* communities in West Sumatra have been recognised through local government regulation.

There are only three districts and one province which have followed the *Adat* Land Registration procedure whereby local legislatures issue a regulation (Perda) to recognize *adat* rights. The Kampar district in Riau, Sumatra regulated the right of ancestral lands (Perda Kab Kampar no 12/1999). Lebak district in Banten Province, Java recognized the *Baduy adat* community, this was followed by *adat* land mapping and registration by the land agency for the whole 5000 hectares of *Baduy* ancestral land (Perda Kab Lebak no 32/2001). The third case was the recognition of the *Lun Dayeh* *adat* community by the Nunukan District government, East Kalimantan (Perda Kab Nunukan no 04/2004). This case is yet to be followed up with mapping and land registration (Simarmata 2007, p 30). A more recent regulation from the West Sumatra Province establishes *Adat* Land Rights and its utilization (Perda Prop Sumbar no 6/2008, see Firmansyah and Arizone 2008).

In several districts in Jambi Province, Sumatra, local executive orders have been issued that recognize particular forest areas as belonging to *adat* communities, as well as recognizing the indigenous peoples themselves. The government of Bungo District recognized the *Adat* forest of the Batu Kerbau village (SK Bupati no 1249/2002), Merangin District recognized the forest of the *Adat* community of Desa Guguk, and the *Adat* Seko communities were recognised by the North Luwu district executive order (SK Bupati Luwu Utara no 300/2004). These can be seen as steps to implement Permen 5/1999 before the Local legislatures issue regulations (Simarmata 2007).

These efforts give increased recognition to *adat* communities but may also weaken the position of neighboring *adat* communities that do not recognize this kind of Local Government Regulation. Even for those IPs that have now been recognized by the state, their efforts to secure control of their lands will depend on *adat* community cohesion in dealing with the private sector companies that have obtained government permits to utilize their land.

National Land Bureau issued Regulation no 5/1999 on Registration of *Adat* Land which regulates *Adat* Land as Non State Domain. This is an implementation policy from the BAL that regulates the registration procedure of ancestral lands. To fulfill the registration of communal land title, the adat community should be recognized by a district regulation (see box 5, Implementation of Adat Land Registration). Human Rights Law (HRL) no 39/1999, issued soon after the 1998 reforms, was supposed to be a basis for further Indonesian legal reform. This law aims to respect and protect universal human rights and includes individual rights (articles 20 to 27) and communal rights (articles 36 to 42). Unfortunately the revision of sectoral laws such as Forestry Law (no 41/1999) did not incorporate the spirit of the HRL or the tenure system defined in the BAL. The Plantation Estate Law, which has consistently been used to violate the rights of the Indigenous Peoples, is described below.

4.2.1 The legal setting of the sectoral laws

The 1999 Forestry Law (FL) states that the management of state forest located within the jurisdiction of customary law communities (*Masyarakat Hukum Adat*) may be classified as *Adat* Forest. Therefore *Adat* Forest is considered as part of the State Forest area or under State Domain (article 1.5). The right to manage *Adat* Forest can be given only after it has been officially recognized by district regulation (article 65)³⁸. This interpretation of the existence of indigenous peoples' territory conflicts with the BAL. The FL regulates indigenous peoples' territories as state domain while the BAL regulates indigenous peoples' territories as non state domain. In regard to oil palm estates, the Plantation Estate Law (PEL) includes several articles regarding the recognition and fulfillment of indigenous peoples' rights as follows:

Article 9.1

- (1) In order to run a plantation estate, and according to the interest, the agent of plantation activity can be given the right upon the land needed for this plantation business in the form of proprietary rights, concession rights, and/or using rights according to the rules of the law.
- (2) If the land needed belongs to the society, or is customary or traditional land which existed prior to the right given as mentioned in article (1), the applicant of the right has to conduct a discussion with the indigenous people holding the customary right upon the land in order to obtain an agreement on the utilization of the land and a fee for that utilization.

The General Explanation of the law states:

The distribution of rights upon the land used for plantation activities has to consider indigenous people, and traditional law, provided that in reality the land still exists, and the rules are not against the higher law and the national interest.

Article 9.2 states:

The indigenous people still exist if they fulfill the following:

- a. The society is still in the form of an informal group or "paguyuban" (*rechtsgemeinschaft*);
- b. There is an institution in the form of custom officer board;
- c. There is a clear traditional law area;
- d. There are rules and law officers, especially traditional justice which is still obligatory and respected;
- e. There is recognition in the form of a district regulation (*peraturan daerah*).

38 See Colchester, Sirait & Widjarjo 2003.p161

This means that the rights of an indigenous people will only be considered as valid after they have achieved recognition from the district government in the form of a district regulation. If an indigenous people continue to utilize their customary lands without a district regulation, they can be accused of damaging a plantation as stated in:

Article 21

Each individual is prohibited to perform any action that can result in damage to the plantation and/or other assets, use of plantation land without permit and/or any other actions that can disrupt the plantation activities

The Spatial Planning Law no 26/2007 is supposed to harmonize the sectoral laws on spatial planning at the national, provincial and district levels, creating a window of opportunity to classify ancestral lands or *adat* lands under the sub-classification of rural areas (article 5). The law also provides protection and respect for the rights of indigenous peoples' lands as a consequence of the spatial plan (article 7).

Several legal scholars have noted that these laws fail to adequately protect the rights of indigenous peoples. These rights will only be respected by the state if all the requirements (the existence of the *adat* territory, its *adat* laws and its *adat* institution as well as the *adat* community) are fulfilled. In other words, indigenous peoples' rights will only be fulfilled if they are recognized by district regulation, otherwise the state can ignore the rights of an indigenous people.³⁹ On the other hand, there is also the Human Rights Law of 1999, which mentions the concept of inalienable rights not only for property but also the right of indigenous communities to maintain their identity (articles 6, 11, 13, 15, 36 and 37), but which are not yet sufficiently translated into sectoral laws.

The current legal setting for indigenous peoples is unclear and contradictory and there remain important unanswered questions such as:

The subject of indigenous peoples varies depending on the law, such as *Masyarakat Hukum*, *Masyarakat Hukum Adat*, *Rakyat Asli*, *Masyarakat Tradisional* etc. The term indigenous peoples is clear in the International Law especially UNDRIP but becomes unclear in national laws.⁴⁰

The process to define who are indigenous peoples includes two different approaches:

Self identification

Recognition by district regulation, which most of the normative law followers believe (such as Forestry and Plantation Estates).⁴¹

Are indigenous people's institutions state bodies that replace the village administration or independent bodies separate from the state? If they are a separate body, how do they relate with the village administration?⁴²

The right of indigenous peoples over land and natural resources is still unclear, especially how this right relates to state and non state domain.

The legal setting regarding the rights of the indigenous peoples has changed from time to time based on the interpretation of the current Amended Constitution. In the transition process of

39 See Colchester, Jiwan, Sirait, Firdaus, Surambo and Pane, 2006. p50

40 See Moniaga 2007. pp 275-294

41 So far there are only 2 out of 600 districts that recognize adat rights through district regulation (Lebak district for Masyarakat Adat Baduy, Nunukan district for Masyarakat Adat Lun Dayeh)

42 Further on this see, AMAN-World Agroforest Centre-FPP, 2003. pp17-34

the legal reform, Legislative Act no IX/2001 re. Agrarian Reform and Natural Resource Management gave a clear principle to interpret the constitution to the laws, especially to relate the rights of *masyarakat hukum adat* to agrarian and/or natural resources, legal pluralism, and human rights which are mandated as the new foundation for the reform of agrarian and natural resources laws and policies⁴³.

Indonesia has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (law 29/1999a) which also concerns the right of indigenous peoples to not be discriminated against by any other society. The UN Covenant on Economic-Social-Cultural rights as well as the UN Covenant on Civil Political-Right were ratified into Indonesian Law (UU 11 and 12 /2005) following a long debate on article 1. on the Right to Self Determination⁴⁴ which clearly states the concept of progress, protect and fulfillment of the rights. In September 2007, Indonesia voted in favor of the UN Declaration on the Rights of Indigenous Peoples. Some legal scholars believe that this might be a step towards an Indonesian Law on Indigenous Peoples which has been stipulated by the Legislative Body for the working period of 2004-2009, together with other hundreds of other laws.⁴⁵

4.3 Local Policy Setting

Several West Kalimantan Provincial Government policies as well as Sanggau District policy that impact on IPs are described below:

4.3.1 West Kalimantan Policy

There are no district or provincial regulations in West Kalimantan that recognize the rights of IPs or other ethnic groups in West Kalimantan. Although there is a constitutional requirement that district and provincial regulations recognize the rights of indigenous peoples, West Kalimantan district and provincial regulations do not recognize *adat* rights, and so local governments also do not recognize the existence of indigenous peoples or respect their rights. The West Kalimantan Provincial Regulation on the spatial plan (Perda no 4/2005) does not accommodate indigenous peoples' lands in its spatial plan. In contrast, Bappeda, the Regional Development Planning Board, does recognize that many indigenous peoples in West Kalimantan lost their lands (converted to private and state lands). Bappeda's statistical data does recognize the loss of *adat* rights but does not document which indigenous community's lands have been lost or converted to private land and state lands.

4.3.2 Sanggau District policy

There are three main Sanggau District policies that are relevant to oil palm development in the area: District Regulation no 4/2002 regarding Village Governance (*Pemerintahan Kampung*) recognizes indigenous village institutions as an autonomous lowest level of government at the village or *Kampung* level in Sanggau District (article 1). The rights and responsibilities of each *Kampung* are elaborated in article 12: Each *Kampung* has its own rights, based on their indigenous rights and indigenous institutions. Each *Kampung* has the right to manage its own institutions, a right that has devolved to it from the district and provincial levels. Each *Kampung*

43 See Moniaga (draft), *Between State Laws and Administrative Realities: The Kasepuhan Rights to Land in Lebak*

44 *The right to self determination in the two laws has been received as an internal right to self determination which meant a right to self identify as part of the Indonesian Unitarian State*

45 See Prolegnas 2004-2009, *Badan Legislatif DPR*

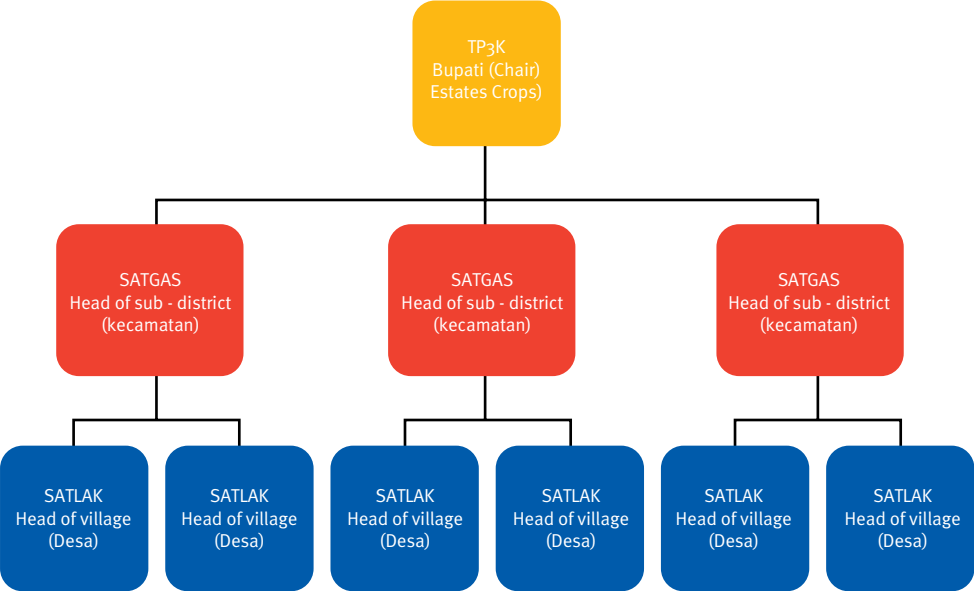
also has the responsibility to support the tasks of the district and province, and receives financial support from the government to do this. A *kampung* could reject tasks delegated to it by district or provincial government if there is insufficient support.

Each *Kampung* is required to have an organizational structure which reflects the separation of power between the executive (*Kampung Chief*) and legislative board (BMK). It can develop *Kampung Regulations* that bind all interest groups in the *Kampung* (article 18). Article 241 allows *Kampung* institutions to settle disputes between *kampungs* and between the members of a *kampung*, with any agreement signed by the *Kampung Chief* and witnessed by *adat* leaders and BMK members. Dispute resolution between the *kampung* and other parties such as oil palm companies has not been devolved by this regulation to *kampung* authorities and still remains a problem in the field.

Articles 241 to 255 regulate indigenous peoples' organizations (*kelembagaan masyarakat adat*) as separate bodies from the governance system. IPs' *adat* organizations aim to accommodate and channel the aspirations of the community to the government, and also aim to settle disputes regarding customs using *adat* laws. IPs' organizations are required to manage the IPs' assets and represent the IP in issues with parties from outside their community. IPs' organizations are also required to support government development programs and the utilization of *adat* rights. The IPs' organizations are to be developed at the district, county and village level. The formulation of this regulation took more than two years and involved several civil society organizations, but in the end it did not satisfy many civil society groups and there are fears that it has been part of a process of cooptation of IPs' organizations by the state. The fear materialized clearly in the District Regulation no 3/2004 regarding Oil Palm Estate Schemes as well as the Sanggau District Decree no 207/2004 regarding the implementation of guidelines for Oil Palm Estate Schemes. It is clear that District Regulation no 4/2002 regarding Village Governance is being used to support the expansion of the oil palm estates as described below. Through the two policies the local government developed partnership schemes for oil palm estates through joint ventures between private companies and cooperative benefit sharing or other mechanisms such as out-grower schemes (nucleus smallholder estate known as *Plasma-inti*, elaborated in Box 4). The crucial part is the establishment of the task force to support the land acquisition process at the district (TP3K), county (*satgas*) and village (*satlak*) level (see Figure 6. Structure of TP3K). The members of the task force come from government institutions, the IPs organization, the military commander, the police, the *kampung* chief and sub-*kampung* (*dusun*) chiefs. All the support for these task forces, including financial support, is provided by the oil palm company. This is also reflected clearly in the Bonti County Decree no 04/2002 re the reformulation of the Task Force of Land Acquisition surrounding the PT MAS area.

This structure reverses the logic of the *kampung* institutions as well as indigenous peoples' systems for representation. The representative of the local community in the task force is paid monthly by the company to become the agent of the company for land acquisitions. Good governance is also threatened by this task force, as the local government which is supposed to support the community becomes the agent for land acquisition. Clearly the land acquisition task force structure and practice is against good governance as well as against the principles of respect, protection, recognition and fulfillment of the rights of the indigenous people. Local policies are hijacked by the company to support its interest in acquiring lands, with the aid of the police, the military, local government, the village chief and even the IPs own organizations.

FIGURE 6. STRUCTURE OF TP3K



Importance of Structure of TP3K in land acquisition process

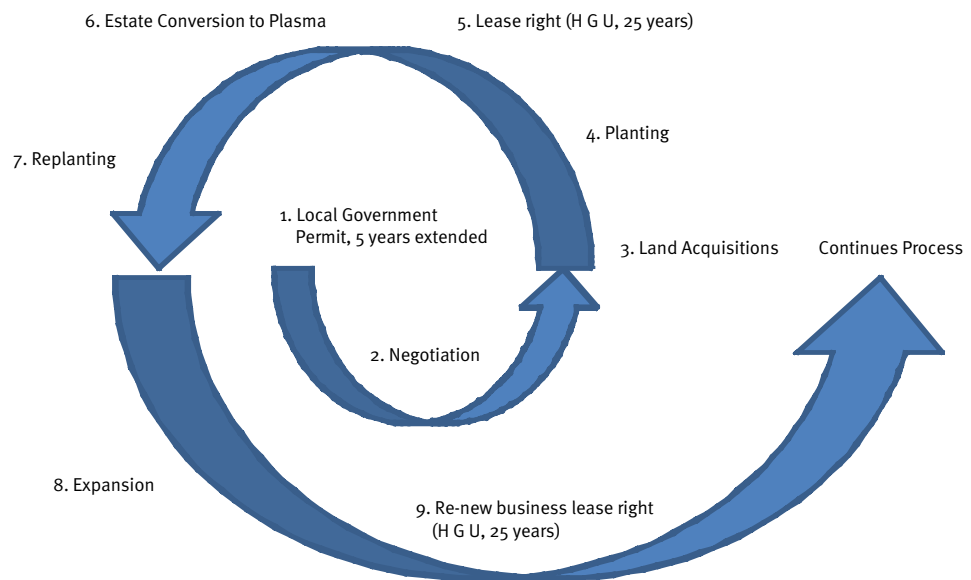


5

The Procedure for Oil Palm Plantation development

Most oil palm plantations are established on state lands and companies are later given a stewardship contract valid for 25 years with the possibility of extensions (HGU). This is based on Government Regulation no 24/ 1992 on HGU permits. These plantations, called *Inti*, are managed by state-owned companies as well as Indonesian and foreign companies that are given land lease permits over state lands. Companies involve local communities in oil palm plantations through a mechanism called *Plasma*. The usual Plasma scheme in West Kalimantan requires every individual (man or woman) who joins the Plasma to provide 7.5 hectares of land. The company will receive a lease over 5.5 hectares as *Inti*, which will be converted from community management to state land. The remaining two hectares will be certified through individual land titling (SHM) in the name of individual owner, and will be charged by credit loan for the land clearing, planting materials, maintenance, road construction, and land certification. See Figure 7. Cycle of an oil palm plantation.

FIGURE 7. CYCLE OF AN OIL PALM PLANTATION



It takes three to eight years until oil palms produce harvestable fruit bunches, and the trees typically produce viable fruit bunches until they are 25 years old. After 25 years, the oil palm trees are too old and too tall for manual harvesting. At this stage plantations need to be replanted. Unlike the initial planting, which was supported by the company, *Plasma* and *inti* are supposed to replant their own plantations. At this stage some Plasma will be sold to the company due to the lack of capital available to individual farmers for replanting, and often the company will look for new areas nearby for expansion. The pioneering oil palm plantations in West Kalimantan which started in the 1980s have already entered the low productivity and replanting stage.

In general there are three types of ownership of oil palm plantation schemes, these are: a state-owned company, a national private company or a foreign investment company. There have been four generations of oil palm plantation schemes, as described in Boxes 3, 4, 5 and 6.

BOX 3: THE FIRST GENERATION OF OIL PALM PLANTATIONS,INTI MURNI SCHEME

This scheme assumed that the indigenous people possess vast tracts of land but de jure they didn't have the right to own it. It also assumed that the IPs had no interest to maintain and invest in the land. Large scale oil palm plantations are granted lease rights by the state for 20 years and some small compensation were given to the IPs for their effort in the past in land clearing (*derasah*). This system failed due to the 2nd assumption. IPs maintain large areas of fallow land for swidden agriculture as the best way to maintain land with limited inputs. This scheme were promoted in the 1980 in Kalimantan and changed into the Plasma-inti scheme.

BOX 4. THE SECOND GENERATION PLASMA-INTI SCHEME

This system was started in the 1990s in Kalimantan, promoted by the World Bank and the Asian Development Bank under the generic name of Nucleus Estate Smallholder (NES). Plasma-inti schemes are also based on the assumption that indigenous people possess vast tracts of land and that IPs households (plasma) are willing to invest their land in exchange for a cash crop and a share in the land with large-scale oil palm plantation as their foster parents. In this scheme Plasma participants should contribute 7.5 hectares of their lands and will receive assistance from the company to develop two hectares of that area as an oil palm plot (plasma) with individual land title. Company expenditure on establishing the individual plots becomes a debt that each farmer must repay. Of the remaining 5.5 hectares of land 1.5 hectares are for public utilities (roads, drains and other public areas) leaving 4 hectares for the company (inti) under lease right from the state for 20 years with possible extension. This system initially received good publicity as a better scheme than the first generation of oil palm plantations. After reformasi in 1998, where information flow was much more open and faster, this scheme was criticized as a source of corruption and hegemony of the company and the fake/puppet farmer cooperatives, leading to deprivation for local communities.

BOX 5. THE 3RD GENERATION OF OIL PALM PLANTATION KKPA SCHEME

This KKPA scheme was also based on the assumption that indigenous households possess vast tracts of land, were willing to invest in cash crops but did not have access to credit for developing their lands. After the 1998 reforms, the Bank of Indonesia prepared a credit scheme for farmers to develop oil palm plantations through farmer cooperatives. Each household had to release two hectares of land to be developed as plantations by the third party (company), and was issued with an individual land certificate by the government. All the development costs were to be paid by the peasant household through its cooperative under a credit scheme that was supposed to be below the market interest rate. Again the system reinforced the hegemony of the third party (oil palm plantation company) which was the broker and guarantor to the bank and became the liaison to the local government. Often the company failed to provide the household with two hectares of oil palm plantations.

BOX 6. THE FOURTH GENERATION OF OIL PALM PLANTATION AKUAN SCHEME.

Realizing that the 1st, 2nd and 3rd generation of oil palm plantations had failed to deliver plantation ownership to communities, the plantation companies had no interest in developing oil palm plantations for peasants or in renegotiating earlier oil palm schemes taken up by IPs. Some companies came up with a practical solution to ongoing conflicts by redistributing some part of the company plantation to IPs as *Inti Murni*, *Plasma-inti* or *KKPA*. This distribution of land managed by the company did not return land ownership into the hands of IPs' households but maintained control and management by the company. Participating IPs' households received passive income from the average production of the plots. Local and central government perceived this as good progress in resolving land conflicts and promoted this as a model of peasant shareholding or some times called as *Saham* scheme. But IPs' households were further manipulated by the oil palm plantation companies and their own cooperatives.

5.1 Oil Palm Plantation Business Permits

There are several steps for a company to receive the necessary permits to establish an oil palm plantation. According to Ministry of Agriculture decree no 26/2007, oil palm investors should register themselves with the Board of Investment, and acquire a Notary Statement for the establishment of the company and apply for a tax number. Then the company should submit a business plan to the local government (district level), which shows that the area planned for plantation development is in accordance with the provincial and district spatial plan. If the area overlaps with a state forest area, detailed calculations should be made concerning the overlapping jurisdictions, and the process will be transferred to the Ministry of Forestry to get permission for forest area conversion (conversion of land status from forest area to non forest area).

An overlap of forest area and planned oil palm plantation in West Kalimantan does not usually involve converting healthy forest to monoculture oil palm plantation, but more often concerns taking over secondary forest or agroforest lands that are possessed by IPs who lack formal rights to the land due to lack of procedures in state forest delineation⁴⁶. In the process of plantation establishment, land conflicts with IPs shift from the forestry department to the national land agency (BPN).

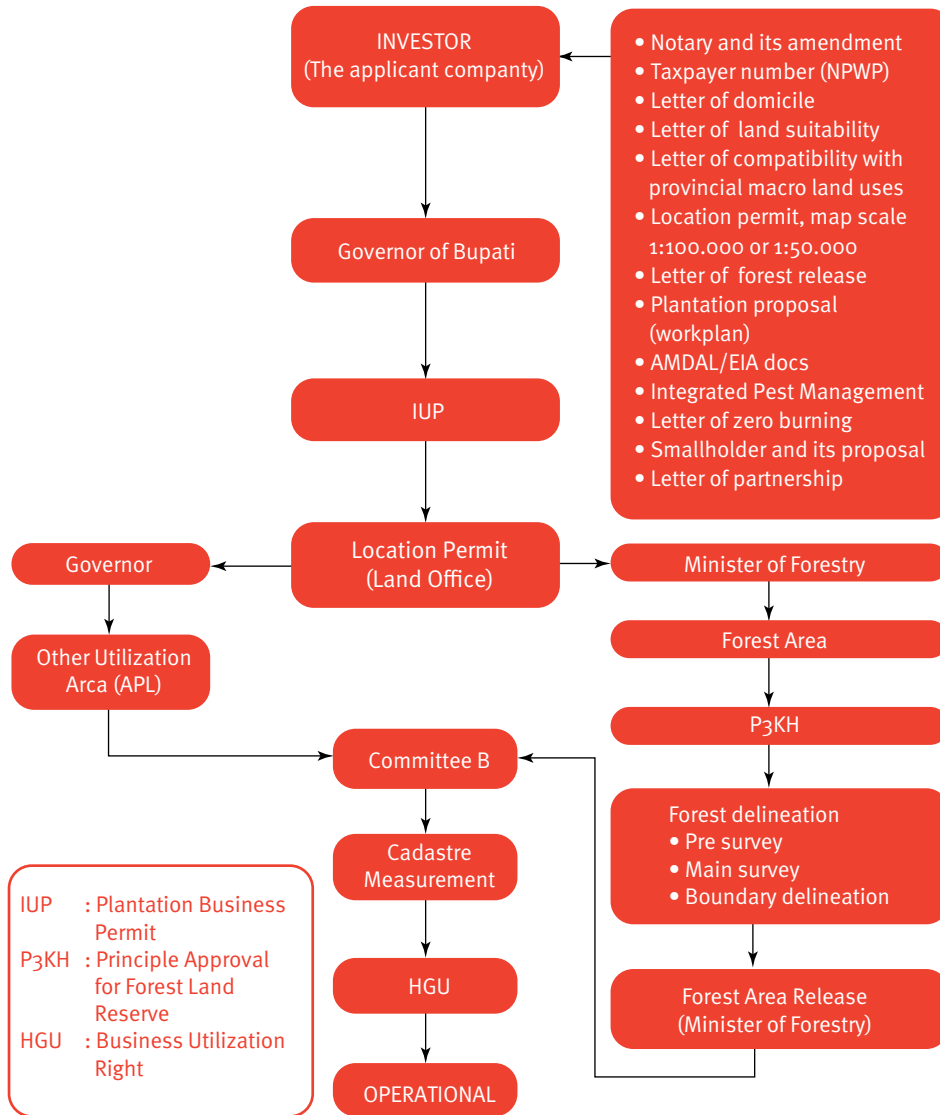
EIA (Environmental Impact Assessment/AMDAL) documents based on relevant laws and regulations should also be presented which show any potential environmental impacts (biophysically and social) and the strategies to address those problems. The company should also declare that the land clearing process will not use fire, and present the company's statement of intent to undertake partnerships with farmer cooperatives (accompanying the proposal).

Once the Plantation Business Permit (IUP) is issued, within two years the company or applicant is obliged to: carry out due acquisition of rights over the lands; realize plantation development and/or a processing unit, based on the feasibility study, the technical standard, and applicable

⁴⁶ See Chip C Fay, Martua T Sirait and Achmad Kusworo, 2000

FIGURE 8. PLANTATION BUSINESS UNIT (IUP) AND BUSINESS UTILIZED RIGHTS (HGU) PROCESS

(Based on Ministry of Agriculture Decree No.26/Permentan/ar.140/2/2007)



provisions; install its facilities, infrastructure and systems for carrying out land clearing without burning; open land without burning and manage natural resources sustainably, establish facilities, infrastructure and systems to protect crops from fires and invasive organisms (OPT); conduct an Environmental Impact Assessment or Environmental Management and Environmental Monitoring based on applicable regulations; empower and develop the local community's cooperative; and regularly report progress to the governor or Bupati (head of district).

Article 38 of the regulation stipulates administrative sanctions against companies as follows:

- (1) A company which has already got IUP, IUP-B, or IUP-P, as stipulated in Article 13, and held approval for land extension, alternate type of commodity, extension of mill capacity, or diversification of business as stipulated in Article 30 which has not carried out obligations as stipulated under Article 34 paragraphs a, b, c, e, f, g, and/or h, and has been given warnings at least three times in four months.
- (2) If the three warnings as stipulated in section (1) are not followed by company action to fulfill the obligations, the IUP, IUP-B, or IUP-P of the company is withdrawn and it is recommended to the relevant authority that its Business Utilization Right (HGU) be revoked.

In reality, companies that have received IUP often start to establish the plantation and start land acquisition even though they are yet to acquire:

- (1) Letter from the forestry department as to whether the land in question is classified as a forest area or not.
- (2) Business Utilization Rights (HGU) from the national land agency (BPN) which clarifies that the land is free from conflict and based on state land.
- (3) Approval of the Environment Impact Assessment (EIA) by the local government to address the social, economic and biophysical impacts of the oil palm plantation.

As the cases in this report show, Agriculture Ministry Decree no 26/2007 (see Figure 8. Plantation Business Unit (IUP) and Business Utilized Rights (HGU) Process) is just a paperwork procedure that in practice is not used to address the latent problems of overlapped claims of IPs over state forest land as well as other state lands that might be granted as HGU for oil palm plantation development. The decree does not protect IPs from the social, economic and biophysical impacts of having oil palm plantations close to or on their customary lands.