

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

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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 Pygmy 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*.

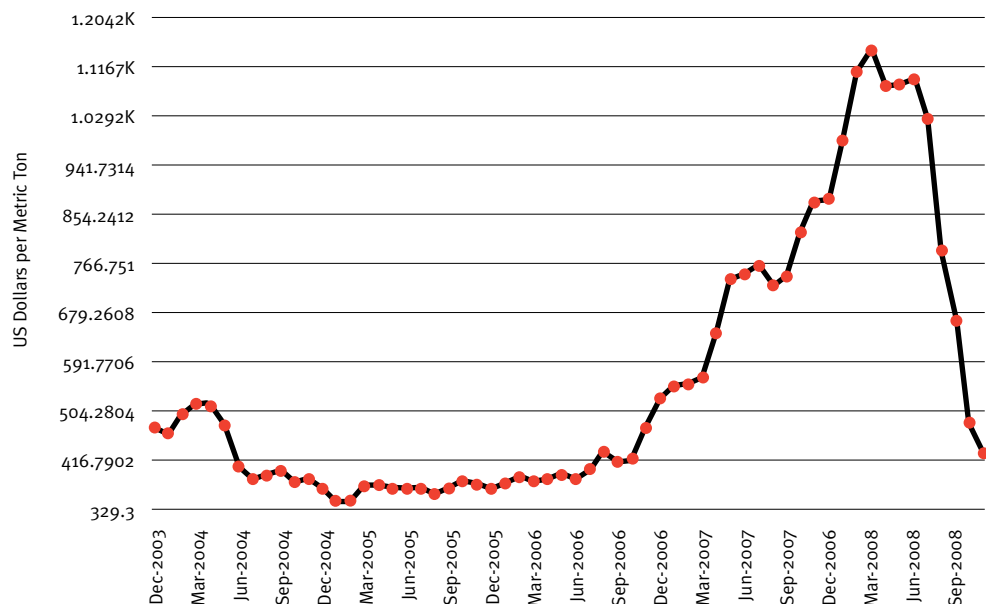


2

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.

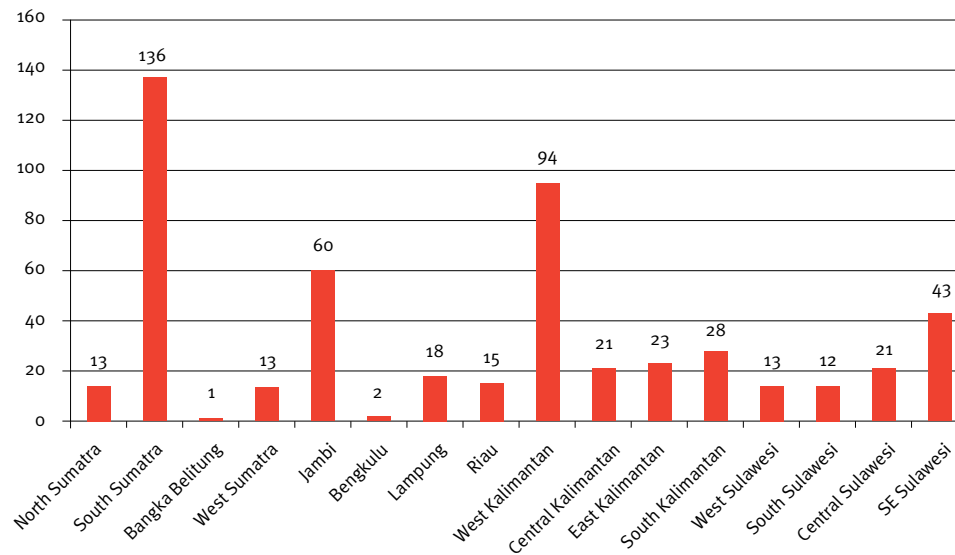
that play the role of brokers, trading in their access to plantation permits and promising prosperity to local communities. Many local companies made large profits from selling the wood obtained from forest conversion, after which the company and its plantation permits are often sold to national or foreign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

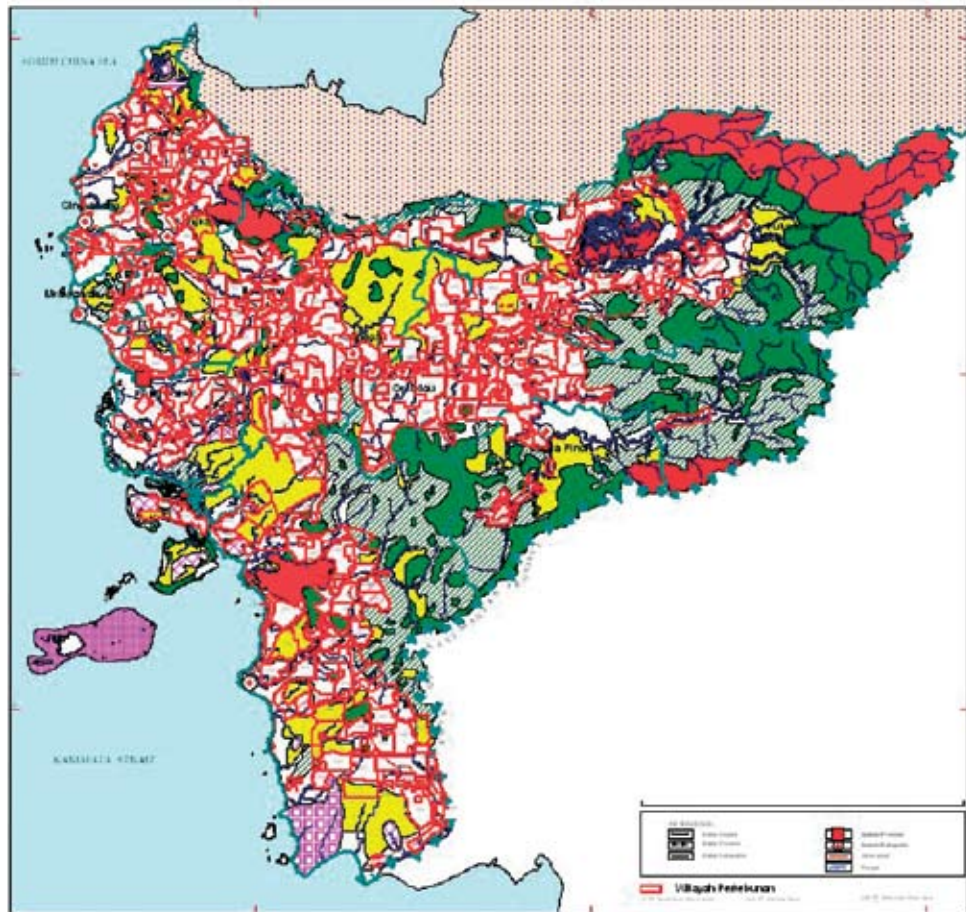
10 See Perda Kab Sanggau no 3 tahun 2004 ttg Penyelenggaraan Perkebunan Kelapa Sawit Pola Kemitraan and SK Bupati no 207/2004 re. Operational Guideline for the Perda 3 no 2004

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

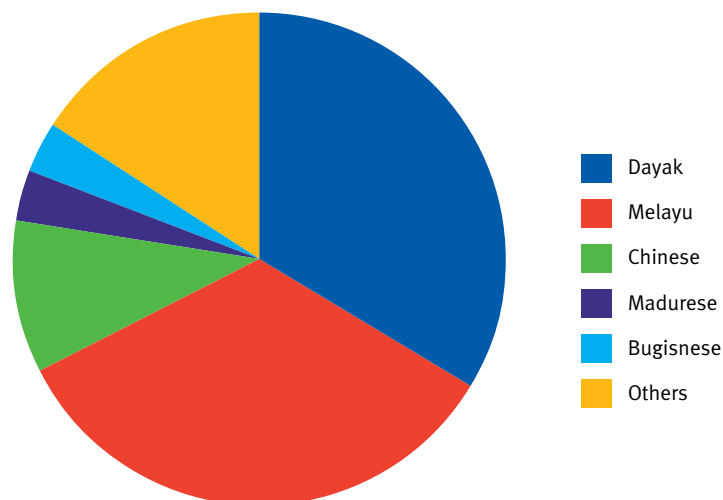
Madurese (0.21 million/3.5%) distributed in the cities as well as in the rural areas

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



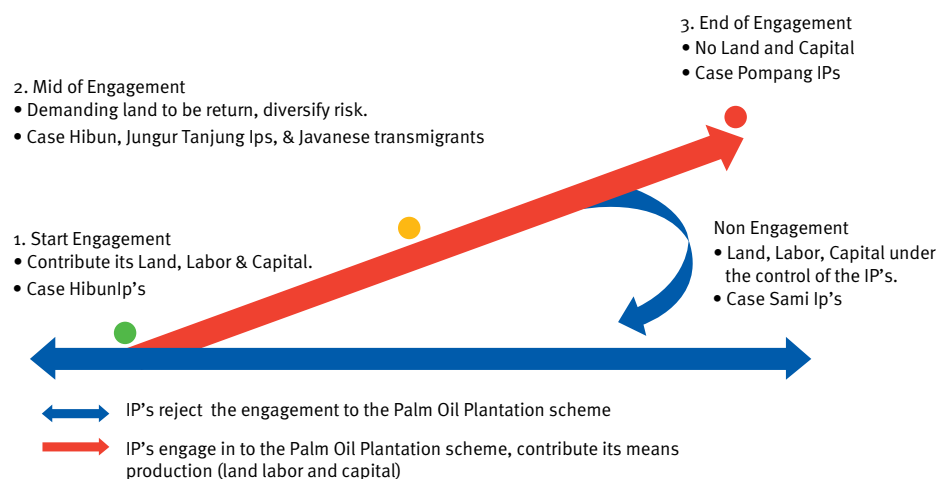
Source: Kalimantan Review special Edition 2003

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/unpfi/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*

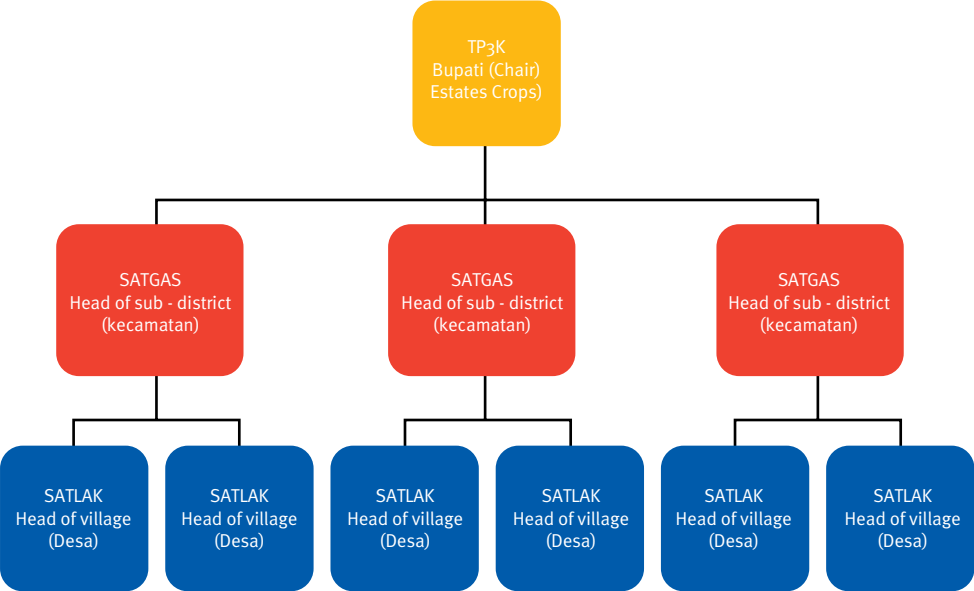
also has the responsibility to support the tasks of the district and province, and receives financial support from the government to do this. A *kampung* could reject tasks delegated to it by district or provincial government if there is insufficient support.

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

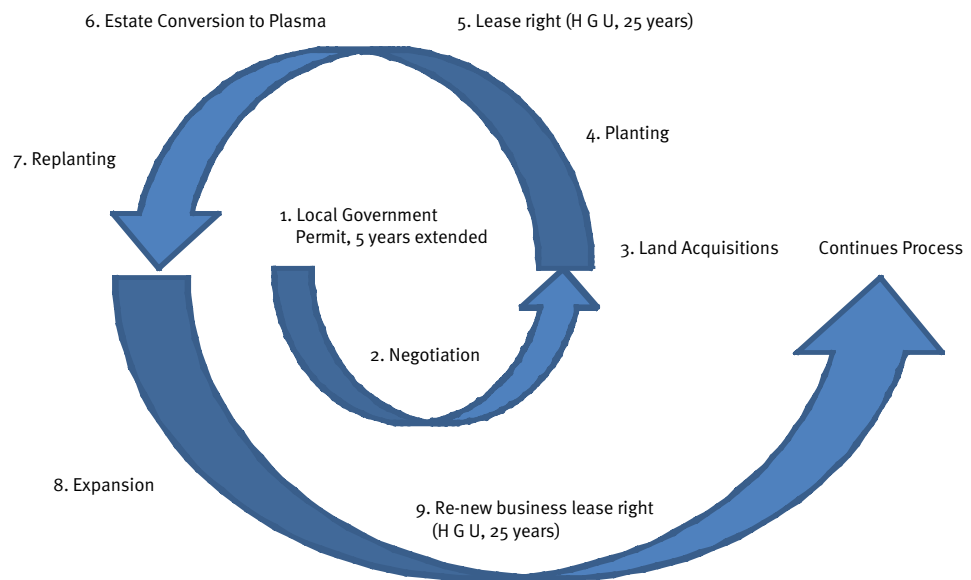


5

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 sometimes 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).

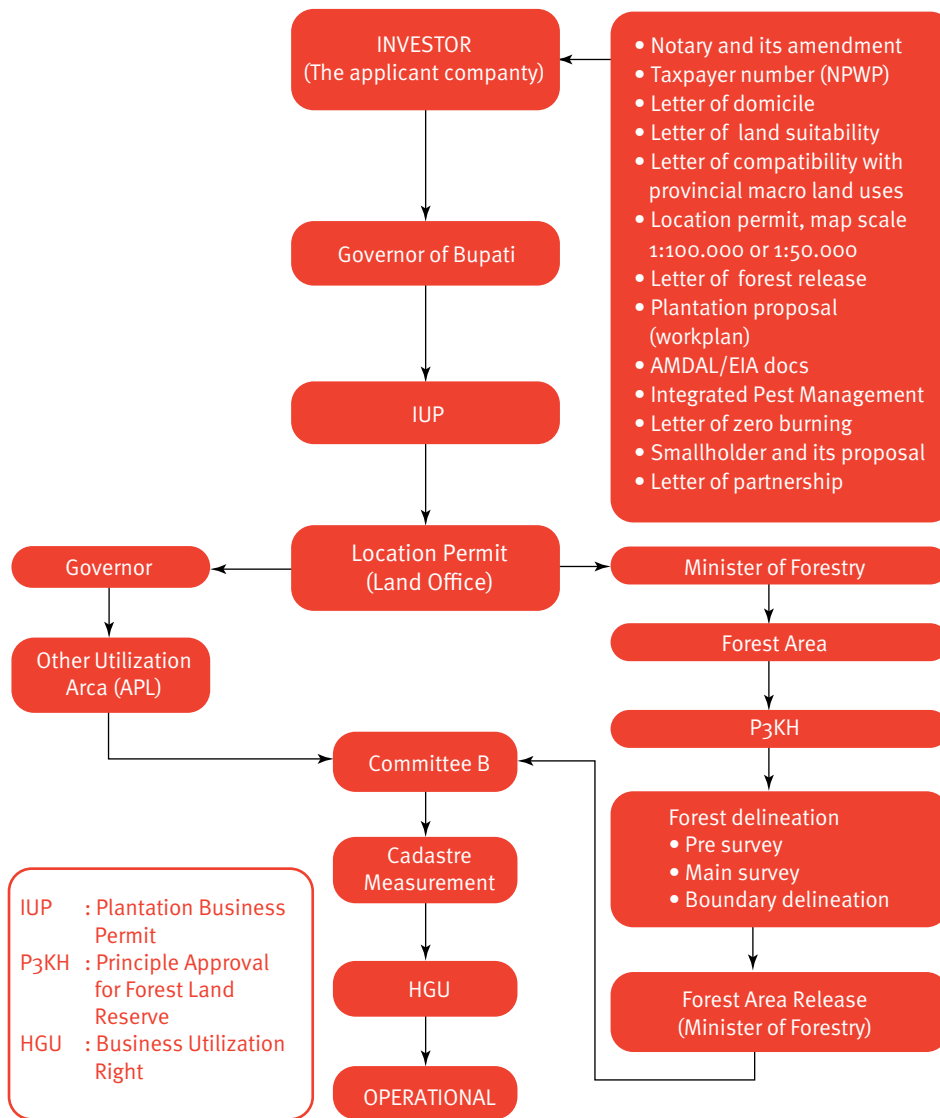
EIA (Environmental Impact Assessment/AMDAL) documents based on relevant laws and regulations should also be presented which show any potential environmental impacts (biophysically and social) and the strategies to address those problems. The company should also declare that the land clearing process 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.

6

Conflict and Collaboration in the Case Study Areas

The research was conducted in Sanggau district, an upland area and the biggest producer of CPO for the province, dominated by the *Dayak Bidayuh* ethnic group (70% of the population). Most of the *adat* lands are in conflict either with the forestry department or oil palm plantations. Land acquisitions for forestry activities were carried out through a one-sided process by the Forestry Department. Unfair land acquisition processes were also used by the oil palm plantation companies.

Adat lands were ignored by the Ministry of Forestry in its process to determine the extent of the province's state forest area. In this regard, Provincial and District governments share the perspective of local communities that many areas are not state forests but are *adat* lands. The state forest areas, forest concessions as well as conservation areas were designated solely by the ministry of forestry in Jakarta.⁴⁷ The designation of National Forest areas and the delineation of areas for logging concessions and nature reserves by the national government limited the local government's ability to develop these areas for rent seeking. The revenue it derives from logging concessions is too small to fund development of the district. Oil palm plantations can only be located outside state forest areas; if an area is classified as state forest, a land status conversion process needs to be followed (as explained in figure 3.3).

District and Provincial governments favor plantation companies over the interests of *Masyarakat Adat*⁴⁸. Governments assume that oil palm plantations will provide more revenue compared to forest areas and traditional local community farms. Given this situation it is extremely unlikely that District governments will issue regulations calling for the recognition of IPs rights to protect them from further expansion of oil palm plantations. This conflict is reflected in the cases below.

6.1. The Indigenous Peoples Customary (Adat) Institution and its Land Tenure System

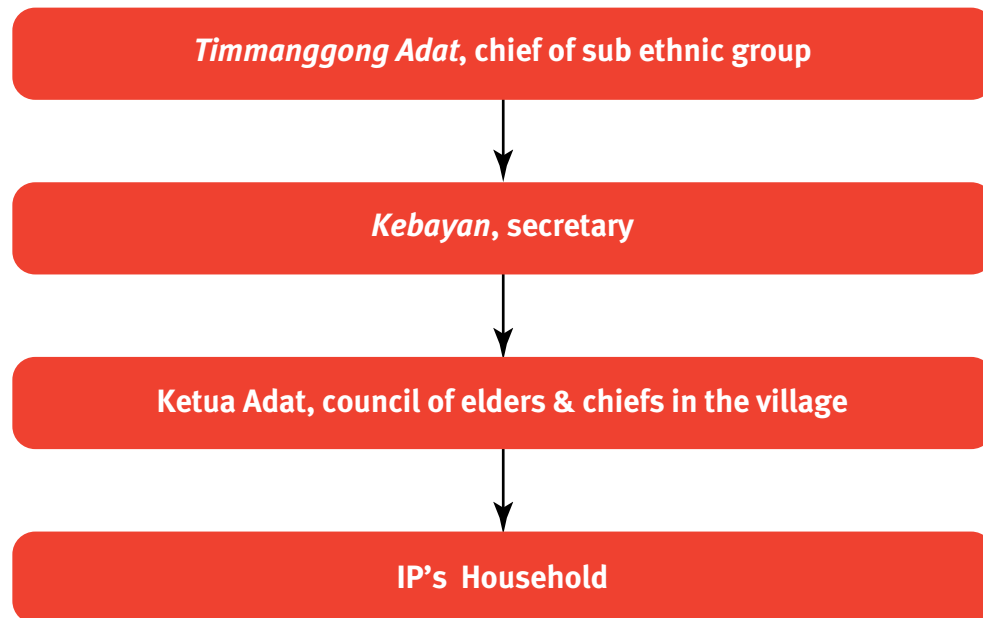
The *adat* institution responsible for *adat* law enforcement in these three case studies and throughout the *Dayak Bidayuh* ethnic group is similar. The *adat* institution is headed by a chief (usually a man but sometimes a woman) called *Timanggong*, who is chosen by the elders of the descendant group of ancestors who originally established and developed the village. The chief is responsible for several villages in the ancestral territory of sub ethnic groups such as the *Sami*, *Jangkang*, *Hibun* and *Pompang*. The chief is helped by a *Kebayan*, his secretary. *Ketua Adat* form a council of elders and chiefs for each village. The chief at the village level is chosen by the IP members of each village. There is no clear separation of powers in these IPs institutions as in the western system *trias politica*⁴⁹, with the council of elders functioning as both legislature to establish laws and judiciary to run the *adat* court together with the *Timanggong Adat* (see Figure 9. General Structure of the *Dayak Bidayuh* Indigenous Peoples Institution in Sanggau District).

⁴⁷ See Colchester, *Sirait & Widjarjo* 2003.

⁴⁸ See Colchester, *Jiwan, Sirait, Firdaus, Surambo and Pane*. 2006

⁴⁹ See, *ICRAF-FPP-AMAN* 2003, *In Search of Recognition, Bogor* pp 29-34

FIGURE 9. GENERAL STRUCTURE OF THE DAYAK BIDAYUH INDIGENOUS PEOPLE INSTITUTION IN SANGGAU DISTRICT



Source: Abdiyas Yas, Iwi Sartika, Marthen Lother, Susilaningtyas ed. Forthcoming, Mengenal Sistem Peradilan Adat; 25 Suku Dayak di Kabupaten Sanggau, LBBT, Pontianak p25

In all legal issues in the village, the village chief should initially handle the case. If the disputants are not satisfied with the chief's ruling, they can appeal to the *Timanggong* and settle the case by involving the council of elders. Murder cases will be brought to the *Timanggong* and to the police.

The *Timanggong* are elected from village chiefs. If a chief performs well, he or she could be elected *Timanggong* by the council of elders. There is a time limit for the position of *Timanggong* and its staff. The *Timanggong* can be replaced if the council of elders loses faith in his or her capabilities.

In the past, the IPs institution was stronger and respected by the community and neighboring IPs as well by the outsiders from non-indigenous communities. Until the 1980's, adat institutions played a central role in the life of each IPs community. All affairs were executed, regulated and justified through *adat* institutions, from birth to death, from planting to harvesting, from war to peace. In the 1940s, government imposed village institutions only dealt with official state affairs such as government projects, identity cards, census etc. and village officials could not interfere in the adat judicial process.

This system started to break down in 1979 when the state introduced a uniform system of village governance that did not recognize *adat* institutions, through the Local Governance Law no 5 /1979. After the Reform 1998, through the Local Governance Laws (no 22/1999 and no 32/2004) the state re-allowed village Indigenous Institutions to replace the village governance

system as long as it has a separation of power between the legislative and executive function. But law UU 4/2004 on Judicial Power does not recognize Indigenous Peoples' Judiciary as equal to or part of the state judicial system and this weakened the judicial function of Indigenous Peoples' adat institutions.⁵⁰

In practice today communities use both government and indigenous institutions for regulating and administering law. Oil palm companies as well as local government use both governance systems to promote oil palm plantations on ancestral lands, using state law as well as manipulating *adat* law. Chapter 7 will elaborate the consequences of these challenges to IPs *adat* systems and *adat* land management and control.

The IPs in the case studies used to access and control their **ancestral lands** or **communal lands**, calling it tanah adat (*adat* land) using their own land tenure system, regulated by their *adat* law, through their own *adat* institutions. The land tenure systems were similar for these IPs groups as they were from the same root ethnic group (*Dayak Bidayuh*) with land divided into three categories:

- (1) **The commons**; lands possessed by the whole IP community. These lands were forest and other commonly used areas, and could be used for farming by new members of the community with the permit of the *adat* chiefs and elders.
- (2) **Descendant land**; lands possessed by individual families, usually the descendents of the ancestors who established the longhouse (village) in the area. These descendant lands were mostly used for mix agroforest and sometimes contained sacred forests and graveyards. The benefits from these lands were shared among the descendant group and the community with consent of the descendant group members. This land could not be transferred to persons outside the descendant group, but the land could be converted to private lands belonging to a descendent household with the consent of the descendant group leaders.
- (3) **Individual lands**; private lands under the management and control of individual households, with the benefits shared by members of those households. These individual lands could only be transferred to members of the same IP residing in the same village.

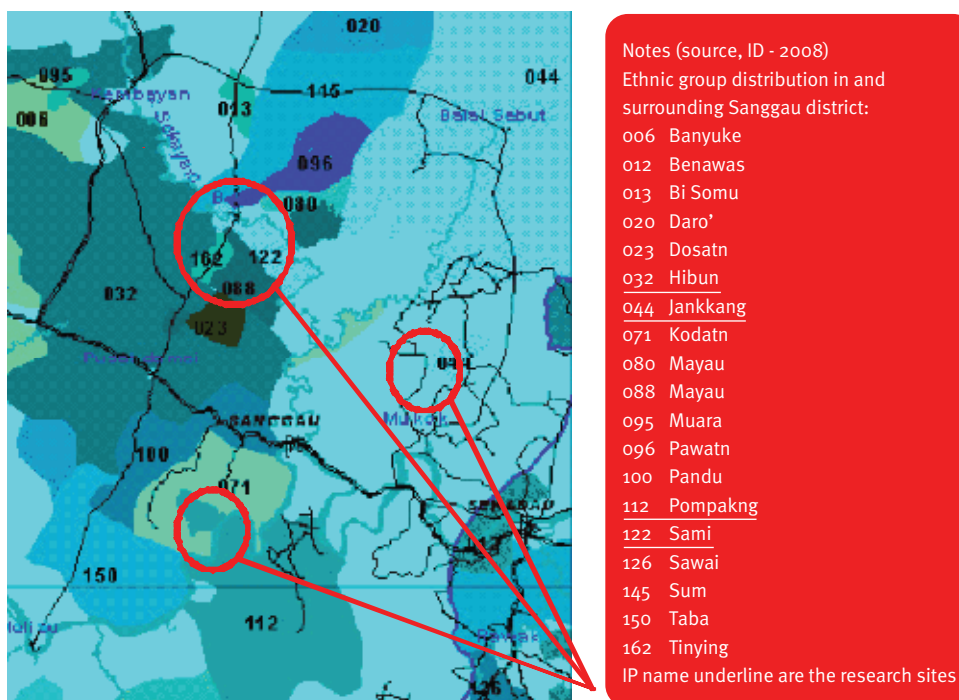
These indigenous tenure systems are recognized widely among IPs in West Kalimantan and regulated by *adat* law. Adat chiefs and their staff were responsible for *adat* law enforcement. These land ownership and management systems were not registered in the state land registration system, but were respected by the local community as well as neighboring communities. These indigenous tenure systems were threatened by the expansion of the state tenure system which did not explicitly recognize IPs tenure systems. In the 1970's, large-scale forest concessionaires used the state tenure system to ignore the tenure rights of the IPs. In the 1980s and 1990's large-scale oil palm plantations also ignored the tenure systems of IPs (common land, descendant land and individual lands). In the last decade, community mapping was introduced to several IPs in West Kalimantan to help them articulate their claims using the same spatial approach (map with scale and coordinates) as is used by the government and companies.

⁵⁰ See Abdurachman (2009), in: Abdiyasa Yas, Iwi Sartika, Marthen Lothar, Susilaningtyas ed. Forthcoming, *Mengenal Sistem Peradilan Adat*; 25 Suku Dayak di Kabupaten Sanggau, LBBT, Pontianak. Further, the Government Regulation no72/2005 re. Village Governance (article 15 k) elaborates that the Village Governance could run an arbitrary rule outside the court in settling disputes, and IPs Institutions could assist the Village Governance in settling arbitrage among the members of the village (p5). Exception for Papua Province, through the Autonomous Law of Papua no 21/2001(article 51, 1 and its explanation) the State recognized the Indigenous Peoples Court of the IPs in Papua as one of the court to settle disputes among the IPs in Papua (p 7).

The study was conducted in three sites in Sanggau District where IPs lands have been taken over by oil palm plantations. The *Hibun*, *Sami*, *Jangkang*, and *Pompang* are four sub-sub-ethnic groups from the largest *Dayak* sub-ethnic group in Borneo Island, *Dayak Bidayuh*. *Dayak Bidayuh* are known as the *land Dayak* as they settled upland areas of Borneo together with other Dayak sub-ethnic groups such as *Kayan*, *Kenyah*, *Iban* and *Punan*. (Kalimantan Review, September 2006). In the Sanggau district these IPs are interspersed with another 60 *Dayak* sub-ethnic groups as well as with Malay and ethnic groups originating from other islands (see Figure 10. Ethnic distribution in Sanggau District). According to a Dayak Bidayuh legend, this group came from the area called *Tampun Juah* (Kalimantan Review, October 2006). It is not clear where *Tampun Juah* is located; some communities believe it is in Metun Taput, Sarawak, Malaysia (Sirait 1997⁵¹). According to an Institute of Dayakology language research survey, the majority of the Dayak Bidayuh ethnic groups reside in Sanggau district, especially in Mukok, Bonti and Meliau sub-districts, and can be divided in 37 communities⁵².

The four sub-sub-ethnic groups (*Hibun*, *Sami*, *Jangkang Junggur Tanjung*, and *Pompang*) have their own dialects which differ from each other and from other Dayak ethnic groups, which helps to maintain their identity as distinct indigenous communities. The dialects are used in certain areas for communication between a number of different ethnic groups, e.g. in Mukok sub-district, the *Jangkang* dialect is used, in Bonti district the *Hibun* dialect is commonly used.

FIGURE 10. ETHNIC DISTRIBUTION IN SANGGAU DISTRICT



51 See Martua Sirait. 1997. p59

52 See Kalimantan Review no 134/ThXV/Oktober 2006. p47 as well as Institute Dayakology, 2008

Three cases were chosen to explore community experiences in conflict and collaboration between *masyarakat adat* and in their dealings with migrants, government and companies in relation to the development of oil palm plantations. 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. 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. See Figure 4. IPs Engagement with Oil Palm Plantations.

The first case presents conflict and collaboration between the *Hibun* and *Sami* communities who have been living as neighbors since time immemorial. *Hibun* (population 18,502 no. 032) is the dominant group and dialect used in the sub-district of Bodok and includes villages such as *Kampuh*, *Kerunang* and *Upe*. The *Sami* (population 608 no. 122⁵³) are the minority IP in their sub-district, mostly staying in Terusan village. The Hibun decided to engage with the oil palm plantation while the Sami rejected the engagement with the same oil palm company.

These two groups have a long experience in conflict and collaboration with each other and they hold many stereotypes, attributes and stigmas against each other. The decision in each community whether to engage or not with the offer of a *plasma-inti* contract farming scheme from the oil palm plantation company PT MAS-II revealed different positions within each community. Conflict and collaboration regarding the decision and all the consequences brought by the practice of oil palm reformulated the internal relations within a community, as well as the community's relation with the company, especially in the process of expansion of oil palm plantations.

The second case presents conflict and collaboration between the indigenous community *Jangkang* and *Javanese* transmigrants. In the sub-district of Mukok, the *Jangkang* (population 15,711 no. 044⁵⁴) are the dominant IP and reside in several villages together with the Javanese transmigrants that arrived in the 1980s through a government sponsored program. The bringing together of these two ethnic groups has created a complicated situation. Today the stereotypes, attributes and stigmas against each other are not based on personal experience but mostly come from secondary information. The situation worsened with the arrival of the oil palm plantation PT CNIS (PT Citra Nusantara Inti Sawit, an Indonesia subsidiary of the *Sinar Mas* group) when both communities accepted the company onto their lands. The company promoted conflict between the two ethnic groups and used the differences to gain access to community lands from 1986.

The third case presents conflict between the indigenous community of *Pompang* (population 4,892 no. 112⁵⁵) in the Meliau sub-district, the *Malay* ethnic group around the Kapuas River and the state-owned oil palm plantation Company, PTPN XIII. The *Pompang* community joined the oil palm plantation scheme in the 1980s and today it does not have enough land to maintain its agricultural activities or practice traditional rituals. Not many options on the land remain for most members of the *Pompang*; they work as daily laborers on the plantation, work in the nearest town or have migrated to Sabah/Sarawak (Malaysia).

53 See Figure 10. Ethnic distribution in Sanggau district.

54 See Figure 10. Ethnic distribution in Sanggau district

55 See Figure 10. Ethnic distribution in Sanggau district.

6.2 The Hibun and Sami communities in relation to the oil palm plantation

In 1995 the majority of the *Adat* community of *Hibun* from several villages, including Kerunang and Upe, accepted the request of oil palm company PT-MAS to operate on their customary lands and they joined the company's *plasma-inti* scheme. The neighboring *Sami* community from Terusan and Terinting villages rejected engagement with the oil palm plantation company.

In 1996 the company started land clearing including areas of swidden land and graveyards belonging to the *Sami* even though the *Sami* had rejected the proposal to join the oil palm plantation. The *Sami* asked for clarification from the company but land clearing continued. After several years of having their demands ignored, in 1999 the *Sami* community stopped their land being taken over by the company and did not allow the companies' nursery and office to be based in their territory. The *Sami* confiscated company vehicles and all documents in the company office. The PT-MAS II, which bought PTPMS (*PT Ponti Makmur Sejahtera*, an Indonesian Private Company) in 1998, used the opportunity to provoke *Hibun* leaders from eleven villages to accuse the *Sami* community of violating *adat* by harassing the oil palm company. Tensions escalated between the two ethnic groups. Terusan village received threats: if they refused to pay the *adat* fine equivalent to US\$1,100, their village would be burnt down. The *Sami* decided to pay the *adat* fine to protect their village and their ancestral lands. The spirit of the *Sami* community is reflected in a statement by the *Sami* lawyer Mr. Abdias (see Figure 11 Mr. Abdias):

FIGURE 11. MR. ABDIAS



According to my ancestors, the land that we claim as our *Sami* ancestral land was given to us by the Mayau, Darok and Selayang Indigenous Peoples. These lands were given to us through a long social and historical process, so we can't easily pass it to the oil palm company. We believe that we should continue to manage our land using our indigenous systems for swidden agriculture, mixed gardens etc. and also use our indigenous institutions that we reinstalled in 2004 through an *adat* assembly. Our indigenous system distributes access to resources more or less equally among us. Sometimes we need to add to our institutions new systems that are accepted by our custom, such as cooperatives (*usaha bersama*)

As a result of the conflict, clear segregation and demarcation of each *adat* territory between these two ethnic groups was made, even though the *Sami* community lost about one hundred hectares of their territory, which was occupied by the oil palm company. The forced agreement on boundaries between these two ethnic groups resulted from the imbalance in power between the communities, including physical threats from the dominant group. The *Hibun* with a population of 14,000 were supported by the local government and the company against the *Sami* who had a population of only 640.

The *Sami* communities continue to manage their remaining territorial resources based on their indigenous knowledge and wisdom. They wish to remain independent of the company. They

realized that due to the large operations of the oil palm plantation in their neighboring village, they might become alienated from their *Hibun* neighboring community and marginalized from the local government development program. Their isolation from the wider world is influenced by their geographical position. *Terusan* village is located on a small island in the Sekayam River, with only a small bridge connecting it to the other side of the river. In response to these developments, the *Sami* community formed cooperatives (*Usaha Bersama*) to buy and sell their agricultural products such as rubber, rice and other mixed farm products. The cooperatives also sell basic needs such as gasoline, sugar, rice and cooking oil to members of the village. The cooperatives are involved in maintaining and developing basic services, such as bridges on the Sekayam River, roads, water and sanitation projects etc.

The income of the *Sami* community is higher than in most of the neighboring *Hibun* villages and they don't depend on the charity from the oil palm company. They can afford to send their children to basic and secondary school. Some families send their children on to the high school in Pusat Damai (the main town of Bonti sub-district) or to the University in Pontianak based on income from their mixed gardens (mostly from the sale of rubber).

The situation in the Bonti sub-district changed radically in early 2006 when the company failed to fulfill its promise to the local communities to redistribute land to the farmers and continued to expand the oil palm plantations under the name of PT-MAS III. The *Hibun* community realized that they had lost most of their land and identity due to the changed structure of their livelihoods and lives: from a subsistence village that could generate its own food and resources

BOX 7. GAINING BACK THE COOPERATIVE

Mrs. Herkulana Rini is a member of SPKS (the union of oil palm farmers) Sanggau. She is a teacher who has consistently struggled for the rights of IPs and oil palm farmers through the company cooperatives. In December 2007 she was transferred by the local government from her village school to serve as a teacher Kapuas sub-district, far from her home. After widespread protests, in November 2008 she was transferred back to serve at her village school in Kampuh. She was supported widely not only by SPKS members and its supporting NGOs but also by her own students and their parents who petitioned the local government. Threats by the company and local government due to her activities have not stopped her advocating for the rights of IPs and oil palm farmers.

“As a teacher working in the village and originally from the village Kampuh, and as member of the Hibun indigenous people, my husband and I feel that it is our obligation to react collectively. We and other teachers in the area as well as the other communities here are members of the cooperative. We were each supposed to receive our own oil palm plot but we still do not know which is our plot. Our land was taken with empty promises but none of our adat leaders have reacted. No wonder, they are members of the Satlak of the company. They became the guardians of the company, not any more our real leaders. By joining SPKS, step by step we will gain back our cooperative and we can negotiate with the company to gain a better position”.

Source: Kalimantan Review no 151, March 2008, *Pejuang yang Dibuang*, P 47 and personal interviews in 2007-2008

where a family could earn approximately US\$6 a day from rubber tapping, to a village of plantation labourers that receive small wages (US\$1.50/day) working for the company. Of the land that each family released (7.5 ha), they had been promised two hectares for oil palm plantations of their own, but this was never transferred to all house hold beneficiaries. The interest rate of the credit scheme doubled, and these costs were deducted from each family's share. Their sacred graveyard was dug up and planted with oil palm.

The *Hibun* community realized that they could not return back to the previous situation, so they demanded the company to fulfill its promises, especially those listed in the written contracts with each family participating in the *plasma-inti* scheme. The community decided that individual efforts to demand their rights from the company should be channeled through the Cooperative (*Koperasi Maything Hija*⁵⁶). The cooperatives are controlled and appointed by the company, most of them are *Satlak* members, which are their own *adat* chiefs and the village head, and paid by the company.

To further its struggle, the *Hibun* community joined the oil palm peasant union (SPKS) together with other communities in West Kalimantan. Peaceful demonstrations were held at Sanggau district, involving 500 members of SPKS to demand a special taskforce of the legislative assembly to resolve land conflicts⁵⁷. The SPKS has also held a peaceful demonstration at the provincial government office in Pontianak together with the members from other districts of the province using the momentum of the 2007 Indigenous Peoples day. They demanded a freeze on all oil palm plantation expansion and a focus on resolving oil palm land conflicts.

The SPKS has also been involved in developing and testing the criteria and indicators of the Roundtable on Sustainable Palm Oil (RSPO) standard. This process brought Mrs. Rini (See Figure 12. Mrs. Rini spokesperson of SPKS-Sanggau from Kampuh village) and other members of the SPKS to an international conference on the RSPO in Singapore in 2005. There she met with the RSPO CEO, lending aid agencies, consumer groups, NGOs and academics who are concerned about the sustainability of oil palm plantations. Mrs. Rini and other SPKS members received threats of punishment for joining the SPKS, and for going abroad to the RSPO meetings.

FIGURE 12. MRS. RINI, SPOKESPERSON FOR SPKS SANGGAU FROM KAMPUH VILLAGE



56 The name of *Maything Hija* Cooperative has been taken as the abbreviation of four sub-ethnic groups representing the four IPs participating in the oil palm plantation scheme: *Mayau*, *Thinying*, *Hibun* and *Jangkang*

57 The demand was addressed by the local government which formed a special task force for resolving conflict between the peasants and the oil palm companies *PTPN XIII*, *PT MAS*, *PT KGP*. The task force includes *SPKS* as one of its members.

In mid 2007, the *Hibun*, as well as communities of *Mayau* and *Sami* from areas affected by the plantations of PT MAS-II, wrote a letter to the company requesting that it solves the outstanding land conflicts. After several weeks with no response from the company, the local communities blockaded the road leading to the areas in conflict, to stop company trucks from harvesting the area (see Figure 13. Blockade and demonstration against PT MAS II in Bonti sub-district). The blockade used the *adat* symbol of *pantak* which is used in sacred rituals and is not allowed to be used without *adat* ritual. On the same morning, youth, children, men and women went to the company office and demonstrated outside, repeating their demand that the company redistributes two hectares to each oil palm participant and asking for transparent management of the oil palm concession. The demonstrators forced open the office and harassed one of the Satlak members. A long negotiation with the company manager of PT MAS-II regarding the communities' demands followed. At 4.00 AM the next morning, the company agreed to raise the demonstrators' demands with the branch office in Pontianak. The 18-hour demonstration ended peacefully under heavy guard from the company (*Pamswakarsa*) and the police.

FIGURE 13. **BLOCKADE AND DEMONSTRATION AGAINST PT MAS II IN BONTI SUB-DISTRICT**



The next day, the company, working through the IP leaders, negotiated the lifting of the road blockade. This exposed the conflict between the IP leaders backed up by local government, police and company and the local communities allied with the SPKS. During the tension between the IP leaders and their local communities, police captured five SPKS local leaders, detained them and beat them up. The SPKS leaders were charged under the criminal code with destroying company property, including opening a company gate by force and blockading a plantation access road. They were also charged with assaulting an *adat* leader who was a member of the *Satlak*. Advocates from the Public Interest Lawyer Network (PILNET) including an AMAN lawyer from Jakarta as well as AMA Kalbar from Pontianak backed up the SPKS leaders during the police investigation and the court process. At the same time the *adat* leader who claimed to have been assaulted was backed by the company to bring a case of *adat* harassment to the district *adat* board (alleging misuse of the sacred *pantak* to blockade the plantation road).

Several days after the demonstration, the District Government attempted to force teachers not to join the SPKS. It sent a letter to all school heads in the area asking the teachers to support and promote oil palm expansion in the area. The teachers reacted by sending a letter to the Human Rights Commission in Jakarta asserting their right to unite and express their views on human wellbeing⁵⁸. At the same time the Provincial police office assigned a special armed team to undertake law enforcement operations to protect the oil palm plantation. The SPKS leaders faced intimidation, with stones thrown at night into their houses and assassination threats from the *Satlak* (land acquisition task force) and *Pamswakarsa* (security). These intimidation attempts, as well as the empty promises by the company were reported by Sawit Watch and SPKS members, facilitated by Paul Wolvekamp (Both Ends) directly to the CEO of Synergy Drive (Dr. Dato Azhar) at the RSPO V meeting in Kuala Lumpur, 20th-22nd November 2007 (See Figure 14. Mrs. Rini meets with the CEO of Synergy Drive in KL). PT MAS-II is owned by the Malaysian company Synergy Drive which itself is part of the *Golden Hope Group*, *Kumpulun Guthrie*, and *Sime Darby* group. Dr. Dato Azhar apologized for the lack of action and the empty promises from his company and asked to be kept informed of any further intimidation of the community or SPKS members.

FIGURE 14. MRS. RINI (CENTER) MEETS WITH THE CEO OF SYNERGY DRIVE IN KL



The court case against the five SPKS leaders is ongoing but it will not help resolve the land conflicts at the root of the problem as it will only deal with the criminal case of the blockade of a public transportation route (see Figure 15. The SPKS leaders from Bonti sub-district facing criminal charges). The case brought to the district Adat board is stuck on the issue of who in the community has the legitimacy to use the *pantak*.

The Synergy Drive responded to the crisis by sending an independent monitoring team consisting of Wild Asia and Aksenta⁵⁹, to assess the problems through mapping, verification, inventory of stakeholders etc. This process will be the barometer as to whether the case will be reported to the RSPO for a Grievance Procedure, or solved directly. Communication is being maintained in an informal way between the SPKS and managers of the parent company in Malaysia, as well as with supporting NGOs. However, SPKS members clearly find it difficult to stay in regular communication with outside parties.

FIGURE 15. THE SPKS LEADERS FROM BONTI SUB-DISTRICT FACING CRIMINAL CHARGES



PT-MAS II remains unwilling to distribute land according to the agreements originally made by PT-MAS with members of the *Hibun*, *Mayau* and *Sami* communities (each community participant that released 7.5 hectares was to receive two hectares for their own plantation). The company offered to allocate several blocks for redistribution, but participants will only receive between 1 to 1.5 hectares, and the land is located on infertile soil or steep slopes. Each block will be managed by a group of farmers and they will share the costs together, known as an *Akuan* scheme.

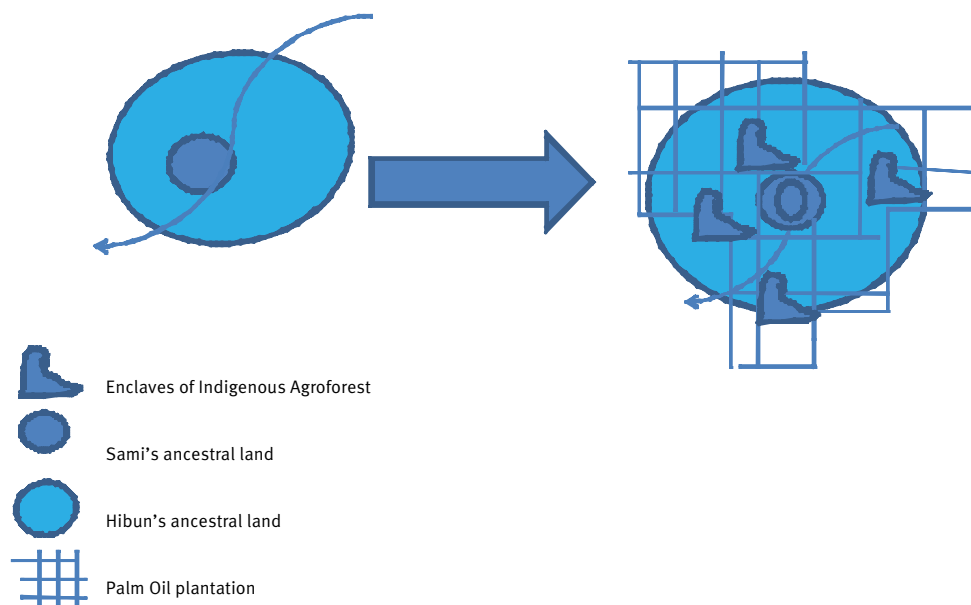
Most of the participants did not agree with the first offer and without any choice they joined the virtual block scheme, known as *saham* (share). Under *Saham*, the plantation will be fully

⁵⁹ Both organization are hired by the company to do the assessment of several problems surrounding the PS MAS operation that might be violating the RSPO standard and criteria.

managed by the company and the participants will receive a fee, based on their production with a deduction for production costs. In this plantation scheme, those owning two hectares of oil palm plantation will receive between US\$22 and \$33 per month and will be paid every three months, without doing anything. In this system, there is no transparency over the production or the level of deduction for production costs. Some farmers realized this after their demonstration, as their earnings for the next month increased almost 50% without a clear reason.

The frustration and anger within the communities affected by PT-MAS II is still evident and will no doubt remain until the root of the problem is addressed. Several religious leaders have brought the case into their sermons and prayers at the Sunday church and on other occasions, which helps to give moral support to the community struggle for their land. At this moment, the *Hibun* and *Sami* are working hand in hand to resolve their common problem with the company, along with other members of the SPKS and supporting NGOs. The ancestral lands of these two IPs are largely taken over by the company's oil palm plantations. In both IPs, those families who had limited private lands and depended on common ancestral land are suffering the most from the expansion of the company's oil palm plantations. At this stage the two IPs are collaborating to achieve different purposes; the *Hibun* are struggling for their rights as participants in the *plasma-inti* oil palm scheme, while the *Sami* seek to protect their remaining ancestral lands from the expansion of oil palm plantations. The control of the communal land and the landscape of the *Hibun* has changed radically from communal lands to company lands with the promise of some individual land ownership. Some communal land of the *Sami* was taken over by the company, but the community has kept their remaining ancestral lands intact (see Figure 16. Changes in the *Hibun* and *Sami* Communal Lands 1995-2008).

FIGURE 16. LANDSCAPE CHANGES ON THE HIBUN AND SAMI COMMUNAL LANDS (1995- 2008)



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

The Adat community of *Jangkang*, especially those living at Tokang village, could not reject the Transmigration plan that took over some of their ancestral lands in 1980. Transmigration was a major government program at that time; it was supported by ADB and became the pilot project for further transmigration programs in West Kalimantan. The transmigration area around Tokang village is around 20,000 hectares. Fifty-eight *Javanese* transmigrant families from Delangu, Central Java arrived in Tokang village in 1983 and mixed with 43 families from Tokang village.

The old village was left behind when all the Tokang villagers moved to the new settlement at SP 1 in the transmigration area named Tokang Jaya. The Government promised that each transmigrant family would receive a quarter hectare of land as its home yard, one hectare as a first plot and three quarters of a hectare as a second plot. But by 1986 only the quarter hectare home yard had been distributed to each family. Few transmigrants received the first land parcel of one hectare or the second parcel of three quarters of a hectare. In response to this situation, the members of the Adat community from Tokang moved back to their old village and continued cultivating their land through shifting cultivation and rubber tapping. Some of the *Javanese* transmigrants sold their quarter-hectare plots to neighbors and returned to Java or moved to the city and became street vendors. But the majority of the transmigrants held on to their land and survived by working outside the village, such as labourers in new oil palm plantations. This was the hardest period of their life as transmigrants.

In 1986 the transmigrants protested to the transmigration authority demanding their first and second land parcels. After a long negotiation, they obtained ownership to the first plot (one ha per participant), but they did not get access to the promised second parcel due to overlapping claims with the *Jangkang* from *Tokang* village. Later in the 1990's the National Land Agency released the second parcel certificate and distributed it to the *Javanese* transmigrants even though the land is still under the control of *Tokang* village.

Several violent conflicts and cases of harassment took place between the *Jangkang* IP and the *Javanese* transmigrants. Later the two groups realized that the basis of their conflict stemmed from the bad planning and implementation of the transmigration area. The planner had underestimated the area, thereby undermining the land status of the ancestral lands of the *Jangkang*. The indigenous tenure system was confusing for the *Javanese* transmigrants and the land certification process confused the *Jangkang*. Through a long process the *Javanese* transmigrants agreed on the indigenous tenure system, as described by transmigrant Pak Siswomiharjo (see Figure 17):

FIGURE 17. MR. SISWOMIHARJO



Land certification is a registration system that is required by the state, and is what the transmigration staff promised to provide us, but it is not a letter that shows proof of ownership (yang menghaki). It is only proof of being a paper holder (pemegang sertifikat). The question of who owns the land should be asked from the local Tokang community. The Tokang community does not have a written record; they know exactly who owns the land and who the descendants are who have rights over it. If I want to be both certificate holder and land owner, I should negotiate with the person who owns it. A certain price could be negotiated on the basis of good will.

Realizing this condition, both the *Jangkang* land owners and Javanese transmigrant title holders felt anger, frustration and disappointment. The transmigrants felt cheated by the National Land Agency and the *Jangkang* community felt betrayed by the Transmigration authority. Not all rights over land have been settled between the two communities. Most of the land owners and holders of certificates for the second land parcel knew each other but have refused to talk about it. The transmigration authority has been dismissed and the National Land Bureau keeps promising to solve the problem, but this has never materialized. Mr. Albertus Awin (see Figure 18) from the *Jangkang* community expressed his concerns:

FIGURE 18. MR. ALBERTUS AWIN



I was one of the local transmigrants from Tokang village. During the land acquisition for the transmigration area, the government never bought our land. There was only compensation for the plants we had planted on our land. Ten hectares was taken from me, and I got Rp. 100,000/ hectare for rubber gardens and Rp. 30,000 /ha for swidden land. I still own land to which a certificate has been issued by the land agency under someone else's name. If the person wants to use that land, I would agree if the price is Rp. 50,000,000 per hectare (approx US\$5,000).

In 1999, an oil palm plantation company (PT CNIS) came to the transmigration area. They knew exactly which lands were in dispute and through their land acquisition task force (TP3K) they offered the *Javanese* as well as the *Jangkang* to join the plasma-inti scheme. The participants with a land certificate for three quarters of a hectare - mostly the *Javanese* transmigrants - were promised the same area. For the land outside the transmigration area - ancestral lands owned by the *Jangkang* community - the company required that five hectares should be released in return for two hectares. This favorable treatment for certified land for which there was no proof of ownership raised the issue of racial discrimination, as the *Javanese* were put in a privileged position compared to the members of the *Jangkang*.

Through the TP3K land acquisition task force, the company promoted a solution to the land conflict and asked the transmigrants to provide their land certificates to the village head. The *Javanese* transmigrants who did not join the oil palm scheme felt intimidated that they would no longer be allowed to cultivate their land. Members of the *Jangkang* were concerned that if they did not join the new oil palm scheme, they would become poor and the *Javanese* transmigrants would become their bosses, taking over their customary lands. Most members of the two communities released their land to the oil palm company. In return they received a piece of paper registering them as a member of a cooperative (Koperasi Tut Wuri Handayani) although they were not involved in forming the cooperative and have never controlled it.

In 2000, PT CNIS was sold to the Sinar Mas Group. The new owner neglected the previous promises to distribute the land to the transmigrants as well as to the other participants from outside the transmigration area. The *Javanese* transmigrants and the Tokang community demanded that a portion of their land be returned in a form of oil palm plantations along with land certificates for those areas and credit of US\$778 per hectare. These requests have never been fulfilled; the land has not been returned and the credit that the participants are owed on the use of those lands by the company has grown to US\$2500 per hectare.

Currently the company is offering to manage the whole plantation by itself and to pay a fee to the local community based on the level of production. This scheme has a good name *sistem Saham* (participant as share owner) but all the *Javanese* transmigrants as well as the *Jangkang* participants are listed as passive members and will only earn approximately US\$6 per three quarters of a hectare per year. This scheme actually is the same with Akuan scheme (see Box 6.) with better name. Returns are very low compared to the returns from rubber tapping that the Tokang community practices and which has also been taken up by the *Javanese*, as expressed by Mr. Raji Mulyono (see Figure 19), a *Javanese* Transmigrant:

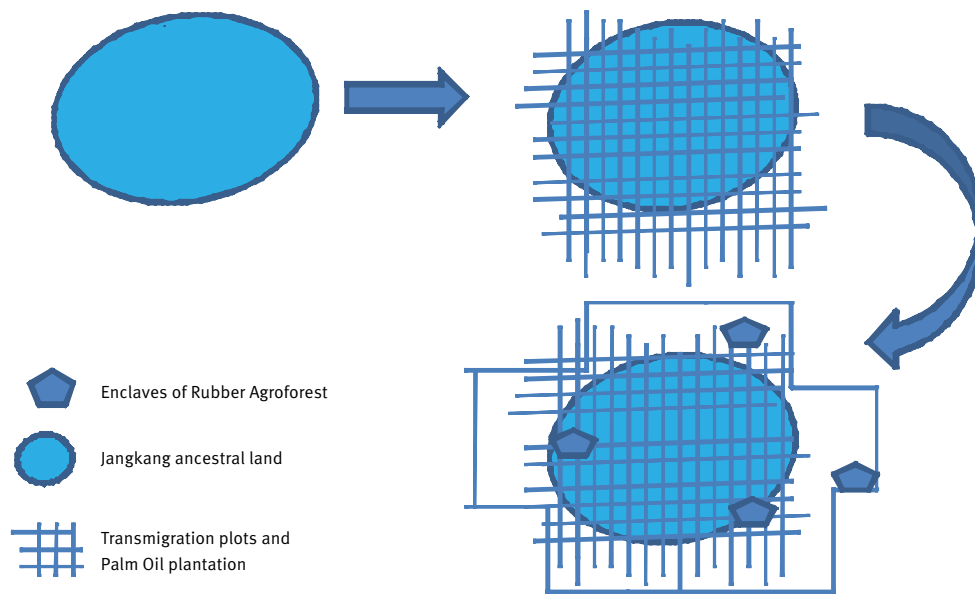
FIGURE 19. MR. RAJI MULYONO



Before the company arrived in our village, we already knew how to plant and take care of oil palms. We used to work as wage labourers in surrounding areas because we did not receive our land from the Transmigration authority. I don't think the Oil Palm scheme is benefiting us, it is another way of exploitation. It has been proven over the generations that our neighbors from the *Jangkang* IP manage their mixed rubber gardens profitably. I also learned from them and know my life is better as a result of their help and I will invest in mixed rubber gardens in the future.

The communal land of the *Jangkang* IPs has been rapidly changed to individualized land plots owned by *Javanese* and *Jangkang* families amidst the vast land holdings of the company oil palm plantation.

FIGURE 20. LANDSCAPE CHANGES ON JANGKANG COMMUNAL LAND (1983-2008)



Both the *Javanese* families as well as the *Jangkang* IP hope that their land, at the least their individual plots, will be returned as expressed by Sutomo (see Figure 21), a Javanese transmigrant:

FIGURE 21. MR. SUTOMO



If the land is not returned, I will ask the village leader of Tokang, because he is the person in charge of the case. If he passes away, I will convince other friends to march to the company and ask them to return our land as soon as possible, so we can win back control over our lands.

A similar expression was made by Diman (see Figure 22), a member of the *Jangkang* IP and the village leader of Tokang:

FIGURE 22. MR. DIMAN



I am disappointed with the company and feel bad that I released my land to the oil palm company, but what to say, it's too late. I think if we want our land back, we need to march to the company and make our demands. So far we have complained in our meetings and raised our complaints to the cooperatives. It does not work!

If the community demands the return of the land to those holding land certificates (the transmigrants), it will create another conflict between the *Javanese* transmigrants and the *Jangkang* IP. This horizontal conflict was not expected by either group, especially those who were involved in the process of land acquisition. The *Javanese* transmigrants received land through a long struggle and they might continue to fight to get their land certificates back. The younger generation of *Jangkang* seems to hold a different feeling. They still believe that the whole land is owned by them and should be redistributed to the families of the *Jangkang* IP.

Land conflict will manifest again as soon as the leaders from the elder generation pass away. The company knows the nature of the land conflict and has managed to get more land and maintain control over the land by entering the conflict arena. To “avert” the pre-existing conflict, the company offered another scheme, which itself is an unfair system. This position is represented in the statement of the oil palm company public relations officer, Mr. Bonifasius (see Figure 23):

FIGURE 23. MR. BONIFACIUS



The company uses the benefit sharing mechanism, but credit should be paid by the participant farmers. 60 % of the production will be given to the participants and 40% will be the right of the company. We just continue this calculation given by the former company owner.

This means that the land and the management of the oil palm plantation will neither be given back to the Javanese transmigrants nor to the *Jangkang* community. At this stage, these two ethnic groups are represented by the older generation who avoid conflict (horizontal conflict), but it is predicted that this status quo will not last long. The younger members of the two communities are not hesitant to enter into horizontal conflict when they cannot form a position of solidarity against the oil palm company.

6.4 The Pompang IP at the end of their IP existence

This *Pompang* IP is one of the ethnic groups of the Dayak Bidayuh in Sanggau district. The population of this ethnic group is not large compared with other ethnic groups (the Malay) along the Kapuas river.

In 1974 the *Pompang* IP from several villages including Sei Rosat and Sei Kodang could not resist when the heads of the district, sub-district, national land agency (BPN) as well as military and police intimidated the community to release their ancestral land for oil palm plantations under the state owned company (PTPN XIII). If the *Pompang* had resisted releasing their ancestral land, they would have been accused of rejecting the government program and obstructing national development. In 1976, each household was asked to register their land ownership and prepare a map showing which land should be excluded from the oil palm plantation, in particular their mixed rubber gardens (*kebun karet*), mixed gardens and the village settlement. In Sei Kodang and Sei Rosat village the process of land acquisition continued in 1979 with demarcation in the field involving the village chiefs and supervised by the police, military and the national land agency. Most of their ancestral lands, including forest, mixed gardens and rubber gardens which were far from the village settlement were classified as part of the oil palm concession. In the early 1980's the company cleared the area including the mixed gardens and rubber gardens that had been demarcated and excluded from the oil palm concession. The company paid compensation ranging from Rp25.000 - Rp275.000 for each hectare (approximately US\$2.50 - \$27.5/ha). Almost all of the *Pompang* lost individual lands and the community as a whole lost a huge area of communal lands due to the state claim over their lands. The *Pompang* members from these villages never received the promised payment for transferring their lands to the State but only received small compensation for the costs of originally clearing the land. Not even all households received this small compensation.

The *Pompang* community realized that the oil palm plantation scheme was not a nucleus-estate smallholder model (*Plasma-Inti*), but was managed by a company that would not redistribute two hectares back to each household. The *Pompang* did not get any share of the profits from the oil palm plantations on their lands, which have been productive since 1988. They lost all the lands that they had released on the assumption that for every 7.5 hectares released, two hectares would be returned. Two members of the community, Mr. Marsan (a former village chief) and Mr. Itjin (the local teacher) bravely spoke up and rejected the compensation proposal and refused to release their productive lands. These two persons, representing their clan, refused to sign the land acquisition letter despite being intimidated by the military firing shots near them during the land demarcation process. Until now the letter from their clan releasing their lands is unsigned by the authorized person, but was signed instead by the subsequent village chief.

The intimidation model using military and police as well as government officials during the Soeharto era could not be maintained after the 1998 reforms. In 2000, the *Pompang* IP from Sei Rosat and Sei Kodang villages held demonstrations asking the oil palm company to return their ancestral lands or redistribute two hectares to each household member. Several negotiations were facilitated by the district government over the last seven years and it seemed that the parties had reached a consensus with an offer to the two villages to join another oil palm plantation credit scheme known as KKPA (Primary Cooperatives Credit for its Member), see Box 5.

The scheme sounded good, as the members of the *Pompang* IP would get back some of the land that they released to the company in 1976, even though each household would have to pay the KKPA credit to develop their own two hectares of oil palm plantation. But the reality is different, as expressed by Mr. Marsan (see Figure 24) from Sei Rosat.

FIGURE 24. MR. MARSAN



I was shocked when I realized that the land that will be used for the KKPA oil palm scheme is not the land that had been promised to be redistributed by the previous land grabbing oil palm concession. The scheme will take our only remaining lands, surrounding our settlements. The new oil palm plantation is planted right up to our door steps! We can't do much about this, as every decision-making process in this village has been manipulated by the TP3K members for the benefit of the oil palm company.

The KKPA scheme was used by the company to expand their plantations and increase their input to the palm oil production mill. The land surrounding the village settlements that was turned into plantations under the KKPA scheme has been producing oil palm fruit bunches since 2007. Lands have been redistributed to all households, but a lot of *Pompang* families with larger households have no land for farming activities. They had hoped for oil palm plots to be redistributed to them under the KKPA scheme. The land hunger can be felt clearly in the statement of Mrs. Ruth (see Figure 25 and illustrated in Figure 26 The Landscape of the *Pompang* IPs Communal Land).

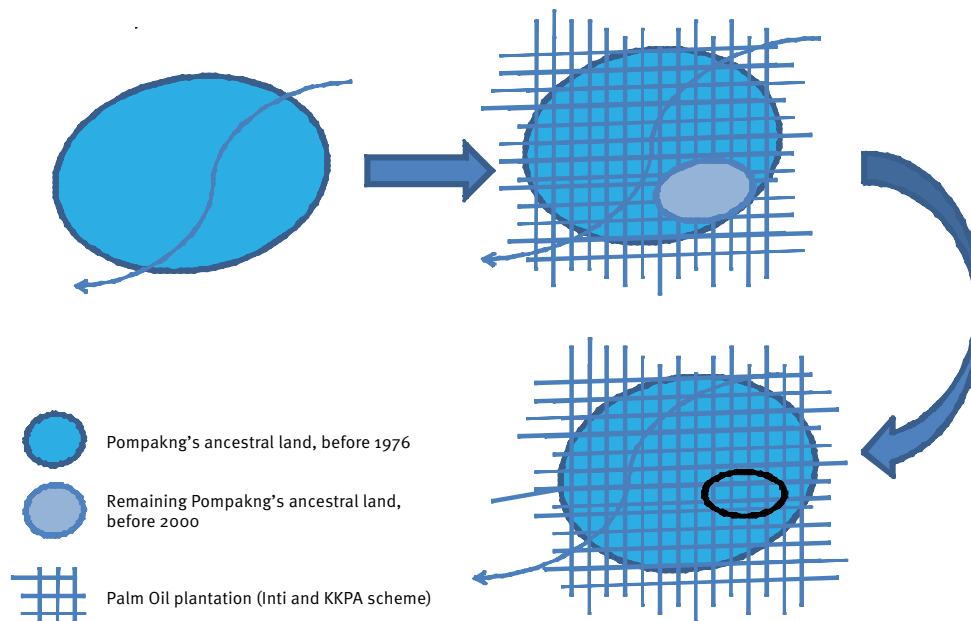
FIGURE 25. MRS. RUTH FROM SEI ROSAT



Could you imagine that our two hectare oil palm plantation plot should feed 16 household members, consisting of four families? This of course is not enough. Most of the families, especially those who did not get a plot of oil palm, have sent their sons to go off farm and their daughters to work in the cities.

The gross income of households able to obtain and manage two hectares of oil palm and produce 2000 kg of oil palm fruit bunches a month is Rp. 2 million or US\$200 per month. After selling fruit bunches, a household must deduct fees, such as 5% cooperative fee, 15% for credit preparation (they never know how much exactly they are charged), Rp. 30/kg for transport, Rp. 10/kg for (down)loading, Rp. 5/kg fee for the cooperative director and Rp. 5/kg for group savings. If this is their only income it will not be enough to feed and maintain a household with 16 members for a month. More land is needed to support the *Pompang* IP.

FIGURE 26. LANDSCAPE CHANGE ON THE POMPANG IPS COMMUNAL LAND (1976-2008)



Since 2000, the *Pompang* have not held *adat* ceremonies. There is no swidden land left and so no celebrations can be held in the harvesting season. The *Pompang* communities are busy with their own survival, each household trying to keep members from starving. The elite households, mostly the village leaders and *adat* chiefs, profited from selling the ancestral lands and receive monthly payments from the company. Some of these funds were used to buy oil palm plots from poor households or for opening Karaoke businesses which are fronts for prostitution in the village near the oil palm company dormitory.



7

The Consequences for Indigenous Peoples

To engage in oil palm plantation partnership schemes (either KKPA and *Plasma-Inti*) IPs must contribute their land, labor and capital. This engagement brings about major social, political, economic and cultural consequences which ideally should be anticipated by IPs prior to deciding whether or not to engage in such schemes.

7.1 Impact on ancestral lands

Local governments in West Kalimantan strictly interpret the Plantation Estate Law to mean that *Masyarakat Adat* rights are only relevant if they have been recognized by the local legislature. Even though this is against the spirit of the national constitution and many international human rights laws that Indonesia has ratified, the lack of local (district or provincial) regulations recognizing IPs institutions and rights means that the rights of IPs in West Kalimantan (*Dayaks* as well as other IPs) over their customary lands and resources are neglected by the state (central, provincial and local) as well as by the private sector. Ancestral lands are taken over by oil palm plantations under the claim of state land. In the process, customary lands are converted to household lands or to individual members of households. The three sites in this study show how ancestral lands which were communally owned shrank significantly after the IPs engaged with oil palm plantations in partnership schemes. The proportion of loss of ancestral lands differs between the three sites. The *Pompang* IP who became engaged in oil palm plantations in the 1980s lost the highest proportion of their customary lands, followed by the *Jangkang Junggur Tanjung* due to oil palm plantations and transmigration, followed by the *Hibun* who joined an oil palm plantation scheme after 2000.

In each case, commons as well as descendant group ancestral lands were transformed into privately owned lands through individual land ownership titles. The households who obtained ownership of several oil palm plots were able to get money as passive participants of the “partnership” oil palm scheme. Without providing labour, these households receive money from the company as a share of the production. Households that previously depended on ancestral commons were the most negatively affected by the land acquisition process. The livelihood strategies of members of these land-poor households included selling the small plots of land which they had received for investing in the partnership with the oil palm company, working as casual labor on the oil palm plantations, engaging in off farm economic activities or migrating to nearby towns and cities or to Malaysia. In the process of land acquisition, ancestral lands were split up as households compete for control over communal lands; elites typically want more commons land to be offered in partnership with oil palm companies, while those families with little or no individual land want to maintain their access to commons lands. Communities are divided pro and contra on the issue of oil palm expansion.

Pursuing a different strategy, the *Sami* IP resisted engagement with the scheme of the oil palm company seeking to take over their lands. They found ways to strengthen their communal solidarity and maintained community control over their ancestral lands. This is also reflected in the strength of their cooperatives which maintain common goods such as public areas, bridges, roads etc. Similar strategies have been used by IPs in other parts of Kalimantan who have rejected engagement with oil palm plantations.

7.2 Impact on Indigenous Natural Resource Management Practices

The spatial relationships of the *Dayak Bidayuh* ethnic group have changed significantly since the 1960s when they were forced to leave their longhouses and occupy single houses with one household per house. Currently only a few *Dayak* longhouses remain in all of Kalimantan, and most of those are only used for ceremonial purposes. Continuing to conduct ceremonies is essential for the cohesiveness of *Dayak* institutions and for maintaining indigenous resource management practices. All this changed for the worst for the *Dayak Bidayuh* ethnic groups in Sanggau when they engaged with oil palm plantation companies. Oil palm companies want their plantations planted in monoculture blocks and not mixed with other crops in the scattered form of mixed gardens used by the IPs (*PompangPompang*, *Hibun* and *Jangkang* IPs) in the study sites.

The planting of oil palm in monoculture blocks differentiates it from Rubber (*Hevea brasiliensis*), which was introduced as a commodity crop in the late nineteenth century. IPs all over Kalimantan and Sumatra introduced rubber into their mixed farm systems, and rubber gardens became a symbol of identity for many of them, including the four IPs in this study. Households that still maintain a mixed garden including rubber trees and ilipel nuts trees (*tengkawang*) have a higher economic and social status than those who have no mixed gardens. The growing of rubber in a mixed garden is recognized by the scientific community as an example of IPs adapting their indigenous swidden fallow management system (IFM⁶⁰), by shortening the shifting cultivation cycle especially the fallow periods, which are sometimes classified as a non productive stage.

Mixed gardens, owned communally by descendant groups, are well known in the research sites for production of ilipel nuts oil as well as timber and fruit products. The shifting cultivation land and mixed rubber gardens owned by households produce rice, vegetables, medicinal plants, rubber latex, timber and ilipel nuts for sale and local consumption, as well as seasonal fruits etc. These lands are often targeted by companies for conversion to oil palm. IPs that lose these lands lose the ability to grow and sell products and must generate cash income to buy food and building materials instead.

Most of the local governments in Sanggau district (Bonti, Mukok, Meliau sub-district) and the oil palm companies promote monoculture agriculture rather than diverse agroforestry farming systems. *Buying rice, vegetables, meat and fish is better than wasting time to produce it by your own*, they are reported to have told IP communities. Almost all of the members of the *Pompang* IP in Sei Serosat and Sei Kodang suffered by following this suggestion; only a few of their households now control large oil palm plots and earn enough money to live from the oil palm plantations. All the other members of the community have lost the ability to live from their own lands, and have to work elsewhere to survive. All of their forest and agricultural lands were converted to oil palm plantation in the 1980s, and everything that they need must now be bought at the local market. The *Jangkang* IPs in Mukok district lost all of their old mixed garden to a transmigration project in the 1980s and oil palm plantations in the 1990s, but some households still maintain and benefit from mixed rubber gardens. Some of the *Javanese*

60 See Burgers, Kairah, Cairns, 2008. p4. *Swidden cultivators themselves have been remarkably innovative in devising their own ways to manage fallow lands. These management systems have developed from internal initiatives and are known under the term indigenous fallow management systems.*

transmigrants were reluctant to join the oil palm plantation scheme and were able to “escape” this development. These communities decided to develop their remaining lands into mixed rubber gardens, a system that they learnt from the *Jangkang* IPs, as expressed by Mr. Margono (see Figure 27):

Currently our family has three plots of mixed rubber gardens, which I learned how to develop from the Jangkang community. My experience shows that the benefits of mixed rubber gardens and planting food crops are better than a share in the oil palm company. I don't care about my land which has been released to the oil palm company, it is like losing at the gambling table in one night. Our family has now joined the Keling Kumang credit union in Sekadau, to save our earnings from latex rubber sales and we will use it to expand or rejuvenate our farm. We learned about the credit union from the neighboring Dayak Bidayuh who established their own mixed farm independently from the oil palm plantation.

FIGURE 27. MR. & MRS. MARGONO, JAVANESE TRANSMIGRANTS IN TOKANG JAYA VILLAGE



This migrant community, as represented by Mr. Margono, does not have a close relationship with the land, and they were able to distance themselves from the land that they released to the oil palm company. They did not have the depth of relationship towards their land as the *Jangkang Junggur Tanjung* IP did, and it assisted them to escape from the oil palm company domination and exploitation.

The *Hibun* IP released almost all of their communal lands but they did not release all of their household individual lands. Only a few households from the *Hibun* IP in *Bonti* district still maintain a diverse agroforestry landscape and benefit from shifting cultivation lands and mixed gardens. In contrast, the *Sami* IP, which although it also lost its longhouses, rejected the oil palm plantation expansion and was able to maintain their indigenous spatial landscape, which helped them to maintain a better economic and social status than neighboring IPs.

In the 1980s the *Pompang* IP did not release all of its land in oil palm deals. In 1999-2000, when an oil palm company offered that their ancestral lands would be returned to them and

redistributed to household members as oil palm plots, the community agreed. The oil palm plots, however, were not returned after they released their remaining land for an oil palm plantation under a KKPA scheme. This situation left the *Pompang* surrounded by oil palm plantations right up to their door steps. They had given up all their lands for oil palm, and had neither rubber gardens nor other indigenous landscapes, except for the *Pompang* community in Sei Kodang that controls a plot of less than one hectare of their last indigenous sacred place (*pesaguan*) to maintain their customary rituals.

7.3 Impact towards the means of subsistence

In the transmigration areas as well as the *Hibun IPs* villages in *Kerunang*, *Upe* and also in the *Pompang IPs* villages in *Sei Kodang* and *Sei Rosat* there is not enough rice for the whole year, in contrast to the situation before the land has been converted to oil palm plantations. These communities now depend on other villages that still have rice surpluses such as the *Sami IP* villages in *Terusan* and other villages that rejected the oil palm plantation offers to utilize their land. They now need to generate cash income to buy rice, vegetables, meat and fish and for cloths, school fees, health services etc. Produce from their remaining mixed rubber gardens are the main source of income for purchasing basic staples, but those who don't have a mixed garden need to work off farm to provide income to purchase their basic needs.

The community members realize that if they earn cash working as day laborers on the oil palm plantations, as well as income from their own two hectare oil palm plot, they can earn approximately US\$70/month working eight hours a day, 20 days a month. This is approximately twice the working hours and 30% less income than what they earned previously. Having two hectares of mixed rubber garden and working 20 days a month, 4 hours a day earned them US\$100. The community members who are already engaged with oil palm plantations can not return to their mixed rubber garden practice as they will lose the opportunity to work as wage laborers if they ask for their lands to be returned by the company. As a consequence, they try their best to get back the two hectare oil palm plot owed to them by the company and hope to manage it assuming that they will earn more money than before.

TABLE 3. COMPARISON OF EARNING IN THE OIL PALM AND NON OIL PALM PLANTATION

Activity and hours worked	Oil Palm Plantation Monthly Earning in US\$	Non Oil Palm Plantation Monthly Earning in US\$
Rubber tapping, 4hs		100
Share in oil palm plantation, 0 hrs	33	
Wage Labor in oil palm plantation, 8 hrs	37	
Total income US\$	70	100

The several families who own rubber gardens as well as more than five oil palm plots have a good income. There is no need for them to work as laborers for the company, and they can hire wage labor to tap rubber in their mixed gardens. These better off households belong to the elites of the IPs who betrayed other members of their community to promote oil palm plantation development on their communal lands. Most of them are among the three to four

households that belong to the land acquisition task force that secured community lands for the company and in return received a monthly salary from the company during the acquisition period ranging from 400,000 to 1.5 million Rupiah per month (\$US40-150/month). They were able to obtain land for the oil palm company by claiming that communal lands were individually owned or by contributing their descendant group land⁶¹. They typically invest their surplus by opening shops and transportation businesses or buying other parcels of land from those who are planning to quit from the oil plantation scheme.

Agrarian structures and relations changed rapidly based on land holdings in the communities that joined oil palm plantation schemes. The proportion of households in the community that are nearly landless or already landless significantly increased while a few of the former elites become the new rich or the middle class of the village. As well as the elites who were able to use their traditional power in the village to gain wealth from oil palm plantations, there are the outside elites whose wealth is not only based on inherited land but on actively accumulating land and capital from the village. These are the managers of the company who have the power to make significant decisions in the area, and also the military, police officers and civil servants related to the oil palm plantation sector. They are able to influence decisions regarding oil palm company business such as who in the community gets the best plots and also regarding public and private policy, as demonstrated by the policy of transferring active SPKS members who are civil servants (e.g. the teacher, Mrs. Rini) to villages outside the oil palm concession, and influence public policy to disallow civil servants from joining SPKS, etc.

Besides the IP Elite, there has emerged a new social class: the traders from the district, province or other islands who run businesses in the area, selling cloths and other basic needs as well as lending money. The cohesion of IPs communities becomes further fragmented and stratified between the minority group that benefits from oil palm plantations and those who suffer from oil palm plantations. The majority of IPs members suffer from oil palm plantations because of a significant decrease in their livelihoods, and they struggle to return to the standard of living they had before the oil palm company took over their ancestral lands.

7.4 Means of survival, integrity and gender issues

The establishment of large areas of oil palm plantations has led to a significant decrease in land ownership and land use in the *Hibun* and *Tokang* communities and especially for the *Javanese* transmigrant families. Those families who are now landless or nearly landless can only hope to work as wage laborers on plantations or look for work outside the village. The situation for the younger generation is expressed by Mr. Serinus (see Figure 28) from Sei Kodang:

⁶¹ *Descendant group lands are known in the local language as parenean. These are lands that can be utilized by a group of descendants or clan. These use rights are acknowledged by the community.*

FIGURE 28. MR. SERINUS FROM SEI KODANG



We can't rely on our ancestral land as now we do not own any remaining parcel. We also can't rely on the job opportunities here at the oil palm plantation or at the palm oil mill. The work in the plantation is limited and seasonal, the company brings its own staff to run the mill, and they have their own school and housing for their staff. My wife works seasonally as a daily laborer at the oil palm plantation. With my limited education, my strategy to feed my family with small children is to work outside the district in gold mining (sungai emas). It is a hard job and we use mercury for processing the ore but this is our survival strategy!

The trend of sending members of the family as migrant workers to the city or abroad was reported by the younger generation of transmigrants in *Tokang* village and the *Pompang* IP community in Sei Kodang and Sungai Rosat village. This trend, however, was not admitted to by the elders. This withholding of information hindered the ability of the study to find out where the women and girls go to work outside the village. From interviews with women's activists in Sanggau, it was acknowledged that there is a new attitude among the girls and women in the rural areas in their decision to look for work outside the village. Ten years ago it was relatively easy to find *Dayak Bidayuh* girls from rural areas working as housemaids for *Dayak Bidayuh* families living in cities such as Sanggau. In addition to the housework, these girls usually continued their formal studies. This practice was common in the past but currently it is difficult to find girls and young women who are willing to do so. Currently girls and young women prefer to work as sales promotion girls in the cities or working at cafes along the main road of the Trans Kalimantan Highway; they admit this is easier than working as housemaids. Cafés and Karaoke bars have been spreading in the towns, near palm oil mills and near forestry and mining operations. These establishments are often a front for prostitution that uses *Dayak* girls to serve customers who work at the plantations, mills and mines.

Julia (2008) through her research of the Hibun IPs, indicated that the oil palm plantation brought a new concept of masculinity to the area. Tracing back through oral history, the *Hibun* IP used to have a prominent woman figure, *Entulai Ndou' Labaa'*, who called on the community leaders to stop inter-tribal war. This indicates that the *Dayak Bidayuh* culture recognized and respected women leaders in its social system⁶².

But the land acquisition process neglected women's voices and marginalized women's role in decision making and control over oil palm plots. Women were excluded from the negotiations; only men attended the acquisition meetings. The women were told that the land was to be released to the oil palm plantation company even though they realized that they can't eat oil palm fruit. Oil palm plantation plots are registered under a man's name as the head of the household. In one case in the *Hibun* community, a woman insisted on being registered under her own name, and she was required to present evidence that she was a widow.

62 Other *Dayak* ethnic group also noted the existence of its women leader in their indigenous social system, such as prince Kumang in the *Iban* IP, Bungin in *Kenyah-Kayan* IP etc

In the oil palm plantations, women provide the main labor for planting, weeding, chemical spraying with limited protection, harvesting and loading the trucks. Men control the benefits from oil palm production as they transport the fruit bunches to the mill and receive payment from the mill.

It is impossible for women to join the transportation because of the long journey and the need to rent a truck. The trucks leave the plantation in the middle of the night and start queuing at the mill at 4 AM, hoping to return home the same day.

There are no special efforts in terms of government policy or company codes of conduct to protect vulnerable groups, such as households headed by women, orphans, landless households etc. According to Agarwal (1994) and Razavi (2007)⁶³, to be able to improve the imbalanced power relations that women face in the household and at the community level, there is a need to allocate productive businesses to women's groups collectively. Collective registration of oil palm plots, either as groups of families or women's groups, such as suggested by Agarwal and Razavi, is not known in the area. Most of the young married women in the village work as seasonal and daily laborers for the oil palm plantations. The women must also work in their own houses and gardens.

7.5 Reconstruction of indigenous Peoples

Oil palm plantations reconstruct the whole community, firstly by segregating those who join and those who reject the scheme. Oil palm plantations also segregate those that benefit and those that lose out, and those who join the SPKS and those who reject the SPKS approach. Plantation schemes distinguish between descendant groups regarding their decision towards their communal lands, segregating those who are still loyal to *adat* institutions from those that want to reform *adat* institutions.

Agrarian differentiation, which happened rapidly as a consequence of the Green Revolution in rural areas of Java in the 1970s, is currently happening in West Kalimantan due to the expansion of oil palm plantations. This agrarian differentiation is sharpening social and economic disparity and creates a new class of landless and nearly landless families as well as a few newly rich families. The situation creates new professions in the rural areas and allows outsiders to gain benefits from the imbalanced agrarian structure through work such as money lenders and land brokers etc.

This situation is expected to worsen in the future in areas where the oil palm plantations are entering the non productive age and need to be replanted. See Figure 29 Replanting area in the *Pompang & Pandu* IPs territory. Several plantations established in the late 1970's and through the 1980s along the main road to *Meliau* and *Sosok* sub-district have become unproductive and need to be replanted. The replanting starts by injecting Round-up herbicide into each old palm tree; within several weeks the trees die and are cut down. After replanting with new oil palm seedlings there will be a period of three to seven years with no product coming out of the plantation, so there will be no income from the plantation for the company or the community for that period. Oil palm plantations are also enriching the non productive class through accumulation of oil palm lots by civil servants and plantation staff when they buy plantations

63 See Bina Argawal 1994. ; Razavi 2007

from the IPs,⁶⁴ which is against the Basic Agrarian Law⁶⁵. There are no special efforts by government or industry to address the issue of sharpening agrarian differentiation in the communities that join oil palm plantation schemes.

FIGURE 29. REPLANTING AREA IN THE POMPANG & PANDU IPS TERRITORY



IPs communities who engage in oil palm schemes are transformed rapidly into a community differentiated by social and economic class. The identity of communities, previously developed by the interrelation of several ethnic groups through long social historical processes, and their relation towards their ancestral lands and its natural resources, is transformed into a loose identity as Dayak ethnic group. Dayak is not a genuine ethnic group but is a loose differentiation created by outsiders to identify the communities who live in the uplands, and is used in government statistical data presented in Chapter 2.

In the *Pompang* villages in Sei Kodang and Sei Rosat where almost all ancestral land was given to oil palm companies, the identity of the IPs in their day-to-day relations is now limited to symbols which differentiate them from *Melayu* ethnic groups. The ceremonial practices by the *Pompang* IP to celebrate the rice harvest now rarely happen.

In *Tokang Jaya* village, which is part of a transmigration area, the IPs are no longer identified by their ancestral lands, the type of landscape they manage or the type of house they stay in, but are identified and labeled as the *Jangkang* ethnic group to differentiate them from the *Javanese* ethnic group. Both groups stay in the same type of house built by the transmigration program

64 *McCarty John, 2008.*

65 *Article 10 Basic Agrarian Law no 5, 1960. absentee land*

but located in different blocks. Both plant irrigated rice introduced by the *Javanese*, both plant mixed rubber gardens introduced by the *Jangkang*. Their children go to the same school, and supposedly they own oil palm plots and are registered as members in the same cooperative (*Tut Wuri Handayani*), but they are segregated into ethnic groups and feel uncomfortable with each other due to horizontal land conflict.

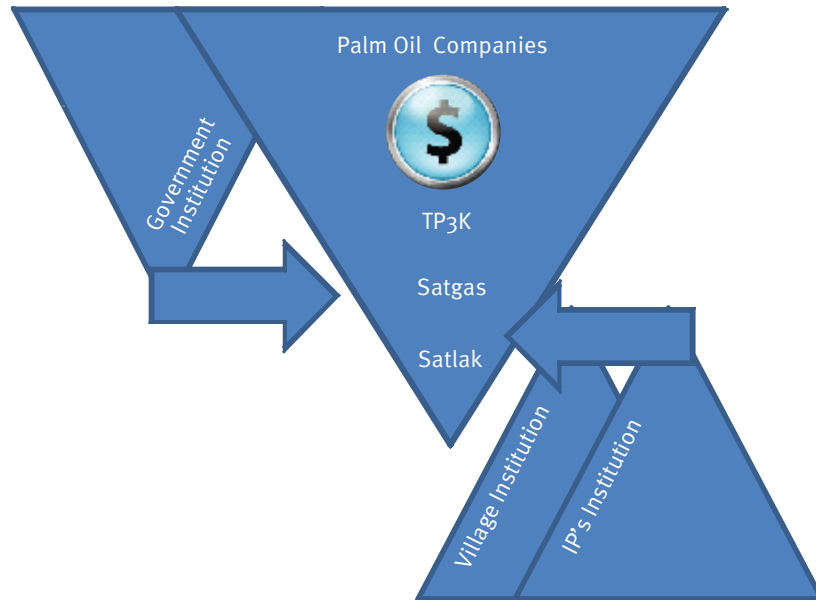
They have tried to solve these problems themselves and they believe that their land is not productive if it is all given over to oil palm plantations; they would prefer to develop mixed rubber farms with improved high yield seeds that could almost double their income. They learned about the improved high yield rubber plants from ICRAF/World Agroforestry Centre who assisted them in developing a communal village seedling farm.

The lands of the *Hibun IP* village in Kerunang and Upe have been changed into oil palm plantations, but they are still strong in their identity as an IP and are also active members of SPKS, AMAN and the local Credit Union. They want to gain back control of the cooperative and for each family to diversify their farm not only with oil palm but also to develop their rubber and mixed farms. They believe that they could gain back their previous level of income through partially engaging with the oil palm plantation while diversifying their farm with other crops such as rubber or other products with a high and stable market price. If the company honors its promise to the community and returns two hectares to each of the beneficiaries, it is only a few of the better off families that will be able to diversify their land to include both oil palm and mixed rubber gardens. Most of the poor families in the community have already released all of their land to the oil palm concession

The *Sami* community was able to maintain its identity as an Indigenous People. They felt that they could pass through the turbulence in the past three decades because they followed their *adat* values and rejected the oil palm plantation scheme. They maintained their pride after they were charged an *adat* fine by eleven neighboring villages that supported the oil palm plantation in 1999. They also maintained their cooperative which is responsible for basic services in the village. Individually owned shops are not allowed in *Terusan* village. They are also an active member of AMAN as well as a member of the Credit Union. They are very selective in choosing who will be their *adat* leaders as well as village head. The younger generation who went to school outside the village are united in an informal association to maintain communication and cohesiveness.

The process of land acquisition that is engineered through the *TP3K*, *Satgas* and *Satlak* (the land acquisition task forces at the district, sub-district and village levels) has weakened IPs institutions and decision-making on engagement or rejection of oil palm plantations. These task forces were initially developed during the 1970s and were utilized by the military and police to force IPs to release their ancestral lands for oil palm plantations. The task forces were reported to be inactive during the latter part of the Soeharto era and the early reform era (1998-1999) but have been revitalized in the current situation, utilizing village chiefs, IPs chiefs and leaders to support the process of land acquisition. As illustrated in Figure 30 Land Acquisition Task Force Modus Operandi

FIGURE 30. LAND ACQUISITION TASK FORCE MODUS OPERANDI



Using capital, oil palm companies can co-opt provincial, district and local government to back the company to gain more land from IPs. Local Government, military and police are actively involved in the district level task forces (*TP3K*) and together with company representatives, promote oil palm plantations. The sub-district task force (*Satgas*) which consists of the sub-district head, several prominent IPs leaders, as well as police, military and the company representatives, is responsible for allocation of lands for the oil palm company. At the lowest level are the village and sub-village task forces (*Satlak*) doing the dirty work to convince each family to join the oil palm plantation scheme. The village head and sub-village head and IPs chief, as well as some prominent persons from the village, actively encourage each household to release their land for the plantation of the oil palm company. All operational costs, including a monthly salary for the land acquisition team members, are paid by the oil palm company. As a result, the village head and the IPs chiefs do not represent the community but effectively represent the company against their own community. This process ruins the representativeness of village institutions as well as ruining the IPs self-reliant institutions. The *Satlak* team is co-opted by the company and later the institution is misused by its members to be the vehicle to invite the company to take over their community's lands. The task forces not only ruin local coherence of IPs and their institutions, creating sharpening agrarian differentiation but also ruin the basic concept of good governance in the district, where the local government should protect the people (political constituents) from the exploitative expansion of companies. Instead, local government has become the guide for investors to take over community productive resources.

The situation today is completely different from when rubber was introduced to the interior of Borneo in the late 19th and early 20th century. Rubber had no such task forces supported financially by private companies but merely cheap rubber seedlings provided by the government to encourage growing rubber for latex production and export. Rubber promoters had no interest over the land compared to the current situation.

As the cases show, the elite of the IPs benefit by engaging with the oil palm company while the commoners who only control small pieces of land join the oil palm company scheme hoping the company promises will come true. The middle class of the IPs, mostly young educated households and individuals react by looking for allies outside the village (eg through membership of AMA West Kalimantan) to support their idea to reform their IPs institutions and revitalize *adat* norms. Revitalization of *adat* norms has been the reaction of the *adat* leaders that felt that their *adat* norms have been neglected by the state as well as by the outsiders, and that a new system needed to be installed that could deal with modern organizational issues, such as election of chiefs, separation of powers, mainstreaming gender and human rights issues etc⁶⁶.

The communities also look for support to gain back their lands as oil palm plots, as promised by the company, through engaging with Sawit Watch and joining SPKS they hoped that they were better positioned against the palm oil company. As IPs engage in oil palm plantations, they sometimes identify themselves as IPs and use a rights-based approach and their constitutional right as IPs in the Indonesian context while also seeking further protection and fulfillment of their constitutional rights as IPs and referring to international convention such as the UNDRIP. In other cases communities demand their rights using a class-based approach in relation to their own elite and the company. In some cases communities use a rights-based and a class-based approach in their struggle, as in the case of the *Hibun* IP demonstration against their own elite and the PT MAS company.

7.6 Risk of Violence

The possibility of violent conflict still exists and can be analyzed based on a rights-based approach, a class-based approach and a market-based price fluctuation. Sometimes all three perspectives may contribute to violent conflict, as elaborated below:

- (1) Rights-based conflict is conflict between the oil palm beneficiaries (*Plasma*) and the company that controls the land, the plantation, and the marketing of the palm fruit to the mill. Broken promises by the company create deep tensions. Blockades of the plantation, which happened in the *Hibun* IPs area, is one manifestation of the conflict with the *Plasma* owners (IPs). Escalation of the conflict can be seen in demonstrations at the company office or at the mill which is usually nearby the company office. The expression of anger towards the company can escalate into violent conflict if the *Plasma* members become provoked by police or company security, or if the local government or another actor fails to facilitate fair mediation of the outstanding conflict.
- (2) Other conflict within the community is class-based; the conflict between the elites who received privileges from the company and those who were deprived of lands and livelihoods due to the plantation. If the company continuously uses the elite to prevent rights-based conflict, as in the cases of the *Pompang*, *Hibun* and *Jangkang Junggur Tanjung* IPs, where the village task force of elite members prevented the expression of anger of other IP members towards the company, the conflict can change to a class-based struggle. Companies are often able to deflect rights-based conflict into class-based conflict so as to be able to continue to exploit the IPs land and labour.

⁶⁶ This process has been facilitated by Institute Dayakology and AMA Kalbar (West Kalimantan Alliance of Indigenous peoples).

- (3) If rights-based and class-based conflicts are not addressed properly, as shown in the court case that could not provide justice to the *Hibun* IP, the anger of the community can manifest in other types of conflict without clear causal relations such as ethnic conflict, for instance, anti *Chinese* violence, anti *Madurese* violent conflict, anti *Javanese* conflict etc. A situation conducive to ethnic conflict has been constructed by the new identity of IPs that are mostly based on ethnicity rather than by ties to land and custom. An even worse situation can happen if the anger of the IPs is used by unscrupulous groups to strengthen their political position using ethnic sentiment and ethnic conflict.
- (4) The conflict can also develop due to external factors such as market price fluctuations of crude palm oil, which began to fall in price in August 2008 and by early 2009 was at one third of its value compared to early 2008. The collapse of the US banks due to improper housing credits brought about a global recession which has slowed down palm oil consumption. This effect has led companies to reduce production at the mills and the price of fruit bunches has collapsed from Rp. 2100 (\$US 0.21) to Rp. 200 (\$US 0.02) per kilogram in only a few months. The local government as well companies who were promoting oil palm plantations have become a target of the anger of the oil palm peasants. In some cases, companies were forced to buy oil palm fruit bunches at higher rates than the market price. Following the price collapse, several riots and demonstrations happened in the major oil palm producing areas in Indonesia⁶⁷. This also shows that the government and the companies only talk about the good things that oil palm plantations can bring without addressing the problem of reliance on a single commodity and the vulnerability to market price fluctuations.

67 See *Cappa Briefsheet, October 2008, The Consequences of the Oil palm Fluctuation Market Price*



8

Environmental Peace-
building Processes

There are several initiatives in progress to support peace-building processes to address problems between IPs and oil palm companies. The processes are interrelated to each other and are taking place at various levels to support peaceful resolution of land conflicts.

8.1 The Roundtable on Sustainable Palm Oil (RSPO) Initiatives

Land conflict in the concessions of RSPO members should not happen if the land acquisition process follows the RSPO criteria. Sinar Mas, which is in conflict with *Jangkang Junggur Tanjung* IP and the *Javanese* Transmigrants, Sime Darby (Synergy Drive) which is in conflict with the *Hibun* and *Sami* IPs, and PTPN XIII which is in conflict with the *Pompang* IP are all members of the RSPO. All these companies are violating the RSPO standard, as highlighted in a Sawit Watch-World Agroforestry-Forest Peoples Programme study released in November 2006. During the November 2007 RSPO V meeting, farmer delegates demanded a stop to all oil palm plantation expansion in Indonesia until land conflicts on existing plantations are resolved.

The intent of the RSPO is to promote sustainable palm oil production through the adoption of eight principles and 39 criteria. Achieving sustainable development in the sector implies a balanced interaction between people, planet and profit (3P) or the economic, social and environmental spheres. It means that profit-making can be achieved only when it follows the imperatives of respecting the well-being of affected people and addressing environmental impacts. The RSPO criteria (in particular criteria 2.2, 2.3, 7.5, and 7.6) require resolution of conflicts in operations of plantations in particular where lands are legitimately contested by local peoples with demonstrable rights. Companies are obliged to build respectful relationships through verifiable implementation of Free, Prior and Informed Consent (FPIC) agreements with indigenous communities in areas where their lands overlap with oil palm plantation development. The RSPO Criteria Working Group (2008) included the newly adopted United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as one of key references of international law for the RSPO.

The Indonesian oil palm sector is still facing serious challenges and unresolved environmental problems, in particular expansion into remaining natural forests, destroying habitats of endangered and rare species such as orangutan, elephant and tiger; and annual haze and fire problems contributing to global warming. There are more than 500 social conflicts in the Indonesian oil palm sector, mainly over lands, labour disputes, disharmony of corporate-community partnerships, criminalization of villagers, and high profile political scandals involving illegal issuance of permits for natural forest conversion, and for oil palm concessions within protected areas and national parks. In short, the Indonesian oil palm industry is involved in the same legal, social and environmental problems with all the implications for local communities and indigenous peoples, as is seen in other palm oil producing countries such as Malaysia, Papua New Guinea, Colombia and Brazil.

The RSPO has set up a Grievance Procedure to (1) provide a platform to address complaints against RSPO Members, (2) ensure that any alleged breaches of RSPO Statutes, By-laws, Principles & Criteria for Sustainable Palm Oil Production and Code of Conduct are impartially and transparently addressed, and (3) in cases where it is deemed necessary and appropriate,

provide recommendations for action through forming of a Grievance Panel⁶⁸. In the case of a joint venture oil plantation company group named Wilmar's (see 8.2), which is in conflict with several indigenous communities in West Kalimantan and IFC-World Bank, complaints are the first to be channeled through the Grievance Procedure of the RSPO⁶⁹. The case is under consideration by the panel and is looking into Wilmar's official responses and corrective statements as well as actions of IFC-World Bank as an investor. The case of the *Jangkang Junggur Tanjung* IP as well as the Javanese Transmigrants against the PT CNIS, the *Hibun* and *Sami* IP against the PT MAS, the *Pompang* IP against the PTPN XIII may also be brought to the RSPO following the use of the Grievance Procedure to resolve the Wilmar case.

Some argue that in a conflict-manifest situation, especially conflict over land between communities and an oil palm plantation, sustainable development is impossible because it requires company activities that are not legally contested, are environmentally sound, and socially acceptable. The RSPO as a global business-to-business initiative with its voluntary market approach will be challenged in promoting and imposing resolution of conflicts but it also provides incentives to develop broader networks of production chains between producers and consumers. The RSPO credibility requires a strong market chain which can guarantee the quality of the product or prevent palm oil derived from plantations with bad practices from entering into the certified market. It remains to be seen if RSPO will certify plantations with unresolved social conflicts, such as those elaborated in the case study and whether the RSPO complaints mechanism can be responsive to civil society concerns.

8.2 IFC-World Bank Ombudsman process

The Wilmar group has been under investigation by the IFC's ombudsman. It took some time for the IFC to agree to take up the case which includes field work and direct negotiation. Investigations by Lembaga Gemawan, Kontak Rakyat Borneo and FoE England, Wales, and Northern Ireland (FoE EWNI) helped to revealed social and environmental issues in the case. Subsequently, based on the investigation findings, a joint complaint was sent to the IFC-World Bank under the CAO (Compliance Advisor Ombudsman) process and RSPO under its *grievance procedure*. The main target is the code of conduct of Wilmar, which violates the WB standard as well as the RSPO principles, criteria and indicators in its operations in Sambas, Landak, Sanggau as well as in Riau, Jambi, Central Kalimantan and West Sumatra. If the company refuses to resolve the conflicts, it could be blacklisted from membership of RSPO and their credit could be frozen. SPKS, Sawit Watch, FPP, Ombudsman IFC-WB and Wilmar are involved in this process.

Some violations and allegations considered critical to environmental issues in this case are: use of fire to clear land, clearance of primary forests, clearance of areas of high conservation value, takeover of indigenous peoples' customary lands without due process, failure to carry

68 RSPO's existing 5-member Arbitration Panel will form the core Grievance Panel. Additional RSPO Ordinary or Affiliate Members may be called-upon to participate in the Grievance Panel as deemed appropriate by the core Grievance Panel. The proposed composition of the core Grievance Panel is as follows (current representatives) are Head of Grievance Panel – RSPO President (Unilever), EB member – environment (WWF Switzerland), EB member – social (Oxfam), EB member – producer (Malaysian Palm Oil Association), and an Affiliate Member (Dato' Henry Barlow)

69 Both formal complaints on 18th of July 2007, under the Arbitration Panel/Grievance Procedure exposed allegations and violations against RSPO standards, policies, statute, by laws, code of conduct in particular its members, Wilmar and IFC-World Bank

out or wait for approval of legally required environmental impact assessments, and clearance of tropical peat forests without the legally required permits. Such violations are common in Indonesia and have not previously stopped the oil palm industry expanding into new regions. However, the involvement of the CAO has made this a high profile case of environmental peace-building, contestation and negotiation. For the IFC, this was the first complaint received after it changed its internal procedures in handling complaints and grievances against its oil palm investment policy. It has also had to review whether its oil palm investment is significantly contributing to economic improvement and well-being of affected people, and whether it is socially responsible and environmentally friendly. The IFC-World Bank may well have to reconsider future investments in the oil palm industry.

The mediation process in Sambas district (West Kalimantan) concerned the Wilmar group and the Senujuh and Sanjinang Kecil IPs whose ancestral lands were damaged by the activities of subsidiaries of Wilmar. The outcome of a year-long process of mediation was that in December 2008, Wilmar acknowledged in a written agreement with the Senujuh and Sanjinang Kecil communities that the lands in dispute are under the administration of each community, that Wilmar had cleared forest and planted oil palm without their consent, and that Wilmar would provide restitution to these IPs for damages. Wilmar and the communities also agreed on the rents and fees that Wilmar will pay to continue to use part of each community's lands for oil palm. Wilmar accepted that the land it leases from the communities will revert to the community after the lease expires, and that it must renegotiate all contracts before replanting. The company and communities agreed to establish a joint monitoring process to ensure adherence to the agreements.

The case is a precedent in solving other IPs cases through the complaints mechanism which is embedded in the code of conduct of the financial institution and the standard of the RSPO.

8.3 Complaint Mechanism using the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

In July 2007, a group of civil society organizations⁷⁰ filed a submission to the UN body under the United Nations Convention on the Elimination of All Forms Racial Discrimination Committee's Early Warning and Urgent Procedures, against the Government of Indonesia's plan to develop the largest oil palm plantation in the world along the border between Indonesia and Malaysia. As the member of the UN that had ratified the convention, Indonesia is obliged to follow the conditions of the Convention.

The submitting organizations raised concerns against the project by referring to past, ongoing and potential impacts of oil palm plantation development on tropical rainforests (Heart of Borneo), and economic, social and cultural impacts on indigenous peoples. The submission

⁷⁰ (1) *Perkumpulan Sawit Watch*, (2) *Aliansi Masyarakat Adat Nusantara/AMAN (Indigenous People Alliance of the Archipelago)*, (3) *Aliansi Masyarakat Adat Kalimantan Barat (Indigenous People Alliance of West Kalimantan)*, (4) *Lembaga Studi dan Advokasi Masyarakat/ELSAM (Center for Community Study and Advocacy)*, (5) *Wahana Lingkungan Hidup Indonesia/WALHI (Friends of the Earth Indonesia)*, (6) *Perkumpulan Untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis/HuMA (Association for Community and Ecologically based Law Reform)*, (7) *Yayasan Padi Indonesia*, (8) *Lembaga Bela Banua Talino*, (9) *Lembaga Gemawan (Lembaga Pengembangan Masyarakat Swandiri/The Institution of Swandiri Society Empowerment)*, (10) *Institut Dayakologi*, and (11) *Forest Peoples Programme*

mentioned that most oil palm plantation development in Indonesia requires the clear-cutting of indigenous peoples' forests in order to establish monoculture crop plantations, thereby destroying the ecosystems that indigenous peoples have depended on for millennia. Furthermore, the submission stated the experience of extensive oil palm plantations in other parts of Indonesia, conclusively demonstrating that indigenous peoples' property and other rights are disregarded, their right to give or withhold their consent is not respected, some are displaced, and they are often left with no alternative but to become *de facto* bonded laborers gathering oil palm fruit for the companies that manage the plantations. The submission is the first ever complaint on an oil palm issue submitted to the CERD Committee by NGOs and indigenous peoples' groups. It exposes how Indonesian law discriminates against indigenous peoples through systematic and persistent regulations and policies in particular the 1945 amended Constitution, the Basic Agrarian Law, the 1999 Forestry Act, and the Plantation Act.

During the 71st CERD Committee meeting, the delegates of submitting organizations (the civil society organization listed in footnote 71) had the chance to make a brief presentation before 11 of the 15 CERD Committee members explaining the submission and its relevance to the convention, prior to meeting the government of Indonesia delegation and listening to reports from the delegation, as a state party to the Convention, officially reporting progresses on the implementation of the Convention. Indeed, the committee concluded:

The Committee, while noting that land, water and natural resources shall be controlled by the State party and exploited for the greatest benefit of the people under Indonesian law, recalls that such a principle must be exercised consistently with the rights of indigenous peoples. The State party should review its laws, in particular Law No. 18 of 2004 on Plantations, as well as the way they are interpreted and implemented in practice, to ensure that they respect the rights of indigenous peoples to possess, develop, control and use their communal lands. While noting that the Kalimantan Border Oil Palm Mega-project is being subjected to further studies, the Committee recommends that the State party secure the possession and ownership rights of local communities before proceeding further with this Plan. The State party should also ensure that meaningful consultations are undertaken with the concerned communities, with a view to obtaining their consent and participation in the Plan.

The committee's conclusions order the Government of Indonesia within one year to provide information on the way it has followed up the Committee's recommendations contained in paragraphs 17, 20 and 25, pursuant to paragraph 1 of rule 65 of the Committee's rules of procedures. The recommendations provide an obvious direction for future advocacy on indigenous peoples' rights in Indonesia, however it has not yet clear to whom the follow up actions must be channeled at the national level. There are concerns, however, that the recommendations raised by the Committee will be left behind by the authorities and remain concerns without an effective solution. According to the submitting organizations, the border oil palm project will have serious impacts on indigenous peoples, which is why the situation in the border area fulfills the condition of *early warning and urgent action procedures* under the Committee.⁷¹

71 *p.7, Request for Consideration of the Situation of Indigenous Peoples in Kalimantan, Indonesia, under the UN Committee on the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedures, UN Committee on the Elimination of Racial Discrimination, Seventy-First Session, submitted by Sawit Watch, AMAN, other Indonesian organizations and Forest Peoples Programme, 30 July – 18 August 2007.*

Following strong international pressure, including the inception of a trilateral conservation-agreement between Indonesia, Malaysia and Brunei Darussalam to adopt the Heart of Borneo under the auspice of Convention on Biological Diversity promoted by WWF Indonesia, the Indonesian government, in particular the Ministry of Agriculture revised the plan for 1.8 million hectares of oil palm plantations along 2000 kilometer Indonesia-Malaysia border, claiming that only 400,000 ha. is suitable for oil palm plantation development. Even these reduced plans ignore the right to give or withhold consent of *Dayak* peoples who have been living along the border since time immemorial.

If in the coming years the 2004 Plantations Estate Law (PEL) is revised and the rights of IPs over land are recognized and respected, this will provide an important way to protect the rights of IPs over the land. Revising the law to support IPs rights, however, will require strong engagement from civil society. This might start from the formulation of an Indigenous Peoples Right's Law such as happened in Philippines (see chapter 4) in a process that created a basis for rights of the IPs over the land and natural resources to be accommodated in the sectoral laws. The policy reform approach is not the only solution being sought by Indonesian civil society, it is also engaged in empowering IPs institutions so that they are better able to decide whether to engage or not engage with oil palm schemes and are aware of alternatives to oil palm plantations.

8.4 SPKS Engagement in the Oil Palm District Taskforces (TP3KS)

In response to several demonstrations and unrest by SPKS Sanggau members, the district government of Sanggau established a new Task Force (TP3KS) to address the conflicts between local communities and the oil palm companies PTPN XIII, PT MAS and PT KGP. This Task Force was established in July 2007 and is different than the TP3K (The District Land Acquisition Task Force). It is mandated to: collect and verify the data on conflict; recommend to the district government a process to resolve the problems, including the harmonization of actions by government offices; prevent further conflict; and resolve problems related to land conflict. The SPKS is helping to increase transparency of *plasma-inti* schemes as well as KKPA schemes, by asking: what is the current value of credits in the oil palm schemes; when will the land be redistributed to the beneficiaries; and which ancestral lands were taken by the company without consent of the owners? SPKS is seeking to put on the table the normative rights of the beneficiaries which have been mentioned in written documents. It is hoped that community lands will be returned, that the communities will be able to manage their oil palm plantations independently of the companies, and that the farmers will be able to sell their product to the cooperative for a reasonable price.

The biggest outstanding issue of land conflict between companies and communities concerns the right of indigenous communities to give or withhold their Free and Prior Informed Consent (FPIC) to developments on their customary lands. A genuine FPIC process can only work if the IPs have a solid institution that is separate from the state as well as the company. FPIC could not take place in the case of the *Hibun*, *Pompang* and *Jangkang* IPs, as the company had already co-opted the village and IPs leaders through the Land Acquisition Task Force at the village and sub-village level (*Satlak*). The condition for FPIC exists in the case of the *Sami* IP of the *Terusan* village, where the IP chiefs rejected the oil palm plantation proposal before the *Satlak* was developed by the company in the area.

8.5 SPKS and District Adat Board and a Mechanism for FPIC

SPKS Sanggau, with the facilitation of Sanggau District Adat Board, has suggested to the Sanggau district government a mechanism for determining Free, Prior and Informed Consent from the owner of the land, especially when dealing with ancestral communal lands. The District Adat Board is a newly created body facilitated by the local government with the task to recommend to the local government how to deal with IP institutions and help the local government to solve inter *adat* community disputes. The members of the Adat Board consist of respected persons from several ethnic groups in the Sanggau district. As a newly created institution, there are challenges to solving oil palm land conflicts. Some members of the Adat Board are well known and have a good reputation among adat communities but others have a mixed reputation or have a political agenda to run for legislative or executive positions in the district government.

The Forest Peoples Programme, Sawit Watch and AMAN, in collaboration with several effected groups as well as the companies, are developing guidance for the application of FPIC in the palm oil sector. In short, the communities have the right to say ‘yes’ or ‘no’ to proposed developments which they must be informed about prior to development decisions are made, with full information about potential impacts and without coercion or intimidation. Moreover, in deciding to say ‘yes’, they can negotiate the terms under which they may agree to a proposal⁷². The guidelines operationalize the concept of FPIC for plantation companies as follows:

- (1) Identifying customary land
- (2) Engaging with representative organizations
- (3) Providing information to allow fair participation and informed consent
- (4) Ensuring Consent is Freely Give
- (5) Ensuring Consent is Prior
- (6) Ensuring there is Consent
- (7) Resolving Conflict

If this process is standardized and accepted by stakeholders including the RSPO, it would be a tool to minimize land conflicts between IPs and oil palm companies. But again, the precondition for this is that the company land acquisition process does not involve co-opting IP leaders. There is a need to involve the government to ensure that a fair process has been followed.

8.6 SPKS efforts to gain back their control over the Company Cooperatives

Most oil palm farmer cooperatives are established by the oil palm company, and use the names of the members to get access to credit from national Banks. The cooperatives control data on price and products of oil palm, and are responsible for the credit deductions as well as other fees charged to the members. SPKS in Sanggau and other regions (*Sekadau*, East Kalimantan, Riau etc) are working through its members to gain back control of the cooperatives. This effort has been helpful in creating a better bargaining position for cooperative members towards the oil palm company. SPKS members from the *Hibun* IP are members of the Cooperative *Mayting Hija* (in the area of a PT MAS concession), SPKS members from the *Pompang* IP are members of

72 Free, Prior and Informed Consent and Plantations in Indonesia, A Guide for Companies Working Draft March 2008, FPP

the Cooperative *Rindu Sawit* (in the area of PTPN XIII), SPKS members from the *Jangkang* IP and the Javanese transmigrants are active of the cooperative *Tut Wuri Handayani* (in the area of PT CNIS concession). The organizational leadership and principles that they learn from the SPKS as a farmers union which is independent from company influence are brought to their own cooperatives. This is a healthy transformation that supports peace building processes in the cooperatives, but it is limited to the basic rights of the beneficiaries of the *plasma-inti*, KKPA, and Akuan schemes, such as a fair price for oil palm fruit bunches, transparency of the credit scheme, etc. The cooperative do not address the issue of ownership and control of ancestral land, and violation of the rights of IPs. These issues must be dealt with directly with the company and local government.

8.7 AMAN, AMA Kalbar & PILNET support the court case

AMAN, AMA Kalbar and the Public Interest Lawyers Network (PILNET) are also actively involved as lawyers for local communities charged in criminal cases brought by oil palm plantation companies. Mr. Sulistiono, AMAN secretariat lawyer based in Jakarta, and Mrs. Agatha, a Pontianak-based lawyer represent the case of the five SPKS members in Sanggau district court, facing criminal charges associated with their demonstration at the PT MAS office to demand the company to return their ancestral lands.

There is great value in supporting defendants with qualified lawyers. Showing that the cases are represented by Jakarta-based lawyers helps the cases to be taken seriously by the prosecutors, the police, the company, as well as the local government. The PT MAS demonstration court case is still in process. The criminal charges against the SPKS members for entering the company complex by breaking a gate have been brought together with other charges of insulting and harassing the *Satlak* members. As the *Satlak* is made up of their own village leaders and *adat* chiefs, this part of the case can be solved through the *adat* court (IPs court) that still exists in the villages of the *Hibun* IP as well as in other IPs. AMAN, AMA-Kalbar as well as PILNET and SPKS have requested that the trial separates the cases, with the criminal charges being solved through the National Court, and the other charges solved in the IPs court. The structural issue of IPs against an oil palm company is classified as an issue to be resolved through the national courts while the horizontal conflict between the *Hibun* IPs, such as harassment of the *Satlak* members (a *Hibun* IP chief and village head) should be resolved through the *Hibun* IPs court. The court case could not be brought to the village level due to the conflict of interest between the IP chiefs and its IP members. Instead the case was brought to the higher level in the structure of the *Hibun* IP court. The *Hibun* IP structure for conflict resolution, named *Poyo Tono Hibun*, is headed by a *Kembayan*, has five *Tumenggung* and consists of 94 *Hibun* villages.

In the process, the *Satlak* member refused to bring the case to the IP court and registered the case with the national court which added to the charges against the defendants. The national court case has been going for almost one year and meanwhile the defendants are being detained at the district police office. This shows how the company uses the case to mix horizontal and vertical conflict and uses the momentum to discourage the defendants and other SPKS members from engaging in activities to resist or contest oil palm company expansion. AMAN, AMA Kalbar and PILNET are engaged in other court cases in West Kalimantan in which IPs are accused of occupying state forest areas.

8.8 Revitalization of Adat by ID and AMA Kalbar

The Institute of Dayakology (ID) and AMA Kalbar play an important role in revitalizing the *adat* community through their publications and active involvement in promoting revitalized *adat* norms. To promote knowledge and wisdom and highlight various problems faced by the Dayak community, ID began publishing Kalimantan Review (KR) magazine in 1992. Kalimantan Review is an alternative media outlet for empowerment of the *Dayak* IPs and also functions as a means of communication of experiences between the *Dayak* sub-ethnic groups in Kalimantan. Today the magazine has many correspondents all over Kalimantan. Since 1996 KR is published every month for the Indonesian language edition; and twice a year in English. Kalimantan Review has received the ISAI Award three times. This is an Indonesian award for alternative media. It acknowledges KR's efforts to empower Indigenous Peoples with the spirit of peaceful reconciliation⁷³.

The Kalimantan Review publishes the words of *Dayak* IPs and also shares international policy issues relevant to the wider community. The church, NGOs, people's organizations, credit unions and local government as well as political party members in West Kalimantan all use the KR to express their opinions regarding issues in the hinterland. Oil palm has been a major issue in the local media since the 1990s. The KR helps to strengthen the understanding of the readership, which are mostly IPs in remote areas, to be aware of the process surrounding oil palm development, e.g. land acquisition processes, the establishment of the SPKS, the promises of the oil palm companies, court decisions that favour oil palm companies, as well as the development of the RSPO. The articles in KR are often used by independent community radio. Besides publishing the magazine, ID has also conducted several oral tradition studies as well as anthropological studies on the existence and the distribution of ethnic groups in Borneo. KR recently published a book and maps on a demographic study of ethnic groups in West Kalimantan based on language groups⁷⁴.

AMA Kalbar is the IPs organization of West Kalimantan which uses KR's research results. This organization is a member of AMAN (The alliance of Indigenous Peoples of the Archipelago, which is based in Jakarta). It promotes members (village IPs institutions) to take a clear position towards oil palm plantations. Most of their members are solid in their opposition to oil palm plantations such as the *Sami* IP.

8.9 The role of the church in passing on the message

The church in the interior of Kalimantan, especially in West Kalimantan, has a dominant role in society and is always respected by rural communities. It has its own governance structure from the priest/bishops to the *Stacy/kring*⁷⁵. In relation to community dilemmas over whether or not to engage with oil palm plantations, the church, especially local Catholic priests, often help communities in dealing with these issues. Sometimes a local priest is accused of being anti oil palm by a company and the local government. The church's role is important in helping the community gain moral support from the religious society. Bringing the problems of oil palm

⁷³ ISAI is an institute for free flow of information, democratization, human right established by senior journalists in Jakarta

⁷⁴ See Institute Dayakology. 2008.

⁷⁵ The term *Kring*, which is brought by Dutch priests during the colonial time, means the neighbourhood.

development into communal prayers is one of the important signs that the church is committed to the issue together with the IPs.

In the last several years the Catholic church of West Kalimantan through the Shepherd Letter (*Surat Gembala*), usually sent out just before Easter or Christmas, has given clear signs to the community regarding the issues of oil palm expansion and illegal logging. The Shepherd Letter for Kalimantan in Easter 2008, prepared by Mgr. Hieronymus Bumbun, OFM Cap, urged the community to be responsible to nature and act fairly and justly to all humankind and use the opportunity to reconcile with nature. This shepherd letter was translated and interpreted by the bishop, the local priests as well as the social economic commission (PSE) into day-to-day messages that the church advised communities to be extra careful in engaging with oil palm companies and to reconcile with nature.

FIGURE 31. JOINT STATEMENT EXPRESSED IN POSTER



The Shepherd Letter for Christmas 2007 for the whole of Kalimantan has the title “Kalimantan the Lost Eden”. It has a strong message to the private sector to act with justice and fairness towards people and nature, and a similar message to the government, to develop just and fair policies towards the welfare of the people without hidden agendas and to be aware of ecological disasters.

The 2006 poster for Easter prepared by PSE visualized a strong message about Justice and Fairness. Are we just and fair enough to be called human kind? The three pictures of Kalimantan show exploitation in oil palm plantations, mining and logging operations as well as gambling and not being responsible to one’s family. Three pictures represent bad acts and habits that have brought Kalimantan to disaster, and the text urges a reorientation of acts to develop welfare and sustainability in Kalimantan, see Figure 29 Joint statement expressed in Poster (left).

The poster prepared in 2005 by the joint coalition of NGOs and the Catholic church in Kalimantan brought a strong and clear message against oil palm company land acquisition:

“Land is our Breath, Blood and Soul, Oil Palm is our Enemy. Defeat the Enemy in our Family. Without Water and Land we will Die!” as seen in the Figure 31 Joint statement expressed in Poster (right).

The Catholic Church functions well in communicating the consequences to communities of engaging in oil palm concession schemes. During 2003, some Protestant churches promoted KKPA oil palm schemes. They compared the KKPA scheme, under which IPs will not lose their lands, as compared to *Plasma-Inti* schemes where IPs must release 7.5 hectares in return for 2 hectares in credit. Some of the Protestant churches did not realize the context of the KKPA scheme, that it was being used by the company for its expansion strategy, and is not comparable to the *Plasma-Inti* scheme. Several of the communities that had been engaged in the KKPA scheme currently are indeed followers of the Protestant church. Recently these Protestant churches have pulled their support for the KKPA scheme after learning about the problems that have occurred for communities that have joined KKPA. This shows how influential the church is on the ground in shaping the decisions of the community towards engaging or not with oil palm and which scheme to choose.

8.10 Multi-media in Support of Peace-building Processes

Besides the several initiatives mentioned above, there are other efforts that have been established prior to oil palm expansion to support community understanding and empowerment. Participatory Community Mapping (PPSDAK) has been used since 1992 in West Kalimantan to support the IPs control over their lands. Currently almost two million hectares of IPs territory in West Kalimantan has been mapped by communities, and the maps have been used in negotiations with the state and the private sector. In *Jangkang*, *Pompang* and *Hibun* territories, community mapping has not taken place, but the *Sami* IPs territories were sketch mapped⁷⁶ in the 2000s during the tension with the *Hibun* IP regarding the expansion of the PT MAS oil palm plantation. Community mapping in the *Sami* IP was postponed to avoid the escalation of the conflict between the two IPs groups. Now that agreement and consent has reached, the oil palm company will not enter *Sami* ancestral lands.

Other media such as comics, films and radio are used in IPs institutional empowerment, assisted by GRPK (*Gerakan Rakyat Pemberdayaan Kampung*), a Pancur Kasih affiliated Sanggau based NGO, ID (Institute Dayakology) and LBBT (*Lembaga Bela Banua Talino*, a legal empowerment, Pontianak based NGO) and HuMa (Hukum dan Masyarakat, a Jakarta-based membership NGO on ecological law reform). These institutions develop their research and publish results in the form of comics and books. Several publications and training materials have been used to empower local institutions by documenting how IPs judicial systems work, as well as how the IP court could deal with land related issues⁷⁷. HuMa has published several comics for training on critical legal studies as well as comics for beginners to understand national law and critical legal interpretation. These materials have been used by LBBT as well as GRPK in the field for their IP institution trainings (see Figure 32. Multimedia Publication in Indonesian language that support the IPs understanding of their rights and efforts in negotiation).

76 A sketch Map is a hand made map which is used to express the spatial position of a village with natural signs used as markers. Sketch maps document the extent of the ancestral land as well the land use inside the ancestral land. Sketch maps become the bases for further community mapping.

77 See forthcoming, *Mengenal Sistem Peradilan Adat, 25 Sub Suku di Kabupaten Sanggau*.

FIGURE 32. MULTIMEDIA PUBLICATION IN INDONESIAN LANGUAGE THAT SUPPORT THE IPS UNDERSTANDING OF THEIR RIGHTS AND EFFORTS IN NEGOTIATION.



ICRAF, FPP (Forest People Programme-UK) and AMAN have also published a booklet for IPs to explore the challenges raised by the demand of recognition and how indigenous communities can find their own solutions in line with their right to self-determination. This also relates to how they negotiate with outsiders, and how IPs select and give mandates to their representatives for negotiations with third parties⁷⁸. This booklet has been printed and is also available in pdf format on their web site. AMAN and FPP have also published several booklets on the issue of FPIC (Free, Prior and Informed Consent) in a broader sense as well as in relation to the oil palm sector. There is a trend to have similar books, films and booklets published in Indonesian and English versions which allow access to the same information at the same time by different language users, for example the Sawit Watch-ICRAF-FPP book on oil palm, the AMAN-FPP booklet on FPIC, the oil palm film by Life Mosaic-FoE, and the Wilmar case report by Milieu Defensie-Gemawan-Kontak Borneo. See Figure 33 Multimedia Publications that share knowledge of IPs in English as well as Indonesian languages.

78 See ICRAF-FPP-AMAN, 2001

FIGURE 33. MULTIMEDIA PUBLICATIONS THAT SHARE THE KNOWLEDGE OF THE IPS IN ENGLISH AS WELL AS INDIONESIAN LANGUAGE



Films in DVD/VCD format are also used by government, companies and NGO's to promote or critique community engagement with oil palm. The film *Maju atau Mundur* (literally: forwards or backwards, but titled *Palmed Off* in its English version) is a one hour educational film made with 20 indigenous communities who have experienced the impacts of oil palm plantations. The film aims to help community members in oil palm plantations or plantation expansion areas to make informed decisions on the future uses of their ancestral lands. *Maju atau Mundur* was made through collaboration of FoE, Life Mosaic and Sawit Watch. This film is now being distributed to thousands of communities in oil palm expansion areas across Indonesia. Sawit Watch and WALHI West Kalimantan and the Institute of Dayakology have also produced short films in DVD format that share the experiences of oil palm engagement in Manis Mata Ketapang district (West Kalimantan), to be shared with other areas and watched by the local communities with their house DVD players. A film on oil palm is being prepared by the Dayak local TV (RUAI-TV) in Pontianak⁷⁹, which is accessible in the main cities of West Kalimantan. This will provide a balance to government and company information to the wider public and the Dayak elites in the main cities of Pontianak, Siantan, Sanggau, Sekadau, Sintang etc.

⁷⁹ Ruai TV is a local TV station in West Kalimantan, established August 2006. Soon the station will be accessible through parabola or cable. It uses three languages in its new broadcasts: Dayak, Malay and Chinese.

8.11 Alternatives to Oil Palm

In reaction to the coverage in mainstream media in Europe about environmental and social problems in the palm oil sector in Indonesia, the National Department of Agriculture as well as the private sector prepared a budget of one million euro to form a counter campaign targeting audiences in Europe. The Department of Agriculture has sought to counter information on environmental problems, claiming that forests are not damaged by the oil palm industry. But it has not attempted to counter criticisms of the extensive social problems caused by oil palm plantations⁸⁰. The government has not attempted to address the problems in the field that critics have raised, but appears to be only interested in promoting a good image for oil palm “business as usual”.

The government of Riau reacted to falling palm oil prices by claiming that the price of rubber is lower than the price of oil palm. It seeks to support oil palm plantations while neglecting that rubber trees only need to be harvested when latex is needed. Oil palm trees produce fruit bunches continuously and need to be harvested even when the price is not good.

In seeking for alternatives to oil palm, it seems there is a need to rely on civil society efforts. East Kalimantan LP3M Malinau, supported by the Non Timber Forest Product (NTFP) exchange program, ended a seminar in 2006 with a joint recommendation by its participants addressed to relevant national and district government officials. The recommendation stated that the undersigned local communities oppose the development of large-scale oil palm plantations and seek the support of the state to develop both product and markets of presently practiced swidden cultivation and NTFP production⁸¹. Similar statements were expressed in the Mansalong local parish in East Kalimantan, where Sawit Watch and the NTFP-Exchange program organized a seminar on the impacts of large-scale oil palm plantations.⁸²

There are three “traditional” alternatives to oil palm well known to IPs in Kalimantan: Rattan, Rubber and Honey. Earlier this year, the Government of Indonesia through the Ministry of Trade and Industry finally lifted the ban on the export of raw and semi-processed rattan. The ban, in place for four years, had drastically lowered the price of rattan from the interior of Kalimantan, and meant that rattan managers (IPs) were no longer interested in managing it. Planted rattan is a potential alternative development to oil palm to improve the livelihoods of IPs. The NTFP exchange network, together with Sawit Watch, SHK and other partners – is now looking into ways to ensure that the expected higher prices will be passed on to the rattan collectors and farmers⁸³. Hopefully this will strengthen the spirit of the rattan farmers to revitalize their production, products and product chain.

80 See *Kompas Daily*, 23 January 2008, *Kelapa Sawit: Kerjasama Hadapi Isu Lingkungan*, p15. The film elaborates only the biophysical problem of the environment and neglects the social problem. Similar notion also occur from the interview with Dr. Delima Azahari from Department of Finance, member of the Plantation Estate Revitalization that engage in the campaign (pers. Comm., 18 December 2008, Den Haag)

81 *Oil palm in Malinau, East Kalimantan, Indonesia: New Sky, New Earth, A New Kalimantan*, by Joanna de Rozario, NTFP-EP, see <http://www.ntfp.org/sub.php?gosub=exchangenews-art&page=15&year=2006>

82 see *A Follow Up in Patal Village*, by JOHANIS JOHN VIRIUS, Secretary, LP3M, <http://www.ntfp.org/sub.php?gosub=exchangenews-art&page=22&year=2006>

83 *Voice from the forest*, No 14, March 2008 NTFP exchange Program

Rubber has a good record for its stable value; the price has increased consistently with the price of other products such as rice and gasoline. Rubber also has an advantage in price (see table 3) and processing time compared to oil palm. Oil palm fruit bunches mature on the palm all through the year, and must be processed within 48 hours of harvesting. Rubber doesn't have these limits. Currently several credit unions (CU Keling Kumang in Sekadau district, CU Pancur Kasih in Bengkayang as well as CU Lantang Tipo in Sanggau), in collaboration with rubber farmers have developed the Entres Rubber seedling propagation technique. The Entres system can produce as many seedlings as needed from reliable sources at a low cost. The former ICRAF-SEA program office in Sanggau provided technical assistance to develop this seedling propagation technology. This intervention with low input and investment to develop productive mixed rubber gardens has proven to be a good alternative to oil palm plantations and may encourage communities to prevent the further expansion of oil palm. The involvement of Credit Unions in funding the rejuvenation of old rubber gardens and expansion of new rubber gardens, has prevented oil palm plantation from entering further into ancestral lands in several places. To progress further, the rubber farmer associations such as KPD (Koperasi Pancur Dangeri, in West Kalimantan) urgently need to strengthen the bargaining position of rubber farmers in relation to the latex market.

The Association of Periaus of Danau Sentarum, West Kalimantan (APDS) is a people's organization of 89 forest honey collectors from five Periaus IPs. APDS production meets the standard for its Internal Control System (ICS) and can assure the production of 4.3 tons good quality honey each year. BIOCert has certified APDS's honey as organic, which increased the price the collectors receive. The honey is sold to Dian Niaga and Riak Bumi through the cooperation of the Forest Honey Network at Rp. 28.000/kg (US\$3/kg) at local sites.⁸⁴

These export oriented commodities that are produced by IPs in Kalimantan are growing and, where successful, preventing the further expansion of oil palm plantations. These export oriented commodities are developed in accordance with the knowledge and customs of the IPs to improve their fallow management. Eagle Wood (*Gaharu*) has been produced by the IPs in other parts of Kalimantan, *Hamijon* for incense has been produced by IPs in North Sumatra, as well as *Damar Mata Kucing* (damar resin) produced by IPs in the southern part of Sumatra.

84 Voice from the forest, No 13, October 2007 NTFP exchange Program



9

Conclusions & Recommendations

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 to address the questions laid out in the first chapter:

5. Will oil palm estate expansion contribute to the sustainable livelihood strategies of indigenous peoples especially for the *Hibun, Pompang, Jangkang* ethnic groups as well as the *Javanese* transmigrants?

The trends are clear that 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.

6. Will indigenous peoples become detached from their environment as policies, institutions and markets that reinforce oil palm plantations influence their livelihood strategies?

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.

In the near future due to the alienation of IPs from their indigenous management practices and their ancestral lands, the IPs living amongst company oil palm plantations, as well as their members who migrate elsewhere to find livelihoods, will only be bound by ethnic identity rather than by the solidarity of swidden cultivators who produce multiple products from communal forests and farms, and have rich traditions in managing and worshipping natural resources.

7. 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?

From the sites visited, it seems that once an IP joins an oil palm scheme, either *KKPA, Plasma-Inti* and *Akuan* 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 of land, and then their capital (as credit) and their labor. This usually starts with land which is far from the village and later they may even have to contribute the land in front of their house. 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.

8. What kind of conflict resolution needs to be undertaken to support IPs during the transformation process?

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:

- d. Strengthening government policies at local, provincial and national level that could protect IPs from further deprivation.
- e. 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.
- f. 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.

Recommendations to stakeholders

General Recommendations

The planned five million hectare expansion 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 future expansion. The effort should not only focus on the policy level but also on continuous support for the IPs organization and the rural community to address their concern to further develop alternatives to oil palm plantations which are environmentally and socially as well as economically sustainable.

Specific Recommendations

1. *National and local policies*
 - 1.1 Develop and implement national, provincial and district government policies that recognize and regularize the rights of IPs, as set out in the UNDRIP, including support for an Indigenous People's Rights Act and revision of the national sectoral laws such as the Plantation Estate Law (UU 18 2004).
 - 1.2 Revise government regulation no 24/1997 on HGU/HGB permits to allow IPs to maintain ownership of land issued as HGU, to communally own HGU and to allow women's groups and other associations to manage a HGU. Revise the sectoral laws such as Forestry Law and Plantation Estate Law to be consistent with the spirit of UNDRIP and the Constitution (amendment) 1945.
 - 1.3 To regulate the procedure for FPIC with clear implementation guideline and position the role of the State to guarantee the fairness of the FPIC process
 - 1.4 To create systems for transparency and accountability for civil servants, private sector companies and consultants involved in planning and decisions concerning oil palm plantation development.
2. *Recommendations regarding IPs institutions*
 - 2.1 Abandon the current form of the Task Force on Land Acquisition as it is clearly against the principle of Free Prior and Informed Consent as well as against the principles of good governance. The Task Force of Land Acquisition should be replaced by a system based on IPs institutions and guided by implementation the FPIC.
 - 2.2 Each IP faced with offers or threats of land acquisition by companies should create their own independent negotiation team with a clear mandate from their whole community. This team should be financially independent from the state and from the company to allow the IP to freely decide yes or no to the oil palm proposal on their customary land.
3. *Recommendation for the RSPO process*
 - 3.1 The RSPO mechanism is not the only way to protect the rights of IPs, but its standard can be used by communities as a basis for engaging in negotiations. The RSPO principles, criteria, indicators and grievance procedure could be used to assist communities and companies in resolving conflicts.
 - 3.2 RSPO should take action against member companies that violate its principles and procedures and must make sure that no product certified by the RSPO enters the market if the principles, criteria and indicators are not followed by the relevant company.
4. *Recommendations for Alternatives to Oil Palm Plantations*
 - 4.1 There is need to find more alternatives to oil palm plantations that address the issues of sustainability and equity in rural areas. The problems with oil palm are associated with land acquisition for plantations and the way this process usually damages the economies, cultures and welfare of IPs and other groups in rural society.
 - 4.2 Alternatives to oil palm plantations should be based on the integration of conservation and production and at the same time be acceptable socially, economically, environmentally and culturally to IPs. This approach is not found in oil palm plantations, which segregate conservation and production, and the RSPO criteria and indicators do not address this problem.

5. *Recommendations to IPs support groups*

- 5.1 There is a need to continue to support the struggles of IPs to protect, fulfill and progress their rights as IPs and at the same time be critically engaged in multi-stakeholder global economic standard setting processes such as the RSPO and the trend of further differentiation of the society, internally as well as externally.
- 5.2 Share findings through multiple media in languages that are familiar to IPs.

6. *Recommendations to Lending Institutions*

- 6.1 Lending institutions should have codes of conduct for lending to the oil palm sector that follow, at the least, the RSPO principles and criteria
- 6.2 Lending institutions should be transparent in loaning funds to the oil palm sector and should develop grievance processes.

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