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Date: 5 April 2002
SOCIO-LEGAL ASPECTS OF LAND DISPUTES
IN RELATION TO
OIL PALM PLANTATION ACTIVITIES:
THE CASE OF SOUTH SUMATRA

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LL.B. (Unsri), LL.M. (Melb)

Thesis submitted on 22 April 2002, in fulfillment of the requirement for the degree of Doctor of Philosophy at Monash University, Australia
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Abstract

In recent years, Indonesia has had to cope with enormous problems in regard to land management. In South Sumatra, there have been a significant number of land disputes between investors, the regional governments, and the local landowners. For example, in 1999 there were 65 unresolved land disputes in relation to oil palm plantation activities.

Land disputes have led to chaos since former President Soeharto resigned from office in July 1998. In many parts of Indonesia, for example, people reclaimed their land from the investors by force, or took over the plantation companies production in commodities such as oil palm. Many people simply occupied land or burned the plantation areas, which were used by the investors. In the middle of December 1998, in Indonesia the total number of areas under plantation production reclaimed by force reached 39.8 thousand hectares in 106 locations. There were 54 locations of state-owned plantations and more than 33,500 hectares of private-owned plantations were occupied by force.

This research seeks: (a) to explain the reasons for land disputes in Indonesia, (b) to explain the causes of land disputes in South Sumatra in relation to oil palm plantation (c) to understand the inadequacy of the Indonesian legal system in dealing with land disputes, and (d) to suggest methods for solving land disputes in South Sumatra.

The main issues involved in land disputes at the national level are those of unfair compensation to the landowners, and land confiscation by the government and the investors. Although there have been similarities with other regions, land disputes in South Sumatra in relation to oil palm activities involved the following issues: (a) compensation disputes, (b) the taking of land by force by companies, (c) farm burning disputes, (d) community/Adat land disputes, and (e) disputes on profit sharing programs.

Any proposal to contend with land disputes should include a system of culturally appropriate dispute resolution mechanisms. In this thesis, I propose two strategies in order to contend with numerous land disputes in relation to oil palm activities in South Sumatra. The first strategy is designed to prevent land disputes in the future with the following policies: (a) the development of a mechanism of transparency and accountability, (b) the development of an Independent Land Problems Inventory Team, (c) the introduction of new policies that require that (i) investors make a public presentation of their commercial aspirations, (ii) companies produce and publish an annual progress report, (iii) the government land disputes team not be funded by the company involved, (iv) strong sanctions should be applied to government officials who abuse their power, (v) the management of the village cooperative organization be strengthened, (vi) a District Commission for Land Disputes Resolution be established, and (v) District Commission for Land Disputes Resolution be established, and (vi) mediation institutions should be developed. My second strategy to cure the existing land disputes is to return to existing procedure, either by resolving them in musyawarah (discussion) or bringing the cases to the court.
STATEMENT BY CANDIDATE

I, Amzulian Rifai, affirm that this thesis contains no material which has been accepted for the award of any other degree or diploma in any university or other institutions. I further affirm that, to the best of my knowledge, the thesis contains no material previously published or written by another person, except where due reference is made in the text of the thesis.

Signature of candidate

Date: 01 November 2003
Acknowledgement

It is impossible to fully thank the many people who have contributed to my thesis, and those who have helped me during my field research.

I have so many debts to many people during my research time at Monash University, Australia.

I honour my former supervisor before she undertook a new position as Victorian Legal Reform Commissioner, Prof. Marcia Neave, who has supervised me patiently given the fact of my limited English and our different legal backgrounds. I offer my sincere thanks.

It was very stressful when I had to find a new supervisor until Judd Epstein came to take the position. Judd Epstein was very supportive to me and he understood how enormous are the challenges to write a thesis in a foreign language. I regained my self-esteem and confidence when Judd assured me that he understood my problem and he was prepared to support my research.

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I found it was a great challenge to study and at the same time to share my limited time with my family. My deepest thanks and love, as always, go to my wife Elmawaty Rifai and my three children Aussielia, Bimasena and Tony.

1/635 Blackburn Road-Clayton 3168
Glossary

adat law
asisten I
ABRI (Angkatan Bersenjata Indonesia)
ADR
BANI (Badan Arbitrase Nasional Indonesia)
BAL 1960
BAPPEA (Badan Perencanaan Pembangunan Daerah)
BPN (Badan Pertanahan Nasional)
BPPO (Badan Pemeriksa Keuangan)
bupati
BULOG (Badan Usaha Logistik)
camat
CPO
daerah
da'i
DANDIM (Komandan Komando Distrik Militer)

desa
DPR-Pusat (Dewan Perwakilan Rakyat Pusat)
national
DPRD Propinsi (Dewan Perwakilan Rakyat Daerah tingkat propinsi)
DPRD Kabupaten (Dewan Perwakilan Rakyat Daerah tingkat kabupaten
ET (Eks Tahanan Politik)
gubernur
HGU (Hak Guna Usaha)
hakim
hak milik
hak menguasai negara
hak ulayat
HPH (Hak Pengusahaan Hutan)
hukum
IMF
INPRES (Instruksi Presiden)
jaksa
attorney
jaksa agung
kabupaten
KAPOLRES (Kepala Kepolisian Resort)
KASDIM (Kepala Staf Distrik Militer)

traditional or customary law
first assistant
Armed Forces of the Republic of Indonesia
Alternative Disputes Resolution
National Arbitration Board
The Basic Agrarian Law 1960
regional planning agency
National Land Agency
The Financial Auditing Board
head of district
State Logistics Agency
head of sub-district
crude palm oil
region
Islamic preacher
commander of district military command
village
House of Representatives at level
House of Representatives at provincial level
house of representatives
at district level
former political prisoner
governor; head of province
land use right
judge
ownership right
state right of control
communal adat land right
forest use right
law
International Monetary Fund
presidential instruction
public prosecutor or district attorney general
district
Chief of District Police Office
Chief of Staff of District Military Command
kabinet reformasi

governmental cabinet under former President B.J. Habibie (1998)

governmental cabinet under President Abdurrahman Wahid (from 1999)

kabinet persatuan

head of district public prosecutor office

cassation (appeal on a point of law)

KAJARI (kepala kejaksaan negeri)

sub-district

kasasi

head of village

kecamatan

oil palm plantation areas built and owned by a company

kepala desa

oil palm plantation areas built by the company but owned by the villagers. All plantation products must be sold to the company

kebun Inti

Presidential Decision

kebun plasma

industrial area of plantation society

KEPPRES (Keputusan Presiden)

KIMBUN (Kawasan Industri Masyarakat Perkebunan)
corruption, collusion, and nepotism.

KKN (Korupsi, Kolusi dan Nepotisme)

prime cooperative credit for members

KKPA (Koperasi Kredit Primer Anggota)

Regional Military command

KODAM (Komando Daerah Militer)

District Military Command

KODIM (Komando District Militer)

consortium for agrarian reform

KPA (Konsorsium Pembaruan Agraria)

Commission for Land Disputes Resolution

KPSP (Komisi Penyelesaian Sengketa Pertanahan)

KUD (Koperasi Unit Desa)

village cooperative organisation

KORAMIL (Komando Rayon Militer)

sub-district military command.

LBH (Lembaga Bantuan Hukum)

legal aid foundation

LKMD (Lembaga Ketahanan Masyarakat Desa)

village public security council

LMD (Lembaga Musyawarah Desa)

village consultative council

LSM (Lembaga Swadaya Masyarakat)

non-governmental organisation

mahkamah agung

supreme court, the highest court in Indonesia

MAHKEJAPOL (Mahkamah Agung, Kehakiman, Kejaksaan dan Kepolisian)

Council of senior officials of the Supreme Court, Department of Justice, Prosecutor, and Police

MPR (Majelis Permusyawaratan Rakyat)

people's consultative assembly

marga

sub-district in South Sumatra
MUSPIDA (musyawarah pimpinan daerah) literally means “local government leaders consensus”. The local government committee consists of the Bupati, KAPOLRES, DANDIM, and KAJARI.

mufakat consensus/agreement
musyawarah deliberation/discussion
nagari Sub-district in West Sumatra
negara hukum state based on law
NGO Non Governmental Organisation
notaris notary
oil palm

ORLA (orde lama) African oil palm (Elaeis guineensis) was first introduced in Southeast Asia in the 19th century.
ORBA (orde baru) the Old Order government under Soekarno (1945-1966)
otonomi daerah the New Order government under Soeharto (1966-1998)
opemerintah regional autonomy
palm oil the oil palm’s primary product.
pancasila five state philosophical principles that constitute the official national ideology

pasal article in law
pasirah head of marga
pembangunan development
pemerintah government
pemerintahan regional government
PEMDA (pemerintah daerah) former sub-district government in South Sumatra before the central government introduced UU No 5/1979
Pemerintahan marga court
Pemerintah religious court
PEMDA (pemerintah daerah) military court
district court, court of first
PERDA (peraturan daerah) high court, court of appeal
pemkab regulation
pemerintah regional regulation
pemerintahan the first party in a contract
pengadilan agama the second party in a contract
pengadilan the Notarial Deed Official
pengadilan instance
militer province
negeri district government
instance: military
pengadilan tinggi high court, court of appeal
pemkab regulation
PERDA (peraturan daerah) regional regulation
pemda the first party in a contract
pemerintah the second party in a contract
PERDA (Peraturan Daerah) Notarial Deed Official
pemda regulation
PENGADILAN district government
pengadilan tinggi regional regulation
pemerintah district government
pengadilan agama regional regulation
pengadilan military
PENGADILAN court
pengadilan negeri: district court, court of first
instance: high court, court of appeal
pengadilan military
pemerintah: regional regulation
pemerintahan: the first party in a contract
pengadilan: the second party in a contract
PENGADILAN: Notarial Deed Official
PENGADILAN: province
pemda: district government
pemerintah: regional regulation
PIR (perkebunan inti rakyat)

PKI (Partai Komunis Indonesia)
propinsi
PRONA (Proyek Operasi Nasional Agraria)
PT. LONSUM (PT London Sumatra)

reformasi
Rencana Tata Ruang Daerah

rupiah
SH (Sarjana Hukum)
sistem plasma
SKT (Surat Keterangan Tanah)

Nucleus Estate and Smallholder Scheme
Indonesian Communist Party
Land Administration Project
London Sumatra Plantation Company.
the reform movement
Provincial Spatial Plan

the Indonesian currency
Bachelor of Laws
profit sharing system
land ownership letter that can be used as a proof of ownership that temporarily substituting the land certificate

land
State land
the accused in criminal

fresh fruit bunches of oil palm
The Indonesian Armed Forces, the new structure of ABRI
Regional Committee to monitor plantation projects
Act, legislation, or statute
constitution

Act No 5 of 1979
Act No 22 of 1999
Act No 25 of 1999

The United East India Company.
vice chief of district police office.

Indonesian environmental forum
SOCIO-LEGAL ASPECTS OF LAND DISPUTES
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THE CASE OF SOUTH SUMATRA
Chapter One: Introduction

Introduction

"One of the nice things about studying Indonesia is that order and chaos look so very much alike"
Clifford Geertz cited by Timothy Lindsey, 1997

A. Land Disputes in South Sumatra: An Overview of the Problem

The objectives of this research are to determine why there are so many land disputes in Indonesia and what needs to be done in order to resolve such land disputes in South Sumatra regarding oil palm activities. In order to explain the disputes, this research looks at Indonesian land law and includes some case studies.

Land disputes constituted the largest number of complaints to various government institutions, such as the House of Representatives, the National Land Body, the National Commission on Human Rights and local government offices. In

2 Aspects of my research have been presented at the ASAA International Conference, Melbourne University, 3-4 July 2000, at the Australian Asian Association Seminar on 30 July 2000, and at the National Interdisciplinary Postgraduate Conference, Faculty of Law, University of Sydney, 9-10 November 2001.
3 In this research I will refer to different levels of government in Indonesia as follows:
a) The central government is a national government responsible for all the provinces, based in Jakarta, b) The provincial government is a regional government, which is based at the province capital (ibukota propinsi), c) The district government (kabupaten) is based at the district capital (ibukota kabupaten), d) The sub-district government (kecamatan) is based at the sub-district capital (ibukota kecamatan), d). The Old Order Government (Orde Lama) refers to government under Soekarno (1945-1965), e) The New Order Government (Orde
1998, for example, the National Commission on Human Rights dealt with the following complaints: land (339 cases), labour/employment (253 cases), housing (74 cases), and religion (8 cases). Complaints were also brought to non-governmental organizations, such as the Legal Aid Foundation and Indonesian environmental groups, such as WALHI (Wahana Lingkungan Hidup Indonesia or Indonesia's Forum for the Environment.

Land disputes were exacerbated by problems with the Indonesian court system. Problems with Indonesian courts range from corruption to government intervention. How the government intervenes in court proceedings, especially under former President Soeharto, will be discussed in Chapter Three. The Kedungombo land case in Central Java and the Hanoch Hebe Ohee land case in Papua are examples illustrating governmental interference. Cases from South Sumatra will be discussed in Chapter Three.

Land disputes result from the pluralism of Indonesian laws and the lack of recognition of traditional rights. Colonial laws only protected the interests of the colonists. Under President Soeharto (1966-1998), the Indonesian government retained some aspects of colonial government land policy. For example, under the colonial government there was a concept of “Domein Veklaring” (declaration of lands

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as belonging to the state) and under the Indonesian New Order Government there was a concept of "Tanah Milik Negara" (State Land) which was, in many cases, misused by those in power.

In South Sumatra, land disputes in relation to oil palm plantation activities are also the result of the abolition of the Marga system of government. Marga was the South Sumatran traditional system of government by which land ownership was regulated. This traditional system of government was abolished by the central government in 1979 causing problems in land ownership. Some villagers claim they acquired land title under the Marga system (and have a land title) although the Marga system has been abolished. The government has argued that all land titles under the Marga system automatically ended when the central government abolished that system of local government. The Marga system will be explained in greater detail in Chapter Five.

According to a South Sumatra government official, there are only a limited numbers of studies of land disputes in South Sumatra involving oil palm plantation activities. This research is relevant not only as an addition to the limited research on land disputes in South Sumatra, but also because it suggests reforms to the government of South Sumatra in dealing with land disputes, particularly in relation to oil palm plantation activities.

Land disputes contributed to the chaos that followed former President Soeharto's resignation from office. In many parts of Indonesia people have taken back their land

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6 Interviews with Drs Dachry Anom, first assistant to the Head of District of Musi Rawas, and
from the investors by force or taken over the plantation companies’ production in commodities such as oil palm. Many people simply occupied land or burned plantation areas, which were developed by investors. According to the Minister for Forestry and Plantations, in the middle of December 1998, the total number of hectares under plantation production taken by force reached 39.8 thousand hectares in 106 locations. This included land of 54 state-owned plantations and more than 35,500 hectares of privately owned plantations.7

In many places people behaved unlawfully by occupying land owned by the state or private companies, or by stealing plantation products.8 This was a reaction to the Soeharto regime, under whose authority the government or members of the former President’s family and friends took land whenever and wherever they chose to without fair compensation.9 According to the Indonesian Agrarian Minister and Head of the National Body of Land, the Cendana Family (Cendana is the name of the street in which Soeharto’s private home is located) own 204,983 hectares of land in various parts of

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8 State-owned plantation companies complained to the House of Representatives that looting had caused them hundreds of millions of dollars in losses and warned that if those responsible were not stopped, the companies might have to close their operations. “We have reported the lootings to local security officials but no firm measures have been taken to resolve the security problems,” Edward Sitorus, the president of PTP Nusantara II (PTPN II), told House Commission IX on financial and development planning affairs during a hearing. The Jakarta Post, “Plantations complain of rampant theft,” 14 November 2000 [Internet: http://www.thejakartapost.com]
9 Under Soeharto’s government, in many parts of Indonesia, land was mostly owned by multinational investors such as PT Barito Pacific for timber and PT London Sumatra for oil palm plantation. Huge areas of land are also owned by Soeharto family and friends. ‘Thousand of Farmers in Muara Enim asked Prajogo to return their land’, Media Indonesia, 3 September 1999 [Internet: http://www.medialindo.co.id] ‘Minister of Forestry and Estate Crop Revoked 10 Corrupt Forest Management Licenses,’ Suara Penbaruan, 07 August 1999 [Internet: http://www.suarapembaruan.com]
Indonesia. In ongoing investigations, the South Sumatran Attorney General’s Office has found at least 11 companies owned by Mrs. Siti Hardiyanti Rukmana (Suharto’s daughter) and one company owned by Hutomo Mandala Putra (Suharto’s son), who own 91,531 hectares of land in various districts of South Sumatra. The Attorney General’s Office also found that none of the companies owned by Suharto’s children has paid land tax.

It is difficult to find out the exact number of land disputes in South Sumatra because there is no systematic method of reporting. We cannot rely on the number of land disputes brought to the court because most land disputes are not brought to the court. We also cannot rely on the government reports because most disputes are not recorded at a government office. As a result, it was necessary to collect information regarding land disputes from various sources including the government, the media, and non-governmental organizations.

The Indonesian Legal Aid Foundation (Lembaga Bantuan Hukum or LBH Palembang) reports figures that differ from the government’s. LBH reported that between 1990 and 1998 there were 153 land disputes in relation to oil palm

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10 *Suara Pembaruan*, ‘Suharto’s land should become object of land reform,’ 2 January 1999, [Internet: http://www.suarapembaruan.com]

11 The eleven companies in South Sumatra owned by Suharto’s daughter are: PT Citra Patenindo Nusa Pratama (oil company), PT Agro Karya Sekayu (forestry), six palm oil plantation companies PT Perkebunan Hasii Musi Lestari, PT Musi Tunggal, PT Musi Rindang Wahana, PT Sekayu Tunggal, PT Aneka Multi Sekayu, PT Karya Rindang Mandiri. Three rubber companies, PT Karya Bumi Sekayu, PT Multi Hasii Sekayu, PT Multi Sekayu Abadi. Suharto’s son owns PT Putra Citra Wahana which occupied 270 hectares of tourist resort in Belitung Island. ‘Tutur’s Land in South Sumatra Has not Paid Tax,’ *Suara Pembaruan*, 04 January 1999 [Internet: http://www.suarapembaruan.com]
plantations in South Sumatra, involving 140,899 hectares of land and 24,586 landowners.\textsuperscript{12}

The South Sumatra Government Report states that in 1998 there were 28 unresolved\textsuperscript{13} land disputes in South Sumatra in the sub-sector of oil palm plantations. The report does not state the total land area involved and the number of landowners involved in the disputes. However, I believe that this figure underreports the number of disputes because many land disputes at the district level were not reported to the provincial government. For example, according to the District of Musi Rawas government report, in 1999 there were 32 land disputes in relation to oil palm plantation activities in that district alone.\textsuperscript{14} This number is higher than the provincial government's report for the whole province.\textsuperscript{15}

Land disputes often focused on the “inhumane compensation” given to landowners, especially those that were powerless. A well-known example of inhumane compensation is the \textit{Kedungombo} case in Central Java. In 1985, the government needed 60,000 hectares of land to build a dam. Many villagers refused the low rate of


\textsuperscript{13} Some disputes were resolved through use of the district government as a mediator. For example, see the \textit{Aringin case}.


\textsuperscript{15} South Sumatra divided into eight districts namely: (1) Ogan Komering Ilir comprised of 12 sub-districts and 72 villages, (2) Ogan Komering Ulu comprised of 14 sub-districts and 471 villages, (3) Muara Enim comprised of 10 sub-districts and 262 villages, (4) Lahat comprised of 15 sub-districts and 579 villages, (5) Musi Banyuasin comprised of 8 sub-districts and 343 villages, (6) Musi Rawas comprised of 11 sub-districts and 263 villages, (7) Bangka comprised of 13 sub-districts and 140 villages, and (8) Belitung comprised of 6 sub-districts and 68 villages. (1) South Sumatra has two municipalities namely: Palembang, comprised of 8 sub-districts and 72 villages. (2) Pangkal Pinang comprised of 4 sub-districts and 57 villages. In January 2001, the districts of Bangka and Belitung separated from South Sumatra and formed Province of Bangka and Belitung (\textit{Propinsi BABEL}).
compensation offered by the local authorities. Compensation was only between 300 rupiahs to 500 rupiahs/meter (approximately equal to 12 Australian cents/meter at the exchange rate at that time). Landowners asked for compensation of at least 50,000 rupiahs/meter. However, they were forced to accept compensation under market price. Resistance grew, but was repressed by the local authorities and the military.\textsuperscript{16}

The government or investors used many methods to acquire land from people, including intimidation and torture. In the Kedungombo case, those who refused to give up their land were accused of being anti-development and against \textit{Pancasila}\textsuperscript{17} or of being members of the Indonesian Communist Party (an illegal organization in Indonesia).

Rimbo Gunawan, an agrarian law expert, observes that the investment activities involving land concessions (HPH) had both positive and negative impacts. HPH concessions led to (a) the opening up of isolated tribal villages, (b) the introduction of various new economic activities, (c) dependence on outside products and industrial goods, (d) the establishment of educational facilities, (e) changes in the orientation and understanding of traditional values, (f) changes in customary law, (j) increased disputes over control of land between the companies and the villagers.\textsuperscript{18} Not all of these changes were negative. For example, at least points (a) to (d) improved the situation in some regions. Another authority lists as positive impacts of investment to the regions: (a) employment opportunities, (b) the opening of isolated areas, (c) economic growth of the

\textsuperscript{16} Rekaman Peristiwa 1991, \textit{Finally Kedungombo Dam was inaugurated}, (PT Media Interaksi Utama and PT Pustaka Sinar Harapan, Jakarta, 1992), p 80.
\textsuperscript{17} Pancasila is discussed more detail in Chapter Two.
\textsuperscript{18} Rimbo Gunawan, teal, \textit{After the Rain Falls} (Yayasan Akatiga, Bandung, 1999), p 5.
villages, and (d) increased revenue for district government. However, as Rimbo Gunawan points out, the investment activities also reduced the average size of land controlled by local people and weakened their culture.

In South Sumatra there have been land disputes connected to mining, industrial activities, real estate development, forestry, tourism development and the plantation sector. This study primarily focuses on land disputes resulting from oil palm plantation activities.

Many districts in South Sumatra Province rely on the plantation sector. The District of Musi Rawas, for example, is a major producer of commodities such as rubber, palm oil, coconut, coffee and cloves. Rubber is still the main commodity produced, but due to aggressive investment by local and foreign investors in oil palm, in the future many farmers in Musi Rawas will depend on this sector.

In the district of Musi Rawas, oil palm constitutes the second main commodity after rubber. The total area of oil palm estates in 1996 was 29,782.40 hectare. Private companies which operate in this area include PT London Sumatra, PT Bina Saint Corp, PT Djuanda Sawit Lestari, PT Perkebunan Hasil Musi Lestari, PT Musi Rindang Wahana, PT Dendy Marker, PT Dwi Raksa Usaha, and PT Raya Mekati. Among those companies it appears that PT London Sumatra has the most problems with the local people in Musi Rawas.

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20 Rimbo Gunawan, Commercialisation of Forestry and the Impacts on Local People. The Case of East Kalimantan, (Yayasan Akatiga, Bandung, 1999), p xi.
Chapter One: Introduction

B. How Disputes Are Resolved in Indonesia

Black’s Law Dictionary defines a dispute as “a conflict or controversy, especially one that has given rise to a particular law suit”\(^2\). Gregory Tillett differentiates between problems, disputes, and conflicts. Tillett writes that “a dispute arises when two (or more) people (or groups) perceive that their interests, needs, or goals are incompatible and they seek to maximise fulfilment of their own interests or needs, or achievement of their own goals (often at the expense of the others)”\(^3\).

In this research, ‘dispute’ means any land dispute that arises between people or groups as a result of oil palm plantation expansion whether or not the dispute has been brought to the court. In my field research all land disputes involved a group of claimants against oil palm companies. In a dispute, claimants appoint a representative to act for their interests. Therefore, it will be considered as one dispute if one group of claimants (or landowners) has a dispute with a company. For example, in the Abdul Djabar case, 300 landowners appointed Abdul Djabar to represent their interests with regard to a total area of 300 hectares of land. While each landowner may represent her/himself during the dispute, in land disputes in South Sumatra in most cases claimants have acted collectively.


\(^3\) According to Tillett a problem can be resolved by management, by agreement on how something can or should be done. For example, two people who need to meet to discuss a topic may have a problem in finding a mutually convenient time; they seek to resolve this by mutually managing their time. A conflict arises when two (or more) people (or group) perceive that their values or needs are incompatible whether or not they propose, at present or in the future, to take any action on the basis of those values or needs. Gregory Tillett, *Resolving Conflict* (2\(^{nd}\) ed, Oxford University Press, Melbourne, 1999), p 7.
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In this research, I use landowners to refer to villagers who believe they “own” a certain area of land and have a dispute with the plantation companies which have been granted a concession to that land. These landowners could be the villagers who live near the disputed land or in other districts. In my field research I found that often the landowners did not live on the land claimed. The land was usually used for estate activities, especially as rubber plantations. Therefore, the land taken or burnt by the plantation companies does not always deprive the landowners of a place to live. However, villagers lost plantation areas, which for many years had been a source of family income. This is an important point because the situation in South Sumatra is unlike that in Java where the villagers had no place to live when the company took their land.

In Indonesian society musyawarah (discussion) is used to achieve consensus or compromise. Musyawarah is generally used by Indonesians when attempting to resolve disputes. In some ways, this method of resolving disputes is similar to mediation. The main differences between musyawarah and modern mediation are: a) in musyawarah the mediator is not professionally trained, and b) generally musyawarah mediators are not paid. The high priority given to musyawarah in resolving problems in Indonesian society means that compromise is usually part of dispute settlement.

24 The root of the problem is a conflict of interpretation involving land ownership based on adat law versus land rights based on the Basic Agrarian Law 1960. This issue will be discussed in Chapter Three.

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Under Indonesian traditional law (adat), most disputes at the village level are resolved by *musyawarah* led by informal leaders and the Head of the village. The Head of the village plays a crucial role in maintaining *musyawarah* as the main method to resolve disputes.\(^{26}\) Resolution is based upon the interest of the community (*kepentingan umum*) which tries to achieve a "win-win solution".

Under the Indonesian national law, another method of resolving disputes is through litigation. All legal disputes have to be heard by the District Court (*Pengadilan Negeri*) located in each district capital as the Court of first instance. Appeals are made to the High Court (*Pengadilan Tinggi*), which is located in the provincial capital. Final appeals can be brought to the Supreme Court (*Mahkamah Agung*) which is located in the national capital.\(^{27}\)

Generally Indonesians avoid going to court for four reasons. First, court proceedings involve high costs. The majority of Indonesians cannot afford the cost of the court process. Second, people lack confidence in the judiciary systems. Third, litigation is not a culturally acceptable means of resolving disputes in rural areas.\(^{28}\) Four, there are not enough professional lawyers available to handle cases as most professional lawyers practice in Jakarta and other big cities.\(^{29}\)

Another factor that makes the litigation process in Indonesia exhausting is geography. All cases start from the District Court in each region (*Kabupaten*) with

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\(^{26}\) Author’s observation.


\(^{28}\) Interviews with South Sumatran villagers conducted by the author.

\(^{29}\) Lev DS, *Legal Aid in Indonesia*, (Monash University Southeast Asian Studies Working Paper
appeal up to the Supreme Court in Jakarta. The necessity for ultimate appeal in Jakarta increases the expense. Unlike Australia, where appeal may take place at the same court with different judges or the judges may travel to visit the parties involved, in Indonesia, an appeal means the parties have to go to a higher court which is located in a different city. Technology such as videoconferencing is not common in Indonesia.

Mistrust of the judicial processes is fairly common among Indonesian people. Some observers, including Trubek, state that the Indonesian judicial system is ill equipped.\textsuperscript{30} Giacoma observes that Indonesian courts are inefficient and slow.\textsuperscript{31} The Indonesian court system is also corrupt. A judge's impartiality is threatened by the power of the Ministry of Justice to dismiss the judge.\textsuperscript{32} The World Bank observes that the Indonesian courts are overburdened and understaffed with little specialization, with all types of cases going to general courts and judges; and there is a lack of confidence in the fairness of the trial process.\textsuperscript{33}

\textbf{B.1 Land Dispute Resolution}

Indonesian land laws, including the \textit{1961 Act on Revocation of Titles} which will be discussed in Chapter Three, envisaged \textit{musyawarah} as the principal method for title revocation. The Elucidation of this law states that the revocation of titles


\textsuperscript{32} Indonesian NGOs for Democracy, \textit{A Country Report. The Other Portrait of Indonesia}, no publisher, 1994, p 49. Under Law No 1/1999 this power was removed.
should only be ordered in matters of public importance, when all efforts to obtain the
land voluntarily through a process of *musyawarah* have failed.  

However, under the New Order government officials at the local and national
levels ignored *musyawarah* in awarding HPH. After the reformation movement in
1998, which forced Soeharto to withdraw from the presidency, many Indonesians also ignored the method of *musyawarah* as a means to resolve their disputes. According to the local Manager of PT London Sumatra Plantation Company's Kepahyang Estate, the reason *musyawarah* is unsuccessful in resolving disputes is because villagers tend to use force to press for their rights rather than negotiate with the company, and also their claims are often unrealistic. For example, in the Abdul Djabar case the list of claimants was fictitious (see Chapter Five for details). Therefore, both the district government and companies prefer to bring the case to court. Villagers in South Sumatra argue that in the process of *musyawarah* the companies generally do not respect their arguments and rights. Therefore they must resort to violence to achieve their aims. The Aringin case and the Abdul Djabar case, which will be discussed in Chapter Six, illustrate what happens when an oil palm company does not respect an agreement reached through *musyawarah*. In Medan, Lampung, and South Sumatra the villagers reclaimed their land by force without negotiation with the companies. The

33 Id.
34 Elucidation, Article 2 of *The 1961 Act on Revocation of Titles*.
35 See Fitzpatrick, for example.
37 Interview with Abdul Djabar (the leader of 300 families who claimed compensation from PT London Sumatra because the company burnt their rubber gardens), 22 January 2000.
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district government was unable to deal with the demonstrations, which created anarchy. For this reason, the district government suggested that the parties bring their land disputes to the court and leave it to the courts to reach a decision.39

However, most people who have land disputes avoid bringing the case to court. For example, the Legal Aid Foundation (Lembaga Bantuan Hukum) in the province of Lampung found that 94.47% of people whose land had been taken by force chose not to do anything to oppose the decision.40 Suharyono, a director of the Legal Aid Institute in South Sumatra, suggested that the main reason is that people have no trust in the judicial systems.41 However, there are also other reasons why people avoid bringing their case to court.

• Many landowners in South Sumatra have no documents to prove ownership. According to the National Land Agency only 20% of the estimated 58 million land parcels in Indonesia have ever been registered.42 One reason that the percentage of registered land is so low is bureaucratic problems including corruption.43 In the court process, proof of ownership is essential.

• There are villagers who make claims because oil palm activities have increased the value of land significantly.

39 Interview with Radjab Semendawai, Pekalongan, 13 January 2000.
40 ‘Land Disputes in Lampung Reached 110,737.50 hectares,’ Kompas, 05 January 1996 [Internet: http://www.kompas.com]
41 Interview with Suharyono Director of Legal Aid Foundation, Palembang, 15 January 2000.
43 Interview with Suharyono, Palembang Legal Aid Foundation, 12 January 2000.
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For these reasons and because the Indonesian court system is, as Della-Giacoma observes, “inefficient and slow”, and, as the Coudert Brothers states, “capricious and unreliable,” land disputes are generally not brought to court.

Instead of bringing their disputes to the courts villagers brought their cases to the local parliament. In some cases, the landowners occupied the Parliament for some days until they were convinced that the members of Parliament had noted their complaints. In other cases villagers involved in land disputes occupied the governor’s office for a period of days. For example, approximately three hundred villagers from the district of Muara Enim in South Sumatra erected a number of tents in front of the South Sumatra Governor’s office in order to force the Governor to become involved in their land disputes with a huge logging company.

Villagers also bring their disputes to non-governmental organizations such as the Legal Aid Foundation (Lembaga Bantuan Hukum) and the Indonesian Environmental Forum WALHI (Wahana Lingkungan Hidup). In my research I found that both the local government and NGO activists are willing to serve as mediators and conduct musyawarah to resolve the disputes. In resolving disputes, the

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45 'Ribuan Masyarakat Desa Menginap Semalam di DPRD' [Thousand Villagers Spent the night at the Local Parliament], Sриwijaya Post, 17 February 2000, p. 1
46 Id.
47 Munarman, 'An Overview of Land Disputes in South Sumatra,' in Dianto Bachriadi (et al.), Agrarian Reform, (KPA-LP FE-UI, Jakarta, 1997), p. 354. Landowners in Nusa Tenggara Barat province brought their land disputes to the students’ organization. In order to resolve the disputes the organizations implemented the following strategies: investigate the disputes and conduct advocacy. Investigations involved the documentation of past and present land disputes and conducting field studies. Team Study Consortium of Agrarian Reform, “Condition and Agrarian Problems in West Nusa Tenggara,” Ibid at 257.
students' organizations and non-governmental organizations apply one or some of the following strategies:\(^48\)

- Influence public opinion on the matters involved. This strategy is implemented by using media to publish the disputes. In addition to this strategy, seminars and public meetings are also held.\(^49\)

- Lobby members of Parliament and the government. For example in the *Marga Rambang Kapak Tengah* case,\(^50\) LBH Palembang actively lobbied members of local and national Parliaments.\(^51\)

- Involve the parties in a mediation process. For example, in the dispute between PT Sajang Heulang Plantation Company and 56 farmers in the village of Babat, district of Muara Enim, LBH Palembang acted as a mediator and involved the parties in a mediation process. At the end the company agreed to pay compensation to the villagers.\(^52\)

- Inform the people of their land rights. LBH Palembang also used advocacy that includes visiting the villagers and informing them of their land rights.\(^53\)

\(^48\) Ibid at 272.
\(^49\) Interview with Suharyono, Director of LBH Palembang, 15 January 2000.
\(^50\) This case involved the villagers from former *Marga Rambang Kapak Tengah* in district of Muara Enim against PT Musi Hutan Persada, a huge pulp and paper company. The villagers claimed that the company took their 26,600 hectares of adat land under the *Marga* system of government.
\(^51\) *Sriwijaya Post*, ‘Masyarakat Menyandera Kendaraan Perusahaan’, 01 March 2000 [Internet: http://www.indomedia.com/sripo/]
\(^52\) Munarman (n 47), p 350.
\(^53\) Interview with Suharyono, 15 January 2000.
Defend the landowners in litigation process. If all dialogue and mediation processes failed, LBH Palembang defended the landowners in the court. For example, in 1999 LBH Palembang handled ninety-nine land disputes and some of them ended in the court.\(^{54}\)

The Kabupaten DPRD also encouraged the conflicting parties to engage in a mediation process. In addition, the Kabupaten DPRD may ask the Bupati to follow up cases and seek the best solution, a process which is not always successful.\(^{55}\)

No detailed report of land disputes reported to the Musi Rawas DPRD where field research was conducted could be obtained. However, Karim AR, the speaker of Musi Rawas DPRD observes that while many land disputes were reported to Musi Rawas DPRD, the total number of successful resolutions seemed few. In 1999 more than 30 land disputes involving oil palm plantations were reported to the Musi Rawas DPRD.\(^{56}\) Karim AR said that the reason the Musi Rawas DPRD was unable to resolve most land disputes was that each party strongly adhered to their own views and the Musi Rawas DPRD had no power to force the parties to reach a solution. For example, the oil palm companies believed that they had followed the process of land acquisition provided by the local government. The villagers on the other hand, argued that the company just took the land with unfair compensation or without any compensation.\(^{57}\)

\(^{54}\) Id.
\(^{55}\) Id.
\(^{56}\) Id.
\(^{57}\) Id.
Attempts to resolve the land disputes through the Parliament or an NGO sometimes creates other problems and conflicts. The villagers expect that the Musi Rawas DPRD representatives would protect the rights of the villagers. However, generally the Kabupaten DPRD has no ability to resolve the conflict. In some cases Kabupaten legislators have misused their power for personal benefit. For example, a member of the Bengkulu province DPRD was sentenced to Seven years in jail on 17 January 2000, as he and his lawyer were found guilty of blackmailing an oil palm company. This DPRD representative and his lawyer acted in the name of the villagers, whereas in fact they used the money for their own purposes.\footnote{Kompas, "Vice Speaker of Parliament of Bengkulu Province was Sentenced to 7 years," 21 August 2000 [Internet: http://www.kompas.com]}

\textit{B.2 A Call for the Rule of Law and for Alternative Dispute Resolution}

It is not the role of Parliament to become actively involved in resolving land disputes. The business of Parliament is to pass laws and to control the government. Parliamentarians should be aware of people's problems and the judiciary should resolve legal disputes. The failure of the court, the police, the public prosecutor, and the bar association does not bode well for dispute resolution.

In order to cope with land problems in Indonesia, two reforms are necessary. First, the rule of law should be implemented. Second, alternative methods of dispute resolution should be developed (this will be discussed in Chapter Seven).\footnote{Todung Mulya Lubis, (n 25), p 103.}

While there is no simple definition of what 'the rule of law' means,\footnote{John McMillan, "An Overview of the Australian Legal System," in Robin Creyke,1996.} it is widely understood to include an independent judiciary, a fair litigation process, and a
clear mechanism for judicial review. In Indonesia priority should be given to independence of the judicial system because as will be shown in Chapter Four under the new order the executive often intervened in judicial processes.

The implementation of the rule of law will not automatically reduce the cost of litigation. Furthermore, the attitude of the majority of the people who avoid going to the court might not change in the short term. Therefore, an effective alternative method to resolve land disputes should be developed. This alternative form of dispute resolution should be in accordance with Indonesian culture meaning that traditional rights are accorded some form of legal recognition. Alternative dispute resolution (ADR) can be used to combat a corrupt judicial system and might cost less than long court proceedings. ADR will be discussed in the final chapter of this dissertation.

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Aspects of Administrative Review in Australia and Indonesia,” Australian National University, Canberra, p.44.


‘ADR could end Court Mafia,’ Kompas, 3 July 1999 [Internet: http://www.kompas.com]

C. Indonesian Civil Law

The Indonesian Legal system follows the civil law system practiced in the Netherlands, Indonesia’s former colonizer. This system is contrasted with the common law system as implemented in the United Kingdom and Australia. I will not discuss the differences between common law and civil law systems in detail but two significant differences between the civil law and the common law systems should be noted:

First, in civil law systems a judge’s decisions are not binding on other judges. In contrast, in a common law system some court decisions become precedents and are binding on judges in similar cases in equal or lower courts. In Indonesia court decisions are not widely published and Indonesian people are not familiar with court decisions, whereas in Australia the public can easily access court decisions. Second, the Australian courts, like common law courts, are distinguished by their independence from other institutions of government. An important aspect of this independence is stipulated in section 71(2) of Australia’s Constitution which states: “...federal judges are appointed until the retiring age of seventy and can only be removed earlier from office by Parliament on the exceptional grounds of proved misbehaviour or incapacity.”

65 My observation.
67 Section 71 (2) of the Commonwealth Constitution.
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Under the New Order, Indonesian courts were not independent because judges were part of the executive. Although the commentary of Article 24 of the 1945 Indonesian Constitution states "judicial power is to be independent, free from government interference, and law must guarantee the judicial posts," in practice this was not the case. The Indonesian judiciary system will be discussed in Chapter Four.

D. Scope of the Thesis

The thesis is entitled 'Socio-legal Aspects of Land Disputes in Relation to Oil Palm Plantations: The Case of South Sumatra.' This title was chosen because it is impossible to understand Indonesian laws in practice without understanding how they operate in society.

Many Indonesians believe that the rule of law does not exist in Indonesia and they do not think the law will protect them so they avoid going to court.\textsuperscript{68} As mentioned earlier, in the province of Lampung, for example, only 5.53\% of people whose land was taken by force by investors or the government took legal action.\textsuperscript{69}

Judicial corruption in Indonesia is extensive. Lack of faith in the judiciary in Indonesia is largely due to allegations that judges are corrupt. Some Indonesian senior officials such as former Minister of Justice, Oetojo Oesman, have acknowledged that there is corruption within the judiciary. Former Chief Justice Ali Said has referred to 'mafia justice' in Indonesia. Former Deputy Chief Justice Zaenal

\textsuperscript{68} Arief Budiman, 'foreword,' Timothy Lindsey (n 42), p v.
\textsuperscript{69} Kompas, 'Land Disputes in Lampung Reached 110,737.50 hectares,' 05 January 1996 [Internet: http://www.kompas.com]
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Asikin Kusumaatmadja said "judicial power was so systematically abused that the justice system was like a business controlled by a 'mafia' of court officials and bribery was a standard practice, with up to 50% of all Indonesian judges taking bribes." Furthermore, 51.3% people believe that the judges in the High Court are involved in the "court mafia." The Head of the Indonesian Ombudsman Commission reported that 37% out of 1,400 cases reported to his committee involved corruption and collusion in the court systems. Judges in Indonesia are also very reluctant to oppose governmental policies.

Therefore this study focuses on socio-legal aspects of disputes in relation to oil palm plantation activities in South Sumatra. The thesis seeks:

a. To explain why there are so many disputes in South Sumatra

b. To explain why the Indonesian legal system is not able to deal with land disputes

c. To suggest methods for resolving land disputes in South Sumatra.

E. Research Methodology

I have used the following sources in this dissertation: 1) secondary sources, such as books, journals, research reports and the media, especially local newspapers

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such as Sriwijaya Post. 2) primary data collected by semi-standardized interviews.74
An open method of questioning was used to encourage the interviewees to discuss more
freely the problems they encountered. Landowners, plantation company representatives,
lawyers, non-government organizations, and government officials at provincial and
district levels were interviewed. 3) field visits to plantation companies were conducted
in South Sumatra.

E.1 Data Collection

Semi-standardized interviews were undertaken in the district of Musi Rawas in
three sub-districts: Rawas Ilir, Bingin Teluk and Muara Rupit. These locations were
selected for two reasons. First, there are many plantation companies in these sub-
districts.75 Second, these sub-districts have the highest number of land disputes of all
districts in South Sumatra.76

In collecting the primary data,77 interviews were conducted in the local dialects.
Guided interviews were carried out with 23 people from the following sources:
a. The head of Musi Rawas district (Bupati).
b. A public notary in the Musi Rawas district. Under the Indonesian legal system, a
   public notary must witness contracts between landowners and plantation investors

74 Berg, Bruce L, Qualitative Research Methods for the Social Sciences, (Allyn and Bacon,
Boston, 1995), p 33.
75 See Appendix A.
76 See Appendix B.
77 Primary data are generated by a researcher who is responsible for the design of the study, and
the collection, analysis and reporting of the data. This is new data, used to answer specific
research questions. Norman Blaikie, Designing Social Research, (Polity Press, USA, 2000), p
181.
for the contract to be legally binding. There were four public notaries in Musi Rawas in 1999 and I interviewed one of them.

c. Two lawyers at the Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum) who are experienced in dealing with land cases for the villagers.

d. One local lawyer from a private law firm who has experience in dealing with land disputes in South Sumatra

e. The Head of the office of the National Body of Land (Badan Pertanahan Nasional or BPN) in Musi Rawas. This institution was established under Presidential Decree No 26/1998 in order to facilitate land acquisition for development. Through the October Economic Package 1993, BPN has been given the authority to grant location permits for business interests.

f. A staff member from the London Sumatra Company in Musi Rawas.

g. Five landowners from each district that have been involved in land disputes with the Plantation Company.

h. Five landowners from each district that have not been involved in land disputes with the Plantation Company.

i. The Head of the sub-district (Camat) of Muara Rupit in Musi Rawas.

j. One former head of the sub-district under the Marga government (Pasirah). The head of a sub-district is an informal leader in the community and plays an important role in daily life. The aim of interviewing this person is to understand his attitude to a plantation company's activities in his area.
k. Three heads of Villages (Kepala Desa) from the sub-districts of Rawas Ilir and Muara Rupit.

l. One member of a non-government organization who is involved in land cases.

Indonesian villagers, including in the district of Musi Rawas, come from different backgrounds, especially in terms of education and culture. Therefore, questions were formulated in words familiar to the people being interviewed, and local dialects were used. I had enough time to discuss land disputes with the local people since I lived among them for approximately three months and I am familiar with the culture as I was born and grew up in the district of Musi Rawas.

Acts, Laws, and Government Regulations in Indonesia were gathered from government related institutions. Legal contracts or other written documentation relating to plantation projects between investors and local governments were obtained from local government offices. Documents regarding the transfer of land from local people to the investors were obtained from the local people participating in the profit-sharing program (program plasma).

E.2 Data Regarding Other Districts

While focusing on the District of Musi Rawas, the thesis also provides an overview of land disputes in other districts in South Sumatra. Information was obtained on the pattern and issues involved in land disputes in those areas.

Data from other districts (Muara Enim and Ogan Komering Ulu) were gathered in the following ways:
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a. Discussing the issues with local government officers (*Pemerintah daerah*)
b. Discussing the issues with the South Sumatra Legal Aid Foundation and other non-government organizations involved in land disputes, such as *WALHI*.
c. Collecting information from prominent national newspapers such as *Kompas, Republika, Media Indonesia, the Jakarta Post* and local newspapers such as *Sriwijaya Post and Sumatra Ekspress*.

E.3 Treatment of the Data

a. In South Sumatra, land disputes occur in many areas, and the government as well as investors and landowners blame each other. This is likely to produce biased information from the subjects interviewed. For example, the London Sumatra company tried to avoid providing data which they think will have a negative impact on the company. The government is interested in emphasising the positive aspects of plantation companies' activities. Landowners, on the other hand, tend to give information about the negative aspects of the plantation companies as well as those of the local government.

E.4 The Difficulties

Conducting research in Indonesia, especially in a rural area, is a great challenge and numerous problems were encountered.

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Informant means "the individual who provides information." Key informants are individuals who possess special knowledge, status or communication skills, who are willing to share their knowledge and skill with the researcher and who have access to perspectives or observations denied the researcher. Gilchrist, Valerie J., "Key Informants" in *Doing Qualitative Research*. 27
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a. It was difficult to get written material because many government offices and other institutions do not have good data.

b. Not many journals are published in Indonesia and it is difficult to obtain the existing journals. In order to get recent data, I had to rely on the leading Indonesian newspapers and magazines including the Jakarta Post, Kompas, and Tempo.

c. Court decisions in Indonesia are not extensively published and are not generally accessible to the public. In order to confront this problem, access to law firms, non-government organizations or the Legal Aid Foundation, all of which have experience in handling land cases, is very important. However, I found that often the lawyers and the non-government organizations themselves did not have good record keeping systems.

d. The attitude of government officials was often negative. In many interviews, local government officials tended to hide the real story of land disputes and to justify their policies. They never admitted that land disputes in South Sumatra were the result of government policies or actions.

F. Structure of the Thesis

- Chapter One is an introduction. In it I have explained the essentials of the study.

- Chapter Two provides basic information on the centralized legal system in Indonesia and its implications for local people and local institutions.

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• Chapter Three summarizes Indonesian land law. This chapter aims to describe the complexity of Indonesian agrarian laws and show how this complexity contributes to land disputes.

• Chapter Four argues that many factors contribute to land disputes in Indonesia. Among the factors are inconsistent policies in applying the Basic Agrarian Law of 1960. In addition, a primary problem in dealing with land disputes is lack of the rule of law and human rights protection.

• Chapter Five analyzes the negative impact of the plasma system (sistem plasma) of oil palm plantations.

• Chapter Six describes four land cases in the district of Musi Rawas which arose as a result of oil palm plantation activities and identifies local issues involved in land disputes in South Sumatra. These four cases are 1) Marga Rupit Ilir Case, 2) Bukit Hijau Case, 3) Abdul Djabar Case, and 4) Aringin Case.

• Chapter Seven proposes some methods to contend with land disputes in South Sumatra.

G. Conclusion

Indonesia faces enormous problems in regard to land disputes and in particular land disputes in South Sumatra. Musyawarah (discussion), which is a traditional method to resolve disputes in Indonesia, often fails in cases of land disputes. In the next chapter I describe the Indonesian system of government and the sources of law in Indonesia.
The Failure of the Indonesian Legal System to Deal With Land Conflicts

"For Indonesia, the issues of democratisation, legal certainty, social justice and human rights are still shaping its daily struggle."

Adnan Buyung Nasution, 1996

A. The Problem of Plural Legal Systems

The Indonesian legal system today is a combination of three very different legal systems, Islamic law, customary (adat) law and national law based on Dutch colonial law. Problems arise in land disputes because of this pluralism. For example, claims of land ownership can cause conflicts between the national law and customary law. The complexity of modern society requires written law. In land disputes, the government bases proof of land ownership on written documents and requires land to be registered, whereas local people in many parts of Indonesia rely on customary law, which is unwritten, and proof of their ownership is unregistered.

In this chapter the different sources of Indonesian law will be examined. The way in which Indonesian law works and its impact on land disputes will be discussed.

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2 Islamic law or Syariah constitutes as an important part of adat jurisprudence. For Muslims this law comes from God and therefore the defining statement of proper Muslim conduct.
3 Some Dutch colonial laws are still currently in force in Indonesia. Article 11 of the transitional provisions of the 1945 Constitution stipulates that: "All the state's institutions and regulations still remain in force in areas where new legislation, which is created based on this constitution, has not yet been provided."
4 Based on Government Regulation No 10 of 1961 and Government Regulation No 24 of 1997 on Registration Regulations.
5 Before the Indonesian independence, some adat laws were written and documented, for example Simbur Cahaya Code in South Sumatra.
6 Today only approximately 10% of land in rural areas has been registered, in many cases areas still dominated by adat Law. In urban areas the level of registration is only as high as 20%. Daniel Fitzpatrick, 'Disputes and Pluralism in Modern Indonesian Land Law' (1997) 22, Yale Journal of International Law 173.
Chapter Two: The Failure of Indonesian Legal System to Deal With Land Conflicts

and the relationship between three main institutions, the judiciary, the legislature and the executive, will be considered.

A.1 Dutch Law

During Dutch colonization, Dutch laws were enforced to protect trading interests. The Dutch intervened in local administration or changed the legal system as their interests required. However, the Dutch had limited power over the whole archipelago and were unable to influence the entire indigenous administration of justice. As a result, Dutch laws only applied in the main cities. In the remaining areas indigenous legal systems, such as customary law (adat), were practiced.

The policy of the Dutch colonists which resulted in the pluralism of Indonesian law was the introduction of Article 163 of Regering Reglement 1920 (Netherlands Indies State Act - de facto colonial constitution) which divided the population of the East Indies into three classes:

1 (1) Europeans (Europeanen, orang Eropa).  

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7 Vereenigde Oost-Indische Compagnie (hereafter VOC) was a trading company whose main policy was to make profit. It occupied East Indies for more than two centuries, and as a consequence the VOC gained large profits from the colonies. The VOC enforced Dutch laws to protect their trading interests. The VOC did not acquire sovereignty over the whole of Java, let alone over the archipelago. Only some areas were controlled by European officials, most areas had local rulers who either ruled as a local king or as the agents of the Dutch government. See John Ball, Indonesian Legal History 1602-1848, (Oughtershaw Press, Sydney, 1982), p 227. Java was governed by dividing the island into twenty provinces. The head of each of these was a resident appointed by the governor. These officials trained at Delft or at Leiden University and were highly educated, capable men, who had passed special examinations, drawn up by the Minister of Colonies. "Colonies of the Dutch," The New York Times, 16 July 1899, see the Great Contemporary Issues of the New York Times. South East Asia, (Arno Press, New York, 1980) p. 21.


9 This group included: Dutchmen (Nederlanders), all other persons whose origin was European, the
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(2) foreign orientals (Vreemde Oosterlingen, Timur Asing). These were people not belonging to the categories European or native Indonesian.  

(3) inlanders, or native Indonesians. This group included the majority of native Indonesians except those who were legally transferred to other groups.

Article 131 of the Act provided that different legal systems applied to each group, as follows:

(1) Europeans (Europeanen, orang Eropa).

Article 131 paragraph 2 (a) of the Act stated that the civil and commercial law applicable to Europeans must be the same as the law in force in the Netherlands. This regulation was known as the principle of concordancy (concordantiebeginsel or prinsip konkordansi).

Japanese, other persons who in their country were subjected to family law similar to Dutch law, such as Thais and Turks and children of people belonging to above groups, born in the East Indies and their descendants. However, it was possible for inlanders to transfer to other legal system in the following ways: a) Equalization. This process involved making an application to the Governor General to become a member of the European Group. This application required that because of superior education the person be alienated by his or her own society. Until 1894 it was also the case that the person should convert to Christianity. b) Voluntary Submission. This submission was where an individual submitted himself to European private law for legal transactions in areas such as commercial transactions, contract, corporations and partnerships. Family law, including inheritance, or land law were excluded. Voluntary submission was regulated by Article 131(4) of the Indische Staatsregeling. The procedure for submission was provided by the Royal Decree of 15 September 1916. c) Involuntary submission. This happened when someone from one population group became subject to another law because of a transaction with a person from another group.

The 1632 Instructions Article 1 provided that “pending further instructions, justice was to be administered at Batavia and all other places under VOC dominion in accordance with the instructions and customs which are as a rule observed in the United Netherlands Provinces in both civil and criminal cases.” The full text of this instruction is printed in Mijer, Verzameling, 47-70. John Ball (n 7), p 29.

In 1621 the Council of Seventeen recommended the adoption in VOC territories of certain laws of the states of Holland and West Fries land. These were the Political Ordinance (1 April 1580), the Interpretation Ordinance (13 May 1594) and the Edict (18 December 1599). In other cases not covered by these laws, the administration of justice should rely upon the common civil laws as practised in the United Netherlands. Ball, Indonesian Legal History (n 32)
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(2) Foreign orientals (Vreemde Oosterlingen, Timur Asing).

a. Dutch civil law applied to the Chinese, except in adoption and trading and commercial organization matters where Chinese customary law applied.

b. Dutch civil law also applied to other oriental groups, except regarding family law and inheritance without testament where customary law applied.

(3) Inlanders, or native Indonesians.

Native Indonesians remained subject to customary or adat law, except where Dutch law provided to the contrary.

During the colonial period, territories directly controlled by the Dutch had three types of courts based on the type of private law administered in each tribunal. The three courts were:

a) The European Courts. This court consisted of the Residency Courts, Superior Courts, and the Supreme Court.

b) The Native Courts. In Java and Madura, this court system was comprised of the District Court, the Regency Court, and the Superior Native Court. The latter court dealt with all civil and criminal cases. Appeal cases from this court system were heard by a special chamber of the Batavia Superior Court. This chamber consisted of special jurists trained in adat law. The structure of the Native Courts in the outer territories was similar to that in Java and

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10), p 29.

15 The procedure for the Native Courts in Java and Madura was based upon the Revised Native Regulation of 1941. However, the Law Regulation for the Outer Territories of 1927 regarding the organization and procedure applied for both the European and Native Courts in the outer territories, M.B. Hooker, Id.
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Madura, but appeals from the Superior Native Courts in the outer territories were heard by the Superior Court in Padang (West Sumatra), Macassar (South Sulawesi), Medan (North Sumatra), or by the third chamber at Batavia.

c) The Courts for all classes of population.

Although Indonesia declared its independence from the Dutch in 1945 at the end of World War II, it was not until 1949 that the Dutch finally relinquished their claim to the former colony following a revolutionary war. Many Dutch laws and state organs remained at the time of independence. These included the Dutch Civil Code (Kitab Undang-Undang Hukum Perdata) and the Criminal Code (Kitab Undang-undang Hukum Pidana or Wetboek van Strafrecht).

The Indonesian government tried to abolish all discriminatory colonial laws and replace them with Indonesian legislation. However, this was not a simple procedure, because the work of drafting or re-drafting laws is a technical process that requires trained officials and funding.

A.2 Indonesian Adat Law (Customary Law)

Adat is an Arabic term which means “norm”, “custom”, “usage”, “rule”, “proper behaviour”, “propriety”, or “law”. Adat law consists of series of descriptions of what it is that the community does, as much as it is a set of commands as to what it is that members of the community should do.\(^\text{16}\)

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During the early colonial period, the VOC showed a lack of interest in adat law. In this period even the Commissioner for Native Affairs often lacked knowledge of local languages and customs. However, later scholars tried to define adat. M.B. Hooker, for example, explained that adat can mean any one of the following: law, rule, precept, morality, usage, custom, agreements, conventions, principles, the act of conforming to the usages of society, decent behaviour, ceremonial practices, the practice of magic, sorcery, ritual. Snouck Hurgronje distinguished two forms of adat. Firstly, adat consists of all social institutions and the behaviour expected of an individual in terms of these institutions. Secondly, it includes regulations and directives, which are specific according to time, place and circumstance, and bind the individual to groups. Van Vollenhoven understands adat as “a preponderance of communal over individual interests, a close relationship between man and the soil, an all-pervasive magical and religious pattern of thought, and a strong family-oriented atmosphere in which every effort was made to compose disputes through conciliation and mutual consideration.” Van Vollenhoven, a Leiden scholar, demonstrated the complexity of adat law when he identified nineteen adat law areas or adatrechtskring (lingkungan hukum adat). This division is based on a classification of adat systems according to cultural and geographic units.

17 M.B. Hooker (n 14), p 76.
18 M.B. Hooker, (n 14), p 50.
19 Snouck Hurgronje, De Atjehers, p 5.
21 The areas are as follows: Aceh, Gayo, Atlas and Batak lands, Minangkabau, South Sumatra, East Sumatra, Maleya and West Borneo, Bangka and Belitung islands, Borneo (except Malayen West Borneo), Minahasa, Gorontalo, Toraja Territory, South Celebes, Ternate, Ambon, Papua, Timor, Bali and Lombok, Central Java, East Java and Madura, Yogyakarta and Surakarta, West Java.
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There are at least two difficulties in understanding adat law. First, there is no certainty of what the law actually is as adat law is unwritten. Secondly, most Indonesian scholars rely heavily on the opinion of Dutch scholars, such as van Vollen Hoven, who wrote before Indonesian independence. The problem with this is that Dutch opinion was not only out of date but was also influenced by a colonial viewpoint.22

A.3 Towards a National Legal System

An attempt was made to unify the judicial system in Indonesia by removing separate courts for Europeans, foreign oriental and native Indonesians. However, legal pluralism continues. For example, in the rural areas many people still apply the traditional laws of their ethnic group to issues such as land ownership. Islamic laws play an important role for Moslem people through the Islamic courts, although their jurisdiction is limited to the areas of family and inheritance law.

There have been attempts to create a national legal system. One such attempt was through the Act on the Unification of the Courts. This Act abolished the European Courts and the jurisdiction of the Village Head to prosecute adat law cases. All cases have to be heard by the District Court (Pengadilan Negeri) as the court of the first instance. Appeals can be made to the High Court (Pengadilan Tinggi) and to the Supreme Court (Mahkamah Agung).

A second attempt was made when the central government passed the Basic Agrarian Law 1960 (hereafter BAL 1960), which will be discussed in Chapter Three.

22 M.B.Hooker, (n 14) p 16.
23 Timothy Lindsey (n 16), p 5.
This law was supposed to provide a system of national land law that would abolish the discriminatory Dutch land system and reflect the legal and cultural pluralism of Indonesian society as expressed through *adat*. However, the effort to form a national legal system conflicted with government interests so under the New Order Government (1966-1998), *BAL 1960* was applied inconsistently. In order to achieve New Order Government's agrarian policies, the regime introduced other agrarian Acts without revoking *BAL 1960*. Examples include The Basic Forestry Act 1967, The Basic Mining Act 1967, The Basic Transmigration Act 1972, and The Basic Environmental Management Act 1982. These Acts will be discussed in more detail in Chapter Three.

**B. Pancasila and the Law**

In order to understand the Indonesian legal system, it is important to understand the Indonesian state ideology, *Pancasila*. *Pancasila* is a Sanskrit-derived term, which literally means “five principles”. *Pancasila* was introduced by Soekarno, Indonesia’s first President, in his speech to a preparatory committee for Indonesian independence on 1 June 1945. This state ideology is meant to ensure that Indonesia as a diverse nation comprising hundreds of ethnic groups and major religious groupings continues as a unified nation.

The five principles of the Indonesian national ideology are as follows:

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23 Article 11 (2) Basic Agrarian Law 1960

24 This date is the birth of *Pancasila*.

25 See, Satya Arinanto, “Indonesia: Democratization of Constitutional and Political life since the 1992 general election and the 1993 Plenary Session of the People’s Consultative Assembly.”
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1. Belief in God the Almighty (Ketuhanan yang maha esa). This principle recognizes that every Indonesian should believe in God, irrespective of their religion. It implies that Indonesians should respect other people if they have different religious beliefs. The state is tolerant of religious diversity.

2. A just and civilized humanity (Kemanusiaan yang adil dan beradab). This principle means Indonesians should behave in a humanitarian way and show tolerance and respect to all Indonesians.

3. Indonesian Unity (Persatuan Indonesia). This tenet stipulates that all Indonesians should maintain the integrity of Indonesia as a unified state.

4. A Democracy guided by wisdom arising from consultation and representation (Kerakyatan yang dipimpin oleh hikmah kebijaksana dalam permusyawaratan/perwakilan). A decision is made through deliberations or musyawarah to reach a consensus. A decision at the national level is reached by the Indonesian House of Representatives or Dewan Perwakilan Rakyat (DPR) as the people’s representative body.

5. Social Justice for all people of Indonesia (Keadilan sosial bagi seluruh rakyat Indonesia). This principle aims to achieve economic and social prosperity for the entire Indonesian people.

Pancasila has become the basic source of legitimacy for all Indonesian law, since all decisions are made not in the name of the state but in the name of God the Almighty. During the Soeharto regime, the People’s Consultative Assembly or Majelis
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Permussuyawaran Rakyat (MPR) Resolution No 11/1983 stipulated that all Indonesian political parties must adopt Pancasila as their only foundation.

During the Soeharto regime, Pancasila was the highest source of law for the country. Indonesian people were taught that their behaviour must be based on pancasila as a moral guide. In practice, Pancasila was misused. For more than three decades, Pancasila was used as a political tool by the New Order government. It was used to prevent political rivals forming parties, particularly Islamic groups or communists. Any organization from national to village level was prohibited if Pancasila was not its sole ideology.

In land management, Pancasila was used to threaten those who refused to give up their land. They were accused of acting against Pancasila. In some cases people’s identification cards (Kartu Tanda Penduduk) were marked with “OT” (Organisasi Tertarang/Banned Organization). This implied that the cardholder was a member of the Indonesian Communist Party (Partai Komunis Indonesia or PKI), which is illegal in Indonesia. Under the Soeharto regime, if someone was accused of being a member of the communist party, it meant that person had no future. They would lose their fundamental rights, such as the right to vote and the right to be elected. People would also treat them as a “foreigner” among their own people because to be anti-Pancasila is taken to mean anti-government. In many cases, because they were afraid of the

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27 Author’s observation.
consequences, landowners chose not to oppose the government projects and gave up their land in the name of "development" to avoid the label of anti-Pancasila.

The Government also used Pancasila to justify unpopular policies. In government projects, for example, when people asked why the state had the right to people’s land, the government’s argument was that “this is a state based on Pancasila where people have to sacrifice for their nation”. Furthermore, they were told, “this is an economy Pancasila style.”28 (However, the government had no response when people argued that low compensation could be considered as “inhuman” and therefore against point two of Pancasila.)

C. Three Constitutions: Lack of Human Rights Protection

Since the declaration of independence in 1945, Indonesia has had three Constitutions. All three constitutions lacked protection of human rights.

The 1945 Constitution was in force from August 1945 through December 1949.29 The United States of Indonesia Constitution (Undang-undang Dasar Republik Indonesia Serikat) was in effect from December 1949 to August 1950. The Provisional Constitution of 1950 (Undang-undang Dasar Sementara 1950) was in

28 Interviews with villagers.
29 The 1945 Constitution was provisional under the Rules of Addendum (2), which stated that within six months after the formation of the People’s Consultative Assembly, the Assembly should convene to enact the Constitution. Soekarno stated that the 1945 Constitution was provisional and at the right time Indonesia would have a better constitution. In the Investigating Committee for the preparation of Indonesian independence, he stressed: “The Constitution we are now drafting is a provisional one. It could be said that this is a constitution made in a flash of lightning. Later if we have already established a state and are in a peaceful situation, we will frame a complete and perfect constitution,” Yamin, 1959 cited by Nasution, ibid at 29.
force from August 1950 to June 1959.\textsuperscript{30}

Under the Decree of the President of the Republic of Indonesia/ Commander in Chief of the Armed Forces, on 5 July 1959 Indonesia returned to the 1945 Constitution.\textsuperscript{31} This occurred after a series of debates in the People’s Consultative Assembly failed to decide whether Indonesia should be an Islamic state or an integralistic state (in which the leader appeared as supreme in a total unity) (Yamin,1971:114).\textsuperscript{32} Islamic parties favored an Islamic state. However, two other groups, Pancasila supporters and those concerned with social-economic development, preferred the concept of an integralistic state. The view at that time was to return to the 1945 Constitution through the People’s Consultative Assembly (MPR) mechanism. However, because of lack of support from the Islamic factions, the idea of returning to the 1945 Constitution was rejected.\textsuperscript{33} In this constitutional crisis, Soekarno issued a

\textsuperscript{30} In the 1950 Constitution the form of the Indonesian state had changed from a unitary to a federal state. The main differences between the 1949 Constitution and the 1950 Constitution were that the 1949 Constitution gave a strong position to the President. Under this Constitution the government could not be dismissed by the Parliament (Article 118). However, under the 1950 Constitution, the government could be toppled by the Parliament, and the President also had the right to dissolve the House of Representatives (Article 84). Therefore, the 1950 Constitution more clearly recognized the sovereignty of the people (Adnan Buyung Nasution (n 37), p.30). The 1950 Constitution also contained more provisions in regard to human rights than the 1945 and the 1949 Constitutions.


\textsuperscript{33} The government proposal to return to the 1945 Constitution was rejected in three consecutive meetings of the Constitutional Assembly. The first vote on 30 May 1959 resulted in 269 votes in favour and 209 votes against. The second vote on 1 June 1959 resulted in 246 votes in favour and 204 against. The third vote on 2 June resulted 263 votes in favour and 203 votes against. J.C.T Simorangkir and B. Mang Reng Say, Sekitar dan Tentang Perubahan Undang-Undang Dasar 1945 [Around and About the Indonesian Constitution of 1945], (Penerbit Jambatan, Jakarta, 1980), p 5.
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Presidential Decree with a state of national emergency as its legal justification.\(^{34}\)

The 1945 Constitution gave the most power to the executive\(^ {35}\) with almost no regulation from other institutions. Under the 1945 Constitution the President was not accountable to the DPR. During President Soeharto's era, one-fifth of the members of the DPR were not elected but instead appointed by the President, either directly or indirectly through the political parties.

All three Indonesian constitutions failed to provide human rights protection. During Soeharto's regime, many government officials and members of the military saw human rights as Western values. The government argued that foreigners used human rights to discredit the Indonesian government.\(^ {36}\) Topics such as the protection of labour, land compensation, and democracy could not be raised.

Today as Indonesia makes the transition from being an undemocratic country to becoming a democratic country, there are rising expectations. People think that now they have the opportunity to express their ideas and to show their disagreement with the government. In relation to land conflicts, local people have become very militant in their attitudes towards the government and investors. They ignore principles such as the rule of law and equality before the law, but they defend their

\(^{34}\) The Presidential Decree consists the following orders: Dissolution of the Provisional People's Consultative Assembly, the 1945 Constitution be in force again for the whole of the Indonesian people, and the invalidity of the 1950 Provisional Constitution. The Provisional People's Consultative Assembly, was to be formed and the setting up of the Provisional Supreme Adviser Council within the shortest possible time. See, Decree of the President of the Republic Indonesia Return to the 1945 Constitution, 5 July 1945.


\(^{36}\) Interviews with government officials.
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actions as a "human right." The widespread disorder in parts of Indonesia is in part a legacy of widespread misunderstanding of human rights both by people and government officials.

On 18 August 2000, the MPR amended the 1945 Constitution with ten new articles specifically deal with human rights (Articles 28A to 28 J). These new

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37 Interviews with LBH activists.
38 Human Rights in the 2000 Amendment:

Article 28 A
Everyone has the right to life and has the right to defend her life.

Article 28 B
(1) Everyone has the right to have a family and has children through married.
(2) Every child has the right to life, to grow up, and has the right to be protected from violence and discrimination.

Article 28 C
(1) Everyone has the right to development and to fulfill his/her basic needs, has the right of education and to obtain benefit from science and technology, art and culture for the sake of his/her quality of life and human welfare.
(2) Everyone has the right to develop by using his/her right in a group to develop the society and the state.

Article 28 D
(1) Everyone has the right to recognition, protection, legal certainty, and equality before the law.
(2) Everyone has the right to work and fair treatment in work relationship.
(3) Everyone has the right to take part in the government of her country.
(4) Everyone has the right to a nationality.

Article 28 E
(1) Everyone has the right to choose religion, education, work, citizenship, residence, and to leave the country, and to return to her country.
(2) Everyone has the right to freedom of opinion and expression.
(3) Everyone has the right to join an organization, assemble, and express an opinion.

Article 28 F
Everyone has the right to communicate and obtains information for herself and her social environment, and has the right to seek, to receive, to store, to process, and to impart information by using all available facilities.

Article 28 G
(1) Everyone has the right to be protected including her family, honour, reputation, and has the right to act or not to exercise his/her rights.
(2) Everyone should be free from torture, cruel, inhuman treatment, and to enjoy political asylum from other countries.

Article 28 H
(1) Everyone has the right to welfare, residence, clean environment, and health service.
(2) Everyone has the right to equal access to obtain opportunity in her country.
(3) Everyone has the right to social security.
(4) Everyone has the right to own property and no one may illegally take this property.

Article 28 I
articles will provide a constitutional guarantee of human rights protection. The central government also introduced Act No 39 of 1999 on Human Rights. However, it is unclear that how these human rights articles will be implemented.

D. Judicial Independence

The courts are the institutions through which the rights of the individual are protected and through which basic fairness in the operation of the law is assured. In order to discharge this task, courts must be independent of the executive.\(^{39}\) The courts must be independent of the executive because they are an important element in the system of checks and balances that protect society from a concentration of power that might otherwise oppress and restrict freedom under the law.\(^{40}\) However, the independence of courts in Indonesia is seriously compromised in several ways.

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(1) The right to life, not to be tortured, freedom of opinion, to choose religion, freedom from slavery, equality before the law, and the right not to be punished under ex post facto laws are human rights, which may not be taken in any condition.

(2) Everyone has the right of freedom from discrimination and has the right to be protected from any discriminatory actions.

(3) Culture and traditional society are protected.

(4) The government is responsible to protect, to develop, to enforce, and to implement human rights.

(5) In order to enforce and to protect human rights in line with the principles of the rule of law, the implementation of human rights shall be regulated by legislation.

Article 28J

(1) Everyone must respect other people’s rights.

(2) In practicing her rights and freedoms, everyone must obey the limitation prescribed by the laws which aim to respect other people’s rights, and to be fair based on moral, religious values, security, and social order in a democratic society.


D.1 Judicial Appointments

The ability of the court to implement the objectives of an Act depends upon various factors including the process of judicial appointment. In common law systems, such as Australia, federal judges have usually been senior practitioners who act as advocates in the courts, many have practiced independently as a barrister for at least fifteen years. In Australia, judges are appointed until the retiring age of seventy years and can only be removed from office by Parliament on the exceptional grounds of proved misbehavior or incapacity. Australian judges cannot be removed or made to face administration sanction for decisions against the government.

The Australian situation contrasts with the situation of Indonesian judges. In Indonesia, there are different requirements for each level of court. Judges at the District Courts are selected from fresh law graduates. In relation to the appointment of judges,

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43 The Commonwealth Constitution, s72 provides:

“The Justices of the High Court and other courts created by the Parliament.
(ii) Shall not be removed except by the Governor General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity;...”

Act No 2 of 1986 on the General Courts provides:

Articles 14: The requirement for the District Court judges are as follows:

(a) Be an Indonesian citizen
(b) Believe in God
(c) Be loyal to the Indonesian 1945 Constitution
(d) Must not have been involved in former Indonesian Communist Party
(e) Be a government official (*pegawai negeri*)
(f) Be a law graduate
(g) Be at least twenty-five years old
(h) Be respectable (*berwibawa*), honest, fair, and never involved in crime.

Similar requirements apply to becoming a Judge of the High Court (*Pengadilan Tinggi*). Some differences are that the candidate should be a minimum of forty years of age and have experience as Chief of Justice or deputy at the District Court for five years or as a judge of a District Court for fifteen years. Act No 14 of 1985 on the *Mahkamah Agung* provides that judges at the Supreme Court be appointed by the President from a list of two judges proposed by the *DPR* and they should be loyal to *Pancasila* as the national ideology.

Indonesian Judges are usually appointed from career judges. However, for the Judges of the Supreme Court there is a possibility for non-career judges such as a barristers or law professors to be appointed. Daniel Lev has pointed out that during the New Order the Supreme Court became a place to accommodate the President's friends and generals so that the Supreme Court was actually full with inexperienced people who had no interest in the development of law.\(^{44}\)

In theory, the removal of Judges in Indonesia is controlled by Government

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\(^{44}\) However, in contrast with Prof Lev's idea to reduce the number of judges at the *Mahkamah Agung*, President Abdurrahman Wahid proposed to increase the judges of the *Mahkamah Agung* from 51 to 60 Id.
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Regulation (Peraturan Pemerintah) No 26 of 1991, which requires a recommendation from Majelis Kehormatan (The Honor Council which disciplines judges). The result of an investigation into a judge by the Majelis Kehormatan is reported to the Supreme Court and the Minister of Justice before a final decision is made. However, in practice the Majelis Kehormatan does not function well and the disciplining of the judges is mainly a government decision with no reasons provided. During the New Order it was possible for Indonesian judges to be removed or re-located because their decisions were against government policies.

E. Judicial corruption.

Lack of faith in the judiciary decisions in Indonesia is largely due to allegations that judges are corrupt. A Hong Kong-based political and economic risk consultant released findings of a survey that found that Indonesia is seen as the most corrupt country in Asia.

It is promising that under President Abdurrahman Wahid there has been some changes in the Court system. For example, the DPR appoints the Supreme Court judges by conducting fit and proper tests of the candidates. These interviews are open to the public and are widely reported by the media. However, the system of promotion and

Simon Butt, The Implementation of Judicial Decisions in Indonesia, in Timothy Lindsey, (n 16), p.316. See also, Kompas,'Mendongkrak kembali wibawa Mahkamah Agung' and 'Mahkamah Agung Dinilai Tidak Taati Asas Kedaulatan Rakyat' (Mahkamah Agung Evaluated to not Adhere to the Principle of Democracy), 27 May, 1998 [Internet: http://www.kompas.com]

The Economist Intelligence Unit, Country Profile. Indonesia, Redhouse Press Ltd, 2nd quarter, 1997, the United Kingdom, p 21.

Fit and proper tests are a situation where a background check is carried out and candidates are interviewed by members of the DPR. Each of them is asked about various aspects of the Indonesian legal systems in order to test their legal knowledge.
appointment of judges in lower courts remains unchanged.

Judicial corruption will not end without strong punishment of those who are involved in such corruption. A Joint Team to Eradicate Corruption (*Tim Gabungan Pemberantasan Korupsi*) was established in the Attorney General office during the presidency of Abdurrahman Wahid. It was chaired by a former popular justice Adi Andojo Sutjipto. He named three justices of the Supreme Court as suspects in a bribery case.\(^4\) However, these prosecutions failed and the joint team is dismissed. The government also established the National Commission of Ombudsman, which in 1999/2000 found that more than 39% of cases reported were in regard to corruption in the Indonesian courts.\(^5\) However, questions remain as to how consistent this commission will be as Indonesia has already had other similar institutions, which either did not last long or could not perform their task well.

F. Executive Abuse of Power

Under the New Order, the government focused on achieving the highest possible economic growth. In order to fulfill the needs of investors, the government used *KEPPRES* and Ministerial Regulations instead of Acts of Parliament. Regulations introduced in order to invite more local and foreign investors included the Interior Ministerial Regulation No 12/1984 regarding Procedures of Preparing and

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Granting land tenure for Companies granted a simple procedure for investors to have rights to land.

KEPPRES were often abused during the Suharto era to bypass the Constitution and laws passed by the DPR, rather than to implement the law. A non-government organization, GEMPITA, challenged 13 KEPPRES issued by Soeharto in Court. Masyarakat Transparansi Indonesia (Indonesian Transparency Society) states that Soeharto issued 79 KEPPRES that involved corruption, collusion, and nepotism. KEPPRES No 42 of 1989 gave projects at the State Oil Company, PERTAMINA, to the President's children and relatives. KEPPRES No 8 of 1995 allowed the President to use the State Logistics Agency (Badan Usaha Logistik or BULOG) for personal purposes. KEPPRES No 74 of 1995 granted tax-free status to a taxi company owned by President Suharto's daughter. KEPPRES No 42 of 1994 on the development of airplane N250 benefited B.J. Habibie, and KEPPRES No 2 of 1996 allowed Soeharto's son, Tommy Soeharto, to import tax-free cars from South Korea so that his cars were 50% cheaper than other cars manufactured in Indonesia. As this was said to be a national car, government offices purchased it.

KEPPRES No 53/1989 regulated Industrial Areas. This Decree aimed to attract foreign investors. KEPPRES No 26/ 1988 regarding the Improvement of Status of the Agrarian Directorate General established Badan Pertanahan Nasional (the National Land Agency) which was responsible to the minister of Home Affairs and directly under

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50 Kompas, "Director of Jakarta Legal Aid Foundation," 23 October 1998 [Internet: http://www.kompas.com]
52 Kompas 'Attorney General: KEPPRES is Legal,' 23 October 1998 [Internet: http://www.kompas.com Kompas]
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the President. This aimed to set up a simple process for claiming land to be used for development. Article 1 of this decree classified 14 activities for which land could be acquired in the public interest. However, Article 2 stipulates that the President can also declare other projects \(^{53}\) (in addition to the previous 14 projects) as in the public interest. In practice, it is not clear what “public interest” really means. In many cases, people were forced to give up their land in exchange for under-market-value compensation in the name of the public interest and the state development to build supermarkets or golf courses.\(^{54}\)

Theoretically, Regulation of the Interior Minister No 15/1975 concerning the releasing of land and KEPPRES No 55/1993 on the Procurement of Title allowing land to be confiscated in the public interest, provided that discussions and deliberations were held with the title holders and they agreed with the compensation.\(^{55}\) However, the reality was far removed from the procedures of the Act. For example, Article 8 of the Act required consensus based on discussion and deliberation (musyawarah). However, often landowners were not involved in determining the project or the amount of compensation. Generally compensation was decided by the

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\(^{54}\) For example, the Cimacan Case in West Java involved two hundred families, forced to accept under market compensation for their valuable land. Resistance grew, but has stopped by the local authorities and the military.

\(^{55}\) Daniel Fitzpatrick (n 6), p 199.
government or the company with the ultimatum of “take it or leave it” because the projects must be implemented.  

Ongoing discussion of KEPPRES and other government regulations will continue until there is an independent institution that can review the regulations. In the Indonesian legal system, Judicial Review was alien until 1970 when the Indonesian Supreme Court was given the right to review Peraturan Pemerintah, Keputusan Presiden, Keputusan Menteri (government regulations and decrees), but not Acts of the legislature. The problem with the Indonesian judicial review system is that the review can only take place if a case is appealed to the Mahkamah Agung. The appeal at the Mahkamah Agung can occur after the case has been brought to Pengadilan Negeri (District Court) as the court of the first instance and to Pengadilan Tinggi (High Court) as the court of appeal from the District Court. When Soeharto was in power, people rarely tried to challenge government regulations and when they did, it was a tedious process from the District Court to the Supreme Court that consumed both time and money. Only after President Soeharto left the office, did Masyarakat Transparansi Indonesia (Indonesian Transparency Society) lodge a case.

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56 For example, South Sumatra Governor decrees No 006/SK/I/1990 and No 677/SK/I/1990 claimed 2,100 hectares land to develop the city of Palembang. Most landowners disagreed with the inadequate level of compensation decided solely by the government, but the project proceeded whether the landowners agreed or opposed the compensation.

57 Act No 14 of 1985 Article 31 states: Mahkamah Agung has a right to declare that regulations regarding subordinate legislation are unconstitutional when those regulations contradict higher laws. The decision regarding the declaration that a regulation is invalid may take place on cassation (appeal on a point of law). The withdrawal of an invalid regulation should be done by the relevant institution that issued the regulation.
to ask the judges to review 13 putatively unconstitutional KEPPRES issued by Soeharto. 58

In 2000, the MPR introduced Ketetapan (Decision) MPR No III/MPR, which changed the Indonesian legal system regarding judicial review. Article 5 provides: the MPR has a right to review an Act, the 1945 Constitution and MPR decisions. 59 A Constitutional Court that can review legislation is to be set up. Until it is, the Supreme Court exercises this power in full. The Supreme Court plans to develop a special unit to review various KEPPRES. The Secretary General of the Supreme Court says, “We have information that there are 80 KEPPRES issued by Soeharto’s regime which need to be reviewed. The problem is that we have no section to do this job and we cannot review a KEPPRES without an appeal case as stipulated by Act No 14 of 1985.” It remains unclear how the MPR will exercise its right of review. Should all 700 members of MPR give their approval to any review of an Act, the Constitution, or the MPR’s decision? Will the MPR develop a commission that is only active when there is a dispute? Either of these strategies could resolve the judicial review problem in Indonesia. However, involving 700 members of MPR in making a decision is not only time consuming but also needs a huge fund, because the members come from all over the country. One possible way to overcome this problem is that the MPR could develop a Constitutional Tribunal. This Tribunal would have authority to review all existing regulations from Minister Regulations to the Constitution.

58 Kompas, 10 November 1998 [Internet: Internet: http://www.kompas.com]
59 Article 5 states “The Mahkamah Agung has a right to review all regulations and other subordinate legislation”
G. Central Government Domination

Under the Soeharto regime, the regional and local government role was largely administrative: implementing policies, rules, and regulations decided by the central government. Regional and local government enjoyed little autonomy. Rather, they served as subordinate administrative units through which Jakarta-based departments and agencies steered the whole country (See appendix A for the structure of the government of Indonesia.) Many policies on land were decided by the central government without any understanding of the real situation in the field. The policy of the district government followed the decision of the provincial government and the decision at the provincial level similarly depended on the central government. Government officials at local levels viewed central government decisions as unchallengeable and tended to give land to the investors.

Central government domination contributed to land management problems in Indonesia. Often business people who planned to invest in regional areas started by lobbying government officials at the central level. They understood that approval given by the central government was almost a guarantee for their business activities at the provincial or district level.

Another problem was that the president appointed ministers without input from the DPR. Close associates (including family members) whose primary loyalty was to Soeharto dominated the cabinet. This practice created a difficult situation for

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60 Peter Holland, ‘Regional government and Central Authority in Indonesia,’ in Indonesia Law and society, 1999, p 215.
61 His daughter’s appointment as a minister draws many sneers about nepotism. Louise Williams, ‘Tutut braced for accusation of nepotism,’ The Age, 18 March 1998 [Internet.
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the ministers since their obligations to the people conflicted with their loyalty to the President. After the resignation of President Soeharto, some former cabinet ministers acknowledged that in many cases they could do nothing when forced to implement policies that benefited Soeharto’s friends or members of his family.

Under the Soeharto regime, the domination of the central government gave an opportunity to the military to be involved in every level of government, and this had a negative impact on the protection of human rights. Military forces enforced policies of the central government through intimidation and violence when necessary. For example, in 1985-1987, I witnessed a logging company, PT Mandala Wangi, ask the district military commander in Musi Rawas to protect the company’s activities. The military commander regularly sent armed soldiers to the logging areas. The logging company paid a fee to the commander. When there was a dispute between the company and the local people, the military supported the company.

G.1 The Introduction of Regional Autonomy

After the fall of Suharto, some provinces, such as Aceh, Riau, and South Sulawesi showed readiness to separate from Indonesia. Even, in South Sumatra the idea of GSM (Gerakan Sumatra Selatan Merdeka or South Sumatra Freedom Movement) was discussed among non-government organizations. In facing “the separation” issue, the central government offered full regional autonomy. However, some commentators believe that the offer of full regional autonomy is merely a slogan of the central government to deal with the separation issue.
The central government introduced Act no 22/ 1999 on Regional Autonomy and Act no 25/1999 on the Balancing of Funding Between Central Government and regional Government. Act no 22/1999 guarantees independence to the DPRD to choose the Governor and the Head of District. This Act replaced Act no 5/ 1974 on Regional Government. There are some significant aspects in this law, which empower local government. Five matters worthy of comment are:

a. Regional autonomy applies in all areas, excluding the field of international relations, defense and security, monetary or fiscal, and religious policy.

b. District governments have the power to conduct all matters except those excluded by the law. However, district government may inform the provincial government that they are not ready to conduct certain activities and then the authority will be transferred to the provincial government.

c. A separation of power between the DPRD and the Executive (Gubernur or Bupati) is created. This separation of power aims to give more power to the local Parliament in order to place a check upon the executive and to maximize the role of the DPRD as a representative body.

d. In relation to the election of the Head of the regional government (Gubernur or Bupati), full authority is conferred on the DPRD. The central government has no right to interfere.  

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62 Detik, 'In Relation to Government Regulation on Regional Autonomy,' 10 May 2000 [Internet: http://www.detik.com]
63 Under Act 22/1999, the Governor is a representative of the central government. Therefore, the President should agree his election.
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The government has also recognized the village level of government (desa), which is to be organized according to local government regulations (Peraturan Daerah). The government structure under Act No 22 of 1999 on the Regional Government can be illustrated as follows:

The implications of Act No 22 of 1999 on Regional Government are many, some of which are:

a. Government is no longer structured as a hierarchy. Provincial and local government is at the same level in relation to the President and central government.

b. Authority has been re-distributed within the government, with the authority of the central and provincial government clearly laid down within a
decentralized model, leaving most of the implementation authority to the local government.

This new Act on the Regional Government means that land registration is the responsibility of local government. It is too early to see how this legislation will affect land disputes.

H. Conclusion

In relation to the Indonesian legal system, there are five factors that contributed to land conflicts and made it difficult to settle land disputes. First, lack of human rights protection. Since the declaration of independence in 1945, Indonesia has had three Constitutions. All three constitutions lacked protection of human rights. Second, lack of judicial independence. The independence of courts in Indonesia is seriously compromised in several ways, including the process of judicial appointment. Third, judiciary corruption. A Hong Kong-based political and economic risk consultant released findings of a survey that found that Indonesia is seen as the most corrupt country in Asia. Four, executive abuse of power by introducing many Presidential Decrees to bypass the legislation. Five, there was central government domination. Under the Soeharto regime, the regional and local government role was largely administrative: implementing policies, rules, and regulations decided by the central government.

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64 The Economist Intelligence Unit, Country Profile. Indonesia, Redhouse Press Ltd, 2nd quarter, 1997, the United Kingdom, p 21.
Indonesian Land Laws

This chapter begins with a discussion of how land rights were managed under adat law. It goes on to describe the impact of land laws passed during the colonial period (1800-1945) and what happened after Indonesian independence was declared. Because of the importance of hukum adat or customary law, the method of land ownership based on adat law is first presented.

A. Land Rights Based on Adat Law

Van Vollenhoven pointed out that adat law is society-dependent, and it can only be known through examination of the way it is applied by a particular community. It is not surprising that confusion is engendered by Indonesian adat law given the complexity of the concept. According to Van Vollenhoven, as cited in Rachel Haverfield, there are four generic types of adat communities. First are genealogical groups based on descent from common ancestors. An example of this kind of group is the Gayo people in Papua. Second are territorial communities with an autonomous governing body and common property, embracing various genealogical communities. The Minangkabau people of West Sumatra are an example of this kind of group. Third are territorial groupings without subordinate

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1 Under the Agrarian Law 1870 the colonial government allowed the people to sell and to rent community land to foreigners. This policy permitted Dutch investors to start huge plantation activities and this situation changed the community structure. Massive investment in plantations also created forced labour.

genealogical communitie Satoreo Kartodirdjo s. Examples of this kind of group are common in Java. The fourth kind of group is a voluntary corporate association. These communities occur spontaneously. An example of such groups is a society based on irrigation corporations as in Bali and Lombok.

*Adat* is also not simple, nor is it static. Soepomo, as quoted in Daws, writes:

"*Adat* law is living law, because it is the incarnation of the legal feeling among society. According to its natural character, *adat* law is continuously in a state of growth and development, like life itself."

In 1920, J.C Eerde wrote that under *adat* law land rights were divided as follows:

a. Communal Land Rights (*algemeen bezit*)

b. Rights to Use Land (*beschikkingsrecht*)

c. Limited Rights to Use Land (*het genotrecht*)

The right to use land was the right of every person in the *adat* community to use a certain area of land to build a house and to grow the food they needed. These rights were traditionally given to a newly married couple. All products of land under this right become personal property, but the land continued to belong to the community. The right of individual land use is long-term rights. The limited right to use land is similar to the right to use land, but usually this right is given to those who

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3 Rachel Haverfield, Ibid at pp 46-47.
4 In Java the basic territorial unit is the *dukuh* (hamlet), which is subordinate to the village (*desa*), which is in turn, part of the chiefdom (*kelurahan*) and the federation of chiefdom (*kecamatan*). Rachel Haverfield, in Timothy Lindsey (n 2), p 47.
5 Also see Herman Soesangobeng, 'Masalah Agraria Dalam Kelembagaan Adat,' (Institut Pertanian Bogor, Bogor, 1999),pp 3-4.
come from outside the community. This right is a short-term right, which can be terminated at any time when: (a) the land is no longer used; (b) the land is needed by the community.  

According to Ter Haar, the most common form of adat land title is a community right which is shared by all members of an adat society (masyarakat hukum adat). Community land rights are known by various terms, such as tanah marga in South Sumatra, tanah ulayat in West Sumatra, totabuan in Bolaang Mongondow; patuanan in Ambon, pertuanan in East Sumatra; panyanturi, penetapan, hak panyampeto in Kalimantan, wewengkoh in Java; payer, paer and prabunian in Bali. In order to have a community land right there must be a definable community, such as marga, a designated leader (pasirah or Head of a Marga) and a territory controlled by the community. Hak ulayat is a common term describing community rights in Indonesia. Hak means right and ulayat (from Arabic) means ‘a ruled area, territory or jurisdiction.

Under hak ulayat the community keeps the right to manage land use and ownership. Hak ulayat is generally understood to give members of the community the right to use, to cultivate and obtain benefit from the land for themselves and their families, but not for trading purposes or individual enrichment. The community has

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6 Herbert L. Whittier, ‘Concepts of Adat and Cosmology among the Kenyah Dayak of Borneo: Coping with the changing Socio-cultural Milieu’ Sarawak Museum Journal, Vol.xxvi: 47, pp 103-113
8 See Rachel Haverfield (n 2), p 42.
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the authority to ban non-members from the land. However, under certain circumstances foreigners could be given permission by the community to use land.

The individual right to land under adat law is not an absolute right because: (a) there are strict rules applied by the village organization, for example the land may not be sold and (b) individual rights will be recognized by the community as long as the owner works on the land. Indonesian adat lawyer Soekanto has argued that under adat law, land cannot be owned by an individual but only by a lineage or other group, such as a clan or tribe. However, in South Sumatra, under the adat law villagers could obtain land by clearing the forest. Their right and the right of their descendants to cultivated land was recognized by the community in accordance with the marga system. After the central government abolished the marga system, villagers kept clearing the forest to obtain land. In practice, the villagers owned the land for their own purposes, and they could sell the products they raised on the land.

Before Act 5/1979 was introduced, South Sumatra was divided into marga. The territory of marga was divided into villages or dusun. In South Sumatra, a communal land right was known as hak marga. The marga was an area or territory governed by a pasirah, who was directly elected by the people and originally came from the marga area. Pasirah were almost a noble class, and they were highly respected by the people. Under the marga system, the pasirah had absolute

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12 Under Act No 5/1979, the central government tried to unify government at the lowest level on the basis of the system already applying in Java. The Preamble states: “This Act is to promote the unification of the system of government at the lowest level in all parts of Indonesian territory, to strengthen and render effective village governments so they may carry out their activities and encourage public participation in development.”
legislative, executive and judicial power. In making any law, he or she was assisted by the marga council or Dewan Marga. In governing the marga, a pasirah was assisted by pembarab, the marga secretary. In the enforcement of adat law, the pasirah could prosecute any member of the society who violated adat law.

Under the marga system of government, any indigenous Indonesian had a right to clear the forest (hak membuka hutan). First, the person must inform the adat head of the location they have decided to clear. In South Sumatra, the adat head was generally the head of village (kepala desa). Two conditions applied to land clearing. First, the land must not have been cleared previously. The clearing must begin at either the main road of the village or the river. Second, if there has been a previous claim, other farmers may begin the clearing where the others have stopped. Following a ritual ceremony, the individual marked the borders of the land he claimed. By this action, he established a legal relationship between his family and the land. His family had the right to use the land, and other people are not permitted to infringe this right.

The local leader in the village of Jatimulya district of Rawas Ilir explained that clearing the forest proceeded according to the seasons (musim):

a. Musim Tebas

During March-April-May the villagers clearing the forest fell all trees below 10 centimeters in diameter.

b. Musim Tebang

During June and July, the villagers cut all trees with a diameter of more than 10 centimeters.

c. Musim bakar
In August, people burn all the trees that have been cut down.

d. Musim tanam

In September, the period of planting begins. People plant a garden with rubber or fruit trees.\textsuperscript{13}

The total area of forest that may be cleared depends on the tools that the people have and their ability to maintain the plantings. Although there is no limit on the maximum area that may be cleared, normally the area was limited by technology available:

a. If farmers use traditional tools (belianging) to cut the trees, the maximum area that can be cleared is approximately 1 hectare per year.

b. If farmers use modern tools (such as a chainsaw), the maximum area that can be cleared is approximately 15 hectares per year.

Until recently many people in South Sumatra based their land rights on \textit{adat} law. There was no system of registration for land titles. Problems arose when the government only recognized land titles certified or registered with the National Land Agency (\textit{Badan Pertanahan Nasional}). Furthermore, when the \textit{marga} system of government was abolished by the central government, land ownership shifted from the communal land rights to individual land rights.

Karim AR, the Speaker of Musi Rawas House of Representatives,\textsuperscript{14} explained that land acquisition by forest clearing and all land titles based on \textit{adat} law were no

\textsuperscript{13} Interview with Teguh Suprapto, former Head of sub-village I Jatimulya, Ridan Rawas,IIir, and District of Musi Rawas on 12 January 2000.

\textsuperscript{14} Karim AR was a former Head of District of Muara Rupit and at the time of interview he was the speaker of \textit{DPRD} Musi Rawas. Interview was conducted on the 1\textsuperscript{st} October 2000.
longer recognized after 1983 for two reasons. First, Act No 5 of 1979 on Village Government, which took effect in South Sumatra in 1983, abolished the marga system of government. Adat land rights existed because there was a marga. The continuing existence of the marga was a precondition for communal land rights. Second, many people who had land rights based on forest clearing no longer worked on their land. According to Karim AR, under local government regulations, villagers who cleared forestland but then abandoned the land for at least one year lost their rights to that land and the land reverts to the state. When the value of the land increased because of business activity, such as oil palm plantations, many villagers tried to claim back land by force.

Karim AR explained that there was a land registration project (PRONA) to register: a) all land titles based on adat law, b) all land titles not evidenced by a certificate. The project was funded by the central government, and only a small fee was charged to applicants. However, less than 20% of landowners registered their land under this scheme. Karim could not explain why so few villagers registered their land. One reason may be that the villagers hesitated to become involved in a bureaucratic process which involved corrupt government officials.

The abolition of marga government has had significant impact on land tenure protection in South Sumatra. First, the provincial government now controls all unused land. Meanwhile, forestlands are controlled by the Department of Forestry and Estate Crops. The rights of villagers to acquire land by clearing the forest under

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marga government ceased to exist. Under the New Order, all land considered unoccupied or which had no certificate of ownership became state land. In South Sumatra most villagers could not prove their rights to land, even when it had been cultivated for more than one generation.

B. Land Law During the Colonial Period

Colonial agrarian law destroyed some aspects of adat Law. For example, the colonial government permitted sale and rental of land. The colonial government also introduced the “domain principle,” which was later used by the Indonesian government to force landowners to give up their land for investment purposes. Different land policies during the colonial period are discussed below.

B.1 Land Renting Period (1800-1830)

From 1806 to 1811 Herman Willem Daendels, Governor General of the East Indies, enacted rules in relation to land rights. For example, he published a rule eliminating the principle that all land belonged to the king, while at the same time he introduced compulsory work for those who had land titles. He also decided that one-fifth of a farmer’s harvest (hasil bumi) should be paid to the government as a tax.

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17 Under Daendels there were four sources of public revenue included: 1) the revenue from government’s products sold to American ships, 2) the sale of private estates out of government territory, 3) a forced loan from well-to-do inhabitants, and 4) the labour services of the natives for the government. The services were required for road construction, fortifications, transportation and other military requirements. Klaberen, J.J. Van, *The Dutch Colonial System in the East Indies* (Drukkerij Benedictus, Rotterdam, 1953), pp 84-85.

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From 1811 to 1816, the British occupied Indonesia. Thomas Stamford Raffles introduced a land policy based on his experience in India. Raffles introduced three regulations, which made significant contributions to land management. First, all types of compulsory planting (*tanam paksa*) and forced labour were eliminated. \(^{18}\) Second, the heads of districts no longer had the power to collect tax. Third, Raffles introduced a system of taxation based on the assumption that land belonged to the sovereign and a farmer was a tenant of the sovereign and should pay land rent. \(^{19}\)

**B.2 Compulsory Planting Period/ *Tanam Paksa* (1830-1870)**

In 1830, under Governor General Van den Bosch, compulsory planting was introduced in order to help the Dutch increase income from the colony. Under this system the heads of the villages were forced to rent the land from the government and they re-rented the land to the farmers. Through this system, landowners no longer had to pay a tax of 2/5 of their harvest but farmers had to prepare 1/5 of their land to be planted with export commodities as directed by the government, such as coffee, sugar, tea, and tobacco. In practice farmers were often forced to plant a wider area in export commodities. Forced labour was also practiced. During this time individual rights were very weak. Compulsory planting seriously disadvantaged the farmers because it limited their ability to start new farms.

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\(^{18}\) Raffles' policy was introduced in order to create a liberal economic system in Java, freeing landholders from the obligation to plant certain commodities as directed by VOC policy. Sartono Kartodirdjo, *Pembentukan Petani Banten 1888. Kondisi, Jalan Peristiwa dan Kelanjutannya. Sebuah Studi Kasus Mengenai Gerakan Sosial di Indonesia* (Jakarta, Pustaka Jaya, 1984) cited by Endang Suhendar and Yohana Budi Winarni.  

\(^{19}\) Sartono Kartodirdjo, ibid at 89.
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B.3. The Liberal Period (1870-1945) or Agrarische Wet Period

The compulsory planting system (sistem tanam paksa) which was implemented in 1830 provided huge benefits to the Dutch government, but it impoverished Indonesians, which influenced the liberals in the Netherlands to reform land management in the colony. This period was known as the "Liberal Period."

The liberals in the Netherlands were successful in 1854 in amending the Dutch Constitution so that all land matters in the colonies had to be regulated by legislation (Ordonantie). Before the change, the Dutch King and Minister for the colonies issued land regulations.\(^\text{20}\) The liberals in the Netherlands had two agendas. First, they wanted the government to grant absolute individual land rights (eigendom) to indigenous Indonesians to enable them to buy and to rent the land. Under the customary adat law, which applied to most parts of Indonesia, communal land rights could not be sold or rented to those from outside the adat community. Second, with absolute individual land rights, the government would give investors the opportunity to rent the land for a lengthy period of time cheaply (erfpacht).\(^\text{21}\)

\(^\text{20}\) The Agrarian Act of 1870, or Agrarische Wet 1870, had eight articles as follows: a) The Governor General may not sell the land; b) This prohibition does not apply to the limited areas of land for city and village development nor to the construction of industrial buildings; c) The Governor General may rent land as described by the incoming Act. The village administration’s land may not be rented; d) Long term Renting rights (erfpacht) may not be for more than 75 years; e) The Governor General must ensure that there is no land distribution which abuses indigenous Indonesian rights; f) The Governor General may not take land belonging to the village, land for the needs of cattle public grazing, or land which belongs to indigenous Indonesians, except for public benefit based on Article 133 (of Dutch Civil Code) and with fair compensation; g) Land belonging to the indigenous Indonesians with individual use rights, can be granted absolute land rights (eigendom rights) with the right to sell the land to non-indigenous persons; h) Renting or selling of land by the indigenous Indonesians should comply with the Act. Also see Boerma Boerhan and Mahjuddin Salim, Tanah Ulayat Dalam Pembangunan (Ulayat Rights in Development) (Fakultas Hukum Universitas Andalas, Padang, 1972), p 12.

\(^\text{21}\) Gunawan Wiradi, (n 16), p 9.
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Compulsory planting was eliminated and with the introduction of the Agrarian Act of 1870 communal land rights were replaced by individual land rights. In Java in 1882, out of 3.7 million hectares of agriculture land, only 1.7 million hectares was owned by individuals. However, fifty years later when there was 6.6 million hectares of agricultural land, individually owned land reached a total of 5.4 million hectares. In the same period, communal land decreased from 1.3 million hectares to 0.89 million hectares.\(^{22}\)

Dutch investors responded to the introduction of the liberal system by starting new plantations. Most of the land was rented or sold to investors, leaving the farmers without land for their own farming purposes. This forced the farmers to become plantation workers (*buruh perkebunan*). In 1884, because of a decrease in international trade, plantation owners were forced to reduce their expenses and to lower worker wages. The company could sack or punish workers who tried to escape from their plantation jobs. Van Gelderen states: "... the increasing number of foreign companies had already made indigenous Indonesians become a 'labour community' and now Indonesia became a labourer nation."\(^{23}\)

The introduction of the Agrarian Act of 1870 was not only unjust for Indonesians; it also destroyed local norms in land management. In order to implement the Agrarian Act 1870 other detrimental regulations were introduced.


\(^{23}\) "Perkembangan perusahaan asing telah menjadikan rakyat pribumi sebagai bangsa buruh dan dengan demikian Indonesia menjadi buruh diantara bangsa-bangsa." Gunawan Wiradi, 'Indonesian Land Problems in Historical Perspective, Paper for Seminar Land, People, and
Article 1 of what was known as "Agrarisch Besluit" (State Gazette No 118/1870) contained an important statement, the "domein verklaring" (domain principle) which included the following: "All land considered to be unoccupied or which could not be proved to be owned is deemed to be state land." The Agrarian Act of 1870 had many critics, including Dutch intellectuals. In the early 20th century, these critics forced the government to introduce a policy of "political ethics". This policy included six programs for the people: irrigation, replanting, transmigration, loans, education, and health.\(^24\)

C. Land Laws After Indonesian Independence (1945-)

Even after Indonesia gained its independence, the former colonial power tried to reclaim plantation areas in Indonesia. The first Dutch military action (July 1947) targeted Dutch plantation activities in East Sumatra. After a failed first attempt, the Dutch launched a second military action (August 1948), which targeted their plantation areas in Asahan, South Malang and Kediri.\(^25\)

C.1 The Old Order Government (1945-1966)

In 1948, based on Presidential Decree No 16/1948 the government of Soekarno appointed an agrarian committee, which was known as the "Yogya Justice in Development dynamic" (Surabaya, 1990) cited by Endang Suhendar and Yohana Budi, 1998, p 61.

Ibid at 9.

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Agrarian Committee (Panitia Agraria Yogya) and was chaired by Sarimin Reksodiharjo. This committee was established to develop a draft agrarian law, to replace the existing Agrarian Act 1870. The Yogya Agrarian committee had to stop its work because of the second Dutch military action and also because the Indonesian capital was moved from Yogyakarta to Jakarta. While the Committee could not finish its work of drafting a new agrarian law, it did contribute significant ideas for the next committee. The Yogya committee set forth ten principles for a new law: (a) the uniformity of Agrarian law in order to eliminate dualism in land laws. (b) A system which is able to give a piece of land to each farmer so they can support themselves. (c) The return to the state of all plantation lands. (d) The abolition of private plantation companies with ownership status. (e) The creation of a credit facility for farmers. (f) The creation of co-operatives to sell farm products. (g) A program to liberate villagers from a colonial economy. (h) Protection for small farmers who rent land. (i) The development of small-scale village industries and transmigration programs, and (j) state coordination in water management.

In 1951 the Yogya Committee was replaced by the “Jakarta Agrarian Committee.” Besides embracing the ideas of the Yogya Committee, the Jakarta Agrarian Committee proposed its own recommendations: (a) it is important to determine maximum and minimum areas of land ownership, (b) only an Indonesian

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26 Yogya is short name for Yogyakarta, the Indonesian capital before it moved to Jakarta.

27 Committee members said (1) “...the new law must be understood and accepted by the people; not only that, the new law should be able to influence the people’s soul,” (2) “The legal drafters should understand the truth of the people’s soul,” (3) “The legal drafters are not an agent of God. Although they have been chosen but they are ordinary people” See, Singgih Praptodihardjo, 1953, p.98, cited by Gunawan Wiradi (n 16), p 10.
citizen may have land for small farm purposes, and (c) land title must be based on legislation.

In 1956, the "Soewahjo Committee" replaced the "Jakarta Agrarian Committee." In 1957, it produced a Bill which included the following points: (a) the "domain principle" is abolished, (b) the "domain principle" be replaced by the "state's right to control" and (c) land for farming should be farmed by the owners themselves. On 24 April 1958 under the Scenario Committee, the government submitted the Basic Agrarian Law. President Sukarno asked scholars at the University of Gajah Mada to assist the government in finishing the Bill. The Bill was formally accepted by the Indonesian House of Representatives on August 1, 1960. The law is known as the Basic Agrarian Law of 1960 (Undang-Undang Pokok Agraria 1960). The Basic Agrarian Law of 1960 was meant to abolish the unjust land laws which were implemented under colonial rule. The law also reflected the legal and cultural pluralism of the Indonesian society because the law was based on Indonesian adat law.

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29 The new proposal gave the state authority to control all unoccupied land for the sake of the Indonesian people as stipulated by Article 38 (3) of the Indonesian 1950 Constitution.

30 Other Provisions of the Basic Agrarian Law 1960 revoked the following colonial laws: (1) Agrarische Wet (S.1870-55) (Agrarian Act), (2) "Domein Verklaring" (declaration of lands as belonging to the state) mentioned in Article 1, (3) "Agrarisch Besluit" (Agrarian Decree) of State Gazette 1870, (4) "Koninklyk Besluit" of 16 April 1872 No 29 (S.1971-117) and the regulation for its implementation and (5) Volume 11 of the Civil Code of Indonesia so far as it is related to earth, water and natural resources contained therein, except the provisions related to mortgage which were still valid at the moment of the coming into force of the Act.
C.2. The Basic Agrarian Law of 1960 and Adat Law

There are three principles of the Basic Agrarian Law of 1960 (hereafter BAL 1960):

a. Agrarian law, which is implemented on earth, in water, and in space is based on adat law.

b. The State is the highest organization to control land, water, and space as provided by Chapter 33 (section 3) of the Indonesian 1945 Constitution. This right is in the interests of the welfare of the Indonesian people.

c. The implementation of a land reform program

Whilst the BAL 1960 is based on customary law or adat, it included at least three restrictions on adat. The first restriction in Article 5 of BAL 1960 specifies that hak ulayat (community land rights) are not to be observed in cases where they contradict the “national interest” or the interest of the State. This term has been used to provide legitimacy for the use of land for the purpose of investment or development. The second restriction was that adat must not be in conflict with “Indonesian socialism” as per Articles 6 and 15 of BAL 1960. Socialism means that all land has a social function, that is, the use and the exploitation of land must be in harmony with the interest of the society. The third restriction is that adat must not be contrary to the principles of the Agrarian law or other government laws, that is, all

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31 BAL 1960 used many similar terms such as “public interest” (kepentingan umum), “national interest” (kepentingan bangsa), but never used “people’s interest” (kepentingan rakyat). Community interests (ulayat) are never considered. In many cases “national interest” is synonymous with government interest.
adat land rights should be converted into new rights and registered as stipulated by the BAL 1960.

Registrable interests in land available under the BAL 1960 include Hak Milik (the right of ownership) Articles 4, 20-27, which includes Dutch rights of ownership and similar interests held by people previously identified as “orientals” and “natives” under colonial law. Timothy Lindsey writes: "The Hak Milik is roughly equivalent to the common law notion of fee simple and is capable of free alienation." Hak Milik is the title closest to outright ownership. It is a right to own land and to use it for any purpose that does not conflict with the interests of society. Hak Milik continues indefinitely, but is subject to the State's power of cancellation. Although Hak Milik titles cannot be owned by companies or foreigners, even if domiciled in Indonesia, companies may purchase titles and register them as a right to exploit (Hak Guna Bangunan) or the right to use (Hak Pakai). Hak Milik can be sold and passed by inheritance, or be the subject of mortgage.

Hak Pakai (Right of Use) Articles 41-43 applies to possessory rights which do not have a permanent quality. This right has similarities to the archaic common law rights of usufruct and to some aspects of leasehold interest. Hak Pakai is a right to use land for a specific purpose. It is available for a period of 25 years, extendable for 20 years and renewable for a further period of 25 years only. Hak Pakai may be

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32 Article 16: The rights on land include: The right of ownership (hak milik), b) the right of exploitation (hak guna usaha), c) the right of use of building (hak guna bangunan), d) the right of use (hak pakai), e) the right of lease (hak sewa), f) the right of opening-up land (hak membuka tanah), g) the right of collecting forest product (hak memunguti hasil hutan), h) other rights not included in the above mentioned rights which shall be regulated by law and rights of a temporary nature as mentioned in Article 53.

33 Timothy Lindsey, Indonesia Law and Society (The federation Press, Sydney, 1999), p 3.
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held by Indonesian individuals, corporations, certain foreign entities, such as embassies and banks, and by foreigners "resident in Indonesia," a vague expression. It may be mortgaged and is registrable.

Hak Guna Usaha (Right to Exploit) Articles 28-34 is a form of agricultural commercial lease, a right to cultivate state land or use it for other agricultural purposes. Hak Guna Usaha (HGU) is a right to cultivate State land of 5 hectares or more. It may be granted for a period of 35 years, is guaranteed to be extendable for 25 years and renewable for another 35 years only. While HGU is available to foreign investment (Penanaman Modal Asing) companies, it may only be used for agrarian business purposes.

Hak Guna Bangunan or HGB (Right to Use a Building) Articles 35-40 is similar to western residential tenancies. Although HGB may be granted over any land, it is almost invariably granted over State owned land. Indonesian citizens or corporate entities may apply for HGB, as well as corporate entities and individuals domiciled in Indonesia, including foreign companies. HGB may be granted to foreign individuals or corporations that are not Indonesian corporate entities. HGB may be held for a period of 30 years, at the end of which it may be extended for a further 20 years. At the end of the extension period, the title may be renewed for another 30 years and extended for another 20, and so on. Charges are imposed for this. Parties who are not entitled to acquire HGB titles are required to release/transfer the land to a qualified party, failing which, the title will be null and void.

Under Article 19(1) of the BAL 1960 all titles must be registered. In theory, registration is only presumptive evidence of title and is open to challenge although
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there are some limited exceptions to this. The proof of ownership of a land title is a land certificate issued by the National Land Agency (Badan Pertanahan Nasional).

Problems arise because Articles 9 and 30 of BAL 1960 provide that the entities which can be registered include only natural persons who are Indonesian citizens or legal institutions established and resident in Indonesia. According to this definition, adat communities are excluded.

Land ownership under adat law had been under threat since the central government introduced the BAL 1960. Article 19(1) states: “For the sake of legal certainty, the government will register all land in Indonesia” This law aims to transfer all Dutch-derived land rights together with adat land rights into a series of new statutory rights. These rights are western in nature and are registrable (articles 19 and 23), transferable (Articles 20(2), 24, 27, 49(3), and mortgageable (Article 25).

Under adat law, land is not simply immovable property or an asset, which can be used for economic activities. Land is the basis of a community’s existence and an essential part of its social, economic and political life. Under adat law, land rights are not based on a government decision, but because someone, or a community, has worked on the land, and their right is recognized by the community, that the person has a full and strong relationship with the land he has worked on. In the adat system, recognition of land ownership is based on witnesses, such as the head of the village or the community. Whereas article 19 requires all land to be registered,

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35 Soerjono Soekanto, 1985 cited by Rachel Haverfield (n 2), p 44.
36 Herman Soesangobeng (n 5), p 10.
fact, since this law was introduced, only 22% of the estimated 58 million land parcels in Indonesia have been registered.\(^{37}\) Until recently, the status of *adat* land rights which had not been converted under the BAL 1960 remained unclear.


The New Order government came to power during adverse economic conditions. In 1966, the inflation rate was high and there were difficulties paying offshore loans with Product Domestic Bruto (PDB) of US$70. This situation led the government to introduce a new economic policy with the object of attracting international investors.\(^ {38}\)

Typical policies of the New Order Government included:\(^ {39}\)

(a) Prioritizing foreign aid, loans, and foreign investment, and reliance on investment.
(b) Attracting as many investors as possible using simplified investment procedures.
(c) Establishing a strong centralized government.\(^ {40}\)
(d) Introducing the concept of land as a commodity and as an object of trade.\(^ {41}\)

According to Mas’oed, the New Order Government had the following economic approaches:\(^ {42}\)

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\(^{38}\) Gunawan Wiradi (n 16), p 60.

\(^{39}\) Gunawan Wiradi (n 16), pp 3-14.


\(^{41}\) This concept is contradicted by the fact that land is a non-renewable and non-substitutable object. The indigenous Indonesian assigns meaning to land. The Amungme of Irian Jaya perceive land as the mother who provides life to people. The Dayak believe that land has a soul, like human beings. Historically, Indonesians use the phrase *tanah air* (land water) to signify “Indonesia” with reference to the Indonesian struggle for liberation. (Konsorsium Pembaruan Agraria-Bandung, 1997).
(a) “Shock treatment approach” in order to minimize inflation rate
(b) Supporting potential business people
(c) Prioritizing private companies as a dominant economic force
(d) Heavy dependence upon foreign capital
(e) Prioritizing the export primary products
(f) Centralization rather than regional autonomy of the economy.

D.I The New Order Government Land Policy

Under the New Order Government (1966-1988), the Basic Agrarian Law of 1960 was ignored or used for purposes different than originally intended. The BAL could not be used to achieve the goal of economic growth because it would restrict the process of investment. For example, it would require a lengthy process to start investment given the fact that many land titles were based on customary laws (hukum adat) which are unwritten. The New Order Government only used the BAL when it suited their needs and otherwise denounced it as a product of communism. However, the New Order Government made no attempt to replace the BAL 1960.43

The New Order Government generally implemented their policies on land through government regulations or presidential decisions instead of basing them on the BAL. For example, in order to invite more investors, the government introduced a right in addition to those provided by the BAL. The new right was known as Hak Pengelolaan or “the right of management”. This right was usually granted over state owned land occupied and managed by government bodies.44

44 Endang Suhendar and Idfal Kasim, ibid at 61.
45 Foreign investors commonly encounter Hak Pengelolaan titles in Building, Operating, Transferring or BOT arrangements with government bodies. Hak Pengelolaan may not be transferred or mortgaged.
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The decision of the Minister for Domestic Affairs No 15 of 1974 in the Guidelines on the implementation of land reform included the following policies: setting aside adequate areas for agriculture purposes, a prohibition on absentee landlords and the distribution of abandoned land to landless villagers.46 However, the New Order Government disbanded the Indonesian land reform court.47 Parties involved in land disputes had to file their case in the District Court. The absence of land reform courts facilitated the practical abandonment of BAL 1960.

Groups of the New Order supporters, such as the Indonesian military and civilian officials, obtained benefits from the policy of minimizing the use of BAL 1960. For example, in 1968 Indonesian military and civilian officials gained control of Dutch plantations, which had been nationalized (dinasionalisasikan).48 When the government introduced the Basic Forestry Law 1967, many businesses as well as the

45 Technically these laws were illegal. First, BAL 1960 is a reference law in land matters. As a reference regulation in land matters, all other regulations should be consistent with this Act. Second, BAL 1960 was introduced earlier than other laws such as the Mining Law. If a new law was meant to revoke certain articles of BAL 1960, any repeal should be explicit. An Act which regulates land and agrarian matters can only be revoked by an equal law regarding the same matter. See Maria R. Ruwiastuti, 'Hak-hak Masyarakat Adat dan Proyek Administrasi Pertanahan,' (KPA-Bandung, 1998) [Internet: http://www.kpa.or.id] and Mohtar Mas'ud, Ekonomi dan Struktur Politik Orde Baru 1966-1971 (LP3ES, Jakarta, 1989), p 60.

46 Agrarian reform refers to a change of concentration of agrarian ownership from capital domination to those who directly work on the land. In 1994, 20 companies owned more than 50% total forest area through Forest Use Right (Hak pengusahaan Hutan or HPH). "Reform Agenda: The Farmers Awareness in Land Reform Program" (KPA, 1999) [Internet: http://www.kpa.or.id].

47 This court was removed by the Indonesian Act No 7 of 1970.
military obtained forest use rights (*Hak Pengusahaan Hutan* or *HPH*). The New Order Government also re-distributed “state land,” which was taken from the original occupiers of the land. This land was then allocated for investment purposes. In West Java, for example, in the period 1988-1991, over 15,000 farmers who worked on “state land” were forced to leave because the land was scheduled to be used for “development.”

The New Order Government had a target of 7% annual economic growth for Indonesia’s second long-term period of development. The investment development in Indonesia can be seen in the following table.

**Table 3.1: Investment Development in Indonesia**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of Projects</td>
<td>Capital</td>
<td>Number of Projects</td>
<td>Capital</td>
</tr>
<tr>
<td>PMA*</td>
<td>1,290</td>
<td>27,252.5</td>
<td>432</td>
<td>8,751</td>
</tr>
<tr>
<td>PMDN</td>
<td>6,097</td>
<td>78,409.4</td>
<td>1,329</td>
<td>59,878.</td>
</tr>
</tbody>
</table>

*Source: Indonesian Statistics, 1993.*

PMA is *Penanaman Modal Asing* or Foreign Investment in million US$

PMDN is *Penanaman Modal Dalam Negeri* or National Investment in Indonesian billion rupiah
Investment had a positive impact on economic growth and created job opportunities, but it had also had negative implications, such as human rights abuses, and inadequate land management. The development of industrial companies, agricultural businesses, and logging companies resulted in land disputes between landowners and companies supported by the government.

The strategies the government applied to achieve economic growth and to attract as many investors as possible included the following:

a. Deregulation of land management. This policy aimed to encourage development by minimizing laws which were considered to impede land acquisition. There were six steps taken by the New Order Government.

1) The government introduced the Minister of Home Affairs Regulation No 2 of 1984 on Land Acquisition for Companies to Develop Inexpensive Homes (rumah murah). Under this regulation, the government provided areas for real estate companies to build inexpensive houses to overcome housing shortage for low-income people. In practice, this regulation creates problems as often the landowners refused to give up their land for a housing project because the compensation levels were very low.

2) The government created a National Land Agency as decreed by the Presidential Decree No 26 of 1988. This institution was established to provide a process of simple land acquisition.

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52 Endang Suhendar and Ifdhal Kasim (n 42), pp 54-57.
53 See, Endang Suhendar and Ifdhal Kasim, (n 42), pp 71-76.
54 Article 2 stated: “in order to obtain land for developing inexpensive housing projects, the real estate company is to submit an application to the Governor with the recommendation from the Head of the District who decides the location for the project.”
3) The government introduced Presidential Decision No 53 of 1989 on Industrial Areas. This decree aimed at attracting industrial countries to move their business to Indonesia under a re-location program.\(^5\)

4) In order to accommodate private sector preferences regarding the period of exploitation, the government changed the length of the right of exploitation from 25 years to 60 years.

5) By Presidential Decree No 55 of 1993 on Land Acquisition for Public Interest the government determined which sectors of development could be categorized as in the public interest.

6) In order to create efficiency in the land market, the government launched a land registration program. A systematic and transparent land ownership status would assist the government in land-transferring processes.

All steps taken by the government resulted in the investors acquiring land more easily. During this time because of strong support from the government for investors, it was difficult for the landowners to resist the alienation of their land for the sake of economic development. In fact the government had only postponed disputes which would create serious problems in the future.

b. Manipulating concepts in BAL 1960. This was done by altering the interpretation of concepts as needed by the government. Article 6 of BAL 1960 imposes a condition that all rights to land must serve a social function. The original intention was that any use of land might not be merely for individual interests

\(^{55}\) In 1995 Indonesia has 152 industrial areas with covered area of 42,304.35 hectares. *Republika*, 13 July 1995 [Internet: http://www.republika.co.id]
which caused disadvantage to others. The use of land should, as much as possible, give benefit to the owner, the society and the state. However, this did not mean that the BAL 1960 gave priority to society's interests at the expense of an individual's interest.

Under the New Order Government the "social function" of land meant the transfer of land rights for "the public interest," that is, for development. Once investors were granted a location permit, they used the permit as a tool to revoke previous land titles. In fact, according to Plantation Use Permit Regulations, the location permit is only one procedure out of ten which should be conducted before procuring a licence from the Minister of Forestry and Estate Crops. The government's aim was to create a transparent land market. Those articles of BAL which would empower the people were abandoned.

c. Developing a National Land Agency. Under the Old Order Government, land matters were the responsibility of the Agrarian Directorate General, an institution within the Minister of Home Affairs. In 1988 based on Presidential Decision number 26 of 1988, the National Land Agency (Badan Pertanahan Nasional or

The ten step process to obtain licensing from the Minister of Forestry and Estate Crops was:
(1) Submit an application to the Governor stating an intention to develop a plantation in a set area, (2) Conduct a land survey of the area, (3) submit an application to the Ministry of Forestry and Estate Crops for an agreement in principal (izin prinsip), (5) Conduct a feasibility study on the development, (6) Apply to the Head of the National Land Agency at the district (Kepala Badan Pertanahan Nasional tingkat Kabupaten) for a location permit (izin lokasi), (7) Apply for acquisition of land (pembebasan tanah) and pay out compensation payments, (8) Apply to the Minister of Forestry and Estate Crops for a permit to release any forest land (izin pemanfaatan kayu), (9) Apply to the Head of National Land Agency (Kepala Badan Peranahan) for the right to use the land (Hak Guna Usaha), (10) Conduct an environmental impact statement (Analisa Mengenai Dampak Lingkungan or AMDAL). Anne Casson, The Hesitant Boom: Indonesia's Oil Palm Sub-Sector in an Era of Economic Crisis and Political Change, (CIFOR, Bogor, 1999), p 36.
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BPN), was created to deal with the increased demand for land for investment activities.

d. Allocating funds.

e. Interference in land acquisition and court decisions. In many cases, the government used the military or government agents to force the people to give up their land.

One factor affecting central government policy was the World Bank, which became a very important source of finance for Indonesia during the New Order. The World Bank believed that land disputes in Indonesia, which were considered a restriction on economic growth, were caused by an improperly functioning land market and the complexity of land law. According to the World Bank, there were 300 land regulations and approximately 32 months were needed to complete a land acquisition, whereas it took only 5 months in Thailand. To maintain Indonesia’s economic growth and ensure that Indonesia could pay back its loans, the World Bank urged the government to simplify the process of investment. The Indonesian government adopted policies such as reducing the time necessary for processing a location permit for investment to 10 days. Thereafter, land acquisition for investment could be achieved within 22 days.

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58 Endang Suhendar and Ifdhal Kasim, (n 42), pp. 82-83.

59 Endang Suhendar and Ifdhal Kasim (n 42), p 101.
D.2 Land Registration Project

In 1981 the Indonesian government introduced a program known as PRONA (Proyek Operasi Nasional Agraria) or National Land Registration Project to increase the pace of land registration.\(^60\) This project concentrated on reducing the costs associated with land registration and corruption that had turned land registration into a complex and extremely slow process. However, the PRONA program was not successful.\(^61\)

In 1992, the Land Administration Project (hereafter LAP), a cooperative undertaking of the government of Indonesia and the World Bank was initiated, funded at US$ 140.1 million. Under this scheme the government aimed to develop an efficient land market to ease land acquisition processes for large capital investment.\(^62\) The project has the following objectives: (1) to foster efficient and equitable land markets and alleviate social conflicts over land. (2) To accelerate land registration in support of long-term land use programs and to register all non-forest parcels. (3) To improve the institutional framework for land administration, and (4) to support government efforts to develop long term land management policies.\(^63\)

The project has three components: Part A: To register all non-forest land parcels within 5 years by accelerating the process of land titling and registration. Part B: To strengthen the institutional framework and capabilities in land administration.

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\(^{60}\) Decision of Home Minister No 230 of 1981.

\(^{61}\) Timothy Lindsey, ‘Square Pegs and Round Holes: Fitting Modern Title Into Traditional Societies in Indonesia’ (Melbourne University, Indonesian Law material, 1998), p 2.

\(^{62}\) Konsorsium Pembaruan Agraria, ‘Our land is not for sale,’ 1998 [Internet: http://www.kpa.or.id]

\(^{63}\) The National Development Planning Board (Badan Perencanaan Pembangunan Nasional or BAPPENAS), 1999 [Internet: http://www.bappenas.go.id]
especially within the National Land Agency (BPN) at the local and national level.

Part C: To support and strengthen the government in developing effective long-term land management policies. The project concentrates on Java, Sumatra and Bali, where it is believed that the LAP will have the most direct impact on the alleviation of social land conflicts. Areas selected at the district government level (Kabupaten) were targeted on the basis of predicted high economic and population growth.

In 1993, one year after the government implemented the registration program, only 10% of registrable land in rural areas and 20% in urban areas had been registered. There are two reasons why most land titles and land transactions in Indonesia were not registered. First, many areas in Indonesia are still dominated by adat law and land ownership based on adat law. Second, the process of registration or transferring land is complex, time consuming and costly. Due to the size of Indonesia and the number of parcels to be registered and the resources available, experts estimate that it will take approximately a century to register each parcel of land in Indonesia.

Government Regulation No 10 of 1961 on Land Registration provides that all land transfers must be conducted before a Penjabat Pembuat Akta Tanah (PPAT) or

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61 Part A and B of the project are implemented by the National Land Agency (Badan Pertanahan Nasional or BPN) and part C is under the direction of the National Development Planning Board (Badan Perencanaan Pembangunan Nasional or BAPPNAS).
In the case of unregistered land, the transaction must be verified by the village headman. The transaction must be endorsed by the Head of Sub-district (Camat as PPAT) and must include land-tax documents (bukti pembayaran Pajak Bumi dan Bangunan). Furthermore, where the land is within the jurisdiction of a Land Registry Office, a letter from this office, explaining that the land is unregistered, is needed. Finally, for agricultural land, which is mostly unregistered, approval is needed from the Governor or Bupati before one can register a transfer of land. Because this process is so complex, many people simply carry out the transaction without following the prescribed process. However, the local National Land Agency refuses to provide a certificate of land on the basis of an unregistered transaction.

The LAP invited criticism because the program requires government intervention in land acquisition and was viewed as inefficient. The project increased the number of land conflicts because LAP only registered individual land rights. Also, there was no clear border between the forestry lands, which had the status of “state lands,” and non-forestry land. Four defects in the LAP have been identified: (a) LAP views land administration only from a technical perspective. (b) LAP does not recognize land rights under customary law. (c) LAP is not based on what is really happening in the adat community and the indigenous system of land ownership, and

Penjabat pembuat Akta Tanah or PPAT is appointed by the Minister of Home Affairs. Most Public Notaries also act as PPAT and in areas where there is no public notary, the Camat holds the position of Land Deed Official.


Sudargo Gautama and Budi Harsono as cited in Daniel Fitzpatrick (n 19), p 195.
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(d) LAP does not recognize the difference between “communal rights” as a political concept, and “communal rights” recognized in society.\textsuperscript{71}

Under *adat* law, land transactions are made in the presence of the village head (*kepala desa*), who represents the whole community. The presence of the village head is a guarantee of the validity and propriety of the transaction. The village head receives a sum of money as “witness money” and is responsible for the transaction on behalf of the community. He ensures that the transaction does not conflict with the community’s interests and laws.\textsuperscript{72}

On the other hand, Government Regulation No 24 of 1997 states that the only valid form of transferring lands is by a notarial deed (*akta notaris*). Under this Regulation, the role of the village head is to witness the notarial deed together with other local government agents as witnesses.

D.3. Legal Rights to Compensation

Among the major issues raised by land acquisition are the level of compensation and the recognition and protection of human rights.\textsuperscript{73} KEPPRES No 55 of 1993 regulates land acquisition for government projects. In relation to land

\textsuperscript{70}There are more than 2000 guiding regulations and this increases transfer costs and time and scope for mistakes.

\textsuperscript{71}Maria R. Ruwiastuti, ‘Hak-hak Masyarakat Adat dan Proyek Administrasi Pertanahan,’ KPA-Bandung, 1998 [Internet: http://www.kpa.or.id]. As a political concept communal rights (community land rights) have been transferred to the state. According to the central government, the formation of the unitary state of Indonesia has caused communities based on *adat* law to end. These *adat* societies have been integrated into the unitary state of Indonesia. Consequently, any land rights based on *adat* laws automatically transferred to the national government. However, in practice, communal rights to land based on *adat* law are recognized by people. Maria R Ruwiastuti, ‘Land Reform,’ in Dianto Bachriadi (n 55), p 48


\textsuperscript{73}Maria SW Sumardjono, ‘Land Acquisition Policy,’ *Kompas*, 15 November 1999 [Internet: http://www.kompas.com]
acquisition for private projects, the KEPPRES requires that companies should negotiate directly with landowners. Local government acts as a witness to ensure that the deal is fair. Therefore, there is no government regulation on land acquisition for private purposes; the law allows the parties to transact without government intervention. As a result two problems have occurred in land acquisition for private projects, especially for oil palm development. First, when the company and the landowners deal directly, the landowners are in a weak position given their cultural background and low educational level. Second, the company involved the local government in the compensation process because they needed protection. According to Suharyono, Director of Palembang Legal Aid Foundation, in the process of compensation the villagers were often intimidated and forced to accept compensation offered by the company without negotiation.  

The New Order Government introduced two regulations on land acquisition, which included guidelines for compensation: Indonesian Home Minister Regulation No 15 of 1975 on Land Acquisition, which was repealed by the KEPPRES No 55 of 1993 regarding Land Acquisition for Public Interest. The 1975 Home Minister Regulation required the provincial government to establish a committee to investigate and advise on compensation. Article 1 provides:

In determining compensation, the Committee must reach its decision by consensus based on discussion (musyawarah) and the local price (harga umum setempat). The committee is comprised of the district officer of the National Land Agency, a local government representative, a representative from the institution that seeks to acquire the land, the head of the kecamatan, and the village head.

74 Interview with Suharyono, the Director of Palembang Legal Aid Foundation, 10 January 2000.
Article 2 provides:

(1) The committee conducts an investigation and determines the value of compensation
(2) The value of compensation is based on agreement with landowners and the general price of land in the area
(3) The general price of land in the area is the base price, which is regularly published by the local government.

Under this regulation, the committee plays a significant role in setting the level of compensation. Unfortunately, in practice the company paid the committee members as well as compensation to the landowners. In the district of Muara Enim the committee of land compensation for PT Musi Hutan Persada was accused of doubling the amount of compensation and then paying only half to the landowners.

Companies involved the local government in the compensation process when it was difficult to reach an agreement with landowners as to the level of compensation. According to Suharyono, Director of the Palembang Legal Aid Foundation, when the government was involved in determining compensation to landowners, the military was used to force or intimidate the landowners to reach agreement with the company.75

A second issue was whether villagers were entitled to compensation for their land or merely compensation for the trees on the land.76 The villagers claimed that the land that they worked for generations belonged to them, therefore, they should receive adequate compensation for the land. The government and companies claimed

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75 Interview with Suharyono, the Director of Palembang Legal Aid Foundation, 10 January 2000.
76 Interview with Karim AR, the Speaker of DPRD and a former Camat Rupit, 31 September 2000.
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that land rights had disappeared with the end of the marga system, and villagers were only entitled to compensation for trees.

Value of Compensation

There are three prices that could be used to determine the value of compensation for land:

a. The market price. A price which is based on supply and demand (the highest price)

b. The price based on taxation estimation. A price determined by the Taxation Office for land and building tax purposes (middle price)

c. The land compensation committee price. A price which is decided by a land compensation committee (the lowest price and in most cases opposed by the landowners).

As there is no national standard for the value of compensation, each regional government has the right to introduce its own regulation. In South Sumatra, the Governor issued Decision No 909 of 1986, later repealed by Decision No 309 of 1999 on the Guidelines for Land Compensation as a Result of Exploration and Exploitation Activities. The later decision follows a similar pattern to the 1986 Decision but increases the value of compensation. The 1999 Decision calculates the value of compensation at Rp 6,750,000 per hectare (Article 2(1d). The compensation for rubber trees varies with the age of each tree.

7 Amzulian Rifai, ‘Land Problems in South Sumatra,’ Sriwijaya Post, 10 April 1999 [Internet: http://www.indomedia.com/sripo/]

78 Article 3 (2) states that for a rubber estate the compensation value as follows: rubber trees up to 1 year old Rp 3,682/tree, 2 years old Rp 7,403/tree, 3 years old Rp 11,104/tree, 4 years old Rp 15,738/tree, 5 years old Rp 20,776/tree, 6 years old Rp 26,559/tree, 10 years old Rp 31,669/tree, 15 years old Rp 39,918/tree, 20 years old Rp 42,773/tree, 24 years old Rp 38,691/tree, and 25 years old Rp 34,256/tree.
Disagreement over Compensation

Article 7 (2) of Home Minister No 15 of 1975 provides:

If the landowners disagree with the price decided by the committee, they may object to the committee with their reasons for non-acceptance.

Article 8 (1) states:

The committee may take the following steps:

a. Uphold its former decision
b. Ask the Governor to make a decision (who may support the committee’s decision or reach a new decision).

The 1993 Presidential Decision follows a similar pattern to the 1975 Ministerial Degree but emphasizes the importance of the process of compensation. Article 2 of the 1993 Presidential Decision provides that land acquisition may only be carried out for public interest projects. In relation to land acquisition for private sector purposes, including for oil palm development, companies should negotiate directly with landowners based on musyawarah (deliberation).

Article 6 provides: “Compensation for appropriation is to be assessed by an Appropriation Evaluation Committee. The governor of the province should form that Committee in every region and district.”

Article 8 requires the Committee to fix the form and amount of compensation. Compensation must include the value of land together with buildings, crops, and other appurtenant to it. The calculation must be on the basis of:

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(a) The actual value of the land, with attention being paid to the value of the land stated in the latest Soil and Development Tax Document (harga berdasarkan penetapan Pajak Bumi dan Bangunan).
(b) The market price of the buildings on the land as estimated by the regional government agency responsible for buildings.
(c) The market price of the crops on the land as estimated by the regional government agency responsible for crops.

According to the 1993 Presidential Decree compensation may be in various forms. Article 13 states: “Compensation may be in the form of money, substitute land, or any other form agreed to by the parties”. However, in the case of hak ulayat land, Article 14 states that compensation may only be in the form of public development facilities useful to the community in the area.

KEPPRES No 55 of 1993 on Land Acquisition for the public interest has the following weaknesses:

a. The definition of public interest in Article 5(1) is uncertain. The President has a right to issue another KEPPRES to include other projects as in the public interest without any standard to judge what is and what is not in the public interest.

b. There are no representatives of landowners on the nine-member committee. 80

c. The committee has the right to impose a final decision on compensation without agreement from the landowners if the process of musyawarah fails.

The following table provides an overview of land policy under the New Order.

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80 All members of the committee are the representatives of local government institutions.
Table 3.2: New Order Government Land Policy

<table>
<thead>
<tr>
<th>Period</th>
<th>General Policy</th>
<th>Land Policy</th>
</tr>
</thead>
</table>
| 1967-1973 | Economic stability through foreign investments  
Political stability | Exploitation of natural resources by implementing the Act on Foreign and National investment, the Basic Forestry Law, the Basic Mining Law, the Act of Transmigration and manipulation of BAL 1960  
The elimination of the land reform court |
| 1973-1983 | “Green Revolution” (Revolusi hijau) or self reliance in food  
Increasing agriculture productivity through nucleus estate and small-holder scheme (sistem plasma) without implementing BAL 1960 |
| 1983-1990s | Export oriented Industry  
Free market orientation  
Attract foreign investors | Deregulating permits in order to simplify the land acquisition process especially for the private sector. This was done by introducing: Presidential Decision No 53 of 1989 on Industrial Areas, Presidential Decree No 55 of 1993 on Land Acquisition by the government, the change of Hak Guna Usaha or the “Right of Exploitation” from 25 years to 60 years, land registration project, PAKTO 23 of 1993 on deregulation in the permit process, Presidential Decision No 26/1988 on the Creation of National Land Agency, Government Regulation No 20 of 1994 on the deregulation of foreign investment. |

Endang Suhendar and Idfhal Kasim, (n 42), p 75.
E. After The New Order Government (1998-)

The New Order Government ended in May 1998 when former President Soeharto was forced to resign and was replaced by Vice President B. J. Habibie. B. J. Habibie was not re-elected in the 1998 election, and Abdurrahman Wahid became Indonesia's fourth President. In 2001, Vice President Megawati Soekarno Putri replaced Wahid as Indonesia's fifth President.

By May 1998 Indonesia's economic growth had fallen dramatically from over 7% per year to minus 7%. Unemployment reached 12%; interest rates jumped to 75%, and the Indonesian currency fell from 6,000 to the US Dollar to 18,000.

The Reformation Government led by President B.J Habibie seized the initiative in an attempt to repair the economy. The oil palm sub-sector looked very promising given Indonesia's low labour costs and its cost effectiveness in the establishment of oil palm plantations. In order to encourage further investment in oil palm plantations, the government made significant regulatory changes:

a. In June 1998, permission was given to State Forestry Companies to use 30 per cent of their concession areas for estate crops, including oil palm.

b. In February 1999, the government invited foreign developers to invest in the oil palm sub-sector throughout Indonesia. This decision was made in accordance with the IMF (International Monetary Fund) agreement.

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82 Anne Casson, (n 56), p 15.
c. In March 1999, the government introduced a Plantation Use Permit Regulation to simplify the licensing procedure for new oil palm plantation areas.  

d. In August 1999, the government introduced a regulation giving plantation companies the right to establish tree crops and timber plantations in non-productive forests. In the past, this right was allocated to logging companies.

The central government under President Abdurrahman Wahid did not introduce new land policies. Many investors fled the country or re-located their businesses for security reasons. In February 2001, Price Water House Coopers Endowment for the study of Transparency and Sustainability rated Indonesia as the third worst country for doing business after China and Russia based on five indicators, including lack of legal protection, economic policy, corporate reporting, corruption, and government regulation.

According to Plantation Use Permit Regulation 1999, the necessary steps to obtain licenses from the Ministry of Forestry and Estate Crops were: (1) Submit an application to the Governor stating the plan to develop a plantation. (2) Conduct a land survey of the area. (3) Submit an application to the Ministry of Forestry and Estate Crops stating an intention to develop a plantation once the provincial government has approved the development. (4) Apply to the Ministry of Forestry and Estate Crops for a principal agreement (izin prinsip). (5) Conduct a feasibility study. (6) Apply to the District office of the National Land Agency for a location permit (izin lokasi). (7) Apply for acquisition of land and pay compensation. (8) Apply to the Ministry of Forestry and Estate Crops for a permit to release any forest land. (9) Apply to the District office of National Land Agency for the right to use the land. (10) Prepare an environmental impact statement (Analisis Mengenai Dampak Lingkungan or AMDAL).

Under this regulation companies may obtain a maximum land holding of 50,000 hectares in any province or 100,000 hectares in Papua. Forty percent of the concession can be allocated to estate crops and the rest may be planted with timber.

Kompas, "Indonesia is the third worst country for investment," 15 February 2001 [Internet: http://www.kompas.com]
Chapter Three: Indonesian Land Laws

F. Conclusion

The following table shows us the development of land policy in Indonesia since the colonial period to the New Order Government.

Table 3.3: Land policy Development in Indonesia

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ideology</strong></td>
<td>Capitalism</td>
<td>(Neo) populism</td>
<td>Capitalism</td>
</tr>
<tr>
<td><strong>Policy Oriented</strong></td>
<td>Exploitation of plantation sector</td>
<td>For a maximum welfare of the people</td>
<td>Land acquisition for the sake of economic growth (Investment)</td>
</tr>
<tr>
<td><strong>Strategy</strong></td>
<td>Taking people’s land for plantation</td>
<td>Land reform programs</td>
<td>Taking people’s lands without land reform</td>
</tr>
<tr>
<td><strong>State intervention</strong></td>
<td>Interventions were done by giving “erfpacht” right, concession right</td>
<td>Interventions to implement land reform</td>
<td>Interventions in land acquisition for investment. Interventions through granting of location permit, right of exploitation,</td>
</tr>
<tr>
<td><strong>Parties involved in land disputes</strong></td>
<td>People versus colonial government and private plantation foreign companies</td>
<td>People versus people within the context of land reform</td>
<td>People versus investors and the state or people versus the investors supported by the state</td>
</tr>
<tr>
<td><strong>Principal</strong></td>
<td>Land for foreign exchange by exporting plantation products</td>
<td>Land for farmers</td>
<td>Land for economic growth</td>
</tr>
<tr>
<td><strong>Concept/Idea</strong></td>
<td>Land as an object of exploitation</td>
<td>Land as the basis of development</td>
<td>Land as a commodity</td>
</tr>
<tr>
<td></td>
<td>Colonial period: competition to gain colonies</td>
<td>After independence period: Land reform was implemented by many countries</td>
<td>Free market ideology was developed. Industrial export orientation was developed.</td>
</tr>
<tr>
<td><strong>Social function</strong></td>
<td>There was no social function of land. There was only an economic function of land</td>
<td>There was a social function of land in relation to the use of land.</td>
<td>Social function of land as a justification for land acquisition</td>
</tr>
<tr>
<td><strong>Transfer of</strong></td>
<td>Concept of</td>
<td>Transferring of rights in</td>
<td>Transferring of rights can be</td>
</tr>
</tbody>
</table>

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Endang Suhendar and Ifdhal Kasim, (n 42), pp 98-99.
### Chapter Three: Indonesian Land Laws

<table>
<thead>
<tr>
<th>Rights</th>
<th>&quot;domein verklaring&quot;</th>
<th>the public interest can only be done based on an Act</th>
<th>done by using Minister of Home Affairs. Regulation or Presidential Decisions in the name of “development”. Investors holding a location permit can buy land freely. Concept of “state land” was implemented.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agrarian Law</td>
<td>Colonial Agrarian Act 1870</td>
<td>Basic Agrarian Law of 1960 is introduced to revoke Colonial Agrarian Act of 1870. Basic Agrarian Law 1960 was used continuously</td>
<td>The government only used the Basic Agrarian Law 1960 when it suited their needs. Inconsistent attitude toward the Basic Agrarian Law 1960.</td>
</tr>
<tr>
<td>Institution</td>
<td>Colonial government</td>
<td>Agrarian Department which was responsible for all agrarian matters</td>
<td>National Land Agency which was solely responsible for land matters</td>
</tr>
</tbody>
</table>

Each regime of government in Indonesia has had its own agenda in land policy and to some extent each neglected the land rights of the people. The colonial government tried to maximize land usage in order to increase export commodities, such as coffee, sugar, tea, and tobacco. The Government of Sukarno (1945-1966) attempted to develop national agrarian laws. The New Order Government selectively implemented the Basic Agrarian Law 1960 and tried to maximize foreign investment in plantation development. As a result, the Reformation Government (1988), the Unity Government (1999-2000), and Megawati’s government (from 2000) inherited a large number of land disputes.
The Rule of Law and Land Disputes in Indonesia

A. The Rule of Law and Human Rights

Many legal experts have emphasized the importance of the rule of law in the protection of human rights. For example, Todung Mulya Lubis, a leading Indonesian human rights lawyer, says that only within a state based on the rule of law including an independent judiciary with due process of law and judicial review, can human rights be guaranteed.\(^1\) Robin Creyke adds that the rule of law requires that decision-making should have lawful authority and be rational and predictable.\(^2\)

Logeman argues that there are three basic elements of the rule of law. First, there must be a guarantee of human rights protection in all fields without distinction of any kind, such as sex, race, cultural background, economic condition or political conviction. Second, there must be an independent and impartial judiciary. Third, there must be strict adherence to the principle of legality.\(^3\) Friedrich Hayek and Justice Scalia observe that the rule of law means that the government is bound by rules fixed announced before hand.\(^4\) They argue that a minimum requirement of the rule of law is a commitment to some form of equality, at least to the avoidance of arbitrary discrimination between equally situated persons. Another requirement is the

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\(^1\) The rule of law has some synonyms such as *rechtsstaat* and which is translated literally as *negara hukum* in Indonesian and this term is used in the 1945 Constitution. *Rechtsstaat* derives from a civil law model and rule of law implies a common law. Todung Mulya Lubis, *In Search of Human Rights: Legal Political Dilemma of Indonesia's New Order 1966-1990*, (PT Gramedia Pustaka Utama and SPES Foundation, Jakarta, 1993), p 171.
\(^3\) Id. Logeman as cited in Robin Creyke.
maintenance of fair procedures for resolving disputes. Ismail Suny, a prominent Indonesian constitutional lawyer, argues that there is a universal standard applied in the rule of law. He believes that the requirements of an Indonesian rule of law should comply with international standards. He emphasises that the judiciary should also be supported by social control and public opinion. The Chief Justices of the courts of the Law Asia region points out that the judiciary must ensure that “all people in society are able to live securely under the rule of law; promoting, the observance and attainment of human rights within society; and administering the law impartially”.

An International Commission of Jurists (ICJ) conference in Bangkok stressed six basic elements of the rule of law, which include constitutional protection of human rights, an independent and impartial judiciary, fair and free general elections, recognition of the right to express an opinion, freedom to organise, freedom to dissent and civil education. They stressed that the rule of law and human rights protection are ideal for good government.

A basic element for a functioning rule of law is the separation of power. Only when the three arms of government - legislative, executive, and judicial - are separate will there be the checks and balances. Separation of power plays a central role in protecting society from a concentration of executive power. Ultimately, checks and balances create public confidence in the judicial system, which is crucial for the implementation of the rule of law.

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5 Ismail Suny cited by Todung Mulya Lubis (n 1), p 102.
6 Alan Rose AO questioned the limits of the judicial function. He compared the dissenting judgment of Justice Kirby on the appropriate supervisory role of the High Court of Australia in relation to the exercise of section 51(xxvi) of the Constitution, the power to make special laws for the people of a particular race, with the majority judgments in Kartinyeri v The Commonwealth (1998) 152 ALR 540. Alan Rose AO, 'The Model Judiciary-Fitting in with Modern Government' (1999) 4 The Judicial Review 3.
7 Id.
9 Id.
In Indonesia a lack of the rule of law and the lack of protection of human rights have led to a situation of political uncertainty and to episodes of sporadic violence. The rule of law only exists in theory, but in practice the government has failed to apply it.

The World Bank argues that the practice of rule of law and legal reform and human rights protection must emerge as a key component in Indonesia's efforts to fight corruption and establish good governance in both the public and private sectors. Law is essential in interaction with the international community and in competing with other countries.

Indonesia's failure to implement the rule of law has contributed to ongoing land disputes. Endang Suhendar argues that land disputes in Indonesia have been caused by three main factors: the pluralism of the Indonesian laws; problems with the rule of law; and the government's unwillingness to recognize community land rights (hak-hak masyarakat adat) which conflict with government policy of inviting massive investment.

B. Rule of Law: Concept versus Reality

Indonesia appears to have a commitment to the rule of law (negara hukum) as provided in the constitution. For example, Article 1 of elucidation of the Indonesian 1945 Constitution states that Indonesia is a state based on law, not on power, and the

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government is based on a constitutional system, which is not absolutist. Article 1 of Elucidation of Act No 14/1970 on the Indonesian Judicial Power states that there is an independent judiciary free from interference from other state institutions, free from pressures, directions or recommendations which originate from extra-judicial authorities. The Indonesian Consultative Assembly (MPR) stated that rule of law in Indonesia consists of three principles: First, legality, in the sense of law in all its forms. Second, an independent judicial system. Third, the recognition and protection of fundamental rights such as the right to life, liberty, and security.

In theory Indonesia is committed to the rule of law but in practice there is evidence to suggest the contrary. While the rule of law requires the independence of the judiciary, this chapter will show that Indonesia has a dependent judiciary. In addition, human rights can only be protected if the military is subject to the rule of law. However, ample evidence shows that Indonesian's military often acts with little respect for the law. Furthermore, there is a lack of checks and balances between the executive arm of government and the parliament under the Indonesian constitution. Finally, under the New Order people were taught that human rights were western values alien to Indonesian culture. In many universities, for example, the subject of human rights was only introduced in late 1995.

B.1 Distribution of Power: Lack of Check and Balance

The French political philosopher Montesquieu developed the doctrine of the separation of powers. This doctrine stipulates that the three major organs of the state,

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14 See the elucidation of Indonesian 1945 Constitution.
17 Article 3 of Universal Declaration of Human Rights 1948.
18 Todung Mulya Lubis presentation, Asian Law Centre, University of Melbourne, 8 November 2000.
the executive, the legislative and the judiciary shall each perform a single different function. Laws are enacted by the legislature, and the executive is responsible for applying those laws. The judiciary will resolve a dispute regarding the meaning or the application of a law.19

The Indonesian system is based on a 'modification' of Montesquieu’s principles where state power is not separated but divided. State power comes from the People’s Consultative Assembly and is distributed among the executive, the legislature, and the judiciary. The President, who gains power from the MPR, claims an implicit right to influence the other two instruments of the government. During the thirty-two years of the New Order Government, the President had absolute power compared to other two institutions. The Elucidation of the 1945 Constitution states: "the President is not responsible to the DPR (the House of Representatives), which means the President’s position is not dependent upon the DPR".20 Theoretically, the Indonesian Consultative Assembly (MPR) controls the President. In practice, under the New Order the President controlled the MPR and had extensive power to implement the broad outlines of state policy formulated by the MPR. Ismail Suny, a prominent Indonesian constitutional lawyer, has described this situation as "executive-heavy government".21

Although there were essential improvements under President Abdurrahman Wahid’s government (from 1999) and under President Megawati Soekarno Putri (from 2000), the three decades of government under Soeharto (1966-1998) has made it a difficult task to ‘liberate’ the judicial system in Indonesia. Many judicial

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20 The Elucidation of 1945 Constitution on the System of the Government (point 5).
21 Todung Mulya Lubis (n 1), p 179.
processes in Indonesia, which are contrary to rule of law principles, have become endemic. For example, under the New Order the Supreme Court (*Mahkamah Agung*) often received a request from the government to cancel or delay its decision as in the *Hanoch Hebe Ohee Land Case* (discussed below).22

B.2 A Dependent Judiciary

In law, the Indonesian judiciary is independent of the executive, however the reality is very different. The sections of the 1945 Constitution on judicial power do not explicitly deal with judicial independence. Articles 24 and 25 state that: 1) judicial power is to be exercised by the *Mahkamah Agung*, and other judicial bodies in accordance with statute,23 2) the structure and powers of those courts shall be regulated by statute,24 and 3) the conditions for becoming a judge and for being dismissed shall be prescribed by statute.25

Judges in Indonesia have limited independence. Article 11 of Act No 14 of 1970 on the Judicial Power authorizes the Minister of Justice to determine judicial appointments, promotion, salary and dismissal.26 Under the Indonesian Constitution of 1945 a minister was an assistant to the President, and was appointed and dismissed by the President.27 The Chief Justice has equal status to a minister. As assistants to the President, Ministers have an obligation to support the President who has an

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23 Article 24 (1) of the 1945 Constitution
24 Article 24 (2) of the 1945 Constitution
25 Article 25 of the 1945 Constitution
26 Former Chief Justice Ali Said was highly critical of government attempts to limit the independence of the judiciary. Similar criticisms have been stated by other *Mahkamah Agung* judges such as Adi Andojo and Bismar Sirag. *Mahkamah Ali yang Dipriketi,* *Tempo*, 18 July 1992 [Internet: http://www.tempo.co.id]
27 Article 17 of the 1945 Constitution: 1) The President shall be assisted by Ministers of the state, 2) These ministers shall be appointed and dismissed by the President, 3) These ministers shall lead the government departments.
absolute right to suspend his ministers. Judges in Indonesia are answerable to the
Minister of Justice and the Chief Justice, and therefore have similar status to any
other bureaucratic appointment in Indonesia. Daniel S. Lev states:

Indonesian judges conceive themselves as pegawai negeri (government
officials), and as such, members of a bureaucratic class to which high status
has always been attached. One implication of the role of pegawai negeri is
that it is patrimonially associated with political leadership, to whose will it
must always be responsive. It is this as much as anything else that underlies
the issue of judicial independence. Whatever the daily effects of the
Ministry's responsibility, it is symbolically important as a reminder of the
judiciary's conceptually limited authority and the direction of its loyalties.

Under the New Order the government effectively controlled the composition
of the courts. Article 8 of the Mahkamah Agung Act stipulates that the Chief Judge
of the Mahkamah Agung is to be promoted from a list of two judges proposed by the
Parliament. The problem with this process is that the President may not accept the
candidates proposed by the DPR, and the DPR's appointment of candidates may be
influenced by political factors. That was the reason President Wahid gave when he
refused to choose either of the two candidates proposed by the DPR. Both
candidates, Prof Muladi and Prof. Bagir Manan, had been involved in the New Order
Government.

Judges at the district level are viewed as subordinate to local government. A
prominent Indonesian judge, Benyamin Mangkoedilaga, noted that there was a case
where a governor expelled a judge from his province because he was not pleased with

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28 For example, there were three ministers suspended in the first year that President Abdurrahman
Wahid was in office.
29 Daniel S. Lev, 'Judicial Authority and the Struggle for An Indonesian Rechtstaat' (1978) 13
Law and Society Review, 37.
30 Kompas, 9 January 2001 [Internet: http://www.kompas.com]
the judge’s decision. Problems exist because the transfer of judges and financial aspects of the judiciary are under the power of the executive.

B.3 The Rule of Law or Rule of the Rulers

Under the Old Order of Sukarno (1945-1966), the judiciary was regulated by Act No 19 of 1964 and Act No 13 of 1965. These two laws gave the President the right to interfere in the judicial process for the interest of the state. Article 19 of Act No 19 of 1964 states:

In the interests of revolution, the honor of the state and nation, or the urgent interests of society at large, the President can intervene in court proceedings.

Moreover, Article 23(1) of Act No 13 of 1965 states:

In the case where the President interferes, the court processes have to be terminated and the decision of the President should be announced.

The New Order Government (1966-1998) also interfered with judicial proceedings. Article 13 of the Indonesian Constitution of 1945 gives the President a right to interfere with the judicial processes as he has a power to grant clemency, amnesty, and abolish and restore the rights of those convicted.

Prominent Indonesian judge Benyamin Mangkoedilaga has stated that the problem with the Indonesian legal system is that judges in Indonesia are not free from government intervention. "If Indonesian judges are being asked: “is there any intervention from the government?” Most of them will answer, “yes” to this

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32 Article 13 of the 1945 Constitution: “The President can grant clemency, amnesty, abolition and rehabilitation to those convicted by the Courts.”
A surat sakti (magic letter) was a common expression for the way the executive influenced a court decision. Retiring Mahkamah Agung Judge, Gandasubrata stated:

We (the Mahkamah Agung) often receive requests from the government to cancel or delay the execution of a Mahkamah Agung ruling in the name of development.\(^{34}\)

Government interference in court decisions was frequent in land cases. Examples include the Kedung Ombo land case (Central Java) and the Hanoch Hebe Ohee land Case in Papua.

In the Kedung Ombo case a dispute arose when the government decided to take over more than 60,000 hectares of land to build a dam in Kedung Ombo village. Many villagers refused the low rate of compensation\(^{35}\) offered by local authorities. More than 1,500 families refused to leave their homes.\(^{36}\) According to the District Court (Pengadilan Negeri) and the Court of Appeal (Pengadilan Tinggi) the level of compensation offered by the government was sufficient and the government had sufficient deliberations with the people.\(^{37}\)

The villagers in Kedung Ombo then appealed to the Mahkamah Agung, which upheld the appeal and increased a claim for a higher level of compensation than the local government had offered. However, under pressure from the President the Mahkamah Agung made the extraordinary decision to review its own final decision on the basis that the judges hearing the case may have been mistaken and the decision

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\(^{33}\) Benyamin Mangkoedilaga (n 31), p 130.
\(^{34}\) Simon Butt, 'The Eksekusi of the Negara Hukum: Implementing Judicial Decisions in Indonesia,' in Timothy Lindsey (n 11), p 253.
\(^{35}\) Compensation was based on the Governor's decision on compensation. In practice, each province has its own Governor decide regarding the standard of compensation.
\(^{37}\) Semarang District Court Decision No 11/Perdata/G/1990 and Central Java Higher Court Decision No 143/Perdata/1991.
may have conflicted with legislation. According to Article 67(7) of the Mahkamah Agung Act a review may be held if the decision in question contains an obvious mistake.

In the Hanoch Hebe Ohee case, the Chief Justice of the Mahkamah Agung delayed the execution of the decision by sending a letter to the Head of the Jayapura District Court (Pengadilan Negeri) recommending that the decision not be implemented. According to adat law, the 62 hectares of land in dispute in Sentani, Jayapura, was owned by the Ongge and Ohee clans. It had been taken over by allied troops in 1945-1947. When the Dutch returned, they made a verbal agreement to lease it for ten years, but never paid the amount agreed. The territory was reintegrated into the Republic of Indonesia. When the Papua government confiscated this land in 1984, Hanoch Hebe Ohee successfully appealed to the Jayapura District Court for more compensation than was initially offered. The Court agreed that the contract to rent the land was valid; proving the Ohee clan owned the land, but they did not award more compensation. This case was appealed to the Mahkamah Agung after the Higher Court (Pengadilan Tinggi) in Papua upheld this decision. In 1985, the Mahkamah Agung overturned the Higher Court decision.

The Mahkamah Agung ordered the Governor of Papua to pay 18.6 billion rupiah (approximately A$ 12,500,000) in compensation for the loss of the use of the land. After waiting for three years for the government to act, the plaintiff (Hanoch Hebe Ohee) requested the Mahkamah Agung to order the Jayapura District Court to implement the decision. The Papua Governor responded that the execution should be

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38 Forum keadilan, 'Kedung Ombo Kembali ke-titik No 1,' 8 December 1994 [Internet: http://www.forum.co.id]
39 Higher Court of Central Java Decision No 143/I/Pd/1991.
40 Decision No 21/Pdt/1985/Pengadilan Tinggi Jayapura, 27 November, 1985
delayed as he had to consult with his superior (the Minister of Home Affairs) in Jakarta because the central government should be responsible for paying the compensation. The Minister of Home Affairs studied the case, consulting with the Mahkamah Agung. In 1995, the Chief Justice of the Mahkamah Agung issued a letter to the Chief Justice of the Jayapura District Court that overturned the previous decision of the Mahkamah Agung. The letter states:

... Because the party required to pay compensation to the plaintiffs is the Papua Governor who is not a public legal entity (does not have his own funds), the Mahkamah Agung Decision No 381 PK/Pdt/1989 cannot be executed.\textsuperscript{42}

The independence of courts in Indonesia is also in question when they have to handle cases that involve the government or the military. For example, in the \textit{Tempo Magazine case}\textsuperscript{43} three members of the military “visited” High court judges to influence them.\textsuperscript{44}

Prof. Harkristuti Harkrisnowo adds that rule of law in Indonesia has not been implemented because the courts are not independent, there is inconsistency in law enforcement, and peoples’ rights are not protected.\textsuperscript{45}

Prof. BIT. Tamba, a criminal law expert, observes

The Court system in Indonesia has degenerated. The collapse is continuing. We cannot stop this process in one day. It is a mission impossible. Our court system is in a very serious situation that is true. Judge’s decisions can be bought, that is also true.\textsuperscript{46}

\textsuperscript{42} Surat Ketua Mahkamah Agung Republik Indonesia No KMA/126/IV/1995.

\textsuperscript{43} On 21 June 1995 the Minister of Information cancelled the publishing license (Surat Ein Usaha Penerbitan Pers/ SIUPP) of popular magazine, Tempo. According to the Minister of Information, the government banned this magazine because Tempo had repeatedly ignored warning from the government about its content and had violated regulations on its operation and management. ‘Muzzling the Press,’ \textit{Inside Indonesia Melbourne}, September 1994, p 2.

\textsuperscript{44} Benyamin Mangkoejadiaga (n 31), p 129.

\textsuperscript{45} Harkristuti Harkrisnowo, ‘The Rule of Law’ in M Deden Ridwan and Asep Gunawan (n 31), p 107.

\textsuperscript{46} Sriwijaya Post, ‘Wawancara Dengan Prof. BIT Tamba,’ 6 November 2000 [Internet: http://www.indomedia.com/sripo/]
Research conducted by a legal aid foundation in Yogyakarta concluded that after 52 years of independence, the rule of law in Indonesia is still a myth because the court systems were subordinate to the government. There is a patent lack of integrity on the part of many involved in law enforcement. During the New Order, rule of the ruler was practiced instead of rule of law.

B.4 Public Mistrust of the Judiciary System

Daniel S. Lev writes, “The Indonesian courts are not trusted by the people.” The respected Indonesian national daily Kompas recently carried out research which found that 51% of respondents believed that Mahkamah Agung judges were involved in a court mafia.

Law in Indonesia is implemented in a discriminatory way. People believe that law only applies to the powerless and poor people, whereas rich people and powerful people seem untouchable. Cases involving former President Soeharto for corruption charges, General Wiranto for human rights violations in East Timor, and Tommy Soeharto (former President Suharto’s son) for corruption charges are clear examples that the law is unable to touch powerful people.

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47 Non Government Organizations Forum, ‘Independent Observer is needed to Control Indonesian Court,’ Kompas, 29 August 1997 [Internet: http://www.kompas.com]
49 The word mafia is often used in Indonesia as a synonym for a corrupt judiciary system.
50 According to Todung Mulya Lubis, a former Vice Chairman of the Human Rights Violation Investigation Team in East Timor, General Wiranto is recognized by his team as the chief perpetrator of human rights violation in East Timor. However, among forty persons named only eleven were charged excluding General Wiranto. Discussion with Todung Mulya Lubis, Melbourne University Asian Law Centre, 8 November 2000.
51 The Courts up to the Mahkamah Agung found Tommy guilty for corruption and sentenced to 18 months in prison but Tommy refused to surrender and since then he became a fugitive. Kompas, 9 November 2000 [Internet: http://www.kompas.com] He was arrested after one year in hiding, Kompas, ‘Menyerah dibawah todongan senjata,’ 30 November 2001 [Internet: http://www.kompas.com]
As mentioned earlier, most people choose not to go to the court if they have legal problems including land disputes. Instead, they go to other institutions, such as the Parliament or Non-governmental organizations. Landowners who have disputes with oil palm plantations have burnt farms or damaged the companies’ facilities because they believe there is no chance of winning the case if they were to bring the case to court.

Since the fall of Soeharto people in Indonesia have taken the law into their own hands. For example, between January and May 1999 at least 45 people suspected of crimes were killed by mobs.

Public trust can only be achieved by ensuring that “the court and the justice which it delivers should be perceived by the public as accessible; the basic court functions are conducted expeditiously and fairly, with integrity; and there is a public perception of independence and accountability.”

B.5 Human Rights Protection

The Vienna Declaration adopted by States at the Second World Conference on Human Rights provides:

All human rights are universal, indivisible, and interdependent and interrelated. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and

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52 See Chapter V of this thesis on Land Disputes in Indonesia
53 Kompas, ‘Kelapa Sawit dirampas, Kantor Dibakar,’ 26 April 2000 [Internet: http://www.kompas.com]
55 Alan Rose argues that justice and the appearance that justice is being delivered are fundamental to create public confidence. He writes that justice should imply a) Consistency, in process and result which means treating like cases alike; b) A process which is free from coercion or corruption; c) Ensuring that inequality between the parties does not influence the outcome of the process; d) Adherence to the values of procedural fairness, by allowing parties the opportunity to present their case and to answer contrary allegations, and unbiased neutral decision making; e) Dignified, careful and serious decision making; f) An open and review able process. Alan Rose AO (n 6), p 326.
cultural systems, to promote and protect all human rights and fundamental freedoms.

Those who believe that human rights are universal claim that international human rights such as equal protection, physical security, freedom of speech and religion, and equality before the law must be the same everywhere. In contrast, the partisans of cultural relativism claim that rights and rules about morality are dependent on the cultural context. International human rights covenants are on the universal side of this debate because they speak in universal terms. The texts of such human rights instruments make no explicit concession to cultural differences.\textsuperscript{56}

The second point to emerge from the Second World Human Rights Conference is that it is the duty of states to protect and enforce human rights. Nations fulfil their obligations through either observing national law (constitutional or statutory) similar to international norms or including international norms as part of national law.\textsuperscript{57} Indonesian laws should include human rights protection.

However, the Indonesian government claims that human rights issues are domestic problems that must be solved by Indonesians.\textsuperscript{58} Under the Indonesian 1945 Constitution, very limited human rights protection is guaranteed. Article 27 provides

(1) Without any exception, all citizens shall have equal position in law and government and shall be obliged to uphold that law and government. (2) Every citizen shall have the right to work, and to a living, befitting for human beings.

Article 28 states:

Freedom of association and assembly, of expressing thoughts and of written publication and the like, shall be prescribed by statute.

\textsuperscript{57} Ibid at 709.
Article 29 (2) stipulates:

The state shall guarantee freedom to every resident to adhere to his respective religion and to perform his religious duties in conformity with that religion and that faith.

In August 2000, the MPR amended the 1945 Constitution and included new articles regarding human rights. However, government regulations are needed in order to implement these new articles as under the Indonesian legal system, articles in the constitution must be implemented by introducing laws, such as an Act or Government Regulation.

B.6 Human Rights and Land Disputes

Without human rights protection, villagers and landowners are powerless when they are in dispute with the local government and the oil palm companies. Human rights abuses include arrest and imprisonment of leaders and those directly involved in disputes. The military has used various forms of oppression including intimidation, terror and physical violence. One villager said that he was arrested and tortured by a military officer because he refused to give up his land for a plantation development project. Another villager, whose family’s land was taken by force to build a Crude Palm Oil Factory, said, “The Company just took our land after we refused to sell the land. If we go to the court, they will not protect us because we are ordinary people. We have been to the members of parliament; they just gave us promises. There is no court to protect us, there is no fair law for us.”

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59 Interview with a landowner in Bingin Teluk village in South Sumatra, 21 January 2000.
60 Interview with Asri’s mother in law whose land taken by force by PT London Sumatra Plantation Company. Asri died five days after the company took his land. Bingin Teluk village in South Sumatra, 21 January 2000.
Chapter Four: The Rule of Law and Land Disputes in Indonesia

C. Land Distribution: Priority for the Investors

According to the Indonesian Statistic's Bureau in 1993: 43% of households in villages had less than 0.1 hectares of land or had no land at all; 27% owned land of between 0.1 to 0.49 hectares; 14% owned between 0.5 to 0.99 hectares; 16% owned more than 1 hectare. Figure 4.1 shows that the majority of farmers in all Indonesian villages had less than 0.5 hectare or had no land at all. However, according to the government policy on the transmigration program, the minimum area that is economically productive for a single landowner is 1 1/4 hectare.

Figure 4.1: Percentage of Landowners Based on Area

![Figure 4.1: Percentage of Landowners Based on Area](image)

Source: Central Bureau of Statistics, 1993

Furthermore, large companies and some individuals own large areas of land including former President Soeharto. The Agrarian Minister/the Head of National

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61 See Biro Pusat Statistik Republik Indonesia, 1993.
62 Article 28(b) of Government Regulation No 42 of 1973 on the Transmigration Program.
Chapter Four: The Rule of Law and Land Disputes in Indonesia

Land Body has found that Soeharto’s family has more than 820 hectares of land all over Indonesia. The majority of land is controlled by investors involved in forestry and plantations.

The largest concentration of land ownership is in forestry industries, which produce timber and related products, such as pulp and paper. This was made possible by the government through *Hak Penguasaan Hutan* (HPH) or Forest Use Rights. For example, one private company, *Barito Pacific Group*, owns at least 6,158,670 hectares of “production forest.” In 1994 there were 20 business groups, which acquired more than 50% of the total forest under Forest Use Rights. In the same year, the government granted additional Forest Use Rights amounting to 64,291,436 hectares although, according to the Minister of Forestry and Estate Crops, there was a decline in the number of projects operated under the Forest Use Rights. In 1998 there were 500 Forest Use Rights projects in operation, which had acquired control of approximately 55 million hectares of productive forest.

Land is also concentrated in the mining sector. In 1996, there were 215 private companies, 4 state owned companies, and 11 co-operatives (koperasi) active in mining. Many companies had acquired control of extensive areas of land. For example, PT Freeport Indonesia in Papua has areas for gold and copper mining operations amounting to an excess of 2.6 million hectares.

Land is also controlled by large companies requiring huge areas of land for estate crop commodities, such as rubber, coffee and palm oil. The plantation sector

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64 Forest Use Right is a license for a 20 year period and can be renewed for another 15 year

65 In Indonesia the forest is divided into five categories as follows: production forest, conversion forest, limited production forest, forestland, and mixed forest plantings.


67 Ibid at 6.
has been most active in the development of land. According to Anne Casson, in 1997, eight conglomerates\(^6\) dominated the Indonesian private estate sector, namely the Raja Garuda Mas Group,\(^6\) the Astra International Group,\(^7\) the Sinar Mas Group,\(^7\) the SIPEF Group,\(^7\) the Socfin Group,\(^7\) the Napan Group,\(^7\) the Bakrie Group,\(^7\) and the Salim Group.\(^7\)

### D. Land Disputes and The Rule of Law

Land Disputes have long been part of Indonesian history. Each period of Indonesian history has its own form of land disputes. During the colonial period the conflict was overwhelmingly between indigenous people and the colonial government and colonial owners of plantations. Colonial government land policy represented the interests of the plantation business sector. Conflicts were relatively local both in scale and nature. Forms and reasons for land disputes changed after Indonesian independence. In order to understand land disputes in Indonesia today, it is helpful to look at agrarian conflict in the context of the rule of law in different periods.

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\(^6\) Four of these groups had their plantation holding companies listed on the Jakarta and Surabaya Stock Exchange including PT Astra Agro Lestari tbk (Astra International Group), PT PP London Sumatra Indonesia Tbk (Napan Group), PT SMART (Sinar Mas Group), and PT Bakrie Sumatra Plantations (Bakrie and Brothers). PT Indofood (Salim Group) has some investments in oil palm plantations and commands a 60% share of the cooking oil industry. Anne Casson, *The Hesitant Boom: Indonesia's Oil Palm Sub-Sector in an Era of Economic Crisis and Political Change*, (CIFOR, Bogor, 1999), p 14.

\(^7\) The Raja Garuda Mas Group plantation holding company is called PT Asian Agri.

The plantation holding company owned by PT Astra International Group is called PT Astra Agro Lestari.

The Sinar Mas Group plantation holding company is called PT Golden Agri Resources.

The plantation holding company owned by the SIPEF group is called PT Tolan Tiga Indonesia.

The plantation holding company owned by the Socfin Group is called PT Socfinindo Indonesia.

The largest plantation holding company owned by the Napan Group is called PT Pan London Sumatra Indonesia. Among the shareholders of this group were Henry Liem, Andry Pribadi, Wilson Pribadi and Ibrahim Risjad.

The plantation holding company owned by the Bakrie and Brothers Group is called PT Bakriw Sumatra Plantations.

The plantation holding company owned by the Salim group is called Salim Plantations.
Chapter Four: The Rule of Law and Land Disputes in Indonesia

D.1 Land Disputes 1945-1965

Indonesian Independence was declared on 17 August 1945. At this time many plantations were transferred from the colonial government to the new Republic, but Indonesian agrarian policy was still based on the colonial Agrarian Act of 1870. For local people, independence was the time to take back land that had been occupied by the colonial companies. Tauchid wrote: “People converted thousands of hectares of plantation areas into farm land for their everyday needs and also to build their houses.”

Indonesian political parties differed in their approach to dealing with foreign plantation companies. According to Suhendar there were three positions. The first option was to allow the plantation companies (onderneming) to continue their operations in order to maintain Indonesian foreign exchange, support state income, give an opportunity for native Indonesians to learn to operate the plantation companies, and impose a higher tax rate on the owners. Supporters of this position group also believed that the plantation companies could be used to attract further foreign investment. Second was the nationalist group on the political right, which proposed that plantations should be managed by Indonesians themselves. This group wanted to expel foreign companies with compensation, believing that Indonesia could attract foreign investment through loans or grants. The third group was the nationalists on the left, which proposed that colonial plantation land should be confiscated (without compensation) and distributed to the local farmers, with priority given to labourers and poor farmers with no land.

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78 Id.
Chapter Four: The Rule of Law and Land Disputes in Indonesia

Pelzer wrote that the different options proposed by the political parties resulted in land disputes in many part of Indonesia. One well-known dispute was the Tanjung Morawa case in 1953. Tanjung Morawa was a plantation complex in East Sumatra. Some of the people who lived in the compound were illegal immigrants (ethnic Chinese) who worked for the company. These people would only leave the compound with compensation. The government believed that they had no legal right to compensation given that many were illegal residents. *Barisan Tani Indonesia*, the Indonesian Farmers Group, which was affiliated with the Indonesian Communist Party, organized the Chinese against the government. The government forced the workers to leave the complex and this led to violence, leaving many dead or injured.\(^79\)

The lack of legal certainty in respect to land ownership led to the repeal of the colonial Agrarian Law and the passage of the Basic Agrarian Law.\(^80\) This law promised a fair distribution of land. The following table shows the maximum limit of land ownership allowed under the new law.

**Table 4.1: Maximum Limit of Land Ownership in District Area (Kabupaten)**

<table>
<thead>
<tr>
<th>Density</th>
<th>Irrigation Land (Hectare)</th>
<th>Dry Land (Hectare)</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than 400 people/Km2</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>251-400 people/Km2</td>
<td>7.5</td>
<td>9</td>
</tr>
<tr>
<td>51-250 people/Km2</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Less than 50 people/Km2</td>
<td>15</td>
<td>20</td>
</tr>
</tbody>
</table>

Source: Central Bureau of Statistic

The government introduced Act No 56 of 1960 to implement the limits on ownership of farmland under the Basic Agrarian Law.


\(^{80}\) In 1948, the government formed a Yogyskarta Committee to draft the Indonesian Agrarian Law.
In the Indonesian Supreme Advisory Council meeting on 13 January 1960, the strategy for implementation of land reform was discussed. The Council aimed to abolish the remaining large land holdings, to reduce the number of farm labourers, and to restrict land ownership to those who worked the land. The goal of land reform was to ensure high productivity and to achieve social justice.

Land reform in Indonesia started with land registration and determining which holdings exceeded the maximum limit of ownership. Land was then to be distributed to people with priority given to the following categories: a) farmers who had no land and worked for others, b) workers who worked on a plantation and had no land, c) farmers who had worked on a plantation less than three years, d) farmers who had no land but had been granted use of land, e) farmers who had no land and worked on land owned by another person that was less than 0.5 hectare, f) those who had land less than 0.5 hectare. 

Land was also to be distributed to war veterans and widows of war veterans.

In 1961, the first period of land distribution was conducted in Java, Madura, Bali and Nusa Tenggara. According to the Land Reform Committee, after four years of the land reform program in Java, only 50% of 112,000 hectares land had been distributed. In relation to land owned by absentee landlords, only 1/3 had been distributed out of 22,000 parcels. There were many obstacles encountered in the implementation of the program and numerous land disputes arose. Land reform caused a reduction in the income of landowners and a decrease in the number of absentee owners. Conflicts arose between those who lost land and the workers who

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81 Government Regulation No 224 of 1961, Articles 4 and 8.
83 This land was from those who owned land more than maximum limit of 5 hectares.
were granted land. In central Java, indigenous landowners felt that they were the losers in the land reform program.

D.2 Land Disputes 1966-1998

Under the Soeharto government there were at least three general causes of agrarian disputes namely: (a) the expansion of capital investment, (b) the change from a populist agrarian strategy in the Soekarno era, to a capitalist agrarian strategy under the New Order Government, and (c) the authoritarianism of the New Order Government. 

Suhendar and Winarni found that in the first decade of the New Order, conflict over land was low. This was not because the potential for conflict was low but rather because of greater repression which enabled the conflict to be handled before it came to the notice of the public. During this time the press and the pressure groups were limited in resources and in number. Agrarian disputes at the beginning of the New Order Government were mostly caused by transmigration policy and the exploitation of natural resources, which caused significant conflict between the forestry business land holders and indigenous peoples.

In the second decade of the New Order Government (1973-1983), agrarian conflicts emerged related to acquisition of land for the development of public facilities, such as roads, irrigation, and dams. In many cases the government promoted these development as in the “public interest,” forcing landowners to give up

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84 Endang Suhendar and Ifdal Kasim (n 12), p 97.
85 Arie Sukanti (n 82), p 44.
87 Endang Suhendar and Ifdal Kasim (n 12), p 180.
88 Transmigration program which is regulated under Government Regulation No 42 of 1973 on the Transmigration Program, is the central government policy to migrate people from populated areas -Java, Madura and Bali islands- to the outer islands such as Sumatra, Kalimantan, and Papua.
89 Endang Suhendar and Ifdal Kasim (n 12), p 207.
land with little or no compensation. The major problem was a lack of clarity in defining “development” and “public interest”. The government’s tendentious interpretation of those words was used to justify government action forcing local people to give up their land. For example, in the *Cimacan case* rice farms were turned into a golf course in the name of national interest.

During the third decade of the New Order, when the state income from the oil sector declined sharply, the government increasingly focused on attracting foreign investment, which caused conflict between local people and capitalist projects facilitated by the government. If in the second decade of the New Order Government, disputes were bipartite, during the next period there were three parties involved, the government and the investors on one side against the landowners.

New Order Government land policy was focused on using land to support “economic development.” Economic development was achieved by inviting potential foreign investors and a deregulation process that simplified the process of land acquisition. The New Order Government considered rapid economic growth to be more important than land redistribution. Former land policies were abandoned. In practice, the New Order regime ignored the five principles of the 1960 Agrarian Law. Although BAL 1960 limited land ownership to not more than 10 hectares, many wealthy farmers in South Sumatra acquired land that exceeded this limit.

Although absentee land ownership was prohibited, much land in rural areas belonged

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90 Suhendar categorized parties in agrarian disputes as follows: a) owners/tillers/residents versus the government institutions, b) Owners/tillers/residents versus private companies, c) Owners versus tillers and residents, d) government institutions versus the private companies, and e) among the private companies themselves. Suhendar (n 260), p 38.
92 Articles 7 and 17 of BAL 1960.
93 Interview with Karim AR, Lubuk Linggau 30 September 2000.
to people who lived in the city and rented out their land or hired local people to work it.\textsuperscript{94}

All land reform programs ceased. Land reform schemes were transferred to transmigration programs where people from Java, Madura and Bali migrated to areas outside Java. One of the main reasons for the transmigration project was that farming in Java was not efficient due to limitations on land ownership. The Basic Agrarian Law 1960 was “frozen.” This meant all policies based on BAL 1960 were stopped. Agricultural policy was reviewed and land ownership was restructured to promote the “green revolution” aimed at speeding up agricultural production.\textsuperscript{95} The government prioritised the allocation of land to sectors that supported rapid economic growth. Significant business people, high-ranking government officials, and military officers, were loyal and strong supporters of the New Order economic policy.

The result was a great increase in land disputes. In West Java between 1988 and 1991 there were approximately 15,000 farmers who had to leave their land because it was claimed as state land to be used for “development.” By 1994, in three districts of West Sumatra—Asahan, Tapanuli Selatan and Labuhan Batu—there were 19 land disputes involving 5,047 families. Four areas studied by the Legal Aid Foundation in 1995—South Sumatra, North Sumatra, West Java, and Bali—reported 113 agrarian disputes involving 64,452 families. According to the Legal Aid Foundation in Lampung in 1995 alone there were 110,737.50 hectares of land involved in land disputes. In nine land disputes, there were 480 houses burnt, and 89,500 families were forced to leave their land.\textsuperscript{96} In the province of West Java in

\textsuperscript{94} Interview with Public Notary Indra Putrajaya, Lubuk Linggau, 30 December 1999.
\textsuperscript{95} Endang Suhendar and Ifdal Kasim (n 12), p 98.
\textsuperscript{96} ‘Land disputes in Lampung reached the areas of 110,737.50 hectares,’ \textit{Kompas}, 5 January 1996 [Internet: http://www.kompas.com]
1995-1996, complaints to the House of Representatives were also dominated by land cases. 97 According to the Legal Aid Foundation in Yogyakarta, in 1997 land cases reported increased more than 200 percent from the previous year. 98

Many complaints made to government and non-governmental institutions were over land disputes. For example between 1994 and 1997, of the 434 complaints reported to the Golkar Faction, 233 related to land issues. The figure below shows that more than 54% of complaints made to the DPR (the Indonesian House of Representatives) related to land disputes.

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97 "Forty Five Cases were reported to the West Java House of Representatives', *Kompas*, 2 January 1996 [Internet: http://www.kompas.com]
These complaints came from all over Indonesia. Although there is a House of Representatives at both the provincial and district levels, people found that local governments had no power to solve problems.99

The three major areas of complaints from 1994 to 1996 to the National Human Rights Commission were land cases, human rights abuses and labour issues. In 1994, there were 101 cases relating to land disputes, and the following year this rose significantly to 168. In 1996, land disputes reported to the National Commission on Human Rights jumped to 327 cases. Yet many cases were not reported to the National Commission because they occurred in areas thousands of kilometers away from the Commission, which had its offices in Jakarta. Many cases have occurred in remote areas involving the villagers without education. The figure below shows that

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99 Interview with Suharyono, Director of Legal Aid Foundation, Palembang, 13 January 2000.
from 1994 to 1998 land matters were the most common issues reported to the National Commission for Human Rights.

Figure 4.3: Three Major Areas of Complaint Reported to the National Commission for Human Rights 1994 – 1998.

However, most land disputes under the New Order were not brought to any institution. According to LBH Lampung research, in the province of Lampung only 5.53% of landowners whose land was taken for various projects complained about the matter, and 94.47% of the victims chose not to report their complaint. This statistic alone cannot be used to conclude that almost 95% of the people avoid seeking a legal or political remedy when their land is confiscated. Nevertheless, the LBH Lampung finding indicates that only a tiny minority of landowners whose land...
was taken by force lodged a complaint. Generally, this was because they understood that a court or other official body would ask for written proof of land ownership, and most farmers had ownership under customary law and did not have a land certificate.

D.3 Land Disputes After 1998

Soon after the Soeharto regime ended, people reasserted ownership rights that were denied by force during the New Order. In Jakarta on 25 June 1998, hundreds of people occupied a real estate complex owned by Sudwikatmono, brother of former President Soeharto. In Ujung Pandang, South Sulawesi, on 16 July 1998, hundreds of people occupied PT Garmak Motor owned by Probosutedjo, another brother of Soeharto. In Medan, North Sumatra, on 22 July 1998, thousands of people occupied a state-owned plantation company. Two particular land occupation cases stand out: “The Cimacan Case” and “The TAPOS Case”.

Cimacan is a golf course with an area of 33.45 hectares under the management of PT Bandung Asri Mulya. This golf facility was built in 1988 by transforming villagers’ rice fields without fair compensation. For almost ten years student activists and non-governmental organizations (NGO) supported the landowners in their fight to get back their land. However, they had to deal with company bodyguards supported by the military. Many farmers in Cimacan were jailed or tortured by the military because of their resistance.

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101 Attorney General Ghalib: Cimacan and Tapos land cases were criminal acts, Kompas, 29 July 1998 [Internet: http://www.kompas.com]
102 Kompas, “TAPOS farmers keep trying to get back their land,” 7 September 1999 [Internet: http://www.kompas.com]
103 One farmer explained that he received compensation of Rp 30 per meter.
104 Forum Keadilan, “Taken back rights which were seized in the past,” 10 August 1998, p. 13

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In July 1998, hundreds of farmers from Cimacan and Cianjur, West Java, occupied the golf course. Instead of bringing weapons, the farmers brought “bibit tanaman” (seeds of plant) such as banana and cassava, and they planted them on the nine-hole golf course. As a result the Cimacan golf course has become a banana garden.\(^\text{105}\)

TAPOS was a ranch owned by former President Soeharto. This ranch was built in 1972 by the Soeharto company, PT Rejosari, after confiscating land without compensation. General Mochamad Jasin, a former Soeharto colleague in the military, explained that Soeharto obtained the TAPOS area from the Governor of West Java. The Indonesian Department of Public Works provided facilities for the personal ranch, such as a water system, fences and roads. Soeharto asked the Navy to import cows from Australia. “TAPOS ranch was clearly an example of abuse of power by a Head of state,” said General Jasin.\(^\text{106}\) Soon after Soeharto left office, hundreds of farmers supported by students occupied TAPOS by force.

Plunder took place in many parts of Indonesia. People pillaged agricultural products such as oil palm, clove, coffee, chocolate, or rice.\(^\text{107}\) People occupied land which had been confiscated by the Soeharto family and friends.\(^\text{108}\) People took the law in their own hands and were quite prepared to ignore proper legal process.

According to the Minister for Forestry and Plantation, Dr. Muslimin Nasution, in the
middle of December 1998, the total area under plantation production taken by force reached 39.8 thousand hectares in 106 locations. There were 54 state-owned plantations and more than 35,500 hectares of private-owned plantations occupied by force.  

Why did people occupy land or take plantation products as they wished without following legal procedures? One answer is that for more than three decades, the New Order Government had implemented policies that were not based on the rule of law.

E. Conclusion

Ultimately the rule of law and human rights protection are defended not by the words written in legislation, but by an independent judiciary and good governance which builds confidence in government institutions. It is meaningless to have elegant legislation if in reality the values expressed in law are a dream.

There are two problems with the rule of law in Indonesia. First, law was unfair because it benefited those in power or the rich. Second, law as safeguard for people is not effective. Government officials and corporations who violate the law are not punished. Therefore, there is no the rule of law if the law was unfair and unenforceable.

A. Oil Palm Plantations: Hopes for a Better Future

The New Order Government put economic growth as the highest priority. Before the economic crisis hit Indonesia in 1997, economic growth in the 1990s averaged 7% per year. To reach its target of high economic growth, the government implemented many policies despite the social cost of the policies. For example, the government policy which facilitated the acquisition of land by investors resulted in smallholders relinquishing their land for little or no compensation. The central government in Jakarta launched various programs inviting both domestic (Penanaman Modal Dalam Negeri or PMDN) and international investors (Penanaman Modal Asing or PMA) to participate in developing Indonesia. However, the central government neglected local people's right to participate in the process.

Many local South Sumatrans expected that the governments' policy would stimulate economic growth and create employment opportunities. However, often the investment activities instead created problems. First, there was a lack of standard

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2. Interview with MA. Djauhari Rusdi, the Head of the 'General Government Section' (kepala seksi pemerintahan umum) at the South Sumatran Governor's Office, Palembang, 11 December 1999.
3. There are eight commodities under the coordination of the Directorate General of Plantation including oil palm, rubber, coconut, tea, coffee, sugar cane, cotton, and chocolate. They are mainly run by state owned plantation companies or 'PTPN' (Perseroan Terbatas Perkebunan...
procedure in investment. Secondly, many government officials became involved in corruption, collusion, and nepotism (*korupsi, kolusi, dan nepotisme*). For example, a head of the sub-district in the district of Musi Rawas issued 5,000 false land certificates, which resulted in land disputes between PT Dendy Maker Indah Lestari Company and the local residents of five villages.\(^4\)

In South Sumatra, the plantation sector including oil palm plantations became the main target for investment. For this reason, the government simplified the process of investment for building oil palm plantations which resulted in a concentration of plantations in many districts in the South Sumatra province, including the district of Musi Rawas where this field research was conducted.

African oil palms (*Elaeis guineensis*) were first introduced in Southeast Asia in the 19\(^{th}\) century. The Dutch introduced four oil palms in Indonesia in 1848. The first large-scale establishment of monoculture plantations in Asia first took place in Malaysia in the 1960s and the expansion of Indonesia’s oil palm estates occurred in the 1980s.\(^5\)

In 1992 palm oil consumption enjoyed the highest average growth rate among vegetable oils and all major categories of oils and fats. Global demand for palm oil increased approximately 7 per cent each year in the period 1992-1997, followed by soybean oil at 5 per cent while other vegetable oils grew less than 4 per cent per year.

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Chapter Five: Oil Palm Plantation and Plasma System

Globally Indonesia has the highest consumption of palm oil, followed by China, Malaysia, and Pakistan because the type of food typical of the region is mostly stir fried. The figure below shows global palm oil consumption by country.

Figure 5.1: Global Palm Oil Consumption by Country

Three South East Asian countries dominate the global oil palm trade—Malaysia, Indonesia, and Thailand. The Indonesian Centre for Business Data (Pusat Data Business Indonesia) calculated that of the 1997 total world production of 17.117 million tonnes, Malaysia contributed 9.105 million tonnes (53.2%), Indonesia 5.358 million tonnes (31.6%), and Thailand 0.405 million tonnes (2.4%).

The oil palm industry is the most rapidly expanding industry in Indonesia. According to the World Bank, its primary product—palm oil—will be the world’s most consumed edible oil by 2012. The growing demand for palm oil combined with the low

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7 Indonesian Center for Business Data, 1998.

8 Crude Palm Oil (CPO) is the primary product derived from the fruits of the oil palm. CPO is used for various products including Margarine, chocolate, frying fat, instant soups, cooking oil, pizzas, soap, cosmetics, and toothpaste. Palm Kernel Oil (PKM) is derived from the fruits' flesh. Palm Kernel Meal (PKM) was used as food for slaves in Africa between 1562 and 1807. At present, it is used for animal feed. Eric Wekker (n 5), p 9.

130
cost of production attracted many investors to this sector. In 1997 the Indonesian Investment Co-ordination Board (*Badan Koordinasi Penanaman Modal*) approved more than 600 oil palm plantation projects covering a total area of 9 million hectares.\(^9\)

Plantation ownership by smallholders increased significantly from 4.1 million hectares in 1968 to 11.2 million hectares in 1998. In the same period, plantation areas owned by the state companies and the private companies increased 2.4 million hectares from 0.8 million hectares in 1968 to 3.2 million hectares in 1998.\(^10\)

Ninety six percent of all oil palm plantations in Indonesia are located in Sumatra and Kalimantan, and 90% of the areas applied for by investors as of 1995 were in these regions.\(^11\) Many districts in South Sumatra rely on the plantation sector. The District of Musi Rawas for example, relies on commodities such as rubber, palm oil, coconut, coffee and cloves with rubber still the main commodity. Because of aggressive investment by local and foreign investors in oil palm, it is likely that the future of many farmers in Musi Rawas will depend on this sector instead of rubber plantations with which they are familiar.\(^12\)

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9. Id.
10. Eric Wakker (n 5), ibid at 29.
11. If the 1995 applications were all accommodated, Sumatra would be approximately 8.5 million hectares of land for conversion purposes. Eric Wakker (n 5), p 14.
12. In the district of Musi Rawas, palm oil constitutes the second main commodity after rubber. In 1996, there were 29,782.40 hectares given to palm oil. Some private companies operating in this area include PT London Sumatra, PT Bina Saint Corp, PT Djuanda Sawit Lestari, PT Perkebunan Hasil Musi Lestari, PT Musi Rindang Wahana, PT Denny Marker Indahlestari, PT Dwi Raksan Usaha, and PT Raya Mekari. Among those companies, PT London Sumatra has the most problems with the local people in Musi Rawas and other districts in South Sumatra because this company has the most in terms of areas and workers involved. See, Musi Rawas Government Office, *Profiles of Investment in the District of Musi Rawas* (BAPPEDA Musi Rawas, Lubuk Linggau, 1998), p v.
B. Negative Impacts of "Sistem Plasma"

In 1970 the World Bank recommended Indonesia develop the plantation sector. The World Bank gave loans in order to achieve this goal and introduced the Nucleus Estate and Smallholder Scheme or NES. The NES scheme was introduced in 1978 with loans from the World Bank known as project NES I. The project continued with NES II in 1980, NES III in 1981, NES IV, NES V, NES VI, and NES VII in 1982. In 1984 the World Bank funded the NES sugar project which continued in 1986 and the NES Oil Palm project in 1987. In order to further promote the development of oil palm plantations, in 1996 the government introduced the KKPA (Prime Cooperative Credit for Members) scheme.

The NES schemes in Indonesia are known by various terms including perusahaan inti rakyat perkebunan (PIR-BUN) or sistem plasma. According to the Minister of Agriculture Decision No 668/Kpts/KB.510/10/1985 on the General Guideline of Nucleus Estate and Smallholders in Plantation (Petunjuk Umum Pelaksanaan Proyek Perusahaan Inti Rakyat Perkebunan) PIR-BUN has different types including PIR-khusus, PIR-Trans, PIR-lokal, PIR-Berbantuan, PIR-Akselerasi, and PIR-swasta. Whichever term is used, the idea is similar in each scheme. The plantation

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15 PIR-Khusus is a Nucleus Estate Smallholders project conducted in the transmigration area and funded by the Indonesian government. PIR-Trans is a Nucleus Estate Smallholders project conducted out of Java in conjunction with a transmigration program. This project develops new plantation areas and involved the migrants as the members of plasma. PIR-Trans is a Nucleus Estate Smallholders project conducted out of Java in conjunction with a transmigration program. This project develops new plantation areas and involved the migrants as the members of plasma. PIR-Trans is a Nucleus Estate Smallholders project conducted out of Java in conjunction with a transmigration program. This project develops new plantation areas and involved the migrants as the members of plasma. PIR-Lokal is a Nucleus Estate Smallholders project conducted around the existing huge plantation areas as the nucleus and all funds come from the Indonesian government. PIR-Berbantuan is a Nucleus Estate Smallholders project partly funded by foreign institutions. PIR-Akselerasi is a Nucleus Estate Smallholders project conducted in a transmigration area and all expenses come from the plantation companies and are then reimbursed by the government bank. PIR-Swasta
company acted as a nucleus and the farmer as a member or plasma.

When discussing profit sharing in oil palm plantations in Indonesia (hereafter sistem plasma), two Indonesian terms kebun inti and kebun plasma must be understood. Kebun inti is the oil palm plantation area built and owned by the company. Kebun plasma is the oil palm area built by the company but "owned" by the villagers. Article 2 of the Minister of Agriculture Decision No 668 of 1985 on the General Guidelines for Nucleus Estate and Smallholders in Plantations provides that the company that invests in oil palm in addition to building its own oil palm areas (kebun inti) must also build oil palm areas for the villagers on a profit sharing basis (sistem plasma), which is called kebun plasma.

The Nucleus estate and Smallholder or Profit sharing system is known in Indonesia by various terms including perusahaan inti rakyat perkebunan or usaha tani kontrak, or sistem inti plasma. In general, a company reaches a contract with local farmers to produce an agricultural product as directed by the company. The company can give technical advice and loans and guarantees a market for the farmers' products. In theory, the sistem plasma concept represents a variant of modern agribusiness. This system developed as a response to the criticism that the large plantation sector was monopolized by one company and to implement the philosophy of the World Bank for promoting export growth.

In oil palm activities, *sistem plasma* means that the companies (*inti* or nucleus) prepared plots of land for smallholders located nearby. Usually the land belongs to the villagers, but they have neither the ability nor the money to develop the plots for oil palm plantation purposes. As the plots mature, usually after four years, the operations are transferred to the smallholders, known as *plasma*. The smallholders then have three choices: a) full responsibility for the management of the plots, b) transfer the management to a cooperative (*koperasi*) where he/she becomes a member, or c) to keep management within the company on a profit sharing basis. Whichever alternative is chosen, the oil palm companies are then required to purchase the oil palm fresh fruit bunches (*tandan buah segar*) from the smallholders.

In theory *sistem plasma* has positive goals, for example, to improve the quality of life for Indonesian farmers. If this program were conducted properly, it could improve the lives of many Indonesians as the majority of Indonesians live in the village and work as farmers.

As a government program, *sistem plasma* aimed to improve the economic status of the villagers and to use vacant land in the villages. Often land was vacant because local people lacked the ability to work on those lands. Under *sistem plasma* the companies were able to change unproductive land into productive land. In some areas such as the village of *Tebing Tinggi*, once the people realized the dramatic change from “unproductive land” to “productive land,” they were stimulated to acquire land and to apply for inclusion in *sistem plasma*. In the district of Ogan Komering Ulu, South Sumatra province, PT Minanga Ogan oil palm company

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**Chapter Five: Oil Palm Plantation and Plasma System**

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*Article IV. (1-6) Tahap Pelaksanaan Pembangunan* of the Minister of Agriculture Decision
succeeded in operating sistem plasma without any land disputes. Leading agrarian lawyer, Darbi Alwi, outlined the reasons for the success of this company. Before the company started its project, the title of land was clarified. The company did not include villagers in the sistem plasma if the status of land was unclear. In paying compensation to the landowners, the company directly dealt with the villagers without involving the local government. As proof that payment of compensation had been made, the company took a picture of each landowner receiving compensation. However, in practice sistem plasma in the oil palm sector does not work as planned.

C. Problems in Implementation of NES Schemes

C.1 Investment

The process of investment in plantations in South Sumatra was based on the Decision of the Agrarian Minister/ the Head of National Land Agency Number 3 of 1992 and the South Sumatran Governor decision's of 1993 regarding the preparation of plantation land. This regulation was replaced by a decision issued by the Agrarian Minister / Head of the National Land Agency Number 2 of 1999.

According to the South Sumatra Governor’s decision of 1993 regarding the preparation of plantation land, investment in oil palm plantations should be conducted as follows: The investors make an application to the Governor of South Sumatra with No 668 of 1985 on the General Guideline of Nucleus Estate and Smallholders in Plantation. Interview with agrarian lawyer Darbi Alwi, Jakarta, 4 October 2001. Sistem plasma successfully operates in some parts of Riau. See, Soeripto, ‘Peranan, Tantangan dan Kendala PIR Perkebunan (Kasus di Daerah Riau)’ in Soeripto, et al, PIR Perkebunan. Kemirian Usaha Besar dengan Petani dalam Agrribisnis Perkebunan (Yayasan Agrimedia, Jakarta,
copies sent to the Head of the National Land Authority at district level, the Head of the Regional Planning Agency or BAPPEDA, and the Head of District. In its application, the company should enclose the following documents:

a. The company's operational permit
b. The company's board of directors
c. The company's tax file number
d. A statement made by a company director regarding the company's responsibility to pay compensation for any villagers land used for the project
e. A recommendation from the Head of District where the plantation will be operated
f. A project proposal regarding investment
g. A business permit in the plantation area issued by the relevant central government minister
h. The company's prospectus

Based on these documents, the Governor then arranges a meeting to discuss this investment plan involving relevant departments including representatives from the mining, forestry, transmigration department, local government, local offices, and BAPPEDA (Regional Planning Agency) at provincial and district level. The coordination meeting aims to make sure that the location is suitable for oil palm activities, such as that it was not located in a mining area or as part of conservation land, for example.

During this meeting, the provincial government can endorse the company's proposal to develop the oil palm plantation and will ask other government representatives for comment. They may reject the proposal. If, for example, in the opinion of the Department of Mining the oil palm plantation plan is located within the mining area, then the Mining Act requires that the plan must be cancelled.
Chapter Five: Oil Palm Plantation and Plasma System

After conducting the coordination meeting, an investigation team is formed to conduct a field study. The company is to pay all expenses of the field study. During the investigation, the team must reach consensus in order to make a recommendation of whether the location is suitable for oil palm plantation activities. Once the team has decided that the area is suitable for the oil palm plantation purposes, the team recommends that the Governor of South Sumatra issue a permit for that specific location. The Governor usually agrees with the team’s recommendation.

One problem is that the provincial government is very dominant in decision-making. In many cases, staff from the provincial government is less experienced than the district government officials as to the area where the oil palm plantation is planned. The district government officials have been dealing with similar issues for many years, yet, in practice, the district government has less power to decide the matter.

Another problem was that the company funded the government activities in the interests of the company. There were at least two government teams involved in oil palm plantation investment. The first team decided whether the location was suitable for plantation activities. This team would inspect the proposal areas and made recommendations to the Governor. All costs of the team’s activities had to be paid by the company. The costs included transportation and accommodation. According to Indonesian culture, it is very difficult for the team to work independently without being subject to influence. The independence of the team in making the recommendation and its ability to reach an objective decision is doubtful.
Chapter Five: Oil Palm Plantation and Plasma System

The second team was set up when there was a land dispute. This team, involving various government departments, investigated the disputes. The field research for this thesis involved working with this team to investigate the Abdul Djobar case, which will be discussed later. The team was set up by the provincial government and was supported by other teams from the district government. The company was responsible for all expenses for this team. It was difficult to ascertain the direct line of reporting of this team, whether it was to the company or the government. It appeared that the company representative directed the government team, rather than the other way around.

The lack of independence of the team favoured the company, which often ignored the process regulations. In many cases the government was unable to resolve the resulting dispute because, from the beginning, they failed to implement the rules and also failed to act independently.

On 23 October 1999 the central government issued Agrarian Minister / the Head of National Land Agency Decision Number 2 of 1999 regarding Location Permits. This new Ministerial Decision differed from the Agrarian Minister / the Head of National Land Agency Number 3 of 1992 as shown below.

<table>
<thead>
<tr>
<th>No</th>
<th>Agrarian Minister Decision No 3/1992</th>
<th>No</th>
<th>Agrarian Minister Decision No 2/1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Location permit endorsed by the Head of the National Land Agency of South Sumatra (Kepala BPN Sumatra Selatan)</td>
<td>1</td>
<td>Location permit endorsed by the relevant Head of the District.</td>
</tr>
<tr>
<td>2</td>
<td>No maximum area for plantation activities (unlimited)</td>
<td>2</td>
<td>Maximum area for each company is 20,000 hectares in one province.</td>
</tr>
<tr>
<td>3</td>
<td>Location permit valid for one year and renewed for another</td>
<td>3</td>
<td>Location permit valid for three years can be extended.</td>
</tr>
</tbody>
</table>
Even with the 1999 changes there are still problems with the investment process in South Sumatra, namely a) the rules of the investment process have not been fully implemented, b) the district government lacks authority, c) there is a lack of transparency, and d) the company funds the government ‘operational team’. These conditions contribute to land disputes and the district government cannot act as a neutral agent to resolve the dispute because they receive funding from the oil palm companies.

Article 8 of Agrarian Minister Decision No 2 of 1999 further states:

The investor has a right to obtain title through the land acquisition process based on consensus with the former landowners. Land acquisition may be based on buying the land, offering compensation, and or by other accepted means.

In South Sumatra the company often neglects to seek “consensus” with the landowners. The landowners, mostly villagers with low educational backgrounds, were not involved in the process. In the *Bukit Hijau case* which involved the family of Syahri (a villager whose land was taken by force by the oil palm company to build a crude palm oil factory), PT London Sumatra used their land for Crude Palm Oil factory without reaching agreement with the landowners.
A second weakness of the investment process in the 1999 law is the lack of authority of the district government. The essential change made in Agrarian Minister Regulation No 2 of 1999 was that a location permit should be endorsed by the relevant Head of District (Bupati yang bersangkutan) rather than the Head of the National Land Agency of South Sumatra (Kepala BPN Sumatra Selatan) as per the previous Agrarian Minister regulation. In theory, the endorsement of the Head of District (Bupati) gave more authority to the district. However, if we look carefully at the whole process, the final decision was taken on the authority of the Governor, as the Head of Provincial government, because ultimately all plantation investment needs a recommendation from the Governor. The endorsement made by the Head of the District would be meaningless without the Governor's recommendation. There appears to be no power by the Head of the district to veto the Governor's decision.

C.2 Informing the Plasma Participant

The requirement by Agrarian Minister Decision No 2 of 1999 on Location Permits states that prior to the commencement of investment activities, the villagers are to be informed.

Article 6 (5) provides:

Prior to the plantation activities, public consultation should be made through the following methods:

a. Dissemination of information regarding the investment, its impact, and land acquisition process.

b. Information should also be given to the landowners regarding the investment plan and the method of dispute settlement.

c. Information regarding social and environmental issues should be collected directly from the villagers.
Chapter Five: Oil Palm Plantation and Plasma System

It is not clear whether sanctions can be levied on the companies if they fail to comply. It is also not clear who will monitor whether the company implements this regulation.

C.3 Parties

According to the Minister of Agriculture Decision No 668 of 1985 on the General Guidelines for Nucleus Estate and Smallholders, sistem plasma in oil palm plantation involved five parties.¹⁹

a) Local government. The local government was responsible for informing the villagers about the positive aspects of being a member of sistem plasma. However some government officials used this opportunity as a tool to achieve personal benefit. According to Supandi, the manager of the Village Cooperative Unit (Koperasi Unit Desa or KUD) Panji Layangan, having advance information about which locations would be used for oil palm plantation projects enabled some heads of sub-districts (Camat) to purchase land for themselves and their relatives in the plantation area. The Head of a sub-district then becomes a member of sistem plasma but often his or her membership is under the name of a relative or friend.²⁰ Unfortunately, it is rather fanciful for the KUD in the district of Musi Rawas to develop insider-trading rules.

b) The landowners. Each landowner may become a member of sistem plasma of an oil palm plantation in accordance with these procedures: 1) each

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²⁰ Interview with Supandi, manager of KUD Panji Layangan, 10 February 2000.
landowner is given one parcel (paket) of 2 hectares of land. 2) Each landowner must be able to prove his title on the land. If no documentary proof of ownership can be shown, then the land would belong to the state (tanah negara) and it automatically belongs to the company based on its agreement with the government. 3) Each family could have a maximum of three parcels or six hectares of land.

In fact, many landowners had more than three parcels of oil palm land. There were landowners who had twenty parcels with a total of forty hectares of land. In his letter to the Parliament, Zainal Arifin Achmad stated that in the sub-district of Muara Lakitan there were 50 parcels (100 hectares) owned by the former of Head of District (Bupati) of Musi Rawas and the Head of Sub-district (Camat) Muara Lakitan who registered as a member of sistem plasma. It is difficult to prove such allegations as, often, land is registered under other people’s names.

Many villagers have no certificates of land ownership. However, there are other methods to prove land ownership. Article 3 (a and b) of the Minister for Agrarian and Agriculture Decision provides that the landowners should report their interest in land to the Head of Village (Kepala Desa). After tracing the title, the Head of a village would produce a letter which is known as a Land Ownership Letter (Surat Keterangan Tanah or SKT). This letter can be used as proof of ownership.

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1 Zainal Arifin Achmad’s letters, Lubuk Linggau 2 February 1999. On 20 February 2000 Zainal Arifin wrote a letter to the Head of District of Musi Rawas stating that SKT no 417 to 466 were false. In his letter he explained that more than 50% of landowners in Sidomulyo and Marga Baru village had false SKT’s as a result of corrupt government officials, in this case the Head of the Sub-district and the Head of Village. On 22 August 2000, I wrote to Zainal Arifin to seek information on this matter, but received no response to my letter.

2 Interview with Karim AR, former Head of sub-district and the Speaker of the District Parliament, 30 September 2000.
Chapter Five: Oil Palm Plantation and Plasma System

(temporarily substituting for the land certificate) to register as a member of sistem plasma. Corruption even affected this lowest level of government. There were many false land certificates sold. For example, in the village of Rawas Ilir one SKT (for two hectares of land) could be bought for 200 thousand rupiahs. The SKT states that the bearer has the right to two hectares of land as mentioned in the certificate. In fact, there were no land rights for the bearer of those SKTs because the certificates were false. This situation created a dispute because the owner of the SKT thought they had a right to claim the land, but in practice this was not the case. The situation was more complex when the plots mentioned in the SKTs were already being used for oil palm plantation.23

In addition to false SKT's, the Head of a sub-district sometimes issued SKTs on production forest which is contrary to higher regulations. Under Government Regulation No 28 of 1985 and the Instruction of Minister of Home Affairs No 15 of 1988, an SKT may not be issued on production forest. In reality, however, the Camat sold SKTs for forestlands to the oil palm companies. In response to these corrupt policies, in December 1998 the Governor of South Sumatra issued a letter to cancel all SKTs on forestland.24

The government officials who sold SKTs illegally were only punished by “a letter” from the Governor telling their superior to suspend the SKTs. No Camat or Kepala Desa was charged for his or her corrupt actions. Dachry Anom, first assistant

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23 Interview with Dachry Anom, 23 December 1999.
24 Governor of South Sumatra Letter’s No 593/5493/1 to all Head of Districts (Bupati) regarding the Cancellation and the Prohibition of SKTs, 15 December 1998.
to the Bupati of Musi Rawas, said that one of the camat was relocated because of his corrupt policy on SKTs. Under the Indonesian criminal law, the issuing of false land certificate can be prosecuted.

\[25\] \[26\]

c) The company as the “inti”. The company was responsible for the development of plots of the oil palm plantation. The company was responsible for any risks, such as bush fire or other natural disasters. The company has the right to harvest the fresh fruit bunches of the oil palm. This company management was to last for three and a half years, and then land would be transferred back to individual holders who must sell the product to the company until the loan is paid off.

In many locations, companies cleared the land and planted the plots without negotiating with the landowners. Even if the company received consent from the landowners, confusion ensued when the terms of a bank loan were uncertain so it was not known how long the company would have the right to the land. In the Terawas estate, for example, after more than four years the landowners still were not sure when they would sign the inti-plasma contract and what share of the profit they could get. The villagers saw that the company kept harvesting the oil palm without any discussion with them. In the PT London Sumatra Oil Palm Plantation area in Terawas estate, a credit agreement was signed only after the company had harvested at least three times. In theory, a credit agreement should have been signed before the oil palm was planted.

\[25\] Interview with Dachry Anom, Lubuk Linggau, 23 December 1999.

\[26\] Article 263 (1) of the Indonesian Criminal Code provides that: “...whoever forges a document which can be used to gain a right or obligation or to release any debt or which can be used as
d) The village cooperative organization (Koperasi Unit Desa, hereafter KUD). All landowners become members of the village cooperative. This KUD would act on behalf of the landowners to acquire loan from the banks. For its role, the KUD would receive a fee of 3% of the total loan payment after the first harvest.

The Indonesian Reserve Bank (Bank Indonesia) introduced a credit facility which was known as Koperasi Kredit Primer Anggota (KKPA) or Primary Cooperative Credit for Members. The Indonesian Reserve Bank required that this scheme be available only if the oil palm company involved the KUD.27

The exploitation of farmers and long-term farmer debt to the company could have been avoided if the farmers were organized in professional village cooperative organizations. The problem was that most farmers either did not organize a KUD, and many KUDs lacked experienced management. There were problems with the organization of the KUD because many directors had no professional experience and there was no management structure. In theory in sistem plasma, there is a contract between a KUD, which acts for and on behalf of its members, and an oil palm company. However, if we look at the contract carefully, it appears that a KUD and its members are in a weak position. Many of the villagers do not understand the contract and instead rely on the KUD. The contract between KUD Pakar Makmur and PT

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27 Letter of Indonesian Reserve Bank to PT Dendymarker Indahlestari, Palembang 19 July 1999.
Chapter Five: Oil Palm Plantation and Plasma System

Dendymarker Indahlestari in the district of Musi Rawas (see appendix E) illustrates the complex arrangements villagers must understand.

In the case of KUD Panji Layangan and KUD Terusan Jaya in the district of Musi Rawas, neither their program nor their sphere of operation was made clear. As a result, these two KUDs became embroiled in disputes about the right to harvest at the Terawas Estate, district of Musi Rawas. KUD Panji Layangan argued that the smallholders asked them to harvest the plantation, but KUD Terusan Jaya stated the opposite.28

e) The banks. Oil palm companies used the landowners’ land in order to get credit from the bank. Usually the first step of the contract was agreement with the company that landowners should surrender their land certificate (SKT) to the bank. With these land certificates the bank would extend credit to the oil palm companies.

PT London Sumatra received a loan from the State Bank of Indonesia (Bank Negara Indonesia) and the State Bank of Commerce (Bank Dagang Negara). In 1997 the loan on each parcel for two hectares was of Rp 8,760,000. The loan was to be repaid by the company’s selling of fresh fruit bunches (tandan buah segar) of the oil palm.

Ali Amran, a former Manager of PT London Sumatra, explained that the landowners would not pay the loan, but instead the payment would be made by the company.29

The field research conducted for this thesis revealed that many villagers whose land was used by the company to acquire a loan from the bank, had never seen the

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28 Interview with Supandi Manager of KUD Panji Layangan, Lubuk Linggau, 10 February 2000 and with Husni, Manager KUD Terusan Jaya, Desa Terusan, 8 February 2000.
29 Ali Amran (n 19), p.3.
contract between the bank and the company by which the company borrowed money on behalf of the villagers. Disputes arose because the oil palm companies had not fulfilled their obligation to inform the landowners of the process of sistem plasma. In Terawas, Kepahyang, Bingin Teluk, Rawas Ilir and Muara Lakitan, disputes arose with PT London Sumatra Oil Palm Company because landowners asserted that the company only used their land for its own purposes including obtaining credit from the bank. One villager, when asked whether he was part of a plasma program, replied “yes”. When asked how long his land had been planted by PT London Sumatra, he replied, “more than four years”. When asked, “Do you have any proof, such as a letter, that your land is just loaned to the company and you are the owner based on profit sharing?” answered, “No. There is no letter whatsoever proving that the company leased my land. I just trust the company management.” In this kind of case, how could Ali Amran (Manager of PT Lonsum) guarantee that after three and a half years the land would be returned to the owner? There was no guarantee the company would repay the loan fully, and the villagers would have their land rights restored.

Some KUD managers were good negotiators, such as manager of the KUD Beringin Makmur, Uskadi, Sriwijaya University law school graduate. He explained that many KUDs were not well organized so they were unable to negotiate with the company. It was difficult even to get a copy of the credit agreement (perjanjian

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30 The district government of Musi Rawas asked the company to resolve the dispute through musyawarah as suggested in its letter No 593/1343/talapem, 25 May 1999.

31 Interview with a villager in Bingin Teluk, 22 January 2000.
between the bank and the landowners. Many villagers just signed the papers without understanding the implication of their signatures. An example of a credit agreement between a member, the Bank, and the oil palm company was produced.\textsuperscript{32} It was a standard contract issued by the bank for all parties which explained all aspects of the credit agreement including parties involved, maximum credit, security, the rights and duties of the parties. Enclosed in the credit agreement was a schedule of payment to enable the creditor to understand the process and the period of payment. For example, for one parcel of oil palm land (two hectares of land) a creditor would receive Rp 8,760,700 (in 2001 approximately A$ 1,600). However, almost all villagers involved in NES schemes had only an elementary school education and could not understand such a contract.

The loan was to be repaid in seven years time with a payment due every three months. In theory, for the first three years the company would decide how much each member got from his plot and then, after calculating the production costs, the remaining money would be used to pay the loan.

Rimbo Gunawan’s research in sistem plasma revealed that farmers often became long-term debtors to the company. He wrote:

The participants became entrapped in a mechanism of long-term loans on a scale that they had previously never even imagined. Technically, the instalments cut from their income to pay back these loans was between 40 to 60 per cent, without any allowance for the drop in production caused by bureaucratic inefficiency. Yet in the days before the project was established, they had been able to earn cash income from their own agricultural system, which was based on multicropping and which could always provide a guarantee of food security\textsuperscript{33}

\textsuperscript{32} Interview with Uskadi, Manager KUD Beringin Jaya, Bingin Teluk 22 January 2000.

C.4 Summary

The office of the Minister of Agriculture found the following problems in the sistem plasma:

a. Lack of harmonious relationship between Nucleus and member (inti and plasma)
b. Lack of transparency in determining the price of plantation products. One agreement in sistem plasma is that the farmer should sell the plantation products to the company (as the nucleus) and the company decides the price.
c. Delays in determining the farmers as members of sistem plasma
d. Delays of loan payments by the farmers.
e. The farmers sell their products to other buyers. This is a violation of contract because under sistem plasma the farmers may not sell their products to anyone other than the nucleus companies.
f. The productivity of the plantation is low and this condition influences profit sharing between the plantation company and the farmers.
g. Disputes with local people often create social unrest, which threatens the company's assets.
h. Delay of plantation development as a result of funding problems.

D. Corruption in Plasma Schemes

D.1 Corruption in Land Acquisition

There are several forms of corruption common in plasma schemes. Article 8 of Regional Regulation No 17 of 1998 on the Development of plantations based on sistem plasma states:

(1) Those who are eligible as members of sistem plasma project are:
   "...local people, farmers whose land is included in the plantation project, farmers who live in the village of the project ..."
(2) The appointment of members of sistem plasma is based on decision of the Bupati following the proposal from Camat and Kepala Desa.

Directorate General of Estate Crop, Jakarta, 1999, p. 8
In practice, many members of sistem plasma are not those described above. In the case of oil palm plantations, many land areas were owned by the wealthy who lived in the city or by local high-ranking government officials and these “farmers” were included in sistem plasma. There appeared to be no procedures to channel protest against this abuse of power by local officials.

A former high ranking local official whom I interviewed explained: “there was nothing wrong for us (the government officials) to have farming areas and be included in sistem plasma as long as we bought the land, rather than claiming the land illegally”. This official did not recognize Regional Regulation No 17 of 1998 above in differentiating between the right and the wrong policy. The local government also failed to protect villagers from the company’s unfair actions.

D.2 Deception by the Company

The plasma system provides no certainty of the level of income for the villagers. The company informs the villagers that being a member of sistem plasma would guarantee their income. Those who became members of sistem plasma were promised Rp 2 million (approximately A$ 400)/ harvest for each parcel. Other observers estimated that each farmer would get an income of Rp 900,000 (approximately A$200)/ harvest per parcel. The problem for the villagers was that many of them believed the promise. That first estimation probably was accurate if the villagers had dealt with a fair and transparent company.

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3 Interview was conducted in January 2000. The subject of the interview asked not to be identified by name.
3 A former high ranking local official whom I interviewed explained: “there was nothing wrong for us (the government officials) to have farming areas and be included in sistem plasma as long as we bought the land, rather than claiming the land illegally”.
36 Interview with Uskadi, Manager of KUD Beringin Makmur
Another problem was a lack of transparency in the company’s reporting to cooperative members. The villagers often lacked information on the project. Once the project started, the villagers were not informed properly about the development of the project. In many cases, even the members of sistem plasma (profit sharing system) were not informed by the annual report of the company. According to Supandi of KUD Panji Layangan, the one matter that was most reported to the members of sistem plasma was that the company suffered losses, and therefore there was no profit to be shared. 38 For example, between July and December 1998 the company reported that they suffered a loss in July and August and gained a small profit in the other months. In January to September 1999 the company suffered losses in January, March, May, June, July, and August and obtained slight a profit in February and April of the same year. 39

The company explanation was that the cost of production was higher than the yield. Consequently, in each harvest period the farmer never made any profit. Because of this, for three months from December 1999 KUD Panji Layangan prevented the company from harvesting and instead harvested the farm themselves. The result was that the farmers obtained profit from selling the fresh fruit bunches. This was in contrast to the company statement that there was no profit from selling earlier harvests. 40 The company argued that the farmers gained profit because they

39 Interview with Supandi of KUD Panji Layangan, 10 February 2000.
41 Interview with Supandi, Manager of KUD Panji Layangan, Lubuk Linggau, 11 February
Chapter Five: Oil Palm Plantation and Plasma System

did not include maintenance expenses including cleaning the oil palm areas and fertilizing the plants.\textsuperscript{41}

PT London Sumatra’s income report to the villagers was contradicted by international reporting on the company performance. *The Far Eastern Economic Review* wrote an article on PT London Sumatra’s record profits which “were going through the roof.” According to that article, in 1996, PT London Sumatra’s net profit was 80.6 billion rupiah (approximately $34 million dollars at the 1996 exchange rate). For the first nine months of 1997, operating profit totalled 83 billion rupiah, a 17 percent increased compare to the previous year.\textsuperscript{42} The article concluded: “As Indonesian companies ponder their fate, they might want to consider the country’s comparative advantages once again: natural resources, land, labour. Returning to basics, to farms and plantations, may not sound as glamorous as gleaming office towers, plush resort hotels and manicured golf courses. But it would be sound and profitable. Ask London Sumatra.”\textsuperscript{43}

E. Some Companies Are Worse Than Others

Land disputes in relation to oil palm plantation activities have resulted in a great number of complaints to various government institutions such as the House of Representatives, the National Land Body, the National Commission on Human Rights, and local government offices. Some objections were also brought to Non-governmental organizations including the Legal Aid Foundation, and WALHI, the

\textsuperscript{41} Interview with Aziz, senior officer of PT London Sumatra, Terawas Estate, 9 February 2000.


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Indonesian environmental forum. In South Sumatra land disputes were reported to institutions such as the House of Representatives (DPRD) and the office of local government (PEMDA).

Based on a 1998 Report from the Team for Land Disputes of the Governor’s office, between 1994 and 1998 there were 65 unsettled land disputes in South Sumatra, mostly in oil palm plantations. Issues involved in the disputes included compensation, land confiscation, farm burning, community or adat land, and disputes on sistem plasma (see appendix C).

PT London Sumatra is involved in more cases than other plantation companies. Between 1994 and 1998 of 37 land disputes in the district of Musi Rawas alone, 28 involved PT London Sumatra. It is likely, based on the figures from Musi Rawas, that PT London Sumatra has been involved in disputes in many districts of South Sumatra, such as in Musi Banyuasin, Ogan Komering Ulu and Muara Enim (see appendix B).

The British group Harrisons and Crosfield developed PT London Sumatra in 1906 and it is one of Indonesia’s leading plantation companies. Its activities include the cultivating, harvesting and processing of oil palm, rubber and, to a lesser extent, cocoa, coffee and tea, and the sale of oil palm and rubber seeds. PT London Sumatra

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Id. A Report from the Team for Land Disputes, South Sumatra Governor Office, 1999.
Palembang Legal Aid Foundation (LBH Palembang) observed that land disputes in South Sumatra have increased significantly since plantation activities with sistem plasma were introduced. Land disputes defended by LBH Palembang have also risen sharply. In 1994, there were only 6 cases, but this figure increased to 13 cases in 1995 and to 21 cases in 1996. The cases increased dramatically to 38 cases in 1997 and to 56 cases in 1998, then reached 81 cases in April 1999. Palembang Legal Aid Foundation, 1999, p.38.
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has land rights covering 52,852 hectares for 25 years until 2023, in North Sumatra, Java and Sulawesi. In 1994, this company commenced an expansion program in South Sumatra, and to a lesser extent, in Sulawesi and Kalimantan. In addition to the development of its own plantations, PT London Sumatra is developing plantations on behalf of cooperatives and local smallholders covering 58,500 hectares, which are funded mainly by Indonesian banks. In September 1999, the development area of plasma plantations covered 26,106 hectares. At the end of 1998, this company owned 86,921 hectares of planted estates in North Sumatra, Java and Sulawesi of which 57,248 were planted with oil palm.

PT London Sumatra also operates 15 processing facilities which include palm oil mills, rubber factories, cocoa, coffee, tea and seed processing plants. Its net sales increased from Rp 136 billion in 1993 to Rp 492 billion in 1998. At the end of 1999, PT London Sumatra employed 42,884 workers.46

Although number of land disputes changes, the figure below shows that in 1999 PT London Sumatra had the most disputes with the local people in district of Musi Rawas.

The figure below shows the companies involved in land disputes.

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Figure 5.2: Company Involved in the Disputes

<table>
<thead>
<tr>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>75%</td>
</tr>
<tr>
<td>11%</td>
</tr>
<tr>
<td>5%</td>
</tr>
<tr>
<td>3%</td>
</tr>
<tr>
<td>3%</td>
</tr>
</tbody>
</table>

- PT London Sumatra
- PT Juanda Sawit
- DPTPHML
- PT Enim Musi Lestari
- PT Musi Hutan Persada
- PT Dendymarker


F. Efforts to Improve Sistem Plasma Operation

In 1992 the provincial government formed a committee to monitor plantation activities in South Sumatra. This committee was formed in anticipation of land disputes in relation to oil palm plantation activities.47

In 1997 district government of Musi Rawas issued guidelines on implementation of sistem plasma:48

a. The Kepala Desa (the head of the village—hereafter Kepala Desa) registers all areas in the village together with information on the landowners. The Lembaga Ketahanan Masyarakat Desa (village

47 South Sumatra Governor's decision No 764/SK/VII/1992 on TP3D.
48 Minister of Agriculture Decision No 668 of 1985 on the General Guideline of Nucleus Estate and Smallholders in Plantation. See also a procedure issued by the government of Musi Rawas District signed by the secretary of the Head of District, H.M Lukman Nawi, Lubuk Linggau 24 March 1997.
public security council—hereafter LKMD—conducts a meeting to agree on areas to be included in sistem plasma.

b. Based on the agreement made by the LKMD, the Kepala Desa issues a decision about which areas are included in sistem plasma.

c. The Kepala Desa makes a list of landowners after consultation with the Camat (the head of sub-district—hereafter the Camat).

d. The Kepala Desa writes to Bupati (the Head of District—hereafter Bupati) and seeks his/her agreement to include areas in the village in the sistem plasma. In that letter, this Kepala Desa should enclose the LKMD's agreement, a village map, and an area map.

e. Based on the application from the Kepala Desa, the Bupati sends a team to clarify the application and contacts an oil palm company to include the areas in sistem plasma.

f. The Kepala Desa is required to monitor when the company starts its activity based on the sistem plasma program. Before the company starts its activity, the government and the company are required to inform the villagers about the aspects of sistem plasma by visiting them or inviting them to a village meeting (introduction of sistem plasma). The duties and rights of the company and the villagers must be discussed.

g. The company is responsible for securing the Surat Keterangan Tanah (SKT or land certificate) and land certification. Therefore,
Chapter Five: Oil Palm Plantation and Plasma System

it is not necessary for the Kepala Desa to issue an SKT for the land.

If all parties followed these, especially the Kepala Desa and the oil palm companies, disputes raised because of sistem plasma could be minimized. In sistem plasma, some disputes occurred because some villagers were excluded from the program although the companies used their areas for oil palm development. This problem was unlikely to occur if the Kepala Desa implemented procedures (a) to (d). Issues also arose in sistem plasma because villagers sometimes held false SKTs issued by a Kepala Desa or Canat, even though procedure (g) stated that the company and not the Kepala Desa is responsible for all SKTs. However, the problem with these regulations is weak implementation and lack of enforcement. For example, in the Rawas Ilir case, the Canat who issued more than 5,000 false SKTs (land certificates) and paid by the villagers was never brought to justice and remained in his position as a senior official at the Bupati's office.

In 1998 the district of Musi Rawas, Bupati decision No 525/1998 organized a committee to monitor plantation projects (Pembentukan tim pembina proyek-proyek perkebunan, hereafter TP3D). 49

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49 The committee members included: The Head of Musi Rawas district (Bupati), The secretary of the Bupati, The Head of the District Planning Agency (BAPPEDA), The First Assistant of the Bupati of Musi Rawas, The Head of estate crop office, The Head of farmers' business section of estate crop office, The Head of District Land Agency (BPN), The Head of Cooperative office, The Head of governmental section of district government (PEMDA) Musi Rawas, The Head of the village government of PEMDA Musi Rawas, The Head of the economic section of PEMDA Musi Rawas, The Head of legal section of PEMDA Musi Rawas, The Head of economic section of BAPPEDA, The Head of the forestry office, and The Head of relevant sub-district. Letter of decision of Bupati Musi Rawas on 28 February 1998.
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Theoretically, the TP3D committee is ideal to monitor the plantation companies’ activities including oil palm plantation, because it consists of all institutions related to plantation activities.\(^50\) In practice, however, TP3D was not popular with the villagers and it was unable to resolve many land disputes in the plantation sector. The fieldwork conducted for this thesis revealed that TP3D was incapable of monitoring the plantation activities and unable to resolve disputes precisely because various government institutions dominated the committee. Sadly, many Indonesian government institutions are not independent. On TP3D, initiatives should have come from the Bupati as the chairman of the committee. The less active the Bupati, the less activities the committee undertook.

Dachry Anom, the former first assistant to the Bupati, confirmed that TP3D in Musi Rawas was not successful in monitoring oil palm companies’ activities. He related that one reason for the lack of control from the district government over the oil palm activities is that the investment procedure mainly is the responsibility of the Governor’s office at the provincial level. It was the Governor’s office at the provincial level that issued a license to the oil palm company, not the district government.\(^51\)

In 1999 the central government introduced a new scheme known as KIMBUN (kawasan industri masyarakat perkebunan) or industrial area of plantation. The new scheme to reduce its negative impact of sistem plasma sought to:\(^52\)

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\(^{50}\) Article 2 of the Head of the Musi Rawas District decision No 525/16/perke/1998 states that the role of TP3D, includes: a) to monitor the plan and the activities of plantation activities based on sistem plasma, b) to resolve problems arising as a result of sistem plasma project.

\(^{51}\) Interview with Dachri Anom, First Assistant to the Head of Musi Rawas District, Lubuk Linggau, 23 December 1999.

\(^{52}\) Agus Pakpahan, Development Plantation in the 21st Century (Directorate of Estate Crop,
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a. Develop values which are based on a harmonious relationship between man and nature (ecology values)

b. Involve local institutions as the gateway in every process of plantation development. This is a crucial factor in avoiding social conflicts.

c. Develop human resources and science and technology which directly correlate with the plantation sector.

d. Develop institutions which are able to reduce transaction costs and revive productive work forces through networking.

e. Divide plantation commodity areas based on agricultural-ecosystems and local ecology.

f. Develop industrial areas of plantation (kawasan industri masyarakat perkebunan or KIMBUN).

g. Develop a supportive business atmosphere for plantation investment especially in the form of consistent policies.

h. Develop work relationships which are harmonious and fair with mutual respect, and trust among the owner, management and the workers (stakeholders).

This new scheme is regulated by the decision of Minister of Forestry and Estate Crop No 107/Kpts-II/1999.

Article 6 of this decision states: “A plantation company must develop its business through one of the following development schemes:

a. The plantation cooperative sector scheme (pola koperasi usaha perkebunan) which is 100% funded by a cooperative of farmers. Under this scheme, farmers organize estate crop business cooperatives, build processing facilities, and develop other basic infrastructure facilities. In the process of developing this plantation cooperative, farmers can seek assistance from third parties such as the oil palm plantation companies on the basis of a management contract. The costs of plantation development, processing facilities, and plantation infrastructure including management contract fees will be funded 100 per cent from available existing long-term low interest loans. 53

b. The joint venture cooperative-investor scheme. Under this scheme the capital will be 65% owned by the cooperative and 35% owned by the company. This scheme is a variation on the existing sistem plasma, which eliminates the distinction between the plasma and the nucleus. Under this scheme, from the beginning the farmers have already developed a business cooperative and formed a joint business venture with the plantation company. 54

c. The joint venture cooperative-investor scheme. Under this scheme the capital composition will be 80% owned by the company and 20% owned by cooperative which gradually increases its percentage. This scheme is similar to scheme number (b) above, but the cooperative will make only an "in kind contribution" which is valued as capital including land holding as

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53 Ibid at 49.

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a share. Under this scheme, at the beginning, the cooperative will own at least 20% and will gradually increase in accordance with business conditions.\(^5\)

d. The Build, Operate and Transfer scheme. Under this scheme the development and the operation of the plantation is conducted by the company which eventually transferred to the cooperative. Under this scheme, the investor undertakes the development of required infrastructure, including the formation of estate cooperatives which will eventually take over the control of the business. The phases of development, operation and transfer will be designed to suit the characteristics and market conditions of the estate crop commodity. In essence, the plantation and factory will be transferred to the cooperative when the cooperative is ready and the plant conditions are ready for operation.\(^6\)

e. The *Bank Tabungan Negara* or *BTN* scheme in which the investor develops the plantation area funded by *Bank Tabungan Negara* (State Saving Bank) and the factory. The facilities (plantation and the factory) will be transferred to the smallholders or to the village cooperative. This scheme will adopt the *BTN* scheme for the development of low-cost housing projects. The government will not only provide credit to develop

\(^{5}\) Ibid at 50.

\(^{55}\) Ibid at 51.

\(^{56}\) Ibid at 52.
The Supreme Court of Indonesia (*Mahkamah Agung Republik Indonesia, Jakarta*)

In its decision Number 1553K/Pid/1999, the Supreme Court overruled the District Court of Musi Rawas decision and decided that Abdul Djabar was not guilty. The Supreme Court upheld the High Court of South Sumatra’s decision that freed Abdul Djabar from all charges and restored all his rights and status.\(^{37}\)

During my field research I spent at least three weeks with Abdul Djabar and some members of his group. I would like to comment on the case and the court decision and show how prejudice, conflict of interest and human rights violations were involved in this case.

In relation to the case, I suspect the following weaknesses:

a. According to Dachri Anom, soon after the rubber garden burning, Abdul Djabar and his group made an agreement with Erlangga, the company representative. Based on this agreement Abdul Djabar received some money as compensation.\(^{38}\) During my field research I tried hard to confirm this information with Erlangga, who lived in remote area, but failed to meet him.

b. In relation to the total number of rubber gardens owners, it was very hard to prove whether these 300 people really owned a total area of 2,500 hectares. If these 300 names owned the rubber gardens, how could they be sure of the exact area because the boundaries were not clearly marked. It was also

\(^{37}\) "Putusan Mahkamah Agung Nomor 1553 K/Pid/1999," Jakarta, 2000, 18 pages. The Judges involved in this case were Judge TH. Ketut Suraputra, SH (Chief) with two members namely Judge Ida Bagus Widja, SH, and Judge Mrs. Mariana Sutadi, SH.

\(^{38}\) Interview with Drs. Dachry Anom, First Assistant to the Head of Musi Rawas District, Lubuk Linggau, 10 January 2000.
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illogical for many farmers to have more than 15 hectares of rubber garden given the difficulty of managing such big area. If it was true that they have the rubber gardens, it was doubtful that the farmers owned the area presented in Abdul Djabar’s list.

c. Most people on Abdul Djabar’s list have no proof of land ownership.

d. There was no independent report on how much area was burnt. During my field research I was involved with the “independent” team to determine the area burnt, but it was difficult because the fire was in July 1997 and we went to the area in January 2000. Abdul Djabar pointed out that for more than two years their demands had not been seriously treated by the company and the government. The case was considered only after it received media attention and Abdul Djabar was charged with criminal offenses.

Many observers believe that PT London Sumatra Plantation Company was responsible for the burning of rubber estate owned by the villagers of Nibung. Some evidence to support this accusation included the admission from the company’s workers who burnt the rubber gardens following instructions from the company. In addition to this confession, the company paid compensation to 20 rubber garden owners whose land was burnt.

Achmad Fikri, public relations officer of PT LONSUM, argued that the fund given to the 20 families whose rubber gardens were burnt was not as recognition that the company was responsible for the burning. The fund was given as “social awareness” to...
villagers whose rubber estates were burnt in an Indonesia forest fire in 1997. However, when I looked at the list of those 20 people there was a statement: “...we thank the company and we will not sue PT LONSUM. With this fund, we cancel our previous charges”\(^{41}\) This statement implied that before receiving the compensation the twenty rubber garden owners had charged that the company was responsible for the burning.

Human rights violations took place during Abdul Djabar trial. He was arrested without a letter of summons from the authorities. On 4 November 1998 at 14:45 pm two police came to his home and informed him that he was invited to meet the WAKAPOLRES who for many occasions was a mediator in the disputes. He thought that it was a regular meeting, but after the meeting Abdul Djabar was jailed in the police station for fifty-seven days.

Abdul Djabar was also intimidated by the police and the military and accused of being a provocateur and anti-development. He explained to me that during the dispute with the company he and his family felt insecure because the authorities could come and arrest him at any time.

Abdul Djabar was imprisoned for 112 days or more than 3 months. The police as the investigator detained him for 57 days. He spent 14 days in the public prosecutor jail, and 17 days detention under Judge’s order in the name of court proceeding.\(^{42}\)

\(^{40}\) Interview with Achmad Sukri on Monday, 20 December 1999 at Cahaya Post, Lubuk Linggau.

\(^{41}\) The translation of statement made by 20 rubber garden owners.

\(^{42}\) There are three types of detention order under the Indonesian Code of Criminal Procedure (Kitab Undang-Undang Hukum Acara pidana or KUHAP). First, Article 24(1) writes that the police may detain a person on their own authority for a maximum of 20 days. This is extendable for a further 40 days by a prosecutor (Article 24(2)). Article 24(4) stipulates that
The District Court found that he was guilty of using false documents and sentenced him to two months imprisonment and calculated all the time that Abdul Djabar had already spent in jail during the litigation process. In fact, altogether he had spent more than 3 months in prison. The High Court and the Supreme Court, which overruled the District Court Decision, did not mention this matter. It appeared to me that both the High Court and the Supreme Court order “to restore all the accused rights as normal citizen with his ability, profession, and status as it was” was just a formality because nothing has been done to restore Abdul Djabar’s rights, such as the right for compensation.

Abdul Djabar was jailed for more than three months to defend the villagers against the international company. The highest court in Indonesia found that he was not guilty of committing crimes as charged by the Prosecutor. As a da’i his good reputation was damaged because he had spent in jail because of criminal charges. As a father of four children, he was absent from his family for more than three months and was unable to support their needs.

It is promising that the Supreme Court found Abdul Djabar not guilty and overruled the decision of lower courts. However, the Supreme Court decision is unclear regarding compensation for Abdul Djabar’s imprisonment. The Supreme Court decision provides “to restore all the accused rights as normal citizen with his
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ability, profession, and status as it was

Who is responsible to restore Abdul Djabar's right? Should the company pay compensation to Abdul Djabar? These entire questions are not answered because the Supreme Court decision does not make any direction on this. Under Indonesian law, Abdul Djabar has the right to lodge a separate application to the court for compensation.

Article 95 (1) of the Indonesian Criminal Code Procedures provides:

the accused has the right to claim for compensation because she/he has been arrested, imprisoned, accused and other acts without legal bases or because of wrong in person or wrong in implementing the law. (My translation)

The problem for villagers, like Abdul Djabar, is whether to lodge another court application to claim compensation. In this kind of case, the Supreme Court needs to provide clearly what should be done and by whom “to restore all the accused rights as normal citizen with his ability, profession, and status as it was”

D. Aringin Case

In August 1997 extensive forest fires in Indonesia's forestland caused a thick cloud of air pollution over Southeast Asia. From 46% to 80% of the bigger fires occurred in plantation areas. The main reason was that companies used fire as a cheap and fast method of land clearing.

The fire-monitoring unit of the German Technical Development Assistance (GTZ) estimated 10 million hectares of land in

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44 Id.
45 Indonesian Criminal Code Procedures
46 International Forest Fire News reported that the fires burning in 1997 appeared to be mainly the result of fire used to clear forest and land for agricultural and forestry purposes. International Forest Fire News, 'Assessment of 1997 Land and Forest Fires in Indonesia: National Coordination,' No. 18 - January 1998 [Internet] 202
Indonesia was affected in 1997/98. In addition to that, approximately 3.3 million hectares of forest were burnt.\textsuperscript{47}

Eric Wakker writes that until mid 1997, it was no secret that plantation companies in Indonesia used fire to clear the land.\textsuperscript{48} In October 1998, 176 companies were accused of practicing forest burning, 133 of which were oil palm plantation companies.\textsuperscript{49} The companies put down burning as a cost component when they applied for credit from the bank. There are at least two reasons why the companies use fire for land clearing.

The first reason is low cost. Burning is the cheapest method of land clearing. Information on the cost of land clearing by burning is incomplete. However, a report presented by Kuruvilla and Mohandas gives an idea of the comparative costs of different methods of land clearing. The comparative cost shows that mechanical clearing is 2 to 3 times more expensive than non-mechanical clearing by burning. The comparative cost of various land clearing techniques are presented in the following table.

\textsuperscript{47} Eric Wakker, Funding Forest Destruction. \textit{The involvement of Dutch Banks in the Financing of Oil Palm Plantations in Indonesia} (AIDEnvironment, Report for Greenpeace Netherlands, Amsterdam, 2000), p i.
\textsuperscript{48} Eric Wakker, Ibid at p 20.
\textsuperscript{49} Eric Wakker, Ibid at p 3.
Table 6.1: Cost of land clearing techniques in grassland and forested land, Central Kalimantan (1996-1997)

<table>
<thead>
<tr>
<th>Clearing technique</th>
<th>Non-mechanical clearing with felling, stacking and burning</th>
<th>Mechanical clearing with bulldozers and excavators</th>
<th>Semi-mechanical clearing with buldozer for stacking</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Land type</td>
<td>Cost in Rupiah</td>
<td>Cost in US $</td>
</tr>
<tr>
<td>Forested land</td>
<td></td>
<td>430,000</td>
<td>185</td>
</tr>
<tr>
<td>Grassland</td>
<td></td>
<td>400,000</td>
<td>177</td>
</tr>
</tbody>
</table>

Source: Kuruville and Mohandas as cited in Eric Wakker, 2000, p.21.

The second reasons why oil palm plantation companies use fire for land clearing is because banks support burning practices. The burning method enables their clients to open their areas faster, helping them to pay back debt. As Piggot writes:

Between planting and the first harvest considerable cost must be borne while for 30 to 48 months or more there is no income. The plantation owner will, almost certainly, need to pay interest on borrowed capital and it is most unlikely that his overall cash flow will become positive for another five years at least. Land clearing alone accounts for almost 20% of preparing a plantation that can be harvested. Thus, any savings possible on land clearing, weeding and fertiliser use will, therefore have a big impact on the overall costs.50

In South Sumatra, especially in district of Musi Rawas, rubber is still the main source of income for villagers.51 Often the oil palm plantation areas are close to the rubber gardens when the oil palm companies use fire to clear the land, it is possible

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51 The acreage of rubber plantations was 141,184.30 hectares in 1996 with the total production of 70,870.42 tones. PEMDA Musi Rawas, Profile of Regional Investment (BAPPEDA, Lubuk Linggau, 1998) p v.
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for the fire to spread and burn the rubber plantation areas. In district of Musi Rawas alone, PT LONSUM was accused of being responsible for fire that destroyed the villagers’ rubber gardens in the villages of Lubuk Tua, Mambang, Pelita Jaya, Makmur II, Embacang Baru, Nibung, and Aringin.

According to the South Sumatra government office, there were at least nine disputes involving the issue of burning. In the district of Musi Rawas, there were two popular cases: the Nibung case and the Aringin case. PT LONSUM was accused of being responsible in both cases.

PT LONSUM denied that it had used fire to clear land. PT LONSUM’s finance Director J. Bell stated that they have a very strict no-burn policy. A similar statement was made by PT LONSUM staff members in South Sumatra. The company blamed the fires on shifting cultivators and the El Nino phenomenon. However, in the district of Musi Rawas, there are witnesses who claim that PT LONSUM was responsible for land burning in Nibung and Aringin. In relation to PT LONSUM involvement in land burning, Eric Wakker writes that the company has repeatedly been accused of burning in its estates in East Kalimantan, North and South Sumatra. Former Minister of Environment Sarwono said that PT LONSUM was one of 10 companies found to burn forest in an effort to create agricultural land.

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53 My interview with LONSUM’s public relation during field observation in the Abdul Djabar Case in 14 January 2000 and my interview with LONSUM’s manager at Terawas estate, 9 January 2000.
54 Eric Wakker (n 47), p 24.
55 Id.
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Aringin is the name of a village in sub-district of Rawas Ilir, district of Musi Rawas. This case involved PT LONSUM oil palm Plantation Company, which was accused of burning the villagers' rubber garden areas in August 1997.

The villagers argued that the company tried to avoid meeting an agreement reached on 21 September 1998, when the company agreed to pay compensation to the villagers. The agreement reads as follows:

"Today, Monday 21 September 1998 there has been a joint agreement between the villagers from Aringin with PT LONSUM (represented by Ir. Usui). The agreement was regarding rubber garden areas burnt and this matter had been resolved in a meeting on 16th September 1998. Both parties agreed that total areas burnt were 300 hectares with total compensation of 405 million Indonesian rupiahs. This joint agreement was made truthfully without any threat from any party".

According to the villagers' representative, Edy Siswanto, the villagers organized a meeting with the company. The villagers asked the company to pay compensation of Rp 5,000 for each rubber tree. After discussion, the company and the villagers reached an agreement that for each rubber tree burnt the owner would be paid compensation of Rp 4,500. The villagers argued that each hectare consisted of 500 rubber trees, however in the meeting both parties agreed that each hectare consisted of 300 rubber trees.

After the issue of the price of each rubber tree and the number of rubber trees in each hectare had been resolved, the company and the villagers invited the local
government of Rawas Ilir sub district to measure the areas burnt. The team found that the total area burnt was 398 hectares. The company asked the villagers to reduce the total areas for compensation to 300 hectares with total compensation of Rp 405 million. On 21 September 1998 this agreement was made in writing.

In July 1999, the villagers asked the company to fulfil its obligation to pay the compensation, but there was no serious response. The company said that they had asked the district government of Musi Rawas to resolve the dispute and asked Edy Siswanto as the villagers' representative to discuss the matter with the district government official. The company told Edy Siswanto that the company would obey whatever decision was made by the district government. Based on the meeting with Edy Siswanto, on 8 July 1999 the district government issued a letter No 593/1691/Tatapem. The letter asked the company to resolve the dispute based on the written agreement on 21 September 1998.

According to Edy Siswanto, on 29 July 1999 he brought the district government letter to PT LONSUM branch office in Palembang. In this office he met three company staff members namely Sk Ch, Sl, and Gp. These three company's representatives refused to pay the compensation and Saipul said: "In fact the company came here under the South Sumatra Governor's invitation. Therefore, please you ask the Governor regarding this matter. If the Governor say that the company should pay compensation, we would follow the governor's order..."

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Edy Siswanto's letter to the Governor of South Sumatra, 8 November 1999.

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On 15th July 1999, fifty-four villagers met the Head of District of Musi Rawas and asked the government to force the company to pay the compensation, but with no positive result.57

On 21 October 1999 a meeting was organized by the Governor to discuss the dispute between PT LONSUM and the villagers from Aringin. The chairman of the meeting informed the audience that the meeting was based on a letter from the Bupati of Musi Rawas No 593/2211/Tatapem on 7 September 1999 regarding the burning of the villagers' rubber garden in Aringin village. The provincial government hoped that this matter could be resolved at the district level, but in fact agreement had not been reached. The chairman asked the district government representative to explain the situation.

Dachry Anom, the first assistant to the Bupati of Musi Rawas district:

“This dispute could not be resolved at the district level because the villagers demanded the company pay compensation based on the agreement of 21st September 1998. The company informed us that the agreement was signed because they were forced to do so. In this case we asked an explanation from the company and the villagers representative”

E'dy Siswanto; the villagers' representative:

“I have to stress that there is a joint agreement in which the company agreed to pay compensation of 405 million rupiahs. Both parties signed this agreement without any force from the other party as clearly stated in the agreement”

57 ‘Aringin villagers asked the PT London Sumatra to pay the compensation,’ Sumatra Ekpress, 16 July 1999, p 3.
Ir. Saka, the company's representative:

"I have to inform you that many villagers came to us asking for compensation because their rubber gardens were burnt. However, the areas burnt were hutan produksi (production forest) and therefore the villagers did not own the area. At our meeting with a joint team from the district government office we agreed that the total area burnt was 200 hectares, not 300 hectares. Our team found that the distance from the company's plantation area with the fire was 200 meters. The fire could not have jumped up to 200 meters.

In relation to the joint agreement, our staff members were forced to sign the document because many villagers came to our office and Edy Siswanto forced our staff members to sign the agreement. We present those staff members in this meeting..." 

Ir. Usul, Company staff who signed the agreement:

"Mr. Saka's explanation is right. In August 1997 a fire burnt the villagers rubber gardens. On 29th September 1997, the joint team from the sub-district government and the local parliament (DPRD) informed us that the fire was not started in the company's area. On 22nd and 29th September 1998 many villagers asked for compensation from the company. We signed the agreement because we were afraid of the more than fifty people armed with knives who occupied our office until mid-night. Although nothing wrong happened at that time, we were very scared"
"Who typed the agreement?"

Ir. Usul:

"Our staff did it"

The Chairman:

"You said that the company was forced to sign the agreement, but it mentioned in the agreement that it was signed without any force. The agreement was drafted and typed by the company. Were you forced to sign this document?"

Ir. Usul:

"No sir, but the situation was really scary"

The Chairman:

"So, you were not forced to sign the agreement. I faced hundreds of demonstrators and I refused to sign a document that I disagreed with and nothing wrong happened to me. You as the Head of project were the company representative and the villagers kept this document as an agreement"

Ir. Armaya, representative of PT LONSUM:

"It was true that the staff members signed the document, but it is the company management who makes the final decision, not the staff members"

Edy Siswanto, the villagers' representative:

"The price of compensation of Rp 4,500 for each rubber tree burnt was offered by the company based on our dialogue with them. We came to the company because we believed that the company started the fire. The agreement was
drafted and signed based on a peaceful negotiation. The agreement was signed on 21 September 1998 and the negotiation was started on 20 July 1998. It took us 56 days to reach the agreement.

In our meeting with Bupati, the Bupati told us that if the company believed that they were forced to sign the agreement because it was under threat, within 24 hours the company should have reported the matter to the police. In fact after one year, there was no report from the company.

It was very clear that the fire started in the company areas because the company cleared its areas by burning and the fire also burnt the villagers' rubber estates and we have a witness, Mr. Nasin.

I was in prison when the agreement was signed and my younger brother was representing me at that time”

Zainal Arifin, Head of Government section PEMDA Musi Rawas:

“PEMDA Musi Rawas has not directly checked this case with the village. So we have not measured how large were the areas burnt. But, if the villagers and the company ask us to do so, we will go to the area. We believe that the disputes has been settled because it has been put in a joint agreement.”

Based on our information, it was a long process to reach an agreement signed on 21 September 1998. Both parties have met at least four times and in the last meeting the company agreed to pay compensation of 405 million rupiahs to the villagers.

I believe that it is impossible that the agreement was signed under force if
we look at the process of negotiation. There has been no report to the police”

The Chairman:

“In principle, we have to defend the right party, either the villagers or the company. In this case I believe 99% that this agreement is true and was signed without any threat. However, I would ask where did the 300 hectares come from. don’t we need to re-measure the areas burnt?”

Edy Siswanto, the villagers' representative:

“The 300 hectares came from the company because at the beginning the total areas burnt were 398 hectares and we asked for compensation of Rp 7,500 for each rubber tree burnt. The company asked us, and we agreed, that the total areas were 300 hectares instead of 398 hectares and each rubber tree was valued for Rp 4,500 instead of Rp 7,500.”

Ir. Saka, PT LONSUM:

“I think in order to clear the situation, we have to re-measure the areas, but how do we do this? In this case, we are in a very difficult situation. We prefer to go to the court to resolve the dispute, but because the chairman (the first assistant to the Governor) asked us to pay, we will pay the compensation.”

Edy Siswanto, the villagers' representative:

“We agree and are ready to re-measure the areas but the company should pay according to the result of the measurement. Please, give us ten days time to inform our members who live in remote areas. Some of them have already moved far away after their rubber gardens burnt. Actually, I believe this is only
the company’s strategy to avoid payment. We are sick of this strategy and ultimately the company will breach the agreement again.”

The Chairman:

“...The chairman concluded that the meeting agreed to:

a. Form a joint team of the district and the provincial government
b. Measure the area burnt
c. Invite all villagers whose garden were burnt to re-measure the areas
d. Ask the team to do their job the first week of November 1999.

First, during the meeting at the Governor’s office, the company representatives tried to argue that the agreement was signed under threat. In fact during the meeting the company representative acknowledged that the agreement was drafted and typed by the company. In addition to that situation, the agreement was reached after 56 days of negotiation through four meetings.

Second, the company denied that total area burnt was 300 hectares. In fact, the figure was based on agreement of both sides, reducing the amount from 398 hectares as proposed by the villagers. During the meeting the company asked the government to re-measure the areas.”

According to Edy Siswanto, soon after the meeting at the Governor’s office he informed the villager of the situation. On 26 October 1999 he was informed that the joint team would come to the village on the 27 October 1999 to measure the area burnt. The rubber garden owners gathered the next day. “We waited for the team...
from 08:00 to 16:00, but they did not come," said Edy Siswanto. The villagers argued that the company did not respect the agreement made in the meeting on 21 October 1999 and did not obey the letter from the Governor of South Sumatra to re-measure the area burnt.

On 10 November Edy Siswanto went to the company office in Palembang to clarify why the company did not come to Aringin village to re-measure the areas. The company argued that they did not re-measure the areas as mentioned in the Governor’s letter No 593/1203/tel/199 because the letter was unclear. Edy Siswanto stated “before we take the law in our own hand, we beg the Governor to help us to resolve this problem.” Edy Siswanto also wrote a letter to the Governor explaining that the people will resolve the problem “their own way” if the government could not help them to resolve the dispute. The villagers also wrote a letter to members of local government, including the chief of district police office (KAPOLRES-Kepala Kepolisian Resort).

In the Aringin case, it was clear that the company should pay compensation to the villagers. This obligation was written in a joint agreement and witnessed by the government officials. This obligation was also supported by the Governor of South Sumatra.

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59 "Aringin vs. PT LONSUM has not clear," Sumatra Ekspres, 16 November 1999.
60 Copies of the letter were sent to several government institutions, including: The Chairman of MPR, DPR, the President, the Minister of Justice, DPRD Sumatra Selatan, KAPOLDA, KAJATI, the Chairman of DPRD Musi Rawas, the Bupati Musi Rawas, the KAPOLRES Musi Rawas, the KAJARI, the Comat of Rawas Ilir, the Comat of Karang Dapo, and the KAPOLSEK of Karang Dapo.
61 KAPOLRES responded by writing to the Bupati to anticipate the situation. KAPOLRES’ letter to Bupati on 16 November 1999.
Sumatra, the highest level of government in the province. However, the company refused to pay the compensation with various justifications.

The government was unable to enforce the law either to protect the villagers or the company. According to PERDA of South Sumatra No 17 of 1998 on the Development of plantation based on sistem plasma, the government has a right to force the company to fulfil its obligation. The dispute could also be resolved if the committee to monitor plantation projects in Musi Rawas (Tim pembina proyek-proyek perkebunan) was proactive.

Finally, the villagers took the law in their own hand. From 29 November 1999 to 1 December 1999 the villagers occupied PT LONSUM oil palm plantation base camp in Sei Hitam Estate. The occupation was a reaction to the company's letter on 23 November 1999. The letter declared that the company would only give a social fund to the villagers of Rp 100 million (approximately A$20,000). This "social fund" was not compensation paid for the rubber gardens burnt in August 1997.

During the occupation, the villagers asked the company to appoint a representative who could make a decision. During this crisis the head of sub-district (Camat) Karang Dapo, Riswan Effendi, sub-district military commander (DANRAMIL), and Chief of sub-district Police (KAPOLSEK) of Rawas IIir were among the mediators. The negotiation was made between Edy Siswanto, the villagers' representative, and Ir. Saka Chairan and Ir. Tarmizi as the company's representatives. The parties reached an agreement as follows:

\[\text{In the district of Musi Rawas, the committee was formed based on the Head of District decision No 525/16/perke/1998.}\]
Chapter Six: Four Case Studies

Compensation Agreement on Areas Burnt in Aringin Village

(Sei Lakitan Estate, 1 December 1999)

Today, Wednesday on 1 December 1999 we the parties signed this agreement:

1. Edy Siswanto, Marwan, Sarkowi, Adli Fuad, and Dulhai –hereafter in this agreement as the first party.

2. Ir Saka Chairan and Ir. Tarmizi –hereafter in this agreement as the second party.

In this agreement both parties agree to resolve the compensation asked by the villagers of Aringin with the following conditions:

1. Total compensation agreed is Rp 300 million.

2. The company will pay the compensation directly to the villagers at the office of Camat Karang Dapo. The payment will be made in the following schedule: Rp 100 million will be paid at the end of December 1999, Rp 100 million at the end of January 2000, and Rp 100 million will be paid at the end of February 2000.

3. After this agreement is reached, the villagers agree to leave the company compound peacefully

4. If the second party breaches this agreement, the first party will re-occupy the company's complex of Sei lakitan

5. After this agreement is reached, both parties will not lodge new application regarding this matter.

This agreement is made and agreed by both parties without any threat.
Chapter Six: Four Case Studies

In my interview with Dachry Anom, first assistant of Bupati Musi Rawas, he explained that the dispute was resolved because the company had no choice but to pay the compensation. The compensation itself was reduced to Rp 300 million from Rp 405 million agreed by the company on 21 September 1998.63

E. Analysis

The four cases discussed in this chapter demonstrate the problems, complexities and limitations of the current system to solve land disputes in South Sumatra. Thirty-two years of corrupt New Order government (1966-1998) created chaos in Indonesian law and the new government was unable to increase the rule of law.

It appears that it was difficult to resolve disputes caused by land burning for two reasons. Firstly, there was no independent institution that could determine who was responsible for the burning. The company argued that they did not use fire to clear the land. However, in the Nibung case, Abdul Djabar was able to present three witnesses who testified that the company was responsible for the burning. In the Aringin case which also involved PT LONSUM, Edy Siswanto as the villagers' representative had a witness who saw the company's worker involved in the burning.64 In many provinces including in East Kalimantan, PT LONSUM was also accused of burning the land to clear the areas for oil palm plantation.65

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63 Interview with Dachry Anom, Lubuk Linggau 10 January 2000.
64 Edy Siswanto statement at the Governor South Sumatra Meeting on 21 October 1999.
65 Kustan from Muara Kedang, Bongan East Kalimantan stated "I swear to God, it is true that the company burnt the forest. There were 13 of us paid by the company to burn the forest. The burning took place at night time to avoid the villagers." LATIN, Indonesian Forest After Soeharto: Reformation without change (Pustaka Latin, Bogor, 1998),p 30.
The second reason that made it difficult to resolve this type of dispute was because most of the villagers did not have documents as proof of ownership. In the *Nibung case*, the company agreed to pay compensation because of land burning. I accompanied the government joint team to check the areas burnt, but the team had difficulties measuring the areas burnt because the farmers themselves could not show the exact location of his or her rubber garden. A similar situation happened in the *Aringin case*. When PT LONSUM agreed to pay compensation, there was no agreement on total area burnt. The area of 300 hectares was only estimation.\(^6\)

One question raised by these case studies is why in the *Aringin case* was the company prepared to pay compensation whereas in the *Bukit Hijau case*, the company took Asri’s family rubber garden without compensation? In the *Aringin case*, the company paid compensation even though there was no independent source to prove the villagers’ allegation. On the other hand in the *Bukit Hijau case*, it was clear that the company confiscated the land to build its CPO factory. In both cases, villagers could not show documentation of proof of land ownership. In terms of publicity, both cases had wide local and national media coverage.

There were three main differences between the two cases. In the *Aringin case*, there were a large number of people involved in the dispute. A significant number of people demonstrated against the company, whereas the *Bukit Hijau case* involved only Asri’s family. In the *Aringin case* the government from the village level up to the Governor level supported the villagers openly. It is possible that the government

\(^6\) Minutes of the villagers, the company and the government meeting at the Governor South Sumatra office on 21 October 1999.
was afraid the impact the case would have if they failed to resolve the dispute. In contrast, in the Bukit Hijau case the government did not give support to Asri's family.

It is difficult to draw a conclusion whether the use of force in “negotiation” with a company was necessary. However, in many cases, including the Abdul Djabar case and the Aringin case, success was partly because force was used during “negotiation.”

F. Conclusion

Issues involved in land disputes in relation to oil palm activities differ from one region to another. In the case of South Sumatra, four main factors dominate the disputes.

First, the status of land title was not clear either because the villagers had no right to the land or the villagers had a right to the land but had no documents, or the villagers held false documents.

The second factor was that often the oil palm plantation companies did not fulfil their obligation to build kebun plasma for the villagers, and if they did, there was lack of transparency during the program.

The third factor which caused so many land disputes in South Sumatra was that the government was unable to decide whether to protect the plantation companies or the landowners. The companies argued that they had followed all government procedures in doing business. On the other hand, the landowners believed that the company took their land without following the regulations. The government should
protect the companies' interest for the sake of legal certainty and to protect investment activities in Indonesia. However, the government should also take strong action against the companies that acted unfairly and illegally. Each decision, either to protect the company or to defend the villagers' rights has consequences. The government should take whatever actions are necessary in order to implement the rule of law.

The fourth factor that caused land disputes is that there is no clear legal mechanism for resolving the disputes. The villagers hoped that the government could resolve the problems. However, often each level of government “exchanged its responsibility”. The lower level of governments (Kecamatan or Desa) asked the district government to solve the disputes. In many cases the district government was unable to resolve the dispute and appealed to a higher level of government by asking the provincial government to resolve the dispute. After inviting the parties involved in the disputes and conducting hearings the provincial government had no clear solution.

Bringing the disputes to the DPRD often created a new problem because the limited resources and ability of the DPRD mean that it is unable to resolve land disputes. This led the people to believe that the DPRD did not take their problem seriously, and this caused conflict between the landowners and the members of DPRD.

As mentioned in the introduction, a majority of Indonesian people solve their disputes through consensus. However, it is difficult to reach a consensus if the
company is arrogant. So often, especially since 1998, the people use force to make the company negotiate.

The present mechanism for resolving land disputes in South Sumatra should be reviewed and a new proposal, which brings a new concept, should be developed to prevent land disputes and to resolve the existing land disputes. I will discuss my proposal to prevent and to resolve land disputes in South Sumatra in the following chapter.
Conclusion: Building Effective Dispute Resolution Mechanisms

A. The Impact of Oil Palm Plantation Activities

Oil palm activities in South Sumatra have both positive and negative implications. There are at least three positive implications. First, the development of oil palm plantation enables the locals to change empty and unproductive land into productive and valuable land. Secondly, oil palm activities provide increased work opportunities for the local people, although the number of positions created is often overestimated. Thirdly the investment in this sector gives significant revenue to the district government.

However, for many people in South Sumatra the positive impact is outweighed by the negative consequences. There are at least four negative consequences resulting from oil palm expansion in South Sumatra. The first negative impact, there are enormous land disputes. Secondly, in many areas, local people suffer an unwanted change in status from rubber estate owners to labourers for oil palm companies. Thirdly, oil palm expansion has resulted in human rights violations. Fourth, oil palm activities have created social conflicts.¹

Land disputes in South Sumatra, especially in the oil palm sector, have impacted negatively on both the oil palm companies and on local government. Companies have suffered as often local people took the law into their own hands and blocked the company’s facilities and prevented sales, making it difficult for the companies to expand or develop new areas of plantation. The local government including members of the DPRD Kabupaten must take time to deal with demonstrators seeking to resolve the land disputes and this diverts the Parliament from its main role as a legislature body.

The courts in Indonesia have failed to resolve these land conflicts. The Indonesian 1945 Constitution guarantees that Indonesia is a state in which the rule of law is supreme. However, in practice that is not the case. The local image of the Indonesian judges is at its nadir. The court system, which plays a crucial role in implementation of the law, has lost all credibility. Instead, court decisions are commonly perceived as able to be purchased. This unfortunate image is common in all court levels, from the district court to the Supreme Court.

Instead of bringing their cases to court, people brought their cases before other institutions including the district House of Representatives (Dewan Perwakilan Rakyat Daerah or DPRD Kabupaten), the Head of the District Office (Bupati), and various non-governmental organizations. Resort to these other institutions did not solve the conflicts; rather it heated conflict between villagers and the members of
DPRD Kabupaten. This is because if matters are not resolved quickly, local people believe that the members of DPRD Kabupaten are not interested in protecting the peoples’ interest.

In this chapter I propose the establishment of new institutions or channels for conflict resolution. Based on the analysis of cases described in this dissertation against the background of both Indonesian law and local custom, this thesis proposes two strategies. The first strategy is a design to prevent land disputes in the future. The second strategy is aimed at solving the existing land disputes. In both strategies, mediation is prioritized to resolve the disputes. The district government is given a leading role in introducing Alternative Disputes Resolution (ADR) in accord with new regional autonomy legislation.

Why not an Agrarian Court? And Other Proposals

Dianto Bachriadi of the Consortium for Agrarian Reform (Konsorsium Pembabaran Agraria or KPA) proposes to re-introduce an agrarian court with its own structure, power and procedure. He suggests that it is also crucial to implement the principle of separation of power.

In Indonesian, agrarian courts are not a new institution. Such a court was introduced during the Old Order Government under the Act No 21 of 1964 on the

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1 Image Indonesia, 'Towards Judicative Reform,' May 2000, p 4.

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Land Reform Court, only to be later abolished by the central government with in all land cases being taken to the district court as court of the first instance.

The re-establishment of the agrarian court includes a number of challenges.

a. Legislation would have to be introduced at the national level. All proposals to change the system would be discussed in the national parliament. All proposals to solve land disputes need to be realistic and capable of implementation in the short-term. Proposals that have to be discussed at the national level are long-term propositions. Land disputes are increasing and must be resolved within a reasonable time.

b. The Indonesian courts are not trusted by the people. The introduction of a new court alone will not alleviate that perception.

In a similar vein, agrarian lawyer, Prof. A. Sodiki has suggested that agrarian problems in Indonesia could be resolved by reviewing the Agrarian Act. He argues that adat law should again be the legal basis for national agrarian laws. The suggestion of a new national agrarian law has all the problems discussed above with regard to an Agrarian Court.

Among other proposals to cope with land disputes in South Sumatra is one by Nur Marzuki, a South Sumatran government official specializing in land matters. His proposal is three pronged. First, the people whose areas have been used for a project

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should be resettled. Secondly, locals should be offered shares in the company.
Thirdly, the company should involve local people as partners to run the projects. Although Marzuki’s proposal is interesting it has some flaws. In large projects, the method of resettlement of the local people has been used, but this has often created further disputes. Either the new location was unacceptable as it was located in a remote area or the people refuse to be re-located. Offering shares to the local people is an interesting idea, but the concept of “shares” is alien to many villagers who have no concept of future trading. As a result, local people would not regard the offering of shares as part of a solution. It would be difficult for the companies to share ownership. The involvement of the local people in managing the company is only possible if they acquire the necessary skills. Many companies argue that the local people are not qualified to fill positions and often they invite persons from outside the district to work with the company.

B. Regional Autonomy Legislation

Under the New Order Government (1966-1998), the relationship between the central and regional government changed dramatically after the central government

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7 Nur Marzuki, ‘Local people could have shares in the company,’ Sriwijaya Post, 17 March 2001 [Internet:http://www.indomedia.com/sripo]

8 In North Sumatra, in order to prevent land dispute oil palm plantation develops various strategies. Both the local government and the company work together to promote the law to make local people aware of the law. Oil palm companies also conduct community development programs to empower the villagers. For example, PT Perkebunan Nusantara IV allocating 10 percent of its annual profit to help village cooperative (KUD) and employing more local villagers. The Jakarta Post, ‘Theft of Oil Fruit Rife in North Sumatra’, 18 December 2001 [Internet:http://www.thejakanpost.com]

9 This chapter was presented at the ASAA International Conference, Melbourne University 4 July 2000. The proceedings of the conference were published in August 2001.
introduced Act No 4 of 1974 on Regional Government and Act No 5 of 1979 Regarding Village Government.\textsuperscript{10} One of the objectives of the Acts was to promote uniformity of government at the lowest level in all parts of Indonesia.\textsuperscript{11}

According to the regional autonomy legislation, Act No 22 of 1999 on Regional Government, discretionary power is conferred on the regional government to decide its own policy based on local ideas.\textsuperscript{12} Among others, Act No 22 of 1999 regulates five matters.

a. District governments have flexible power to conduct all matters except those excluded by the law. If the district government informs the provincial government that it is not ready to conduct matters in certain fields, its authority is transferred to the provincial government (Article 6).\textsuperscript{13}

b. Regional autonomy confers on local government power in all aspects excluding the field of international relations, defense and security, courts, monetary or fiscal policy, and religious and other fields that are part of the policy regarding the national development plan (Article 7).

\textsuperscript{10} These Acts were later replaced by Act No 22 of 1999 on Regional Government.
\textsuperscript{11} In order to execute the Act No 5 of 1979, the Governor of South Sumatra implemented “Letter of Decision” No 142/KPTS/III/1983 on 24 March 1983. In order to increase the funding from the central government through the villages funding program, instead of classifying a marga as a village, the South Sumatra government classified the sub-sections of a marga (dusun) as a village. By implementing this policy South Sumatra had more villages under Act No 5 of 1979 on Village Government and was entitled to more funding from the central government. Amrah Muslimin as cited by Firman Muntaqo, ‘Hak Ulayat (tanah marga) dan Pembangunan Perkebunan dalam era Otonomi Daerah’ (2001) paper, Sriwijaya University, p. 2.
\textsuperscript{12} Detik, ‘In Relation to Government Regulation on Regional Autonomy’, 10 May 2000.
\textsuperscript{13} However, Act No 22 of 1999 on The regional Government provided that for the sake for the people the following matters must be conducted by the district government: (1) public work
c. There is a separation of power between the local Parliament (Dewan Perwakilan Rakyat Daerah) and the Executive (Gubernur or Bupati). This separation of power will result in greater power to the local Parliament and maximize Parliaments’ role as a representative body (Article 14).

d. In relation to the election of the Head of regional government (Gubernur or Bupati), full authority is conferred to the region. The central government has no right to interfere. However, the President may veto the election of a Governor (Article 18).

e. The government has recognized the village level of government. Therefore, the village (desa) will be organized, based on local government regulations (Peraturan Daerah) (Article 1(o)). The table below shows the main differences between village governments under Act No 5 of 1979 and Act No 22 of 1999.

**Table 7.1: Village Government in 1979 and 1999**

<table>
<thead>
<tr>
<th></th>
<th>Act No 5 of 1979</th>
<th>Act No 22 of 1999</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Definition of village</strong></td>
<td>A territorial entity</td>
<td>A legal community</td>
</tr>
<tr>
<td><strong>Establishment of new village</strong></td>
<td>Initiated by sub-district, approved by the Head of district</td>
<td>Initiated by villagers, approved by the Head of district and parliament</td>
</tr>
<tr>
<td><strong>Village Government</strong></td>
<td>Head of Village</td>
<td>Head of Village and Village Representative Board (VRB)</td>
</tr>
<tr>
<td><strong>Head of Village</strong></td>
<td>Appointed by and accountable to the Head district, maximum 16 years</td>
<td>Appointed by and accountable to VRB, after approval from the Head of</td>
</tr>
</tbody>
</table>

(2) health (3) education and culture (4) agriculture (5) industrial (6) Communications (7) trade (8) investment (9) environment (10) land matters (11) cooperative and manpower

14 Under this Act, the Governor is a representative of the central government. Therefore, his election should be made after consultation with the President.
### Chapter Seven: Conclusion: Building Effective Dispute Resolution Mechanisms

#### Dismissal of Head of Village
- Proposed by sub-district, approved by district
- Proposed by the VRB, approved by the Head of District

#### Village Institutions
- Appointed Village Assembly and Village Community Resilience Board under the authority of the Head of Village. No other institutions allowed
- Proposed by the VRB with far-reaching rights and autonomy, and other institutions that the village sees fit to establish

#### Village funding
- Block grant from above
- Local sources

#### Village legislation
- Drafted by Head of Village, approved by Head of sub-district
- Drafted and approval by the VRB together with Head of Village

#### Indices of Autonomy
- Village strictly under the authority of the sub-district
- Has the right to reject governmental programs not accompanied by funds, personnel or infrastructure

#### Implementing body
- Department of Home Affairs
- A combination of Department of Home Affairs and individual local governments

#### Village-owned enterprises
- Not allowed
- Allowed

**Source:** Hans Anilov, 2000, p 9.

In theory, these aspects of regionalisation are promising. In practice, however, Act No 22/1999 on Regional Autonomy leaves open the opportunity for control of the regional government by the central government.¹⁵

Is the central government really serious about implementing regional autonomy? It is believed that the offer of full regional autonomy is being given because the central government has no choice if it is to cope with the separation...

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¹⁵ Gary F. Bell identifies at least five weaknesses of the Act on the regional autonomy which include: a) lack of mobility rights and of a prohibition of discrimination based on ethnicity, non-residence and other factors, b) lack of modalities for the transfer of infrastructures and personnel to local authorities, c) lack of clear procedure for the approval of foreign investment, d) lack of sufficient protection against KKN and money politics, e) lack of complete rules for the continuation of laws. See, Gary F. Bell, 'The New Indonesian Laws Relating to Regional Autonomy: Good Intentions, Confusing Laws' (2001) 2 Asian-Pacific Law & Policy Journal 2.
movement.\(^\text{16}\) The government trusts that by offering “full regional autonomy” separatist sentiment will be lessened.

Many Indonesians do not believe that regional autonomy will seriously minimize central government domination.\(^\text{17}\) In fact, the central government has introduced Acts on Regional Autonomy in the past. Although the central government has introduced different forms of regional autonomy—known as “real autonomy” (otonomi nyata), “maximum autonomy” (otonomi seluas-luasnya), and “real autonomy and responsibility” (otonomi nyata dan bertanggung jawab)\(^\text{18}\)—the welfare of the local people never improved and exploitation by the central government of local people continued. During the New Order large portions of the population lived in poverty in areas which were rich in natural resources, such as Riau, Papua, Aceh, and Kalimantan, because much of the wealth created was taken by the central government.

At the central level, the implementation of regional autonomy requires up to 30 Government Regulations, and more than 1,000 existing government regulations, presidential decisions, and presidential instructions to be revoked.\(^\text{19}\) Until the amendment of many existing government regulations, regional autonomy really only exists in theory because existing Acts and government regulations give dominant

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\(^\text{16}\) Separation movements in Indonesia have emerged in Aceh and West Papua, far from the central government. These remote areas are rich in natural resources and have a strong ethnic relationship. Indonesian Institute of Science (LIPI) as quoted in Forum Keadilan, 1999, p 14.

\(^\text{17}\) In response to critics, the minister of regional autonomy said: “regional autonomy is a must, it is cannot be negotiated. Who said the central government is not serious? What is the Regional Autonomy Minister for, is he only for a joke?” Kompas, Monday, 17 April 2000, p.6

power to the central government. Many Indonesians believe that real regional
autonomy is still far off, as there are so many laws needed to implement it.\(^\text{20}\) Gary F.
Bell points out that it is not clear how the central government intends to transfer to the
regions the funds, personnel, equipment, and infrastructures that the regions will need
to exercise their newly transferred powers.\(^\text{21}\)

Regional autonomy requires Regional Regulations. Based on the central
Government Regulation (Peraturan Pemerintah) No 25 of 2000 on Regional
Autonomy, regional governments have to draft a significant number of Regional
Regulations (Peraturan daerah) in the fields of Business Permits, Investment, Land
Matters, and Forestry. This is an enormous task as there are many laws that will have
to be reviewed and new laws drafted. The local government needs staff that is skilled
in these fields—a difficult problem for regional governments given their lack of
resources.

Some articles of Act No 22 of 1999 on the Regional Government are phrased
in ambiguous terms and the central government could interpret these in ways to
maximize their control over regional government. For example, many articles can
only be implemented by central government regulations, which do not involve local
representatives.\(^\text{22}\)

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\(^\text{20}\) Ryas Rasyid, 'Regional Autonomy has to face Various Crucial Problems,' *Kompas*, 17 April 2000, p 6
\(^\text{21}\) Fahmi Imanullah, 'Promise to the Regions,' *Forum Keadilan*, 16 August 1999, p 10
\(^\text{22}\) Gary F. Bell (n15), p 3.

Yowono argues that regional autonomy in Indonesia has ten weaknesses as follows: a) wrong
in terminology. Regional autonomy involves a transfer of political power from state to
society (of the regions). Consequently, many regions ask for independence, b) wrong function
of the central government departments which mix concept of autonomy and decentralisation.
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Act No 25 of 1999 sets for the way financial resources will be divided between the central government and regional governments. However, leading economist Faisal Basri believes that there is no fiscal "balance" between the central and regional governments. There is no restructuring of taxation in relation to the division of revenues between the central and regional governments. What exists is essentially a sharing based on royalties. Royalties are only a small part of the regional revenue. Therefore, the central government keeps its dominance in taxation. For example, the central government has dominated authority to control regional taxes. This Act is an example of a law that restricts the idea of regional autonomy.

Examples of the Distribution of royalties between central and local governments based on Act No 25 of 1999 can be seen in the following table.

<table>
<thead>
<tr>
<th>Year</th>
<th>Central Government Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>75%</td>
</tr>
<tr>
<td>2001</td>
<td>80%</td>
</tr>
<tr>
<td>2002</td>
<td>85%</td>
</tr>
</tbody>
</table>

These two concepts require different management, c) wrong in power sharing. As a unitary state, source of regional power comes from the central government, d) wrong in determining structure of government agencies and their power, e) regions become arrogant, f) the reduction of the concept of the indigenous son (putra daerah) is often has negative impact on the foreigners, g) local parliament (DPRD) has power over the regional government, h) local mismanagement, i) the regional development fund is very low, and j) inconsistency in policy. These ten weaknesses mean the implementation of regional autonomy in Indonesia is in chaos. See, Teguh Yuwono, 'Misinterpretation of Regional Autonomy in Indonesia,' Kompas, 29 November 2001 [Internet:http://www.kompas.com]

Faisal Basri statement as quoted in Fahmi Imanullah, 'Promise to the Regions,' Forum adilan, 16 August 1999, p 11

## Table 7.2: Example of Distribution of Royalties Between Central and Regional Governments

<table>
<thead>
<tr>
<th>Sector</th>
<th>Percent Distribution of Royalties Between Central Government (%)</th>
<th>Percent Distribution of Royalties Between Regional Government (%)</th>
<th>Percent Distribution Within the Regions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oil</td>
<td>85</td>
<td>15</td>
<td>3 to province</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>6 to producer district</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>6 to other districts</td>
</tr>
<tr>
<td>Natural Gas</td>
<td>70</td>
<td>30</td>
<td>6 to province</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>12 to producer district</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>12 to other districts</td>
</tr>
<tr>
<td>Mining</td>
<td>20</td>
<td>80</td>
<td></td>
</tr>
<tr>
<td>Forestry</td>
<td>20</td>
<td>80</td>
<td></td>
</tr>
<tr>
<td>Allocated Fund</td>
<td>75</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>Land and Building</td>
<td>10</td>
<td>90</td>
<td></td>
</tr>
<tr>
<td>Tax</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fisheries</td>
<td>20</td>
<td>80</td>
<td></td>
</tr>
</tbody>
</table>

Source: Darto Martiman, 1999, p 133.

Under the new law, there is a significant increase of income for some regional governments, such as the province of South Sumatra, because this area is rich in mining, forestry, and fishery. Under Act No 25 of 1999, from the Oil and Gas sector, South Sumatra will gain royalties of 250 billion rupiah. In 1999/2000, South Sumatra’s total budget was 303 billion rupiah.\(^\text{25}\)

With respect to land disputes in South Sumatra, regional autonomy will confer two benefits on the regional government. Firstly, under the new mechanism of distribution of revenues based on Act No 25 of 1999, the local government will have

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more income to fund the program. For example, the Musi Rawas district government could develop new institutions to deal with land disputes. Second, the decline of central government domination enables district government to be more independent in determining a strategy based on local values to solve the problems.

C. Analysis of Responsibility for Land Conflicts

Before discussing a strategy to contend with land disputes in detail, it is necessary to assess the responsibility of different parties in disputes. During the field research, it was found that each party pointed to the other as responsible for land disputes in relation to oil palm plantation activities.

C.1 Oil Palm Plantation Companies

Oil palm companies bear responsibility for a number of reasons. There is a lack of transparency in relation to oil palm plantation plans. Local people are not given enough information regarding the project. As a result, the judgment of the local people is often wrong. It was only after problems with the locals occurred that the companies attempted to explain their program of investment, but this was often too late.

For practical reasons oil palm companies often have the head of the village as the central contact in dealing with the villagers' interests. The companies also use the head of the village to forward all information regarding aspects of the project to the

26 Part of this chapter has been presented in Australia Asia Association Seminar, Melbourne, 13 June 2000.
villagers. However, in some locations the heads of the villages have their own interests in the plantation activities. Information was not always forwarded to the villagers and this created miscommunication.

Companies tend to use any method to enforce their rights to land. They have involved security personnel, including the military forces and the police, and local people, whom they believe will help the company obtain the area for plantation expansion.

The companies are unable to guarantee income to the villagers whose land is used for profit sharing projects. The companies keep planting the area and harvesting them without involving the owners of the area, creating mistrust.

Oil palm companies use burning to clear land for the plantation of oil palms. In some cases the company failed to control the burning, which destroyed the villagers' plantings.

There is lack of transparency in the plasma program (profit sharing program). For example, villager often did not understand the contract agreement. Some had never seen it.

The oil palm plantation companies regularly relocate their field manager, often after short periods of time. The new management argues that they are not responsible for former management policies.

Some companies fail to respond promptly to problems with the local people. Consequently, the situation may simple deteriorate because there is no immediate action to resolve the dispute, such as in the Nibung Case and the Aringin Case.
Some companies have been aloof and do not reasonably communicate with the local people.

A company often does not conduct a study about local conditions before starting the project. Consequently, when a problem arises, the company is unable to deal with it.

C.2 The Government

Government has failed in a number of ways. In many cases, there was lack of coordination among local government institutions. For example, each local government institution, such as the district government office, the office of the National Land Agency, the Office of Forestry, or the Office of Estate Crop, was unable to perform its function as stipulated by the regulations. There were too many regulatory bodies, each with its own perspective and agenda. There was no single entity with unambiguous responsibility for conducting land management policies.

Various government agencies activities did not share the same vision for implementing plantation policy. They did not have the same knowledge of regulations in plantation activities. This situation significantly affected policy implementation.

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The district government failed to properly implement Regional Regulation No 17 of 1998 on Supervising and Controlling Plantation Activities based on the Nucleus Estates Scheme (NES). For example, Article 5 of the Regulation directs the district government to supervise oil palm plantation under the NES projects. Article 6(2) stipulates that supervision can be conducted through:

a) Lecturing
b) Communication and consultation
c) Simulation, training, and visiting
d) Direction, suggestion, and advice
e) Controlling

The villagers argue that the government did not supervise the plantation companies sufficiently, and the district government officials admitted that the district government failed to conduct its supervisory roles.

The district government did not supervise the oil palm company activities. As a result, some oil palm companies conducted illegal activities including extending their plantation without permission or supervision from the local government. These activities often conflicted with the interests of local people.

Corruption is also a problem. For example, various Kepala Desa and Camat were involved in creating illegal land titles. Some government officials were able to


The World Bank estimates that 30% of its loan to Indonesia is diverted. In April 2001, Satrio B Judono, Head of the Financial Auditing Board, reported to the DPR that in the fiscal year 1999/2000, the Board found 925 cases where money had been diverted from its set purposes, with a total loss of 8.05 billion rupiahs (Kompas, 'The Financial Auditing Board
purchase oil palm estate plots. Subsequently, those government officials were in a conflict of interest situation in dealing with oil palm issues. The district government often failed to take strong action toward corrupt government officials who abused their power.

The government policy was to attract as many investors as possible. In some cases they waived compliance with the regulations governing investment. New policies were introduced to attract investors, including streamlining the location permit procedure. These policies were not in the locals' interests, which in turn created land disputes.

The district government often used force in plantation disputes. For example, in meetings with the local people, the government regularly involved police and military forces. The use of such security forces exacerbated the situation because local people suspected collusion between the security forces, government, and companies.

C.3 Local People

Local people have also contributed to the problems and must bear some of the responsibility. Many local people have claimed land by force based on adat law

finds diverted budget of 8,05 billion rupiah,' 22 Februari 2001 [Internet:http://www.kompas.com] In 1998 Transparency International ranked Indonesia at number 80 of the 85 countries on its Corruption Perception Index. Rizal Ramli (Econit Advisory Group and a former Economy Coordinating Minister under President Abdurrahman Wahid) estimates that 30 percent of loans to Indonesia have been lost through corrupt avenues. A recent survey of Indonesians found that 68.5 percent believed that the law, from police to judges, could be bribed. (Rudy M. Harahap, 'Strategies for Preventing Corruption in Indonesia,' Asia Pacific Press at the Australian National University, Canberra, 1999,p 3.)
without having official title to the land. In the name of adat land rights, the villagers have forced the company to pay compensation or face demonstrations, which often ended violently.

Reformasi (reformation movement) was used to legitimate attacks on the government and companies. Often local people employed force and violent demonstrations in order to force the district government or the oil palm companies to respond to their demands.

Some local people exploited land burning during the dry season in 1997 for their own benefit. These people applied the following strategies:

a) Declared that the oil palm companies intentionally burned rubber gardens owned by local people without any valid evidence for the allegation.

b) Claimed compensation for fictitious rubber garden owners.

c) When rubber estates were truly destroyed by fire, villagers deliberately marked up the area destroyed.

There were people who acted as land brokers (calo tanah) representing themselves as able to solve disputes, whereas, in fact, these people only served to inflame the disputes.

C.4 Koperasi Unit Desa

The village cooperative organization (Koperasi Unit Desa or KUD) was expected to act as a partner for the oil companies in helping with the plasma program
(profit sharing program). In reality, there were few KUDs that were able to fulfill this mission for two reasons, lack of management skills and lack of funds to run the organization. In some instances, there was competition among the KUDs. For example, in Terawas Estate, KUD Panji Layangan and KUD Terusan were in dispute over which organization had the right to be the company’s partner, and the right to harvest and to sell the palm oil.

Strategy I: To prevent land disputes in the future

Until recently there was no clear mechanism to prevent land disputes in South Sumatra. In this first strategy, I make six proposals as follows:

1. A Mechanism of Transparency and Accountability

The South Sumatra government should develop mechanisms of accountability. Public access to information is a central element of accountability. Access to government information is crucial to the proper functioning of a democratic society. Limited information can distort the accountability process.30

One mechanism that should be adopted by the South Sumatra government is the introduction of a Freedom of Information Act (FOI).31 This Act would permit

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29 M. ali, “We Need to Improve Indonesian’s Tainted Image,” The Jakarta Post, 19 November 2001 [Internet: http://www.thejakartapost.com]
31 In Australia, as in other democratic states, a Freedom of Information Act is in place in all jurisdictions. For example, the Victorian Freedom of Information Act specifies the right of the public to get access to the operations of various government agencies. Section 3 (1) of the Victorian Freedom of Information Act states: The object of this Act is to extend as far as possible the right of the community to have access to information in the possession of the government of Victoria for certain public purposes - by: (a) making available to the public information about the operations of agencies and, in particular, ensuring that rules and
access to government information while at the same time protecting private information in the hands of government.\textsuperscript{32}

At present, the public in South Sumatra has no idea that under a democratic government, they have a right of access to government agencies' activities. A Freedom of Information Act would also reduce the level of corruption, collusion and nepotism.

2. An Independent Land Problem Inventory Team (Tim Inventarisasi Masalah Pertanahan or TIMP)

The South Sumatra government (pemerintahan propinsi) together with the district government (pemerintahan kabupaten) should develop an institution which focuses on collecting data and observing land disputes. I suggest the new institution be named the Land Problem Inventory Team (Tim Inventarisasi Masalah Pertanahan/TIMP, hereafter TIMP). The TIMP duties and members of the team would be as follows:

2.a. Recording Land Ownership Under Customary Laws
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The district governments argued that all land titles gained under the customary law including under the *marga* system no longer exist since the central government introduced Act No 5 of 1974 on the Regional Government. However, local people could obtain title to land held under customary law, if government registration programs were more effective.

Unless the regional government is prepared, the problem of land ownership may become worse after the implementation of regional autonomy. For example, districts in South Sumatra could legally re-introduce the *marga* system of government. In January 2001, the local government of West Sumatra re-introduced the *Nagari* system via *Perda* No 9 of 2000 in the Basic Regulation on *Nagari* Government.33 In many regions including South Sumatra, West Sumatra, and Papua, it is believed that returning to local government will signal a return to land ownership based on traditional laws.

Aware of land claims under customary law, the Agrarian Minister/Head of the National Land Agency issued Decree No 5 of 1999 on the Guidelines to Resolve Problems of Communal Land Rights. Article 1 of this Decree states:

> "A communal right is a right which is based on *adat* law owned by particular communities, which encompasses an area to be used by that community"

Article 2 states:

(2) A communal land right based on *adat* law is acknowledged if:

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a. There are groups of people that are part of adat society who practice adat law in their everyday activities.

b. There exists communal land as part of adat society and the land is used for that adat society.

c. There is adat law practiced with regard to land ownership and that law is followed by that adat society.

The Agrarian Minister's decision to acknowledge communal land rights is a policy that could enable locals to make claim to land based on adat. As a result, regional autonomy could produce chaos in the system of land ownership. The re-introduction of the marga system of local government may cause the issue of land ownership to become even unclear. Under the traditional laws, there is no clear separation of the land of one group from that of another. While investors have been led to believe that they have the right to the land, the locals could argue that they never relinquished their land. There is no guarantee that land conflicts and other problems will be resolved by reintroducing former local institutions such as the marga system of government.

However, it will be difficult for the local people to satisfy the requirements of returning to adat law because, there are not many groups of people that are part of

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35 As an illustration, complicated land disputes have occurred in Papua as a result of the introduction of regional autonomy. Many tribes in Papua have reclaimed their tribal lands from various companies. Areas reclaimed in Papua as communal land by the tribes include areas that have been used for government offices, school buildings, hotels, Parliament house, transmigration areas, gymnasiums, seaports and the airport. 'Regional autonomy has to face reclaiming of land based on communal rights', Kompas, 16 March 2001.
adat society and who practice adat law in their everyday activities. If the Agrarian Minister's Decree is carefully analyzed, the requirements for adat law to be applied are very difficult to fulfill, and in some aspects almost impossible to meet. Article 3 of the Agrarian Minister Decree No 5 of 1999 states that communal land rights cannot be claimed in the following situations:

a. If the land has been owned by an individual or by another institution.

To begin to resolve the problems a survey is needed to investigate which areas of land are claimed based on adat law. The survey should be conducted by university researchers who are expert in this area. Article 5 of the Agrarian Minister Decision No 9 of 1999 provides:

The research on and decision of whether land titles based on adat law still exist is to be conducted by the district government involving adat law experts, adat society, non governmental organizations, and other relevant organizations.

This survey could contribute to solving disputes arising from the application of different laws. However, not many local governments have conducted this kind of research, including the South Sumatra government. The challenge in conducting this research is knowing how to determine the meaning of adat land. For this reason, the TIMP program should include recording land titles retained under the customary law. This record is important for legal certainty for both the investors and the local people.

2.b. Recording various land disputes

There is no reliable record of the number of land disputes in South Sumatra because of the absence of a recording system on this matter. The TIMP should record existing land disputes and become an institution that is responsible for land records.
A systematic recording system should classify existing land disputes according to issues involved, such as compensation, proof of ownership, profit sharing, and land burning. This method of classification enables the public to easily identify disputes and could help the commission to resolve land disputes.

2.c Members of the Team

The team should involve both district government officials and independent people from outside the government. I understand that the district government of Musi Rawas has formed a similar team under the Bupati Decision No 113 of 1999 on the Establishment of Team to Resolve Land Disputes. However, in practice this team is inactive and also unpopular among people in Musi Rawas. The existing team is not active because for two reasons. First, the team has too many members. The team consists of 19 members. Second, all members are ex officio, high ranking officials in the district, who are busy with their routine work.

In order to have an effective TIMP, I propose that the members of the TIMP should be as follows:

a. The team should not exceed five members with supportive staff.

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36 Interview with Dachry Anom, First Assistant to Bupati Musi Rawas, Lubuk Linggau 23 December 1999.

37 The members of the team are: 1) the Bupati, 2) Commander of district military command, 3) Chief of District Police Office, 4) Head of district public prosecutor office, 5) Speaker of the DPRD Musi Rawas, 6) Chairman of the district court, 7) Secretary of the district government office, 8) First Assistant of Bupati, 9) Head of District office of National Land Agency, 10) Head of government section, 11) Chairman of general government section, 12) Regional Inspector, 13) Head of transmigration office, 14) Head of Estate office, 15) Head of Forestry office, 16) Head of the village government section, 17) Head of law and order section, 18) Related Head of sub-district, and 19) Head of section of sub-district office.
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b. The members should be government officials and independent people. Independent people are those who are free from government influence. These people could include university lecturers, informal leaders, NGO's activists.

The small number of TIMP members enables the team to conduct their task faster because coordination is easier.

The TIMP should work closely with various government institutions, which have a role in land use management and investment activities, including the district office of National Land Agency (Badan Pertanahan Nasional or BPN) and the Regional Investment Coordinating Board (Badan Koordinasi Penanaman Modal Daerah or BKPMD). BPN has authority in relation to land in a number of areas, including measuring land and issuing land certificates. BPN has offices all over the country and gives various services in relation to land.

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38 In South Sumatra informal leaders are religious people, retired government officials. These informal leaders are highly respected by the locals.
40 BPN tasks are: Development and Land Acquisition Permit (izin Lokasi), Permit to convey/transfer land rights (Right of Use and other rights derived from state land), Permit to change land use, Compensation for land reform objects, Land Consolidation (private initiative), Cost redistribution analysis for self-supported registration (swadaya), Cost proposal for work plan and final approval, Land acquisition for public purposes/interest (Presidential Decree No 55/1993), Initial Registration, Survey procedures, Grant of Title, Recognition of Title for non-state land, Recognition and confirmation of right (non-state land), Recordation of Right, Revocation of Right, Change in recorded rights (Minister of Agrarian Affairs/BPN Decree No 21/1994), Re-issuance of Certificate due to damage, Re-issuance of Certificate due to loss, Registration and recordation of strata titles on behalf of developer, Subdivision/Consolidation of Titles, Revocation/cancellation of previous rights/certificates, Registration of Secured Interests, Recordation of Satisfaction of Secured Interests, Recordation of foreclosure/debt forgiveness/assumption by other parties, Registration of right revocation/release, Registration of name change/name correction, Application for land office records, Registration of derivative transactions, Registration of rights for social and religious purposes, Information assistance, Surrender of non-ownership right/re-granting of ownership right (hak milik) for developer built low cost housing units with less than 200 m2 plot size.
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The TIMP should have access to the Regional Investment Coordinating Board (Badan Koordinasi Penanaman Modal Daerah or BKPM). BKPM records various investment grants in the region. Article 2 of the Decree of the State Minister of Investment/Head of the Investment Cooperating Board No 21 of 1998 provides that BKPM has authority to give approval and facilities as well as permits for the implementation of investment in the region.

The role of the TIMP would not overlap with other existing local government institutions because the TIMP’s main role is to gather data of land problems. This data may be obtained from various sources including the BPN and the BKPM.

3. The Introduction of New Policies

The second step of my first strategy to prevent land disputes in South Sumatra is that the district government should introduce new strategies in relation to investment. In order to prevent disputes with the local people and to reduce high cost investment, I suggest the following plan.

3.a. investors should make a public presentation of their commercial aspirations before operations are established to ensure inclusive community consultation occurs.

(Ministerial Decree Agrarian Affairs No 9/1997), Grant of right-to-build (Hak Guna Bangunan) or use (Hak Pakai) over owned land, (Hak Milik) based on deed drawn up by land deed official (PPAT) Article 23 - PP No 24/1997), Registration of Transfer of Security Interest, Application for right on state owned land, Recording public enquiries, issuance of project based certificates e.g. HGB Induk, Grant of ownership title for residential use for homes with less than 600 m2 plot size (Ministerial Decree Agrarian Affairs No 6/1998), Grant of ownership title for residential use to civil servants/armed forces personnel who are eligible for and have acquired government housing (rumah dinas), See, Jude Wallace, op cit (n 50) pp.90-91.
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This public presentation aims to ensure that community aspirations are included and to make the projects more transparent. Public hearings could involved the following elements:

a. Related government institutions, including local government representatives, National Land Agency, the office of forestry and estate crops department, regional planning agency, head of sub-district (camat), and head of village (kepala desa).

b. Members of DPRD Kabupaten. The members should be the representatives of the district where the projects are planned. The involvement of parliament members is important to ensure that the proposed project will not neglect the local people's aspirations and to ensure that the district parliament would have continuous commitment to monitor the projects.

c. Members of non-governmental organizations (NGOs) such as the Village Cooperative Organization (Koperasi unit Desa or KUD) e.g. KUD Pakar Maur, KUD Terusan Jaya, and KUD Panji Layangan, various local legal aid foundations such as LBH Silampani in district of Musi Rawas. NGOs play a significant role in Indonesia today. Those organizations concerned with population and environmental problems, could share ideas in relation to the projects. These institutions could represent the local people's interests, because villagers are often unable to articulate their concerns.
d. Informal leaders, such as former heads of villages, former heads of sub-districts, and religious leaders. In Indonesia, especially in rural areas, informal leaders have a significant role within the community. Before a project starts, it is important to involve these people in order to prevent disputes with the local people.

Some people may argue that this kind of presentation could delay implementation of the project because so many people should be heard. I agree that public presentation takes time, but projects that did not involve public presentation became involved in disputes later. The district government is responsible for ensuring inclusive community consultation occurs without complicating the investment procedure.

3.b. **companies should produce and publish an annual progress report.**

Companies often make an annual progress report only for investment purposes and do not allow the public access to this report as mandated by the central government regulation No 24 of 1998 on the Annual Company Budget Information. A published annual progress report would keep local people informed and is part of accountability to the local people.

The local government should guarantee that the company takes appropriate steps to ensure the public (the villagers) gets access to the report. The local government

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41 Central government regulation No 24 of 1998 on the Annual Company Budget Information provides that a company has to provide an annual report. Article 2 states: (1) All companies have to provide an annual report, (2) That annual report is a public document which may be obtained by the public. Article 3 provides: (1) An annual report should include: a. Financial report, b. Statement of profit and loss, c. Report of fund allocation, d. Capital and liability including bank loan, e. List of capital investment.
should be aware that the villagers are not familiar with the concept of an annual report and therefore there should be a mechanism to ensure that the villagers understand this matter, which is relevant to their interest. However, the first party responsible to read an annual progress report is the relevant district government agency.

Further, the government should require that any oil palm company have its office in the district where its activities are based, with local management authorized to take decisions on local matters. In many cases, disputes have been exacerbated because local management had no power to take important decisions and relied heavily on the central office.

3. The government land dispute team may not be funded by the company involved to avoid conflict of interest.

As discussed earlier, a team to Resolve Land Disputes in the district of Musi Rawas was formed under the Bupati Decision No 113 of 1999. However, the team was funded by the oil palm company involved in the dispute. Under this condition, it is difficult for the team to work neutrally.

The district government should be responsible for funding the team. As mentioned earlier, the implementation of regional autonomy should increase the district government revenues to allow for the funding.

The legal experts team of Land Administration Project have also recommended to the Indonesian National Development Planning Agency and National Land Agency, "...that reform of land administration and land law must define conflict of interest, address the corruption issue directly, establish transparency and accountability of process, create assured and easily understood rights, and allow local (not central) implementation." (Jude Wallace, et al, Indonesian Land Law and Tenures-Issues in Land Rights, National Development Planning Agency and National Land Agency, Jakarta, 2000, p 8.)
3d. Apply strong sanctions to government officials who abuse their power.

In oil palm plantation activities, the district government officials have been involved in the following matters:

a. Marking up the value of compensation

b. Conflict of Interest

I believe that to avoid conflict of interest, government officials, because of their position, should not be allowed to purchase oil palm plantation plots while they hold positions at the district government office. If he or she owned the areas before taking the position, he or she should disclose this information. In Indonesia, there is no regulation of local government official’s involvement in economic activities where there is a conflict of interest. Without regulation and implementation of that regulation, conflict of interest will persist.

4. Strengthen the management of the Village Cooperative Organization (Koperasi Unit Desa or KUD)

The next step to prevent land disputes in South Sumatra is to strengthen the management of the village cooperative organization (Koperasi Unit Desa, or KUD).

The majority of KUDs in South Sumatra have the following weaknesses:

a. The presence of the organization is only a formality.

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Some officials received their plots from lower government officials, such as Kepala Desa, as a “gift.” This information obtained from my field research and personal communication with members of local NGOs.
In some locations of my field research I found that formally the \textit{KUD} exists in order to apply for \textit{KKPA} credit from the bank. Often the villagers who are 'members of \textit{KUD}' do not really understand the credit contract signed. They do not know their rights and obligations as a result of the contract between them, the \textit{KUD}, the company and the bank. I found that many \textit{KUDs} have no office. All administration equipment is at the Head of \textit{KUD}'s house and it is difficult for the villagers to get access to the \textit{KUD} administration.

b. Poor of management.

The majority of the \textit{KUDs} have poor management. One of the reasons is because educated people, such as university graduates, do not return to their villages. Consequently, it is difficult to find people who have academic qualifications to work with the \textit{KUD}.

\textit{KUDs} with those defects cannot achieve an equal bargaining position with companies. As a result, often company policies that are inimical to the villagers' interests meet no opposition from the \textit{KUDs}. A stronger cooperative is likely to be better able to protect the members' interests in dealing with the companies.

There are various steps that can be implemented to empower the \textit{KUDs}, such as offering training to locals with potential to work with \textit{KUDs}. The local government, through its cooperative department, could develop a program to give incentives to university graduates, including the Cooperative Academy graduates, to work with the \textit{KUDs}. 

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Sofyan Wanandi, a leading Indonesian expert on small business, suggested that to strengthen the KUDs the following factors should be taken into consideration:

a. Each cooperative organization has a different specification such as loan and deposit cooperative, farmers’ cooperative and plantation cooperative. Therefore, development strategies cannot be generalized.

b. In order to avoid overlapping in supervising the cooperatives, the government and private organizations should have clear separate programs.

c. The government should limit its supervision to aspects of an organization whereas private organizations can supervise a cooperative as a business entity.

d. As a business entity, the supervision can be in the form of consultation, business management training, and relevant business programs.

Sofyan Wanandi added that the following programs should be applied in supervising the cooperative’s business training:

a. Achievement motivation training. The trainees are asked to understand their strengths and weaknesses, understand business, and evaluate the organizations achievements.

b. Technology and business management training including the development of a business model. The trainees are exposed to business skills.

c. Monitoring and consultation after the training. Without monitoring and supervision after the training, the trainees could face difficulties when acting on their own.

However, training alone is not enough without an additional effort by the government to assist with funding. For example, the bank could give KUD credit at a low interest rate.

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44 Ibid at 8.
5. The Establishment of a District Commission for Land Dispute Resolution (Komisi Penyelesaian Sengketa Pertanahan or KPSP)

To deal with land disputes in the district of Musi Rawas, a District Commission for Land Dispute Resolution (Komisi Penyelesaian Sengketa Pertanahan or KPSP) should be established, hereafter referred to as the Commission. The Commission would be an independent institution, free from government or other parties’ influence or power.

The Commission would consist of a Chairman, a Vice Chairman and at least three other members. Members of the Commission would be appointed and dismissed by the Head of District upon the approval of the DPRD. The term of a Commission member would be three years and he could be re-appointed once.

To be a member of the Commission a person shall:

a. Be a citizen of the Republic of Indonesia, at least 30 (thirty) years old and not more than 65 (sixty five) years old at the time of appointment.

b. Be honest, just and of good moral behaviour

c. Be domiciled in the territory of South Sumatra

d. Have experience or knowledge in the field of agrarian law

e. Not be actively involved in any political party.

Once a member is appointed to the Commission, he/she could not be removed except by:

e.1. Death

e.2. Resignation
e.3. The Head of the District and the DPRD in full session, such removal on the ground of proved misbehaviour

It is important to stress that once a Commissioner is appointed, he/she cannot be removed except on specified grounds; this is to ensure the commission’s independence.

Power of the Commission

The powers of the commission may vary but would include at a minimum:

a. To order the parties to resolve their disputes through mediation

b. To summon relevant parties in relation to the disputes

c. To require the parties to disclose all relevant documents

Funding and Decisions of the Committee

Funding for the Commission shall be borne by the District Budget and Revenue Office (*Anggaran Pendapatan dan Belanja Daerah* or *APBD*).

The District court would have the power to enforce all Commission decision. All Commission decisions are binding and appeals from decisions are heard by the district court only by special leave.

6. The Development of Mediation Institutions

The sixth proposal is the development of mediation institutions in South Sumatra. Litigation in Indonesia, as in many countries, is time consuming, complex and costly. The reluctance to litigate may be overcome through Alternative Disputes Resolution (ADR). According to Philip D. Bostwick, ADR is “a set of practices and legal techniques that aim: i) to permit legal disputes to be resolved outside the courts
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for the benefit of all disputants, ii) to reduce the cost of conventional litigation and the delay to which it is ordinarily subjected, and iii) to prevent legal disputes that would otherwise likely be brought to the courts.

There are many methods of resolving disputes, including negotiation and the many forms of ADR, including mediation, conciliation, facilitation, independent expert appraisal and arbitration. In essence, each process is based on negotiation where disputing parties attempt to reach a mutually acceptable outcome through discussion with a professional third party.

The ADR Guide developed by the United States Conflict Management Group recommends the use of ADR when: (a) case backlog impairs court effectiveness, (b) complex procedures impair court effectiveness, (c) the illiterate or poor cannot afford

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47 Robert distinguished two forms of negotiation, simple bilateral negotiation and supported negotiation. Simple bilateral negotiation involves the parties in dispute approaching each other without the assistance of any third party. Supported negotiation is a process of bilateral negotiation in the sense that the parties approach each other without the help of an apparently neutral intervener; but the structure is altered by the appearance of partisans in support of the respective disputants. Hilary Astor and Christine M Chinkin, Dispute Resolution in Australia (Butterworths, Sydney, 1992), pp 59-60.
48 The Australian Commercial Disputes Centre defined conciliation as a process whereby: “An impartial third party acts to bring the principals together for the purpose of dispute settlement. The role of the conciliator is to seek to get the parties to agree upon a process by which they will attempt to resolve their dispute...” Ibid at 61
49 Law Institute of Victoria defines facilitation as the process requires the present of a third party whose role is to inject some degree of lateral thinking into multi-party disputes. This has the purpose of helping the parties to agree on a common course of action to resolve the problems. Id.
50 Expert appraisal is a process which provides for an objective, independent and impartial determination of disputed facts or issues by an expert appointed by the parties. Id.
51 “An Arbitration is the reference of a dispute or difference between not less than two persons for determination after hearing both sides in a judicial manner by another person or persons, other than a court of competent jurisdiction,” Enid A. Marshall, Gill: The Law of Arbitration (4th ed, Sweet and Maxwell, London, 2001), p 1.
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the courts or manage their way within them and (d) a small informal system can better reach a geographically dispersed population.52

The use of mediation is recommended as a priority to settle land disputes. In fact, many land conflicts in South Sumatra were settled through the intervention of the third parties similar to mediators. Mediation is not a novelty for the people of South Sumatra. *Musyawarah* has been the traditional method used by the villagers to resolve their differences.

Folberg and Taylor defines mediation as:

A process by which the participants together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate their needs.53

According to Richard J. Cohen, there are two principles of mediation:54

a. Mediation is a process in which the parties in dispute and the mediator or mediators work together to bring about better understanding of the differences that separate them and then construct a process that helps to identify the issues in dispute including a full discussion of all possible options available to the parties to resolve their differences and finally create an environment in which the parties can negotiate mutually advantageous solutions to their differences.

b. Mediation is based upon co-operation and trust and the abilities of all the parties and the mediator or mediators to work together. The mediator or mediators have a duty to make sure that the process is empowering and that no one dominates the process.

In countries like the United States of America and Australia, there has been a growing use of mediation in civil cases and administrative agency matters. Large companies have increasingly embraced settlement processes through mediation.\(^{55}\)

Almost every dispute has a solution that is acceptable to the parties involved, but often the parties involved in a dispute do not see such a solution. A mediator can help the parties to reach this solution not by taking a position, but by helping the parties to find a solution. A great advantage is that the relations between parties are not unnecessarily damaged.\(^{56}\)

One power of the District Commission for Land Dispute Resolution is to direct the parties to bring their dispute to a mediator. Although mediation is not a new concept in Indonesia, it has not been used formally in the court process. At the hearing in a civil case in Indonesian courts, the judges have to encourage the litigants to resolve their differences. In most cases the parties ignore the court suggestion because there is no legal consequence if they refuse to follow the suggestion. In Indonesia, there is no mechanism to force parties to solve their problems through mediation as practiced in the Australian Federal Court.\(^{57}\)


\(^{56}\) Ibid at 11.

\(^{57}\) The Federal Court of Australia introduced an Assisted Dispute Resolution program in 1987 based on the mediation of disputes by registrars of the court. Of the more than 1,300 cases that have proceeded through this program, 73 percent of matters have settled, 3 percent have been transferred and 24 percent have proceeded to trial. Both the Federal Court Judges and Supreme Court judges can refer proceedings or part of proceedings to mediation with or without the consent of the parties. The Supreme Court of Victoria Rules 050 R7 states: (1) At any stage of proceeding a Judge may with or without the consent of any party, and with the
In South Sumatra, the local government should develop dispute resolution through mediation. The local government should encourage or fund non-governmental organizations to be involved in developing this idea. The involvement of private institutions is important to build public confidence in this new alternative dispute resolution mechanism.

In Australia, as in other developed countries, many mediation institutions operate as non-profit or government-sponsored organisations. In 1977, Indonesia introduced the Indonesian National Arbitration Board (Badan Arbitrase Nasional Indonesia or BANI), supported by the Indonesian Chamber of Commerce and Industry. BANI handles cases through institutional arbitration to which BANI’s rules of procedure apply, or ad hoc arbitration, in which the parties have agreed to the procedure.

Until recently, there have been impediments to the use of this institution to settle land disputes in South Sumatra. A dispute can only be brought to BANI if the contract made by the parties has an arbitration clause. BANI settles disputes through the arbitration based on the contract made by the parties. Most land disputes occurred in relation to oil palm activities in South Sumatra with no contract between

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58 Examples of Australian mediation organizations at a national level are: Australian Dispute Resolution Association Inc Institute of Arbitrators Australia (IAA), International Legal Services Advisory Council (ILSAC), Lawyers Engaging in Alternative Dispute Resolution (LEADR), and the National Dispute Centre. Sue Duncombe and Judith Harford Heap, *Australasian Dispute Resolution* (Lawbook Co, Sydney, 2001), pp. 12-51 to 12-58.


60 Ibid at 19
the company and the landowners. Second, BANI mainly operates in Jakarta with branches in Surabaya, Medan, and Padang.61

In 1999 Indonesia introduced Act No 30 on Arbitration and Alternative Dispute Resolution. Article 1(1) of Act No 30 on the Arbitration and Alternative Dispute Resolution provides: “Arbitration is a dispute resolution outside the court process based upon a written arbitration agreement made by the disputing parties. Article 1(10) of the Act defines Alternative Dispute Resolution as “an institution to resolve disputes through a process agreed by the parties using consultation, negotiation, mediation, conciliation, or an expert determination.

The main weakness of this Act is that it only provides details of arbitration without parallel articles on ADR. Article 1(10) is the only sub-section out of 82 articles of the Act that mentions ADR. The remaining articles explain in detail the arbitration process. The Act does not mention, for example, what mediation is and how mediation is to be conducted. Therefore, there is not much assistance from the Act to encourage the development of mediation in Indonesia.

In order to develop a plan for the use of mediation as a formal mechanism to settle land disputes in South Sumatra, issues regarding various aspects of mediation should be discussed. It is important to discuss, for example, what model of mediation will be applied, who is eligible to serve as a mediator, how the training of the mediator will be conducted and what materials should be included in the training. It is also necessary to discuss who will pay the mediator and how the disputants will be

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61 Id.
presented. In the following section, various aspects of mediation are discussed, which are relevant for the situation in South Sumatra.

6. a The Mediator

In order to choose the right mediators to settle the dispute, it is important to understand what type of mediation is envisaged and how it works. Laurence Boulle distinguishes four models of mediation: settlement, facilitative, therapeutic and evaluative. The favoured option is to use the facilitative mediation model to develop a mediation mechanism in South Sumatra, in land disputes caused by oil palm activities. The facilitative mediation model is more suitable than the other three models for the following reasons:

a. In many land disputes caused by oil palm company activities, the needs and interests of the villagers and the companies are more important than the legal entitlements of the parties.

b. In most disputes the legal status of the dispute is difficult to prove. For example, many ‘landowners’ have difficulties providing written proof of ownership although they have worked on the land for a long time. In land burning disputes, the companies argue that there is no legal evidence that

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63 Settlement Mediation is aimed at encouraging incremental bargaining towards compromise at a central point between the parties’ positional demands. Ibid at 29.
64 The main objective of Facilitative Mediation is to avoid positions and negotiate in terms of the parties’ underlying needs and interests instead of their strict legal entitlements. Id.
65 The main objective of Therapeutic Mediation is to deal with the underlying causes of the parties’ problem, with a view to improving their relationship as a basis for resolution of the dispute. Id.
66 The main objective of Evaluative Mediation is to reach a settlement according to the legal rights and entitlements of the parties and within the anticipated range of court outcomes. The mediator takes an active role in suggesting options. Id.
they are responsible for the burning of the villagers' rubber plantations although the villagers believe (and in some cases have witnesses)\(^67\) that the oil palm companies are responsible for the burning. It will be very difficult if the parties stand strictly on legal grounds. This model of mediation could help resolve the dispute because it focuses on the interests of the parties instead of the legal issues.

c. This type of mediation does not require high status mediators who are experienced in the mediation process. The mediator's main role is to maintain a constructive dialogue between the parties. Many people from various backgrounds in South Sumatra would be able to handle the role of mediator given sufficient training, as discussed below.

Laurence Boulle states that the selection of a mediator can be based on both objective and subjective factors. Objective factors include: a) mediation training, b) mediation experience, c) expertise in the subject matter of the dispute, d) membership of a professional organisation, e) accountability to mediation standards and ethics; and f) fee scales. Among the subjective factors are: a) standing in the community, b) reputation as a mediator or professional, c) personal style; and d) credibility to the parties and their legal representatives.\(^68\)

In South Sumatra, it is difficult to find mediators based on objective factors as defined by Boulle. Mediation has not yet become a formal mechanism to settle disputes and there is no mediation training. At present, the selection of a mediator

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\(^67\) For example in Aringin Case, see chapter VI.

\(^68\)
based on the subjective factors is more possible. There are many people in South Sumatra who have the potential to be trained as mediators because of their educational background or because their daily work leads them to deal with land disputes. People with the potential to be trained as mediators in South Sumatra include:

a. University graduates especially those who graduate from a law faculty. There are six universities in South Sumatra that have faculties of law.\(^{69}\)

b. Officials of the local government, specifically local staff at the Head of District office and those from the sub-district and the Head of village offices. The reasons for proposing these people are because: (a) most land disputes in the district of Musi Rawas involved officials from the governmental structure section as a facilitator,\(^{70}\) and (b) the staff of the sub-district office and the Head of village office have experience with local issues. These experiences could be a relevant background for a mediator.

c. Lawyers and legal consultants.\(^{71}\) It is suggested that the local government cooperate with various legal organizations such as Legal Aid Foundation and Indonesian Bar Association (Ikatan Advokad Indonesia or IKADIN) to develop a mediation institution in South Sumatra.

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69 These universities are: Sriwijaya University, Muhammadyah University, Taman Siswa University, IBA University, Syakkyakiry University and Palembang University.

70 Personal communication with Zainal Aripin, Deputy Head of Governmental Structure section of the Musi Rawas District office, November 2001.

71 In Indonesia the legal profession is mainly divided into two categories, practicing lawyers (pengacara) and legal consultants (konsultan hukum).
d. Non-governmental organization activists. There are many national non-governmental organizations in South Sumatra that have experience in land disputes such as Legal Aid Foundation, WALHI (*Wahana Lingkungan Hidup* or Indonesian Environmental Forum). Other organizations operate locally such as Legal Aid Foundation *Silampari* in district of Musi Rawas.

e. University lecturers. Mediators could also come from the universities, especially faculties of law.\(^{72}\)

Although a mediator need not be a lawyer, in land disputes, it is suggested that those with legal backgrounds be trained as mediators, as many land disputes involve legal matters such as land law and *adat* law. With the participation of universities to train the mediators with possible help from international universities,\(^{73}\) there is no doubt that mediation can be developed in South Sumatra.

6. Mediator Training

Professional mediators require intensive and regular training programs.\(^{74}\) In South Sumatra, law schools are the best possible institutions to conduct mediator training because of their expertise. For example, the faculty of law of Sriwijaya University specialises in Business Law and offers Alternative Dispute Resolution as a

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\(^{72}\) Universities in South Sumatra other than those named in footnote 122 include Tridinanti University, IAIN Raden Fatah, Sekolah Tinggi Ilmu Hukum STIHPADA, Sekolah Tinggi Ilmu Ekonomi Bina Dharma, and Sekolah Tinggi Ilmu Ekonomi Musi.

\(^{73}\) AUSAID through the Legal Reform Program and the British Council through the University Link Program sponsor projects conducted by Indonesian universities in cooperation with Australian or the British Universities.

\(^{74}\) Sue Duncombe and Judith Harford Heap (n 55), p 13.
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compulsory subject. This institution has some experts in mediation who are experienced in conducting similar training and seminars.75

The training of mediators aimed at land dispute resolution, the training materials should include the following topics:

a. General knowledge on mediation practices in other countries including mediation standards and ethics. This topic will enable local mediators to understand general principles of mediation. Such knowledge is relevant because many international companies have businesses in South Sumatra and they require international standards to resolve disputes through mediation.

b. Land laws. Knowledge of land laws in Indonesia, both national laws such as the Basic Agrarian Law and regional laws and regional regulations in land matters, is important for mediators.

c. Adat (customary) law. Aspects of adat law should be included in the training. Many land disputes involved the issue of land ownership based on adat law.

d. Regulations on regional autonomy such as Act No 22 of 1999 on Regional Government and Act No 25 of 1999 on the Fiscal Balance between the Central Government and Regional Governments. This topic is relevant because the introduction of these laws has changed the powers of local

government, including management of natural resources, forestry, and the investment process.

6. Developing the Law of Mediation

The South Sumatra government should regulate mediation practices. A primary feature would be the regulation of compulsory mediation. The District Commission for Land Dispute Resolution would have a power to direct the parties to compulsory mediation.

The regulations should determine eligibility criteria for mediators. There should be a system of accreditation for mediators.76

Regulation of mediation in South Sumatra should also establish the responsibility to pay the mediator, whether it is the party who brings the case to the mediator or shared by both sides.77 While South Sumatra could adopt the principle that the applicant should pay the fee, many villagers that have disputes with the oil palm plantation companies may face difficulties paying this fee. As a result, they will hesitate to avail themselves of the mediation process to avoid the cost. There are three possible

76 In Australia, there is no standardized accreditation or licensing system for mediators. As a result, any person can describe himself or herself as a mediator. To overcome this situation, many mediation institutions, which have mediator panels, develop minimum standards for mediators.76 For example, the Law Society of New South Wales sets training and accreditation criteria for practice as a mediator members must have: a) Successfully completed a recognised training course of at least four days or 28 hours which includes an evaluation component, b) Been admitted as a solicitor for five years, c) Experience in at least six mediations as a mediator is the desired minimum for accreditation or for appointment to the panel. In addition to basic training, pre-requisites for appointment to the panel include: i) satisfactory completion of a two-day Advanced Mediation Workshop conducted by Law Society trainers, which includes a co-mediation component; ii) willingness and ability to mediate in a wide range of disputes and co-mediate in appropriate cases when called upon to do so. Accreditation for appointment to the panel is for a period of two years. Re-accreditation requirements: include attendance at a one-day refresher workshop, which predominantly skills based.

77 In the Federal Court of Australia, unless the Court makes an order to the contrary, the party that commenced the case against the other party must pay the fee (the applicant). Federal Court of Australia, 2001, [Internet: http://www.fedcourt.gov.au/]. In The United States, most community mediation programs and many court-based dispute resolution programs such as
ways to deal with this problem. First, the regulation could apply different fees between the company and the villagers. Secondly, the fee should be the same for both, but the local government should provide funding through its annual budget to help the poor. The regulation should determine who is eligible and how to apply for this type of assistance. Thirdly, the mediation could incorporate unpaid volunteers as constitutes the majority approach to staffing mediation programs in the United States. However, the concern with a voluntary system is quality and continuity of the service.78

6d Party Representation

In a mediation process the parties may need other persons to represent their interests. In Australia usually the parties have lawyers as their legal representatives.79 In South Sumatra, because of their economic limitations, villagers cannot afford to pay for legal representation. The company involved in the dispute may be legally represented. In South Sumatra, LBH Palembang (Palembang Legal Aid Foundation) provides free legal aid to poor people and WALHI (Indonesian Environmental Forum) is a well known NGO that represents the villagers against companies in land and environmental disputes.

The establishment of an independent District Commission for Land Dispute Resolution and the development of mediation institutions are also aimed at overcoming an institutional crisis in Indonesia as mistrust of legal institutions is very high. The development of a commission, which includes independent local people, will hopefully increase confidence and avoid expensive and time-consuming court


Id.
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processes. A higher profile for Alternative Disputes Resolution is necessary before it becomes a popular method to settle differences among disputants.

7. The Development of Expert Determination

The parties can often resolve disputes with assistance from an independent third party without the delay and expense associated with going to court or arbitration by using expert determination as a dispute resolution process. Under this process, the parties agree by contract to be bound by a decision made by the expert who has expertise relevant to the dispute.

Article 1(10) of the Indonesian Act No 30 of 1999 on the Arbitration and Alternative Dispute Resolution outlines expert determination (penilaian ahli) as one method to resolve disputes outside the court. Sadly, the Act does not explain what expert determination is and how it works.

For villagers in South Sumatra, expert determination is a foreign concept. However, with the right approach by the district government including regular emphasis on the positive aspects of this method both for the investors and local people, it would be possible to resolve disputes through this process. Expert

Sue Duncombe and Judith Harford Heap, op cite (n 55), p 2-151.

L. Street uses the term "expert determination" for processes in which a dispute is referred to an independent third party who is required, on the basis of his or her expertise, to furnish a view on the merits of the dispute. Australian Commercial Disputes Centre defines Expert Appraisal as a process by which the parties refer their dispute to a third party for a non-binding opinion. Henry Brown and Arthur Marriott define an expert determination as a procedure whereby a dispute is to be resolved by an expert whose decision is to be final and binding on the parties, and who need not follow the rules of arbitration or litigation. John Kendall, Dispute Resolution: Expert determination (Longman Group, London, 1992), p 50. See also Henry Brown & Arthur Marriott, ADR Principles and Practice (2nd Ed. Sweet & Maxwell, 1999), p 55.
determination has some advantages such as: a) It is suitable for all disputes where an expert knowledge of the subject is necessary, b) It is a quick process, c) It is conducted in informal ways, d) It is inexpensive, and e) It can produce a binding and final decision.

The South Sumatra government should introduce a regional regulation (Peraturan Daerah) regarding the use of expert determination as a form of alternative dispute resolution. The regulation should regulate the following matters:

a) the expert's qualifications. The legislation should determine what qualifications the expert is supposed to have.

b) Appointment of the expert. The choice is between agreement of the parties or accreditation by a professional body.

c) That the decision will be final and binding. The main difference between expert determination and many other forms of alternative dispute resolutions is that expert determination produces a result which is binding on the parties as opposed to facilitation which only produces an agreement if the parties reach consensus.

d) Fees of the expert determination process.

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1 Iain M. Tolmie, 'Expert Determination-sometimes the old ways are best,' Resolveit, 1999. [Internet: http://www.resolveit.co.uk]
2 At the Australian Commercial Disputes Centre (ACDC), the parties select the expert from a panel provided by ACDC. The parties then present documentation relevant to the dispute to the expert. The expert considers the documentation and arranges to meet with the parties to discuss the dispute. The expert then makes a determination.
3 ACDC prescribes that the parties shall forward to ACDC their half share or other such proportion as agreed between the parties of the security payment. The payment is equal to ACDC's estimate of the expert's and ACDC's fees for the conduct of the expert determination. Australian Commercial Disputes Centre, 'Guidelines for Expert Appraisal' (11 b), 1995 [Internet: http://www.austlii.edu.au/au/other/acdc/]

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There are two positive aspects that can be achieved by developing expert determination in South Sumatra. First, the availability of expert determination will encourage parties to conduct their business activities through a contractual framework. Secondly, the use of contractually agreed upon means of dispute resolution could provide legal certainty for both business people and local people, which will help to develop the investment sector.

Strategy II: To Cure Existing Land Disputes

In this section a second strategy to resolve the existing land disputes is discussed.

1. The use of musyawarah

Musyawarah is the traditional method used outside the courts to resolve disputes in Indonesia. Through musyawarah, disputes can be resolved without legal costs. The main differences between musyawarah and modern mediation are: a) in musyawarah the “facilitator” is not professionally trained, and b) generally facilitators are unpaid volunteers. According to the district government of Musi Rawas, it is possible for the existing land disputes to be resolved through musyawarah. In the

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It must be stressed that 55 percent of land disputes in the district of Musi Rawas were resolved by various methods, principally musyawarah (discussion), and none of the disputes was brought to the court. Furthermore, not all disputes are reported or recorded at the district government office. Cases, not settled through musyawarah (discussion), remained unresolved. These disputes may rekindle at any time. There is no legal guarantee that the locals will not re-open a case when they have the opportunity, even though according to the government and the company, the case “has been settled.” Data obtained from the District of Musi Rawas Office, 5 October 2001.
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2001 district of Musi Rawas report, a majority of land disputes were resolved through *musyawarah*.

If *musyawarah* is to be used to resolve existing land disputes, the selection of a facilitator in the process of *musyawarah* is important. Some *musyawarah* have succeeded because the parties have chosen highly respected local people to be facilitators.

1.a Local Government Officials

The research conducted for this thesis shows that there is a lack of confidence among villagers toward the local government officials. Many villagers doubt that the local government officials will act neutrally, given their interests in the investment activities. However, this problem can be resolved if the district government is able to show seriousness and professionalism in the process of *musyawarah*. Seriousness can be shown by having a proactive approach toward the villagers to gain public confidence. It is important that the district government provide explanations to the villagers of the advantages of settling disputes through *musyawarah* as opposed to the court process.

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15 Id.

16 Boulle writes that there are debates on the meaning of term 'neutral' within the context of mediation. The term 'neutrality' can cover the following factors: a) the mediator has no direct interest in the outcome of the dispute, that is, he or she is a disinterested party, b) the mediator has no knowledge of the dispute, c) the mediator does not know the parties or have any prior association with them, d) the mediator will not, directly or indirectly, sit in judgement of the parties, e) the mediator will not use his or her substantive expertise to influence the decision-making, and f) the mediator will act fairly and without bias towards the parties. Boulle (n 121), p 19.
I. Independent facilitators for *musyawarah*

Independent people are those who are able to act free of influence from other parties. There are independent experts in agrarian and *adat* law and they are potential facilitators in the process of *musyawarah*.

Whoever is selected as facilitators, it is important that the disputants know the facilitators. While in a developed urban environment the mediators are strangers to the disputants, in land disputes in South Sumatra, it is important that the disputants have confidence and trust in the facilitator.

2. Dispute resolution through the courts

The only alternative for dealing with existing land disputes, if *musyawarah* has failed, is to bring the dispute to the court. The challenge for the local government is to persuade the disputants to bring the dispute to the court. To encourage the parties to bring their case to the court, the district government could offer inducements, including the provision of free legal aid. The district government should be able to build trust among the villagers that the court will not be biased. The parties should also understand that the court process would be a better solution for both parties than leaving disputes unresolved.

C. Conclusion

Various problems that arise in many parts of Indonesia, including land disputes, are a legacy of the strong centralized government practiced under the New
Order Government. There was an attempt to impose a uniform structure of
government across the country; local customs and local traditions were discarded.
This change was introduced without adequate dialogue and the local people were left powerless.

The implementation of regional autonomy by Act No 22 of 1999 on the
Regional Government and Act No 25 of 1999 on the Fiscal Balance between the
Central Government and Regional Governments bring hope and challenges. Regional
autonomy creates an opportunity for the regions to develop their own ideas in
managing the district. The challenge for some districts is the lack of human resources,
which limits their ability to maximize the opportunity. To overcome this problem,
human resources from outside should be welcomed in the district.

Regional autonomy requires a grassroots movement to ensure that local
peoples interests are represented. The proposals advanced in this thesis require that
local people and local government are prepared to work together to introduce change,
which includes the establishment of a commission and the development of mediation
and expert determination. These plans should be implemented through regional
regulations (PERDA), which are the products of the local parliament (DPRD). The
involvement of a democratically elected local parliament is crucial to prevent and to
resolve land disputes and to ensure that community interests are represented.

Appendix A: The Structure of Government in Indonesia

People's Consultative Assembly (Majelis Permusyawaratan Rakyat/MPR)

Under the 1945 Constitution, the MPR includes all members of the DPR and meets every five years (Article 1). Under the New Order, the MPR acted as a “rubber-stamp” for President Soeharto policies. In 1999 after President Soeharto resigned, the government introduced Act No 4 of 1999 regarding the Structure of the MPR, the DPR and the DPRD. The newly empowered MPR now meets once a year to call the President to account for his performance.

The House of Representatives of the People (Dewan Perwakilan Rakyat/DPR)

Legislative authority is constitutionally vested in the DPR. However, the DPR shares this power with the President. Article 20(1) of the 1945 Constitution states “every statute shall require the agreement of the DPR, and if a law is rejected it cannot be resubmitted during that parliamentary session”. Article 20(2) stipulates that the President should ratify every Bill. Consequently neither the DPR nor the President has legislative power independently of the other. Under Act No 4 of 1999, the DPR is composed of 462 representatives from contesting political parties and 38 appointed members as representatives of the Indonesian Armed Forces (Angkatan Bersenjata Republik Indonesia or ABRI).¹

Under the 1945 Constitution, the DPR has (a) the right to submit a Bill (Article 21(1)), (b) the right to decide on the government annual budget, to determine taxes, to prescribe all kinds and values of the currencies, to regulate general financial matters (Article 23(1), (c) the right to supervise the government. (d) the right to question ministers and the President both in plenary session and in commission of hearings (hak

¹ The number of appointed members from armed forces has reduced significantly from 100 under Soeharto New Order government to 75 after 1997 General Election and reduced to 38 members from 1998 general election.
beritanya), (e) the right to reconsider the law (hak interpelasi), and (f) the right to conduct an enquiry (hak angket).

During President Soeharto’s regime, the government had strong control over the political parties. In the 1997 General Election, the government decided that only 3 political parties could take part; the United Development Party or Partai Persatuan Pembangunan (PPP), the Functional Group or Golongan Karya (GOLKAR), and the Indonesian Democratic Party or Partai Demokrasi Indonesia (PDI). BN Marbun, a former member of the DPR, says that during the Soeharto era there was a popular joke about DPR members as 5-Ds (Datang/come, Duduk/have a seat, Dengar/listen, Diam/silent, Duit/money). During the New Order Government the DPR was also a “rubber stamp” for the government.

Regional Parliament (Dewan Perwakilan Rakyat Daerah or DPRD)

Regional government in the New Order period was based on Acts 1974 on Regional Government and Act 1979 on the Village Government. Under these laws, the central government dominated regional and local government. These Acts have been replaced by Act No 22 of 1999 regarding the Regional Government and Act No 25 of 1999 on the Fiscal Balance between the Central Government and Regional Governments.

Moh Mahfud, MD, a constitutional lawyer, writes that under Act No 5 of 1974, there were three ways for the central government to control the regional government. First, was preventive control, through the regulations introduced by the
regional government. Second, repressive control, by which the central government could invalidate the regional regulations which were viewed as in conflict with public interest or other higher laws. Third, general control, which was control by the central government of all aspects of regional government. If the regional government refused to cooperate with the central government, the central government could impose sanction or take other appropriate action. It was not clear what type of sanction and what kind of appropriate action because the law did not elucidate on these matters.

The provincial DPRD together with the Governor make provincial law (Peraturan daerah Tingkat I or PERDA). Most provincial laws are proposed by the Governor’s office.

Under the Soeharto regime, there was a strong institution at the local government level called Musyawarah Pimpinan Daerah (MUSPIDA) or Council of Regional Leadership. This forum’s main function was to discuss matters that had significant impact on the region. The forum consisted of the following six people: (1) The Governor, (2) The Speaker of Provincial House of Representatives or Ketua DPRD TK I, (3) the Regional Military Commander or Panglima Daerah Militer, (4) the Head of the Regional Police Office or Kepala Kepolisian Daerah, (5) the Head of the High Court or Ketua Pengadilan Tinggi, and (6) the Head of the Attorney Provincial Office or Kepala Kejaksaan Tinggi.

The government structure at the provincial level based on Act No 5 of 1979 on the Regional Government can be illustrated as follows:

Figure A.1: Provincial Government Under Act No 5 of 1979
At the district level the government consists of the District House of Representatives (Dewan Perwakilan Rakyat Daerah Tingkat II or DPRD II) and the Head of a District (Bupati). The DPRD II elects the Bupati every five years. Under Act No 4 of 1999 the DPRD II is composed of members of political parties and appointed members of the Armed Forces. The DPRD II is constituted by a minimum of 20 people and maximum of 45 people, 10% of whom are appointed from the Armed Forces.\(^7\)

At the district level there is also a forum of government called Musyawarah Pimpinan Daerah tingkat II (MUSPIDA II) or Council of Regional Leadership at District Level. This forum consists of the following: (1) Head of District or Bupati, (2) Speaker of DPRD II or Ketua DPRD II, (3) District Military Commander or Komandan Komando Distrik Militer, (4) District Chief of Police or Kepala Kepolisian Resort, (5) the Head of the Lower Court or Ketua Pengadilan Negeri, and (6) the Head of the District Attorney General’s Office or Kepala Kejaksaan Negeri.

The government structure at district level under Act No 5 of 1979 on the Regional Government can be illustrated as follows:

Figure A.2: District Government Under Act No 5 of 1979

Under the Soeharto government (1966-1998), this forum was used by the central government to control all activities at local government level. Article 22(2) of Act No 5/1974 stipulates that Kepala Daerah (the Gubernur and the Bupati) are answerable to the central government.
Appendix B: Structure of the Judiciary

The different types of courts in Indonesia are shown in the following diagram*

* A Constitutional Court (Mahkamah Konstitusi) is to be established.

Land cases are mostly taken to General Courts.

The General Courts (Pengadilan Umum)*

There are two different general courts (having civil and criminal jurisdiction) under the Mahkamah Agung. The District Courts (Pengadilan Negeri) are the courts of the first instance and the High Courts (Pengadilan Tinggi) act as the courts of appeals. Final appeals go to the Mahkamah Agung.

Indonesian Judicial Hierarchy

Explanation:
Continuous lines show the relationship of advisory jurisdiction aspect.
Discontinuous lines show the relationship of the organisation, administration, and finance aspects.

General Court or Pengadilan Umum comprise of 295 District Courts (Pengadilan Negeri) and 26 Higher Courts (Pengadilan Tinggi).
Appendix C: Land Disputes in South Sumatra in Relation to Plantations Activities

A. Compensation Disputes

<table>
<thead>
<tr>
<th>No</th>
<th>Location</th>
<th>Companies Involved</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>District: Musi Rawas, land owned by Abu Hurairoh</td>
<td>PT Kurnia Musi Plywood Industry</td>
<td>Abu Hurairoh asked compensation for his 3 hectares rubber plantation</td>
</tr>
<tr>
<td>2</td>
<td>District: Lahat Villages: Padang Lengkuas, Pulau Pinang</td>
<td>PT Arta Prigel</td>
<td>The villagers asked for compensation of their 900 hectares of land being used by PT Arta Prigel</td>
</tr>
<tr>
<td>3</td>
<td>District: Ogan Komering Ulu Sub-district: Mesuji Villages: Lubuk Tunggal, Embacang</td>
<td>PT Selapan Jaya</td>
<td>People asking for compensation of their 1,200 hectares of land</td>
</tr>
<tr>
<td>4</td>
<td>District: Ogan Komering Ulu Village: Karang Sibur</td>
<td>PT Wachyuni Mandira</td>
<td>People of Karang Sibur asking for compensation from the company using their 1,200 hectares of land</td>
</tr>
<tr>
<td>5</td>
<td>District: Ogan Komering Ulu Sub-district: Pedamaran and Mesuji Villages: Pulaugeronggang, Kayulabu, Embacang</td>
<td>PT Telaga hikmah II and PT Selapan Jaya</td>
<td>An Investigation team set up by the district government has found that those oil palm companies occupied 1,686 hectares of the villagers' land without compensation. In a meeting with all parties involved, the companies agreed to pay compensation but at the end of the research the outcome was not clear.</td>
</tr>
<tr>
<td>6</td>
<td>District: Ogan Komering Ulu Sub-district: Lempuing Village: Tanjung Sari</td>
<td>PT Way Musi Agro Indah</td>
<td>People in Tanjung Sari asked compensation for their 1,120 hectares of land</td>
</tr>
</tbody>
</table>

*PT* = Perseroan Terbatas, Limited Company
*BPN* = Badan Pertanahan Nasional, National Land Agency
*NES* = Nucleus Estate Scheme (Profit sharing or programma)

Source: Provincial Government of South Sumatra, District governments of Musi Rawas, Ogan Komering Ulu, and Muara Enim, Palembang Legal Aid Foundation, finding during the field studies and articles from the Sriwijaya Post
<table>
<thead>
<tr>
<th>District: Musi Banyuasin</th>
<th>Sub-district: Babat Toman</th>
<th>Village: Suka Jaya</th>
<th>People asking for compensation of their 404 hectares of land used by the company</th>
</tr>
</thead>
<tbody>
<tr>
<td>District: Musi Banyuasin</td>
<td>Sub-district: Banyung Lincir</td>
<td>Village: Sumber Harum</td>
<td>Compensation disputes on 404 hectares of land</td>
</tr>
<tr>
<td>District: Musi Banyuasin</td>
<td>Sub-district: Lais</td>
<td>Village: Lubuk Mumpo and Talang Bulan</td>
<td>People in Petaling asked for compensation of their 240 hectares land</td>
</tr>
<tr>
<td>District: Muara Enim</td>
<td>Sub-district: Gunung Megang</td>
<td>Village: Lubuk Mumpo and Talang Bulan</td>
<td>People in Lubuk Mumpo asked for compensation for their 120 hectares of land</td>
</tr>
<tr>
<td>District: Muara Enim</td>
<td>Sub-district: Talang Ubi Villages: Semanggus, Sungai Baung, Sungai Ibul, Suka Maju, Hidup Baru</td>
<td>Village: Lubuk Mumpo and Talang Bulan</td>
<td>Nasir group asked for compensation for their 173 hectares land</td>
</tr>
<tr>
<td>District: Musi Banyuasin</td>
<td>Sub-district: Babattoman Villages: • Ulaktebrau • Bumiayu • Napal • Karanganyar • Karangringin • Rantau Panjang</td>
<td>Village: Sumber Harum</td>
<td>Manan group asked for compensation for their 8.5 rubber plantation.</td>
</tr>
<tr>
<td>District: Musi Rawas</td>
<td>Sub-district: Kelingi Iva Village: Marga Baru SP-3</td>
<td>Village: Marga Baru SP-3</td>
<td>Romza, a landowner, sold his 25 hectares of land to the company but no payment has been received.</td>
</tr>
<tr>
<td>No</td>
<td>Location</td>
<td>Companies Involved</td>
<td>Issues</td>
</tr>
<tr>
<td>----</td>
<td>----------</td>
<td>--------------------</td>
<td>--------</td>
</tr>
</tbody>
</table>
| 15 | District: Musi Rawas  
Sub-district: Karang Dapo  
Village: Aringin | PT London Sumatra | The company has not paid a Rp 405,000,000 (four hundred and five million rupiahs) of its agreement for compensation of 300 hectares of rubber plantation had been burnt by the company. |
| 16 | District: Musi Rawas  
Sub-district: Rawas Ilir  
Village: Makmur II | PT London Sumatra | Claimed for compensation because of farms burning in 1997 |
| 17 | District: Musi Rawas  
Sub-district: Rawas Ilir  
Village: Tanjung Raja | PT London Sumatra | Claimed for compensation because of farms burning in 1997  
a. Harisun group, 12 families, 387.7 hectares  
b. Nasir group, 65 families, 437.3 hectares |
| 18 | District: Musi Rawas  
Sub-district: Karang Dapo  
Village: Biaro Baru | PT London Sumatra | Zainal Muluk asked the company to pay compensation for his land which had been used by the company without permission. The company has repeatedly promised that there will be a contract regarding the use of his land. |
| 19 | District: Musi Rawas  
Sub-district: BKL Ulu Terawas  
Village: Sukarami | PT London Sumatra | Umar and friends asked the company to pay their wages after clearing 100 hectares of land in 1997 |
| 20 | District: Musi Rawas  
Sub-district: Muara Kelingi  
Village: Lubuk Tua | PT Juanda Sawit Lestari | Abadi and Bakri group asked for the company to pay their wages for land clearing of 130 hectares |
| 21 | District: Musi Rawas  
Sub-district: Muara Lakitan Village: Lubuk Pandan | PT Juanda Sawit Lestari | Asked the company to pay compensation on people’s land used illegally for plantation activities |

B. Disputes because the companies have taken land by force

<table>
<thead>
<tr>
<th>No</th>
<th>Location</th>
<th>Companies Involved</th>
<th>Issues</th>
</tr>
</thead>
</table>
| 1 | District: Lahat  
Villages: Pagardin, Karang Jaya, Saung Naga, Lubuk Lungkang, Beringin jaya, Tanjung Aur, Sungai Lingsing | PT Perjadin Prima | - People asked the company to return their 770 hectares of land  
- 33 people of Saung Naga village asked for their 600 hectares of land |
<table>
<thead>
<tr>
<th>District: Lahat</th>
<th>PT Multrada Multi Maju</th>
<th>Since 1993, PT Multrada Multi Maju has been accused of taking people land by force without compensation.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>District: Lahat</th>
<th>PT Perkebunan Nusantara VII Sungai Berau</th>
<th>250 families asked for the company to return their land</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-district: Kikim</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Villages: Saung Naga, Padang Bindu, Penantian, Singapure, Beringin Jaya, Lubuk Lungkang</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>District: Lahat</th>
<th>PT Eka Jaya Multi Perkasa</th>
<th>17 families claimed that the company took 300 hectares of their land to build a Crude Palm Oil factory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-district: Kikim</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Village: Singapura</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>District: Lahat</th>
<th>PT Pan Lonsum</th>
<th>The following people asked the company to return their land: Sudarwin, Usman Saleh, Adam Srikab, and Nurdjana.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Villages: Former Marga Gumay Talang and Bunga Mas SP VI Palembaja</td>
<td></td>
<td>Land confiscation in Ibul village and Belo Laut village</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>District: Bangka</th>
<th>PT Gunung Sawit Bina Lestari</th>
<th>The company taken by force land of people at Mabat and Rimba Kembang</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-district: Mentok</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Villages: Ibul and Belo laut</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>District: Bangka</th>
<th>PT Gunung Maras Lestari</th>
<th>The company taken by force land of people at Mabat and Rimba Kembang</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-district: Bakam</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Villages: Mabat, Rimba Kendang</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>District: Ogan Komering Ilir</th>
<th>PT Prana Graha Multi Dharma</th>
<th>People of Gading Sari village refused to release their 168 hectares of land to be planted with palm oil.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Villages: Gading Sari, Karya Usaha</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>District: Ogan Komering Ilir</th>
<th>PT Telaga Hikmah</th>
<th>People land has been used for oil palm plantation without agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-district: Pedamaran</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Villages: Geronggang</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>District: Ogan Komering Ilir</th>
<th>PT. Kodrat Aman jaya</th>
<th>The company has taken land without permission areas of 200 hectares. The people asked the</th>
</tr>
</thead>
<tbody>
<tr>
<td>Villages: Lubuk</td>
<td></td>
<td></td>
</tr>
<tr>
<td>District: Muara Enim</td>
<td>Sub-district: Talang Ubi</td>
<td>Villages: Lubuk Mumpo and Talang Bulan</td>
</tr>
<tr>
<td>----------------------</td>
<td>--------------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>District: Muara Enim</td>
<td>Sub-district: Talang Ubi</td>
<td>Villages: Semanggus, Sungai Baung, Sungai Ibui, Suka Maju, Hidup Baru</td>
</tr>
<tr>
<td>District: Ogan Komering Ulu</td>
<td>Villages: Nirwana, Toraman</td>
<td>PT Laju Perdana Indah</td>
</tr>
<tr>
<td>District: Musi Rawas</td>
<td>Sub-district: Muara Kelingi</td>
<td>Village: Pecah Kuali</td>
</tr>
<tr>
<td>District: Musi Rawas</td>
<td>Sub-district: Muara Lakitan</td>
<td>Villages: Sungai Pinang and Semangus</td>
</tr>
<tr>
<td>District: Musi Rawas</td>
<td>Sub-district: Karang Dapo</td>
<td>Village: Setia Marga</td>
</tr>
<tr>
<td>District: Musi Rawas</td>
<td>Sub-district: Kelingi Iva</td>
<td>Village: Marga Baru SP-3</td>
</tr>
<tr>
<td>District: Musi Banyuasin</td>
<td>Sub-district: Keluang Village; Bandarjaya</td>
<td></td>
</tr>
<tr>
<td>District: Musi Rawas</td>
<td>Sub-district: Rawas Ilir</td>
<td></td>
</tr>
<tr>
<td>Villages: Aringin, Biaro Baru, Mandi Angin and Beringin Makmur</td>
<td>PT. London Sumatra</td>
<td>Asnawi Mayor claimed that the company has taken his land by force for the development of plantation areas</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>District: Musi Rawas Sub-district: Rawas Ilir Villages: SP I Bumi Makmur, and Nibung</td>
<td>PT London Sumatra v.s PT Perusahaan Hasil Musi Lestari</td>
<td>Areas of Land Use Rights belong to PT PHML has been planted by PT London Sumatra with palm oil.</td>
</tr>
<tr>
<td>District: Musi Rawas Sub-district: Muara Kelingi Village: Binjai</td>
<td>PT London Sumatra</td>
<td>People claimed that the company has illegally used 2 hectares land for “oil palm development area”</td>
</tr>
<tr>
<td>District: Musi Rawas Sub-district: BKL Ulu Terawas Village: Sukamanah</td>
<td>PT Enim Musi Lestari</td>
<td>People of those villages asked the company to return their land has been used for plantation</td>
</tr>
<tr>
<td>District: Musi Rawas Sub-district: Jayaloka Village: Tambangan and Ngestiboga II</td>
<td>PT Juanda Sawit Lestari</td>
<td>Deden and his group claimed the company has taken their 130 hectares of land belong to their community</td>
</tr>
<tr>
<td>District: Musi Rawas Village: Pelawe</td>
<td>PT Musi Hutan Persada</td>
<td>People asked the company to return their 1,154.8 hectares land used illegally by the company for palm oil plantation</td>
</tr>
<tr>
<td>District: Musi Rawas Sub-district: Rawas Ilir Village: Beringin Makmur</td>
<td>PT. London Sumatra</td>
<td>2 hectares productive rubber garden belongs to Asri’s family taken by force by the company to build Crude Oil palm factory without any compensation. Asri died five days after his land was seized.</td>
</tr>
<tr>
<td>District: Musi Rawas Sub-district: Muara Kelingi Village: Mambang</td>
<td>PT London Sumatra</td>
<td>The people asked the company to return their land illegally taken by the company</td>
</tr>
</tbody>
</table>
### C. Farm Burning Disputes

<table>
<thead>
<tr>
<th>No</th>
<th>Location</th>
<th>Companies Involved</th>
<th>Issues</th>
</tr>
</thead>
</table>
| 1  | District: Musi Rawas  
    Sub-district: Muara Kelingi  
    Village: Lubuk Tua | PT London Sumatra | The company burnt the villagers' rubber plantation in 1997. |
| 2  | District: Musi Rawas  
    Sub-district: Rawas Ilir  
    Villages: Aringin, Beringin Makmur I | PT London Sumatra | The company found guilty of burning and planting with oil palm on 398 hectares of rubber gardens owned by the villagers. |
| 3  | District: Musi Rawas  
    Sub-district: Muara Kelingi  
    Village: Mambang | PT London Sumatra | Claimed for compensation for plantations burnt by the company. |
| 4  | District: Musi Rawas  
    Sub-district: Muara Lakitan  
    Village: Pelita Jaya | PT London Sumatra | The villagers accused the company burned their rubber plantation. |
| 5  | District: Musi Rawas  
    Sub-district: Rawas Ilir  
    Village: Makmur II | PT London Sumatra | Claimed for compensation because of farms burning in 1997 |
| 6  | District: Musi Rawas  
    Sub-district: Muara Rupit  
    Village: Embacang Baru | PT London Sumatra | Claimed for compensation because of farms burning in 1997 |
| 7  | District: Musi Rawas  
    Sub-district: Rawas Ilir  
    Village: Nibung SP 5, 6, 7, 8 | PT London Sumatra | Abdul Djabar, representative for 300 farmers, asked for compensation because their rubber plantation have been burned by the company in 1997. |
| 8  | District: Musi Rawas  
    Village: Pelawe | PT Perusahaan Hasil Musi Lestari (PHML) | *Ali Jantan* accused the company burned his farm |
| 9  | District: Musi Rawas  
    Village: Aringin | PT London Sumatra | Edy siswanto represented fifty-eight people from Aringin to ask compensation from the company. The company is responsible for burning 398 hectares of the villagers rubber estates. |
Zakaria and his group asked the company to pay compensation because of fire on their 105 hectares of rubber gardens.

### D. Community/Adat Land Disputes

<table>
<thead>
<tr>
<th>No</th>
<th>Location</th>
<th>Companies Involved</th>
<th>Issues</th>
</tr>
</thead>
</table>
| 1  | District: Musi Rawas  
    Sub-district: Muara Rupit  
    Villages: Noman, Eiatu Gajah, Maur Lama, Maur Baru, Bingin Rupit Ulu, and Bingin Rupit Ilir | PT Dendimarker Indahllestari | The villagers claimed that the company planted oil palm on their land without agreement. Their titles on the land were based on Marga local system of government. The company argued that the land belonged to the state and the company got the license to work on that state land. |
| 2  | District: Musi Rawas  
    Sub-district: Kelingi  
    Village: Mambang | PT London-Sumatra Palm Oil Plantation Company | Community land under adat laws has been taken and planted by the company. 90% of the areas has been planted with oil palm and ready for harvest. |
| 3  | District: Musi Rawas  
    Sub-district: Rawas Ilir  
    Villages: Tebing Tinggi and Bumi Makmur | PT London-Sumatra Palm Oil Plantation Company | The Indigenous people of Rawas Ilir (Suku Kubu) claimed that their land has been planted with oil palm by the company. |
| 4  | District: Musi Rawas, indigenous people living in Semangus village and Pangrelo I | Harvela Company | Harvela company cut trees belong to indigenous people and they asked the company to build 3 primary school buildings. The outcome was unknown. |
| 5  | District: Lahat  
    Village: Patikal Lama | PT Tri Mitra Suaber Perkasa | Disputes about community forest under Marga system of local government taken by the company (554 hectares) |
| 6  | District: Musi Rawas  
    Sub-district: Rawas Ilir  
    Village: Tebing Tinggi | PT London Sumatra | Indigenous people (Kubu tribe) claimed that the company has planted their 2,500 hectares of community land without agreement. |
| 7  | District: Muara Enim  
    Sub-district: Rambang Lubai | PT Musi Hutan Persada | The villagers from former Marga Rambang Kapak Tengah claimed that the company took their 26,600 hectares of adat land under the Marga system of government. |
## E. Disputes on Profit Sharing Program (Program Plasma)

<table>
<thead>
<tr>
<th>No</th>
<th>Location</th>
<th>Companies Involved</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>District: Musi Rawas Sub-district: Rawas Ilir Village: Nibung</td>
<td>PT. London Sumatra</td>
<td>People asked the company to have a written agreement as a member of the NES program (Program Plasma).</td>
</tr>
<tr>
<td>2</td>
<td>District: Musi Rawas Sub-district: Megang Sakti Village: Suka Merindu</td>
<td>PT London Sumatra</td>
<td>The company has not issued written agreement on plots have been used for oil palm plantation.</td>
</tr>
<tr>
<td>3</td>
<td>District: Musi Rawas Sub-district: Karang Jaya</td>
<td>PT London Sumatra</td>
<td>People harvested the oil palm plantation by forced. The villagers accused the company did not serious to include them in the NES program.</td>
</tr>
<tr>
<td>4</td>
<td>District: Musi Rawas Sub-district: Rawas Ilir Village: Nibung</td>
<td>PT. London Sumatra</td>
<td>People whose land has been planted by the company have asked to be included in the NES program. They are: M. Zen (4 hectares), Azhari (12 hectares), Harun (16 hectares).</td>
</tr>
<tr>
<td>5</td>
<td>District: Musi Rawas Sub-district: Muara Rupit/Perwakilan Karang Jaya Village: Karang Jaya</td>
<td>PT London Sumatra</td>
<td>The company has harvest palm oil which illegally used local people land. However, there is no contract has been made for more than 3 years. During harvesting, the company always reports that they never get benefit from selling the palm oil. Local people disappointed and they harvest the palm oil without agreement with PT London Sumatra.</td>
</tr>
<tr>
<td>6</td>
<td>District: Musi Rawas Sub-district: Marga Sakti Villages: Trans Kelingi II SP-I and SP-II</td>
<td>PT Juanda Sawit Lestari</td>
<td>People asked the company to plant their land with palm oil as has been agreed by the parties.</td>
</tr>
</tbody>
</table>
| 7  | District: Musi Rawas Sub-district: Rawas Ilir Villages: SP-5, SP-7, SP-8 | PT. London Sumatra | The company has not fulfilled the agreement to include the villagers in profit sharing programs as compensation for the land taken by the company. The villagers blocked the main road to access to the
| # | District: Musi Banyuasin  
Sub-district: Keluang | PT Musi Banyuasin Indah | People asked to be involved in NES program (*program plasma*) | company and took two company cars. |
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### Appendix D: Oil Palm Companies in South Sumatra

#### I. District of Ogan Komering Ulu

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<th>Area (hectare)</th>
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<td>KOPKAR PT Minanga Ogan</td>
<td>001/SK-II/OKU/1996 (19/09/1996)</td>
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<td>KUD Minanga Ogan I</td>
<td>03/SK/BPN/OKU/1994 (08/10/1994)</td>
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<td>KUD Minanga Ogan II</td>
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<td>PT Laju Perdana Indah</td>
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<td>5</td>
<td>PT Laras Astra Kartika</td>
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<td>PT Minanga Ogan</td>
<td>A 375/Kpts/1/1985 (14/04/1985)</td>
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#### II. District of Muara Enim

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<td>PT Cipta Futura</td>
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### III. District of Ogan Komering Ilir

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<td>PT Tania Binatama</td>
<td>593/03157/I (21/07/1997)</td>
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<td>PT Waimusi Agro Indah</td>
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<td>PT Waimusi Agro Indah</td>
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### IV District of Musi Banyuasin

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**TOTAL AREA** 232,348
### V. District of Lahat

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<td>PT Multrada Multi Maju</td>
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### VI. District of Musi Rawas

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<td></td>
<td>05/SK-IL/BAN/1995 (04/05/1995)</td>
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<td>11</td>
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</table>

**TOTAL AREA** 134,247
VIII. District of Belitung

<table>
<thead>
<tr>
<th>No</th>
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<th>Permit</th>
<th>Area (hectare)</th>
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</thead>
<tbody>
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<td>1</td>
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<td>2</td>
<td>PT Poresta Lestari Dwi Karya</td>
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<td></td>
<td>04/SK-IL/BEL/1996 (27/05/1996)</td>
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<td>3</td>
<td>PT Rebinmas Jaya</td>
<td>04/SK-IL/BEL/1997 (22/02/1997)</td>
<td>25,000</td>
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<td></td>
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<td>013/SK-IL/BEL/1996 (10/10/1996)</td>
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<td>4</td>
<td>PT Sahabat Mewah dan Makmur</td>
<td>225/SK/I/1988 (23/03/1988)</td>
<td>29,000</td>
</tr>
<tr>
<td>5</td>
<td>PT Stelindo Wahana Perkasa</td>
<td>11/HGU/BPN/1990 (23/03/1990)</td>
<td>14,075</td>
</tr>
<tr>
<td></td>
<td></td>
<td>TOTAL AREA</td>
<td>95,575</td>
</tr>
</tbody>
</table>

Appendix E: An Example of a Contract Agreement to Develop an Oil Palm Plantation

Contract of Cooperation in Oil Palm Development
Between
KUD Pakar Makmur
And
PT Dendymarker Indahlestari

Today, Monday, 12 April 1999 the parties below:

1. Bahrun A.A. Yusuf, Head of KUD Pakar Makmur of desa Maur Baru, kecamatan Rupit, Kabupaten Musi Rawas acting for and on behalf of KUD Pakar Makmur (hereafter the first party or pihak pertama)

2. Abdul Halim Ashari, Director of PT Dendymarker Indahlestari of Jalan Garuda No 5 Lubuk Linggau, Kabupaten Musi Rawas, acting for and on behalf of PT Dendymarker Indahlestari (hereafter the second party or pihak kedua).

The contract takes into consideration the following matters:

1. Joint agreements to develop an oil palm plantation in sub-district of Muara Rupit between the Head of Musi Rawas District and PT Dendymarker Indahlestari signed on 5 April 1999.

2. One of KUD Pakar Makmur programs is to increase its members’ income by developing business in oil palm.

3. The program of PT Dendymarker Indahlestari to develop its business sector.

4. That business in oil palm is a growing industry and has a good market.

Article 1
Scope of Cooperation

1. The development and maintenance of the oil palm areas owned by the farmers, members of KUD Pakar Makmur, who agreed to be part of sistem plasma.

2. The marketing of fresh fruit bunches (tandan buah segar or TBS) based on the company policy in sistem plasma.

3. Fund assistant for the KUD and its members.

* My translation
Article 2
Duties and Rights of the first Party (The KUD Pakar Makmur)

1. The first party (KUD Pakar Makmur) is responsible to prepare areas for the second party (PT Dendymarker Indahlestari) to develop an oil palm plantation.

2. The first party is responsible to select members to be involved in sistem plasma. The Bupati of Musi Rawas and PT Dendymarker Indahlestari must endorse the list of candidates for sistem plasma no later than six months after this contract is signed.

3. The first party agrees that the second party will receive credit for farmers from the bank on behalf of the farmers to build and to maintain the oil palm areas owned by members of sistem plasma.

4. The first party agrees that the second party will control the oil palm areas until all loans from the bank have been repaid. All maintenance expenses paid by the company will be taken from the selling of fresh fruit bunches (TBS).

5. The first party organizes his members in learning aspects of oil palm plantation management with the main objective that the members will be able to work on their areas independently after the company returns the areas back to the farmers (in 4 years).

6. The first party is responsible to prepare plantation needs including fertilizer as needed by the company and the farmers to build and to maintain the areas.

7. The first party must sell all TBS of its members in sistem plasma to the second party.

8. The first party is responsible to prepare all administrative papers regarding the sistem plasma project.

9. The first party has a right to acquire advice and information from the second party regarding total production of TBS.

10. The first party has a guarantee from the second party that the second party will buy all oil palm products produced by members of sistem plasma.

Article 3
Duties and Rights of the Second Party (PT Dendymarker Indahlestari)

1. The second party will assist the first party in order to get a loan from the bank to develop the oil palm plantation. If it is required, the company will act as a guarantor until the bank has received all farmers' land certificates as a security.
2. The second party will help the farmers who do not have a certificate of land ownership.

3. The second party will use the farmers' loan from the bank to develop oil palm plantation.

The development of oil palm company includes the following activities:
   a. surveying
   b. land clearing
   c. plot preparation
   d. seeding of oil palm
   e. maintenance up to three years.

4. During the development and the maintenance activities of the project, in the first four years, the second party will employ the members of KUD to act as labourers.

5. Until the plant is three years old, the second party has a duty to maintain the areas and has the right to harvest and to bring the products to the factory. Usually, however, there are few, if any crops, in this period.

   The areas of oil palm plantation will only be returned to the farmers if: a) all expenses paid by the company have been calculated, b) all loans from the bank have been repaid, and c) the company considers that the farmers are able to control the areas independently.

6. The second party has a responsibility to advise the members of sistem plasma on the management of oil palm.

7. The second party will calculate all TBS owned by the farmers based on the price index published by the Department of Agriculture of the Republic of Indonesia.

Article 4

Force Majeure

1. In the event of an emergency which destroys all or part of the plantation areas, the parties agree to follow the existing rules and legislation regarding this matter.

2. In this contract, emergency situations included:

   a. Natural disasters including flood, fire, landslide, earthquake, and state of emergency.
b. Other events beyond humans' control.

Article 5
Dispute Resolution

1. If disputes occur, both parties agree to resolve the dispute based on *musyawarah* (mutual deliberation/discussion).

2. If *musyawarah* can not be reached, the dispute will be resolved through legal mechanisms.

3. Both parties agree to choose the District Court of Palembang, as the court of first instance,¹ to start the litigation process.

Article 6
Conclusion

1. Both parties make this contract voluntarily without any influence and intimidation from other parties.

2. This contract is in force as soon as both parties have signed it. The contract ceases after both parties fulfill their duties and rights as determined in this contract.

3. Two copies of this contract are made for each party, signed by both parties and each document has the same legal implication.

4. The matters regarding the project that have not included in this contract will be drafted later but can not be separated from this contract.

Parties to the contract:

a. The First Party *(KUD Pakar Makmur)*

b. The Second Party *(PT Dendymarker Indahlestari)*

Witnesses to the contract:

a. Head of Cooperative and Small Business Sector, district office.

b. Head of District of Musi Rawas

¹ Palembang is the capital of South Sumatra.
Appendix F: Proposal to Contend With Land Disputes

STRATEGY I: TO PREVENT LAND DISPUTE IN THE FUTURE

A. Develop Mechanism of Transparency and Accountability

B. Develop an Independent Land Problems Inventory Team
   a. Recording Land Ownership Under Customary Laws
   b. Recording various land disputes

C. Introduce New Policies
   a. investors should make a public presentation of their commercial aspirations before operations
   b. companies should produce and publish an annual progress report.
   c. the government land disputes team may not be funded by the company involved to avoid conflict of interest
   d. strong sanctions should be applied to government officials who abuse their power

D. Strengthen the management of the Village Cooperative Organization (KUD)

E. Establish District Commission for Land Disputes Resolution

F. Develop Mediation Institutions

G. Develop Expert Determination

STRATEGY II: TO CURE THE EXISTING LAND DISPUTE

A. The use of musyawarah
   a. Local Government Official as the mediator
   b. Independent People as the mediator

B. The disputes are brought to the court
Appendix G:
Forest Use Rights Owned by former President Soeharto Family, Foundation or Partners

A. Owned by Soeharto's Family

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<th>No</th>
<th>Company</th>
<th>Location</th>
<th>Area (hectare)</th>
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<td>3</td>
<td>PT Mantikei</td>
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<td>4</td>
<td>PT Dacridium I</td>
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<td>PT Dacridium II</td>
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<td>6</td>
<td>PT Djajanji Djaja II</td>
<td>Central Kalimantan</td>
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<td>7</td>
<td>PT Handajani</td>
<td>Central Kalimantan</td>
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<tr>
<td>8</td>
<td>PT Rante Mario</td>
<td>South Sulawesi</td>
<td>114,000</td>
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<td>9</td>
<td>PT Wahana Sari Sakti</td>
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<td>10</td>
<td>PT IFA</td>
<td>Jambi</td>
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<td>PT International Timber Corp</td>
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<td>PT Eucalyptus Tanaman Lestari</td>
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<td>18</td>
<td>PT Menara Hutan Buana</td>
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A. Owned by Soeharto's Foundation

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300
Appendix E: Forest Use Rights Owned by former President Soeharto Family

C. Owned by Soeharto’s Friends

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<td>PT Alas Helau</td>
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<td>PT Alas Helau</td>
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<td>4</td>
<td>PT Kiani Lestari</td>
<td>East Kalimantan</td>
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<td>5</td>
<td>PT Gunung Gajah Abadi</td>
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<td>13</td>
<td>PT Minas Pagai Lumber</td>
<td>South Sumatra</td>
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<td>14</td>
<td>PT Musi Hutan Persada</td>
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<td>15</td>
<td>PT Tanjung Redeb Hutani</td>
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<td>PT Sinar Kalbar Raya</td>
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TOTAL 3,439,601

Source: Department of Forestry and Estate Crop Republic of Indonesia, 1999.
Appendix H: Indonesian plantation companies

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<tr>
<th>Company Name</th>
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<th>Phone</th>
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<th>Email</th>
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</thead>
<tbody>
<tr>
<td>Asia Food &amp; Properties Limited</td>
<td>World Trade Centre, 1, Maritime Square # 11-20, Singapore 099253</td>
<td>+65-2737188</td>
<td>+65-2735788</td>
<td><a href="mailto:info@afp.com.sg">info@afp.com.sg</a></td>
</tr>
<tr>
<td>Pan London Sumatra Finance BV</td>
<td>Office of MeesPierson Trust, Herengracht 548, P.O. Box 990, 1000 AZ Amsterdam The Netherlands</td>
<td>+31-(0)20-5271188</td>
<td>+31-(0)20-6247905</td>
<td></td>
</tr>
<tr>
<td>AFT International Finance Company BV</td>
<td>Office of MeesPierson Trust Aert van Nesstraat 45 P.O. Box 548 3000 AM Rotterdam The Netherlands</td>
<td>+31-(0)10-4035800</td>
<td>+31-(0)10-4048004</td>
<td></td>
</tr>
<tr>
<td>Risjadson Holding &amp; Investment, Co.</td>
<td>Gedung Bank Exim, 3A, Jalan Tanjung Karang No. 34A, Jakarta 10230 - Indonesia</td>
<td>+62-(0)21-3148362</td>
<td>+62-(0)21-3148361</td>
<td></td>
</tr>
<tr>
<td>Golden Agri-Resources Ltd.</td>
<td>10 Fr-re Felix de Valois Street, Port Louis, Mauritius</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>PT Asian Agri Plantation</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Golden Agri-Resources Ltd.</td>
<td>1 Maritime Square # 11-20, World Trade Centre, Singapore 099253</td>
<td>+65-2737188</td>
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<td></td>
</tr>
<tr>
<td>Inti Indosawit International BV</td>
<td>Office of MeesPierson Trust, Herengracht 548 - P.O. Box 990, 1000 AZ Amsterdam - The Netherlands</td>
<td>+31-(0)20-5271188</td>
<td>+31-(0)20-6247905</td>
<td></td>
</tr>
<tr>
<td>Purimas International Finance Company BV</td>
<td>Office of MeesPierson Trust, Aert van Nesstraat 45 - P.O. Box 548, 3000 AM Rotterdam - The Netherlands</td>
<td>+31-(0)10-4035800</td>
<td>+31-(0)10-4048004</td>
<td></td>
</tr>
<tr>
<td>Raja Garuda Mas</td>
<td>Uniplaza, East Tower 6th Floor, Jalan Letjen, Mt. Haryono AI, Medan, Sumatra Utara - Indonesia</td>
<td>+62-(0)61-532532</td>
<td>+62-(0)61530833</td>
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<tr>
<td>Asian Agro International BV</td>
<td>Office of MeesPierson Trust, Herengracht 548, P.O. Box 990, 1000 A7, Amsterdam - The Netherlands</td>
<td>+31-(0)20-5271188</td>
<td>+31-(0)20-6247905</td>
<td></td>
</tr>
<tr>
<td>Company Name</td>
<td>Address</td>
<td>Telephone</td>
<td>Fax</td>
<td>Website</td>
</tr>
<tr>
<td>-------------</td>
<td>---------</td>
<td>-----------</td>
<td>-----</td>
<td>---------</td>
</tr>
<tr>
<td>LonSum Finance BV</td>
<td>Office of the ABN AMRO Bank Atrium, Strawinskylaan 3105, 7th floor P.O. Box 1469 1000 BL Amsterdam The Netherlands</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Astra Overseas Finance BV</td>
<td>Office of MeesPierson Trust Herengracht 548 - P.O. Box 990 1000 AZ Amsterdam - The Netherlands</td>
<td>+31-(0)20-5271188</td>
<td>+31-(0)20-6247905</td>
<td></td>
</tr>
<tr>
<td>PT Astra Agro Lestari ThL</td>
<td>Jalan Puloayang Raya Blok OR-1 Kawasan Industri Pulogadung Jakarta 13930 - Indonesia</td>
<td>+62-(0)21-4616555</td>
<td>+62-(0)21-4616688</td>
<td><a href="http://www.astra-agro.co.id">http://www.astra-agro.co.id</a></td>
</tr>
<tr>
<td>PT Bakrie &amp; Brothers Tbk.</td>
<td>Wisma Bakrie Jalan H.R. Rasuna Said Kav. BA Jakarta 12920 Indonesia</td>
<td>+62-(0)21-5250192</td>
<td>+62-(0)21-5257865</td>
<td>bakrieCoindoexchane.com</td>
</tr>
<tr>
<td>Bakrie International Finance Company BV</td>
<td>Office of MeesPierson Trust Aert van Nesstraat 45 P.O. Box 548 3000 AM Rotterdam - The Netherlands</td>
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<td>+31-(0)10-4048004</td>
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<td>Bakrie Indonesia BV</td>
<td>Office of MeesPierson Trust Aert van Nesstraat 45 - P.O. Box 548 3000 AM Rotterdam - The Netherlands</td>
<td>+31-(0)10-4035800</td>
<td>+31-(0)10-4048004</td>
<td></td>
</tr>
<tr>
<td>Kulim (Malaysia) Bld.</td>
<td>Ulu Tiram Estate, 81800 Ulu Tiram K B 705, 80990 Johor Bahru - Malaysia</td>
<td>+60-(0)7-8611611</td>
<td>+60-(0)7-2611701</td>
<td></td>
</tr>
<tr>
<td>First Pacific Company Ltd.</td>
<td>24th Floor, Two Exchange Square 8 Connaught Place Central Hong Kong</td>
<td>+852-28424388</td>
<td>+852-28459243</td>
<td></td>
</tr>
<tr>
<td>PT Agro, Indomas</td>
<td>Bank SURYA Building, 7th floor</td>
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<td></td>
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<tr>
<td>Carson Cumberbatch &amp; Co Ltd.</td>
<td>83 George R De Silva Mw</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Company/Association</td>
<td>Address</td>
<td>Contact Information</td>
<td></td>
<td></td>
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<tr>
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<td>---------</td>
<td>---------------------</td>
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<td></td>
</tr>
<tr>
<td>PT Cahaya Kalbar</td>
<td>Jalan Raya Pluit Selatan Blok S / 6</td>
<td>Telephone: +62-(0)21-6691746, Fax: +62-(0)21-6695430</td>
<td></td>
<td></td>
</tr>
<tr>
<td>GAPKI</td>
<td>Wisma Bakrie, Jalan Hr. Rasuna Said kav. B-1</td>
<td>Telephone: +62-(0)21-5250173, Fax: +62-(0)21-5250212</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purply Holding BV</td>
<td>Herengracht 548, P.O. Box 990</td>
<td>Telephone: +62-(0)21-5228822, Fax: +62-(0)21-5226014, Website: <a href="http://www.indofood.co.id">http://www.indofood.co.id</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PT Indofood Sukses Makniur ThL</td>
<td>Gedung Ariobimo Sentral, 12th Floor, Jalan Hr. Rasuna Said X-2 Kav. 5</td>
<td>Telephone: +62-(0)21-5228822, Fax: +62-(0)21-5226014</td>
<td></td>
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Source: Eric Wakker, *Funding Forest destruction*, 2000, pp. 1-4
Appendix I: PT London Sumatra and its financiers

PT Perusahaan Perkebunan London Sumatra Indonesia Tbk (hereafter Lonsum) was developed by the British group Harrisons and Crosfield in 1906. In November 1994 Harrisons and Crosfield sold Lonsum to the Indonesian company PT Pan London Sumatra Plantation (PLSP). Lonsum and PLSP were until recently controlled by the Napan and Risjadson Groups. The plantation companies related to these groups are listed below:

### Napan Group

<table>
<thead>
<tr>
<th>Plantation subsidiaries or associates</th>
<th>Start of operations</th>
<th>Area size (ha)</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwi Reksa Usaha Perkasa</td>
<td>1996</td>
<td>8,000</td>
<td>Musi Rawas, South Sumatra</td>
</tr>
<tr>
<td>London Sumatra Indonesia (19 estates), Lonsum International, PT Gelora Mahapala</td>
<td>1962</td>
<td>&gt;45,720</td>
<td>North and South Sumatra, Sulawesi, Java, East Kalimantan</td>
</tr>
</tbody>
</table>

### Risjadson Group

<table>
<thead>
<tr>
<th>Plantation company or associates</th>
<th>Start of operations</th>
<th>Area size (ha)</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delima Makmur</td>
<td>1993</td>
<td>7,000</td>
<td>South Aceh</td>
</tr>
<tr>
<td>London Sumatra Indonesia (19 estates), Lonsum International, PT Gelora Mahapala</td>
<td>1962</td>
<td>&gt;45,720</td>
<td>North and South Sumatra, Sulawesi, Java, East Kalimantan</td>
</tr>
<tr>
<td>Multrada Multi Maju</td>
<td>1992</td>
<td>10,157</td>
<td>Lahat, South Sumatra</td>
</tr>
<tr>
<td>Padang Bolak Jaya</td>
<td>N/A</td>
<td>N/A</td>
<td>Lahat, South Sumatra</td>
</tr>
<tr>
<td>Pinang Witmas Sejati</td>
<td>1998</td>
<td>14,000</td>
<td>Musi Banyuasin, South Sumatra</td>
</tr>
<tr>
<td>Risjad Sumber Kirana</td>
<td>1997</td>
<td>18,000</td>
<td>Kutai, East Kalimantan</td>
</tr>
<tr>
<td>Sisirau</td>
<td>1996</td>
<td>3,412</td>
<td>East Aceh</td>
</tr>
<tr>
<td>Trimitra Sumber Perkasa</td>
<td>1994</td>
<td>15,000</td>
<td>Lahat, South Sumatra</td>
</tr>
<tr>
<td>Tiga Mitra Perdana</td>
<td>N/A</td>
<td>15,000</td>
<td>West Aceh</td>
</tr>
<tr>
<td>Windu Nabatindo Lestari</td>
<td>1997</td>
<td>17,500</td>
<td>Kotawaringin, East Kalimantan</td>
</tr>
<tr>
<td>Windu Nabatindo Pratama</td>
<td>1997</td>
<td>20,500</td>
<td>Kutai, East Kalimantan</td>
</tr>
</tbody>
</table>

*Source: Eric Wakker, Funding Forest destruction, 2000, p.39.*
## Appendix J: Malaysian Investment in the Indonesian Oil Palm Sector

<table>
<thead>
<tr>
<th>Malaysian Plantation Company</th>
<th>Indonesian Partner</th>
<th>Location</th>
<th>Land Bank (ha)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agro Hope Sdn Bhd</td>
<td>PT Agro Indomas</td>
<td>Kotawaringin Timur, Central Kalimantan</td>
<td>17,500</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Kotawaringin Timur, Central Kalimantan</td>
<td>10,000</td>
</tr>
<tr>
<td>Aras Suci Sdn Bhd</td>
<td>PT Aras Malindo Makmur</td>
<td>South Bengkulu</td>
<td>7,200</td>
</tr>
<tr>
<td></td>
<td>PT Andalas Etika Plantation</td>
<td>Sawahlunto-Sijunjung, West Sumatra</td>
<td>14,000</td>
</tr>
<tr>
<td>Austral Enterprises Berhad</td>
<td>PT Mitra Austral Sejahtera (PT MAS I and II)</td>
<td>Tayan, hulu, Bonti, Kombayan, Sanggau-West Kalimantan</td>
<td>26,250</td>
</tr>
<tr>
<td>Cidar Engineering Sdn Bhd</td>
<td>PT Agroindo Cidar Corporation</td>
<td>Labuhan Batu, Sumatra</td>
<td>5,000</td>
</tr>
<tr>
<td>Boustead Holdings Berhad</td>
<td>PT Dandymaker</td>
<td>Lubuk Linggau, South Sumatra</td>
<td>17,500</td>
</tr>
<tr>
<td></td>
<td>PT Anam Kotor</td>
<td>Paseman, West Sumatra</td>
<td>12,300</td>
</tr>
<tr>
<td>The Brooklands Selangor</td>
<td>PT Kebunnira</td>
<td>Pontianak, West Kalimantan</td>
<td>40,500</td>
</tr>
<tr>
<td>Creative Investor Ltd</td>
<td>PT Nusantiara Indah Api-api</td>
<td>N/A</td>
<td>14,000</td>
</tr>
<tr>
<td>EPA Management Sendirian Berhad</td>
<td>PT Trimitra Sumber Perkasa</td>
<td>Lahat, South Sumatra</td>
<td>12,000</td>
</tr>
<tr>
<td></td>
<td>PT Trimitra Panquiet</td>
<td>Lahat, South Sumatra</td>
<td>15,600</td>
</tr>
<tr>
<td></td>
<td>PT Sumber Mahardika Graha</td>
<td>Kota, Central Kalimantan</td>
<td>15,000</td>
</tr>
<tr>
<td></td>
<td>PT Graha Cakramulia</td>
<td>Kota, Central Kalimantan</td>
<td>15,000</td>
</tr>
<tr>
<td></td>
<td>PT Harapan Ibrida KALBAR</td>
<td>West/Central Kalimantan</td>
<td>12,500</td>
</tr>
<tr>
<td></td>
<td>PT Bintara Tani Nusanatara</td>
<td>Sumatra</td>
<td>7,000</td>
</tr>
<tr>
<td></td>
<td>PT Gonjong Limo</td>
<td>Sumatra</td>
<td>3,000</td>
</tr>
<tr>
<td></td>
<td>PT Salanok Padang Mas</td>
<td>Kalimantan</td>
<td>13,000</td>
</tr>
<tr>
<td></td>
<td>PT Bisma Derna Kencana</td>
<td>Kalimantan</td>
<td>10,000</td>
</tr>
<tr>
<td></td>
<td>PT Subur Sawit Lestari</td>
<td>West Kalimantan</td>
<td>10,000</td>
</tr>
<tr>
<td>Dara Lam Soon</td>
<td>PT Bakrie Sumatra Plantations I and II</td>
<td>Simpang Hulu, ketapang, west Kalimantan</td>
<td>41,750</td>
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<tr>
<td>Geroda Jaya Sdn bhd</td>
<td>PT Sawit Karmia Seriang</td>
<td>Kapuas Hulu, West Kalimantan</td>
<td>16,000</td>
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<tr>
<td>Golden Hope plantations Berhad</td>
<td>PT Benua Indah</td>
<td>Kalapang, West Kalimantan</td>
<td>76,000</td>
</tr>
<tr>
<td></td>
<td>PT Budidaya Agro Lestari</td>
<td>Marau-Ketapang, West Kalimantan</td>
<td>22,000</td>
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<tr>
<td></td>
<td>PT Sandika Natapalma</td>
<td>Ketapang, West Kalimantan</td>
<td>24,000</td>
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<tr>
<td>Hak Corporation Sdn</td>
<td>PT Plantatna Rausindo</td>
<td>Badau, Kapuas Hulu, west</td>
<td>47,000</td>
</tr>
<tr>
<td>Bhd</td>
<td>Kalimantan</td>
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<td>------------------------------------------------------</td>
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<tr>
<td>Inch Kenneth Kajang</td>
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<tr>
<td>PT Ceria Prima</td>
<td>Sanggau</td>
<td></td>
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</tr>
<tr>
<td>PT Ceria Karya Purnama</td>
<td>Sanggau</td>
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<tr>
<td>KBS Properties Sdn Bhd of Malaysia</td>
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<tr>
<td>PT Bina Piti Jaya</td>
<td>Sam-sam</td>
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<tr>
<td></td>
<td>Mandau, Bengkalis, Riau</td>
<td></td>
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</tr>
<tr>
<td>Klau River Enterprise Sdn Bhd</td>
<td></td>
<td></td>
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<tr>
<td>PT Langgam Inti Hibrino</td>
<td>Kampar, Riau</td>
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<tr>
<td>KPLB Plantation Sdn Bhd</td>
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<tr>
<td>PT Kebon Ganda Prima</td>
<td>Kampar, Riau</td>
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<tr>
<td>Kretam Holding</td>
<td></td>
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<tr>
<td>PT Kretam Ira Mondo</td>
<td>Bengkulu</td>
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<td>PT Terum Citrawara</td>
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<td>KUB Agrotech</td>
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<td>PT Dirgahayu Palmma</td>
<td>Bengkulu</td>
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<tr>
<td>Gopeng Bhd</td>
<td></td>
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</tr>
<tr>
<td>PT Bina Usaha Warga Sejahtera</td>
<td>Jambi and South Sumatra</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kuala Lumpur Kepong Bhd</td>
<td></td>
<td></td>
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<tr>
<td>PT Adei Plantation and Industry</td>
<td></td>
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<tr>
<td>PT Steelindo Wahana Perkasa</td>
<td>Belitung</td>
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<td>Kumpulan Guthrie Berhad</td>
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<tr>
<td>PT Guthrie Peconina Indonesia</td>
<td>MUBA, South Sumatra</td>
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<td>Ladang Likir Sdn Bhd</td>
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<td>PT Pinang Witmas Sejati</td>
<td>Banyu Lincir, MUBA, South Sumatra</td>
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<td>LKKP Pahang</td>
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<td>Jambi</td>
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<td>Liminvest Resources Sdn Bhd</td>
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<td>PT Sarpindo Graha Sawit Tani</td>
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<td>Minat Warisan Sdn Bhd</td>
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<tr>
<td>PT PT Anam Koto</td>
<td>Pasaman, West Sumatra</td>
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<tr>
<td>Nafas Estate Sdn Bhd</td>
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<td>PT Ubertico</td>
<td>South Aceh</td>
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<tr>
<td>Pelabuhan Johor Bhd</td>
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<td></td>
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<tr>
<td>PT Trimatra Sumber Perkasa</td>
<td>Lahat, South Sumatra</td>
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</tr>
<tr>
<td>Perisind Plantation Bhd</td>
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<tr>
<td>PT Dendymarker Indahlestari</td>
<td>Mura, South Sumatra</td>
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<td>Perlis Plantation Bhd</td>
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<tr>
<td>PT Tidar Sungkai Sawit</td>
<td>Solok, Jambi</td>
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<tr>
<td>Pemdalalan Perak Bhd</td>
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<tr>
<td>PT Pinang Witmas Sejati</td>
<td>Sanggau West Kalimantan</td>
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<tr>
<td>Selasih Permata Sdn Bhd</td>
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<tr>
<td>PT Gunung Maras Lestari</td>
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<td></td>
</tr>
<tr>
<td>Selat Bersatu Sdn Bhd</td>
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</tr>
<tr>
<td>PT Rebinas Jaya</td>
<td>Belitung, South Sumatra</td>
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</tr>
<tr>
<td>Semai Sempurna Sdn Bhd</td>
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<tr>
<td>PT Pusaka Megah Bumi</td>
<td>Pekanbaru, Riau</td>
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</tr>
<tr>
<td>Sentri Holdings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PT Dutawangsa Keriasi</td>
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<tr>
<td>Tenaga lestari Sdn Bhd (Oriental Holding)</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>PT Gunung Sawit Bina Lestari</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>PT Bumi Permai Suryalestari</td>
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</tr>
<tr>
<td>Pahang Enterprise Sdn Bhd</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PT Patriot Andalas (Bakrie)</td>
<td>Belitung Hulu, Sanggau, West Kalimantan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sap Holding Bhd</td>
<td></td>
<td></td>
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<tr>
<td>PT Bengkulan Kelapa Sawit</td>
<td>Bengkulu</td>
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<tr>
<td>Sime Darby Bhd</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>PT Sime Indo Argo</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Suka Chemical Berhad</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>PT Kalimantan Oleo Industri</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PT Kalimantan Olio Industri</td>
<td></td>
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</tr>
<tr>
<td>Tenaga Lestari M Sdn Bhd</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PT Bumipermai Suryalestari</td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

<p>| 307 |</p>
<table>
<thead>
<tr>
<th>Company Name</th>
<th>Subsidiary Name</th>
<th>Location</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tiara Etika Industry</td>
<td>PT Andalas Tuan Sakato</td>
<td>Padang</td>
<td>14,000</td>
</tr>
<tr>
<td>Tradewinds Bhd</td>
<td>PT Sadin Tradewinds Indonesia</td>
<td>Bangka, South Sumatra</td>
<td>20,000</td>
</tr>
<tr>
<td></td>
<td>PT Satia Dinamic Corporotama</td>
<td>Bangka, South Sumatra</td>
<td>30,000</td>
</tr>
<tr>
<td>Lembaga Tabung Haji (Pilgrim Fund Board)</td>
<td>PT Tidar Sungkai Sawit</td>
<td>Riau</td>
<td>80,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Taloto, Sungai Sungkai, Solok, West Sumatra</td>
<td>10,000</td>
</tr>
<tr>
<td>Yayasan pelabuhan Johor</td>
<td>PT Agritasari</td>
<td>Riau</td>
<td>10,700</td>
</tr>
<tr>
<td>YPJ Holdings</td>
<td>PT Agritasari Prima</td>
<td>Kampar/Langgar, Riau</td>
<td>9,000</td>
</tr>
<tr>
<td>Total: 45 companies</td>
<td>64 partners</td>
<td></td>
<td>1,341,200</td>
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</tbody>
</table>

Appendix K: Loans taken out by some Indonesian listed oil palm plantation companies prior to the crisis

<table>
<thead>
<tr>
<th>Company</th>
<th>Total US Dollar Loan (million)</th>
<th>Loan taken out</th>
<th>Loan due (USD million)</th>
<th>Lending Banks</th>
</tr>
</thead>
<tbody>
<tr>
<td>PT London Sumatra Indonesia Tbk</td>
<td>Syndicated loan:$122 (unhedged)</td>
<td>Early 1997</td>
<td>$46.6 due in 1998</td>
<td>Syndicated loan, a consortium of banks including:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$ 97 due in 1999</td>
<td>• Citicorp International Ltd, USA</td>
</tr>
<tr>
<td></td>
<td>Promissory notes: $40 (unhedged)</td>
<td></td>
<td></td>
<td>• Commerzbank, Singapore Branch</td>
</tr>
<tr>
<td></td>
<td>Forward contracts: $103.5</td>
<td></td>
<td></td>
<td>• Rabobank, Hong Kong Branch</td>
</tr>
<tr>
<td>PT Bakric Sumatra Plantations Bakrie &amp; Brothers</td>
<td>$70</td>
<td>1996</td>
<td>1999</td>
<td>• Hong Kong Bank, Singapore Branch</td>
</tr>
<tr>
<td>PT SMART*)</td>
<td>Total loan:$212.1</td>
<td>April 1995</td>
<td>$104 was paid off in</td>
<td>• Shanghai Banking Corp., Singapore Branch</td>
</tr>
<tr>
<td></td>
<td>Hedged:$97.0</td>
<td></td>
<td>August 1998</td>
<td>• Union Bank of Switzerland</td>
</tr>
<tr>
<td></td>
<td>Unhedged:$115.1</td>
<td></td>
<td>$14 was due in 1999</td>
<td>• Sumitomo Bank Ltd, Singapore Branch</td>
</tr>
<tr>
<td></td>
<td>Deposit:$70</td>
<td></td>
<td></td>
<td>• Bank of Taiwan</td>
</tr>
<tr>
<td></td>
<td>Total USD exposure: $45.1</td>
<td></td>
<td>$62.8 was due in 2000</td>
<td></td>
</tr>
</tbody>
</table>

309
<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>PT Indofood</td>
<td>$1,047.7</td>
<td>81.1 was</td>
<td>• PT Citibank N.A</td>
</tr>
<tr>
<td>Sukses Makmur</td>
<td></td>
<td>due in 1997</td>
<td>Jakarta</td>
</tr>
<tr>
<td></td>
<td></td>
<td>449.1 was</td>
<td>• PT Bank Central</td>
</tr>
<tr>
<td></td>
<td></td>
<td>due in 1998</td>
<td>Asia</td>
</tr>
<tr>
<td></td>
<td></td>
<td>417.4 was</td>
<td>• The Hong Kong &amp;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>due in 1999</td>
<td>Shanghai Banking</td>
</tr>
<tr>
<td></td>
<td></td>
<td>126.5 was</td>
<td>Corporation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>due in 2000</td>
<td>• Bank of Tokyo-M</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Mitsubishi, Ltd</td>
</tr>
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<td></td>
<td>• Bank Societe</td>
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<td>Generale Indonesia</td>
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<td>• Deutsche Bank</td>
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<td>• Credit Suisse</td>
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<td>• Bank of America</td>
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<td>• Ocrim SPA, Italy</td>
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<td>• Yasuda Trust &amp;</td>
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<td>Banking Co, Ltd</td>
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<td>• PT Bank Daiwa</td>
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<td>Perdana</td>
</tr>
</tbody>
</table>

*) PT SMART is a subsidiary of the Sinar Mas Group and one of Indonesia's largest oil palm companies.

### Appendix L: Land holdings Owned by Eight Indonesian Oil Palm Companies in 1997

<table>
<thead>
<tr>
<th>No</th>
<th>Holding Company</th>
<th>Group</th>
<th>Total land bank area (Ha)</th>
<th>Total area planted (Ha)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>PT Pan London Sumatra Indonesia tbk</td>
<td>Napan Group</td>
<td>245,629</td>
<td>78,944</td>
</tr>
<tr>
<td>2</td>
<td>PT Bakri Sumatra Plantations</td>
<td>Bakrie and Brothers</td>
<td>376,041</td>
<td>34,392</td>
</tr>
<tr>
<td>3</td>
<td>PT Golden Agri Resources</td>
<td>Sinar Mas</td>
<td>582,208</td>
<td>211,713</td>
</tr>
<tr>
<td>4</td>
<td>PT Astra Agro Lestari Tbk</td>
<td>Astra International</td>
<td>280,000</td>
<td>177,976</td>
</tr>
<tr>
<td>5</td>
<td>PT Asian Agri</td>
<td>Raja Garuda Mas</td>
<td>200,000</td>
<td>110,000</td>
</tr>
<tr>
<td>6</td>
<td>PT Salim Plantations</td>
<td>Salim</td>
<td>275,000</td>
<td>125,000</td>
</tr>
<tr>
<td>7</td>
<td>PT Socfin</td>
<td>Socfin</td>
<td>47,777</td>
<td>37,180</td>
</tr>
<tr>
<td>8</td>
<td>PT Tolan Tiga</td>
<td>SIPEF</td>
<td>52,869</td>
<td>36,312</td>
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<td></td>
<td>Total</td>
<td></td>
<td>1,982,242</td>
<td>821,369</td>
</tr>
</tbody>
</table>

Appendix M: The Agreement to Mediate Developed by
The Law Institute of Victoria

MEDIATION AGREEMENT

RECITALS

A. A dispute has arisen between the parties ('the disputes'), which is briefly described in the Schedule

B. The parties have requested the mediator, and the mediator has agreed, on the terms and conditions of this Agreement, to help the parties resolve the dispute.

THE PARTIES AND THE MEDIATOR AGREE AS FOLLOWS

1. Appointment and Role of Mediator

1.1 The parties appoint the mediator to mediate the dispute

1.2 The mediator will assist the parties to reach their own resolution of the dispute

1.3 The mediator will not make decisions or impose decisions on the parties

1.4 Each party is entitled to retain legal representative(s) in order to be properly counselled about legal interests, rights and obligations. The mediator does not offer legal advice.

2. Conduct of Mediation

2.1 The parties agree:

(a) to co-operate with the mediator in the conduct of the mediation;

(b) to use their best endeavours to comply with reasonable requests made by the mediator to promote the efficient resolution of the dispute;

(c) if considered by the mediator to be in the best interests of the parties before meeting with the mediator to submit to each other and the mediator a written summary of the arguments in support of each party's position in the dispute; and

(d) to meet with the mediator at mutually agreed premises on dates to be agreed upon.

2.2 The mediator may meet with the parties together or any party alone.

2.3 The mediator will not disclose to any person (including a party) information disclosed by one party to the mediator alone, without the prior consent of the disclosing party.

2.4 The mediator must not disclose to any person information obtained during the mediation without the prior consent of the parties, unless compelled by law to do so.

2.5 A party must not disclose to any person other than that party's professional advisors for the purposes of the mediation information obtained during the mediation without the prior written consent of the disclosing party, unless compelled by law to do so.

2.6 The parties agree that they will not at any time before, during or after the mediation call the mediator as a witness in any legal or administrative proceedings concerning the dispute.

2.7 A party may withdraw from the mediation at any time by giving written notice to the other party and the mediator.

2.8 If the mediator believes the mediation is no longer productive the mediator may terminate the mediation immediately by giving written notice to the parties.

3. Effect of Mediation

3.1 If the parties cannot resolve the dispute during the course of or as a result of the mediation the rights of the parties in any subsequent court, administrative or arbitral proceeding shall remain unaffected by the mediation.

3.2 For the purpose of any subsequent proceeding the mediation shall be regarded as a without prejudice conference and nothing said or done during the course of the mediation may be given in evidence in any proceedings and no documents created for the purpose of the mediation may be tendered in evidence or required to be produced in any proceedings.

4. Payment

4.1 The parties agree to pay the mediator fees at the rate of $ .... Per hour plus any reasonable out of pocket expenses actually incurred [within ... days of the account being rendered].

4.2 If requested by the mediator, the parties agree to lodge a reasonable amount in advance with the mediator to meet the mediator's anticipated fees and expenses.
4.3 Each party agrees to bear equally the mediator's fees and expenses unless otherwise agreed.

4.4 If despite clauses 2.5 and 3.2 of this agreement the mediator receives a subpoena or an order of like effect ('subpoena') from a party or any entity which in the opinion of the mediator represents or has the same interests as a party, that party shall:

(a) pay all costs on an indemnity basis incurred by the mediator in relation to that subpoena including all legal costs incurred in opposing the subpoena;

(b) pay to the mediator the sum of $ ... for each hour spent by the mediator in relation to the subpoena plus any reasonable out of pocket expenses actually incurred; and

(c) indemnify and hold harmless the mediator in respect of all orders for costs that may be made against the mediator in relation to the subpoena.

5. Acknowledgment

5.1 The mediator acknowledges that he (sic) has disclosed to the best of his or her knowledge the facts of which he or she is aware as to any prior relationship of the mediator with a party or with business associates of a party.

5.2 The parties acknowledge that the mediator or the firm of which the mediator is a member may have provided legal advice (other than in relation to the dispute) to a party or to business associates of a party and agree that the mediator may nevertheless conduct the mediation.

6. Exclusion of Liability and indemnity

6.1 The mediator is not liable for any damage suffered (directly or indirectly) by any party arising in any way out of any act done or omitted to be done (including but not limited to, acts negligently done or omitted to be done) by the mediator in the performance of the mediator's obligations under the Agreement, but is liable for:

(i) breach of any positive obligations imposed on him or her by the express terms of this Agreement; and

(ii) fraud in respect of anything done or omitted to be done in the capacity of mediator.

6.2 The parties jointly and each of them severally indemnify the mediator against all claims arising out of or in any way referable to any act done or omitted to be done by the mediator in the performance of the mediator's obligations under this Agreement.

7. Restraints upon the mediator
7.1 The mediator will not accept appointment as an arbitrator in or act as a solicitor for or provide advice to a party in relation to the dispute.

7.2 Where one or more of the parties to the mediation are legally represented, the mediator undertakes to refrain from acting for any party to the mediation in a legal capacity of whatsoever nature (without the written consent of the legal representative involved) for a period of two years from the date of this agreement.
Bibliography

Books

Adiwinata, *Survey of Indonesian Economic Law* (Padjadjaran University, Bandung, 1974).


Church, Peter, *Focus on South East Asia* (Allen and Unwin, Sydney, 1995).


Creyke, Robin, Disney, Julian, and McMillan, John (eds), *Aspects of Administrative Review in Australia and Indonesia* (Centre for International and Public Law, Australian National University, Canberra, 1996).


Fauzi, Noer (Ed), *Tanah dan Pembangunan: Dari Konferensi INFID ke-10 [Law and Building from the 10th INFID Conference]* (Pustaka Sinar Harapan, Jakarta, 1997).


________________________, *Land Reform by Leverage in Indonesia* (Konsorsium Pembaruan Agraria Bandung, 1998).

Hariadi, Untoro and Masruchah, *Land, People, and Democracy* (Forum LSM, 1995).


Lev, Daniel, Legal Aid in Indonesia (working Paper No 44, Centre of Southeast Asian Studies, Monash University, Clayton, 1987).


Mahfud. MD, Mohammad, Legal-Politic in Indonesia (LP3ES, Jakarta, 1998).


May, R.J. et.al (ed), Observing Change in Asia (Crawford House Press, Bathurst, Australia, 1989).


McCloud, Donald G, *South East Asia. Tradition and Modernity in the Contemporary World* (Westview Press, the USA, 1995).


Nowak M, *Commentary on the UN Covenant on Civil and Political Rights* (NP Engel, 1993).


Ramli, Rizal and Mubariq Ahmad, Rente Ekonomi Pengusahaan Hutan Indonesia (Wahana Lingkungan Hidup Indonesia, Jakarta, 1993).


Rimbo Gunawan, et.al, After the Rain Falls (Yayasan Akatiga, Bandung, 1999).


Schwarz, Adam, A Nation in Waiting: Indonesia in the 1990s (Allen and Unwin, St. Leonard, 1994).


Soekanto, Observe the Indonesian Adat Law (CV Rajawali, Jakarta, 1985).


Stone, Marcus, Representing Clients in Mediation (Butterworths, London, 1998).

Sunderlin, William, Rate and Causes deforestation in Indonesia: Towards of Resolution to the Ambiguities (CIFOR, Bogor, 1997).


Sumardjono, Maria SW, ‘Land Acquisition Policy’ (The Kompas, 15 November 1999).


_________________________ *Lipsticks from the rainforest: Palm oil, crisis and forest loss in Indonesia: the role of Germany* (WWF Germany, 1998).


Wiranta, Sukarna (ed), *Daya saing Komoditas Unggulan Kelapa Sawit, Karet, Bubur Kertas dan Kertas* (Lembaga Ilmu Pengetahuan Indonesia, Jakarta, 1997).


Fieldwork Interviews and Meetings


Amin, Ibnu, Secretary of BAPPEDA Musi Rawas, Lubuk Linggau, 21 December 1999.

Anom, Dachry, First Assistant to Bupati Musi Rawas, Lubuk Linggau, 21 and 23 December 1999.

Arsyad, Rosihan, Governor of South Sumatra, Palembang, 17 February 2000.

AR, Karim, Vice Speaker of DPRD Musi Rawas, Lubuk Linggau, 30 September and 1 October 2000.

Arifin, Zainal, Governmental Structure Section, Lubuk Linggau, 22 December 1999.


Effendi, Kait, Head of Legal Section PEMDA Ogan Komering Ulu, Baturaja, 4 January 2000.


Faculty of Law, Sriwijaya University, proposal seminar, Palembang, 20 November 1999.

Husni, Manager of KUD Terusan Jaya, Desa Terusan, 8 February 2000.


Rahman, Taufik, Head of Legal Section PEMDA Muara Enim, 5 January 2000.

Rusdi, MA. Djauhari, Head of 'General Government Section’ South Sumatra Governor Office, Palembang, 11 December 1999.


Suharyono, Director LBH Palembang, Palembang, 12 January 2000.

Supandi, Manager of KUD Panji Layangan, Lubuk Linggau, 10 February 2000.

Suprapto, Teguh, former Head of Dusun, Lubuk Linggau, 16 December 1999.

Taufik, M, Member of DPRD Musi Rawas, Lubuk Linggau, 8 October 2000.

Uskadi, Manager of KUD Beringin Jaya, Bingin Teluk, 22 January 2000.

Government Regulations/Ministerial Decisions

The Minister of Home Affairs Decision No 15 of 1975 on the Releasing of Land Titles.

The Minister of Home Affairs Decision No 230 of 1981 on National Agrarian Operational Project.


The Minister of Forestry and Estate Crop Decision No 107/1999 on Plantation Business License.

Governor/Head of District Decisions

Head of Musi Rawas District Decision No 113 of 1999 on the Establishment of Team to Resolve Land Dispute in district of Musi Rawas.

325
South Sumatra Governor Decision No 142 of 1983 on the Abolition of Marga Government.

South Sumatra Governor Decision No 909 of 1986 on The Guidelines of Land Compensation as a Result of Exploration and Exploitation Activities.

South Sumatra Governor Decision No 764/1992 on the Committee to Monitor Plantation Projects.

South Sumatra Governor decision No of 1993 on the preparation of plantation land.

South Sumatra Governor Decision No 309 of 1999 on The Guidelines of Land Compensation as a Result of Exploration and Exploitation Activities.

Journals/Papers/Internet


Epstein, Judd, ‘ADR and Arbitration’ (Commercial Law Training Material, Monash University, Australia, 2001).


Harahap, Rudy M, ‘Strategies for Preventing Corruption in Indonesia’, Asia Pacific Press at the Australian National University, Canberra, 1999.


McDonald, Michael, ‘Ethics and Conflict of Interest’, The Centre for Applied Ethics, University of British Columbia, 2001 [Internet: http://www.ethics.ubc.ca/research]


Municipal Affairs, Culture and Housing Advisory (Management) Services, ‘Conflict of Interest (Pecuniary Interest) Guidelines’, Victoria-Canada, 2000 [Internet: http://www.municipal.gov.sk.ca/]


Tolmie, Iain M. 'Expert Determination-sometimes the old ways are best', Resolveit, 1999. [Internet: http://www.resolveit.co.uk]


Whittier, Herbert L, 'Concepts of Adat and Cosmology among the Kenyah Dayak of Borneo: Coping with the changing Socio-cultural Milieu' 47 Sarawak Museum Journal 103.

MPR Decision (Ketetapan MPR)

Ketetapan MPR No XI of 1998 on the Government which is free from Corruption, Collusion, and Nepotism.

Legislation/Declaration

Act No 1 of 1967 on the Foreign Capital Investment.
Act No 5 of 1967 on the Basic Forestry Regulations.
Act No 11 of 1967 on the Basic Mining Regulations.
Act No 12 of 1967 on the Cooperative.
Act No 3 of 1972 on the Basic Transmigration Regulation.
Act No 5 of 1974 on the Regional Government.
Act No 11 of 1974 on the Water.
Act No 5 of 1979 on the Village Government.
Act No 14 of 1985 on the Mahkamah Agung.
Act No 2 of 1986 on the General Courts.
Act No 10 of 1990 on the State Administrative Court (*Pengadilan Tata Usaha Negara*).
Act No 4 of 1999 on the Structure of the MPR, the DPR and the DPRD.
Act No 22 of 1999 on the Regional Government.
Act No 25 of 1999 on the Fiscal Balance between the Central Government and Regional Governments.
Universal Declaration of Human Rights 1948.

Presidential Instruction (*Instruksi Presiden* or INPRES) and Presidential Decrees (*Keputusan Presiden* or KEPPRES)

INPRES No 4 of 1984 on the Supervision and the Development of KUD.
KEPPRES No 53/1989 on Industrial Areas.
KEPPRES No 55/1993 on the Procurement of Title Allowed for Land to be Confiscated for the Public Interest.
KEPPRES No 2 of 1996 on National Car Timor.


Newspaper/Magazine

Detik Com http://www.detik.com/
Forum Keadilan http://www.forum.co.id/
Gatra http://www.gatra.co.id/
Image Indonesia
Inside Indonesia http://www.insideindonesia.org/
International Forest Fire News http://www2.ruf.uni-freiburg.de/fireglobe/iffn/iffn_19/content.htm

The Jakarta Post http://www.thejakartapost.com/
Kompas http://www.kompas.com/kompas-ctak/
Media Indonesia http://www.mediaindo.co.id/
Republika http://www.republika.co.id/
Sriwijaya Post http://www.indomedia.com/sripo/
Suara Merdeka http://www.suaramerdeka.com/
Suara Pembaruan http://www.suara.pembaruan.com/
Sumatra Ekspres
Tempo http://www.tempo.co.id/

Unpublished Material/ Internal document


