

Palm Oil Expansion and Conflict in Indonesia

an evaluation of the effectiveness of conflict resolution mechanisms



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**Palm Oil Expansion and Conflict in Indonesia:
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A team of researchers involved in the ‘Palm Oil Conflict and Access to Justice in Indonesia’ (POCAJI) project prepared this national-level policy report. This research is a collaboration between Andalas University, KITLV Leiden, Wageningen University as well as six Indonesian NGO’s (Epistema, HuMa, Scale Up, Walhi West Sumatra, Lembaga Gemawan and Walhi Central Kalimantan), coordinated by Afrizal (Andalas University), Ward Berenschot, Ahmad Dhiaulhaq (both KITLV Leiden) and Otto Hospes (Wageningen University). Supported by these organizations, a team of, in total, 19 researchers studied 150 conflicts in four Indonesian provinces – Riau, West Sumatra, West Kalimantan and Central Kalimantan.

Provincial-level policy reports (Riau, West Sumatra, West Kalimantan and Central Kalimantan) can be accessed via <https://www.kitlv.nl/palm-oil-conflicts-and-access-to-justice-in-indonesia/>

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Summary

This report presents the results of a first-ever study of general patterns and outcomes of oil palm conflicts in Indonesia. Using detailed reports based on extensive documentation on 150 conflicts between rural communities and palm oil companies in Central Kalimantan, West Kalimantan, Riau and West Sumatra, we discuss and analyze the grievances that spark conflicts, the strategies that communities and companies adopt to deal with these conflicts, as well the outcomes of these conflicts. Our main aim in engaging in such a broad analysis is to evaluate the effectiveness of the conflict resolution mechanisms that communities and companies currently rely on. At present, conflicting parties turn to three main mechanisms to address their grievances: adjudication by the courts, informal mediation and negotiation facilitated by local authorities, and the complaint system set up by the Roundtable on Sustainable Palm Oil (RSPO). In this report we evaluate the usage and effectiveness of these mechanisms and provide a number of recommendations on how the resolution of palm oil conflicts can be improved.

This report draws the findings from an almost two year-long research collaborations between a team of, in total, 19 researchers including academics from KITLV Leiden, Andalas University and Wageningen University as well as six Indonesian NGOs with a long history working on land conflicts – Gemawan, Scale Up, Walhi Central Kalimantan, Walhi West Sumatra, Epistema and HuMa.

Palm oil conflicts generally stem from a sense of unfairness about how the lands are acquired by the company and how the benefits of land use are being

shared. One root cause of these grievances and the resulting conflicts is the way in which the Indonesian state curtails the land rights of rural Indonesians. **Another source of conflict lies in the weak implementation (and regular violation) of state regulations.** While laws and regulations do contain various protections of the interests of citizens, these laws and regulations are often not upheld. The result is that rural Indonesians faced with incoming palm oil companies are relatively rightless, in the sense that the protections of citizen rights are largely ineffective.

In response, we find that communities generally voice their grievances in a peaceful manner, mostly through demonstrations and hearings with local authorities. Yet we observed a worrying tendency that **protest leaders are frequently criminalized** by police and company management: community members were arrested in 42 percent (63 cases) of the studied conflicts, involving in total 789 arrests. These conflicts led to 243 injured people and 19 deaths.

Palm oil conflicts are rarely solved. **In four provinces, in 68 percent (102 cases) of the studied conflicts the communities did not (or barely) succeed to address their grievances.** When conflicts are successfully resolved, the process takes very long: 9 years on average.

We conclude that available **conflict resolution mechanisms are largely ineffective.** Courts and the RSPO are rarely used (of our 150 cases only 37 cases were taken to court and 16 to the RSPO), as a combination of legal obstacles, costs, distrust and procedural complexities discourage communities from using these mechanisms. Furthermore, when communities win in court (in only 9 cases), in 5 cases the verdicts were not implemented. This ineffectiveness of the courts is largely due to **weak land tenure of rural Indonesians** which also systematically weakens the bargaining position of communities.

RSPO's complain system also receives and resolves very few cases. Of the 17 cases (out of 64 involving RSPO member companies) reported to the RSPO, in only three cases community grievances were successfully addressed. We attribute this finding to the complexities of RSPO procedures and the limited capacity of civil society to help communities.

Instead, communities mostly turn to local authorities, and in a few cases to NGOs, to mediate the conflict. Such informal mediation was attempted in 73 percent of the studied cases. Yet **this informal mediation turned out to be rather ineffective**: of the 159 studied attempts by local government officials, DPRD and police to mediate conflict, only in 22 cases an agreement between companies and communities was reached and implemented. In the light of the ineffectiveness of current mechanisms, we conclude that there is **a lack of independent, trusted and neutral arbiters of palm oil conflicts**.

Key Recommendations

In the light the recent efforts of Indonesia's government to address land-related conflicts¹, and in the light of our findings concerning the ineffectiveness of available conflict resolution mechanisms, we discuss six concrete measures to strengthen conflict resolution:

To Indonesia's national government:

1. Set up independent and **multi-stakeholder mediation** boards to resolve conflict at district and provincial levels alongside legal aid for affected communities.
2. Strengthen the capacity of government institutions to **monitor and stop corporate law violations**.
3. Evaluate and closely monitor the implementation of both the processes through which companies obtain community consent, as well as the **implementation of plasma schemes**.
4. Take concrete steps to **end the intimidation and criminalization of protesting community leaders**.
5. **Uphold transparency** and provide full information to affected communities concerning the licenses provided to palm oil companies.

¹ This commitment is reflected for example with the issuance of Presidential Chief of Staff's Decree No. 1B/T/2021 concerning the Formation of Team for Acceleration of Agrarian Conflict Resolution and Strengthening of Agrarian Reform Policy in 2021 (dated January 29, 2021). See: <https://setkab.go.id/terobosan-penyelesaian-konflik-agraria/>

6. A structural solution to land conflicts necessarily involves **strengthening the legal recognition of the land rights of Indonesians**, both inside and outside forest areas.

To the RSPO

We recommend the following measures to make the RSPO's complaint system more effective in resolving conflicts:

1. **Provide more support** to (NGOs supporting) communities wishing to report their grievances to the RSPO
2. **Revoke the requirement** that community claimants need to be a legal entity, which generates an unnecessary hurdle.
3. In the light of considerable inequalities between companies and communities, RSPO needs to develop and monitor **bilateral engagement guidelines**.
4. RSPO should enforce the resolution passed by the RSPO in November 2018 which called on members **not to divest operations which were the subject of complaints**, as this greatly complicates efforts to resolve conflicts.

Introduction

The current oil palm boom has led to a massive transformation of rural Indonesia. As the size of oil palm plantations in Southeast Asia is doubling almost each decade, large tracts of community land is being taken over and redeveloped by palm oil companies. Aside from environmental impacts, this expansion has generated widespread land conflicts between members of rural communities and oil palm companies. Across Indonesia, communities are protesting against palm oil companies, engaging in demonstrations, lobbying and litigation as well as road blockades, destruction of property and violence. The National Land Agency (BPN) has estimated that there are currently around 4000 such conflicts.²

These conflicts are an urgent problem: these conflicts entail hardship and economic damage for many rural Indonesians and entail operational costs and reputational damage for palm oil companies. It is in the interest of everybody – of citizens, the government as well as companies – that these large number of conflicts reach an effective solution. As a shorthand, we use the term ‘palm oil conflicts’ to refer to all such publicly expressed disagreements between communities and palm oil companies over the establishment and management of plantations.

This report proposes ideas for more effective conflict resolution on the basis of a detailed study of the trajectories and outcomes of 150 conflicts between rural communities and palm oil companies in four palm-oil-intensive provinces in Indonesia: Central Kalimantan, West Kalimantan, Riau and West Sumatra. While many useful and instructive reports on individual cases of palm oil conflicts have been written³, until now a systematic documentation of a large number of conflicts has never been undertaken. As a result, we lacked knowledge of the general patterns of how such conflicts emerge, how communities and companies deal with such conflicts, and what the outcomes of these conflicts are. Consequently, it has so far not been possible to engage in an evidence-based evaluation of how to improve existing conflict resolution efforts: how often do communities feel they have succeeded in addressing their grievances, and what might account for their (lack of) success?.

2 BPN's presentation at the RSP0 Roundtable meeting in 2012 stated that there were 8000 documented land conflicts, of which half were in the palm oil sector (Colchester and Chao 2013). See also <https://www.scidev.net/asia-pacific/news/international-body-freezes-expansion-of-palm-oil-giant/>

3 See, for example, Colchester et al. 2013, Colchester et al. 2006, Acciaioli and Dewi 2016, Afrizal 2007, Afrizal 2013, Potter 2009, Lund 2017, Lucas and Warren 2013/

Addressing these questions, this report presents the results of a first-ever, large-scale collaborative effort to document a large number of conflicts occurring across four provinces. Using detailed reports on 150 conflicts, we discuss and analyze the grievances that spark conflicts, the strategies that communities and companies adopt to deal with these conflicts, as well the outcomes of these conflicts. Our main aim in engaging in such a broad analysis is to evaluate the effectiveness of the conflict resolution mechanisms that communities and companies currently rely on. At present, conflicting parties turn to three main mechanisms to address their grievances: adjudication by the courts, informal mediation and negotiation facilitated by local authorities, and the complaint system set up by the Roundtable on Sustainable Palm Oil (RSPO). In this report we pay special attention to the usage and effectiveness of these mechanisms.

The findings of this report are sobering. We find that current conflict resolution **mechanisms are largely ineffective in solving conflicts**. Of the 150 conflicts that we studied, in 102 cases (of 68 percent) communities did not (or barely) succeed in addressing these grievances. Furthermore, even for conflicts that are solved the process is very lengthy, taking on average 10,5 years. We find that even complaints of serious violations of licencing procedures or breaches of contracts by companies are generally not resolved. Communities tend to lose the cases they bring to courts on procedural grounds, while protesting community members are frequently arrested and submitted to violence by police or security forces. We find that, while laws and regulations do contain various protections of the interests of citizens, these laws and regulations are often not upheld. The result is that rural Indonesians faced with incoming palm oil companies are relatively rightless, in the sense that the protections of citizen rights are largely ineffective. This rightlessness constitutes the main obstacle in strengthening formal procedures of conflict resolution.

In the light of this finding that conflict resolution mechanisms are generally ineffective, we use our study of successfully resolved conflicts to develop a number of recommendations of how to improve conflict resolution. In an earlier set of policy briefs we already discussed measures that local governments could implement.⁴ In the final section of this report we discuss a number of

⁴ These policy briefs are available at <https://www.kitlv.nl/palm-oil-conflicts-and-access-to-justice-in-indonesia/>

measures that the national government and the palm oil industry could enact. Linking up the recent efforts of Indonesia's government to strengthen conflict resolution,⁵ we propose and discuss four concrete steps: a. the creation and funding of mediation boards alongside legal aid for affected communities, b. the strengthening of the capacity to monitor and stop corporate violations, c. an evaluation and subsequent monitoring of the implementation of both the processes through which companies obtain community consent, as well as the so-called *inti-plasma* schemes of profit-sharing and d. taking steps to end the intimidation and criminalization of protesting community leaders. Furthermore, we emphasize that a structural solution to land conflicts necessarily involves strengthening the legal recognition of the land rights of Indonesians, particularly in forest areas.

The report is the product of an almost two year-long research collaboration between academics - KITLV, Andalas University and Wageningen University - as well as six Indonesian NGO's with a long history working on land conflicts – Gemawan, Scale Up, Walhi Kalteng, Walhi Sumbar, Epistema and HuMa. Focusing on four palm-oil-intensive provinces in Indonesia – Riau, West Kalimantan, Central Kalimantan and West Sumatra – a team of, in total, 19 researchers traced the emergence, chronology and outcomes of these conflicts in these four provinces by collecting written sources (newspaper articles, online sources, government and NGO documents and academic studies) as well as engaging in interviews with community leaders. With these materials researchers wrote extensive 'case reports' of each case on the basis of a shared template, which were subsequently coded to arrive at the descriptive statistics presented in this paper. To further acquire insights into specific dynamics, we also engaged in more lengthy fieldwork for in-depth studies on fourteen of these cases. (See the online appendix for a further discussion of our methodology).

The studied conflicts were selected largely randomly out of a long list of, in total, 544 conflicts that were identified by examining newspapers and government reports over the last decade. As time, access and budgetary constraints prevented us from studying all these conflicts, initially we randomly selected 220 cases for our study. During the research process we narrowed down our selection even further as, in order to ensure reliability,

⁵ This commitment is reflected for example with the issuance of Presidential Chief of Staff's Decree No. 1B/T/2021 concerning the Formation of Team for Acceleration of Agrarian Conflict Resolution and Strengthening of Agrarian Reform Policy in 2021 (dated January 29, 2021). See: <https://setkab.go.id/terobosan-penyelesaian-konflik-agraria/>

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we excluded from analysis all cases for which we found less than six different sources (See the online appendix). We ended up analysing 150 cases.

This report proceeds as follows. After a brief discussion of the root causes of these conflicts, we start by discussing the grievances of communities against palm oil companies. We subsequently discuss the protest strategies that they employ and the effectiveness of conflict resolution mechanisms. In the final part of this report we provide an overview of the outcomes of palm oil conflicts and discuss the main reasons why communities mostly fail – and sometimes succeed – in addressing their grievances. We subsequently provide recommendations for both Indonesian government and the RSPO.

Oil Palm Expansion and Conflict: an examination of root causes

To understand the nature of these conflicts sparked by the expansion of oil palm plantations, we preface our analysis by discussing three general explanations for why the expansion of palm oil plantations in Indonesia is so regularly marred with conflict. While a range of smaller contributing factors could be mentioned, we build available literature as well as our own research to briefly discuss three root causes of these conflicts.

First, an important driver of these conflicts is the way in which the Indonesian state curtail the control that people exert over their land. This weak recognition of land rights can be traced back to a 150-year-old concept introduced by Dutch colonial administration, known as the *domein verklaring*. In its 1870 agrarian law, the colonial rulers declared that all land not held under proven ownership, shall be deemed the domain of the state. This *domain declaration* was used strategically by the Dutch administration to claim ownership of most of the land in Java (as well as, later, beyond Java) to provide European plantation and mining companies with cheap access to land. After its independence in 1945 the Indonesian state largely maintained this colonial heritage. Despite various attempts at reform, these stipulations live on: at present the Indonesian state still designates about 63 percent of its territory as forest land. While most of this land is not forest, this categorization has important effects: the many Indonesians working and living in ‘forest areas’ cannot obtain legal title to their land⁶, and they are often forced to rely on customary property right systems (referred to as *adat* in Indonesian law) to organize their land dealings. Yet land claims based on customary law carry little weight in court. As a result, communities affected by land conflicts generally lack formal evidence to support their claims in court⁷.

This curtailed recognition of land ownership has created the paradoxical situation that while rural Indonesians struggle to achieve legal title to the land

6 For an overview of different types of forest land and their policy implications, see Kapoor et al 2018.

7 See Bedner 2007, Bedner 2016, McCarthy 2005

on which they live and work, outside companies can achieve control over large swaths of land through the licenses and concessions they obtain from both local governments and the forestry ministry⁸. As a result of a limited formal recognition of community or private land rights, state officials can award concessions to (palm oil) companies for land that is being used – sometimes since generations – by rural communities. This situation not only generates conflict, but also complicates its resolution: while remote communities rarely have a formal proof, many villagers generally do have some proof of ownership of land, such as tax receipts or an SKT (*surat keterangan tanah*, ‘land letters’ that are drawn up and signed by village heads and/or subdistrict heads)⁹ but these are not accepted in court as proof of land ownership. This means that, while such local proofs of land ownership do shape negotiations with companies over financial compensation, this lack of formally recognized land ownership makes it difficult for villagers to hold on to their land in the face of an incoming palm oil company. The exception here – at least in theory – are transmigrants mainly from highly-populated Java Island. Under various government schemes Javanese migrants moved to outer islands such as Sumatra and Kalimantan, and in the process they were given certificates proving ownership (*hak milik*) over the land surrounding their new villages. This means that, in theory, the bargaining position of these transmigrants is stronger compared to local residents over land ownership.

A second important driver of palm oil conflicts does not concern the establishment of the plantation itself, but rather the ways in which the profits of these plantations are shared. Since the 1970’s the Indonesian government has required palm oil companies provide to various joint-venture schemes to ensure that rural Indonesians would be compensated for the loss of land. Going under various names, Nucleus-Estate Smallholder (NES or *inti-plasma*) schemes have been developed, whereby villagers were given the ownership of (or profits of) a part of the oil palm plantation in proportion to the land they provided. While earlier schemes were relatively generous – when up to fifty percent of the land converted to palm oil plantation was returned to villagers – in recent years these schemes have become progressively less beneficial to local communities. Following national and local regulations, more recent plantations are established under ‘inti-plasma schemes’ (where *inti* stands for

8 Or, in case of non-forest land, the ministry of agriculture and Ministry of agrarian affairs and spatial planning/BPN

9 In recent years this has been supplemented by the SKTA (*surat keterangan tanah adat* or ‘customary land title’) which somewhat strengthens land claims of villagers in negotiations but similarly carries little weight in court.

company's plantation and *plasma* for the part of the plantation returned to villagers) in which villagers only receive 20 percent of the land they provided. This was further eroded in 2013 when the ministry of agriculture decreed that this 20 percent plasma could come from outside the concession area¹⁰. Furthermore, villagers have to pay for the clearing and planting of their part of the plantations which means that they start this partnership saddled with debt. In recent schemes, villagers also do not receive individual ownership but rather the profit of their part of the plantations, administered through local cooperatives. These aspects of the inti-plasma scheme, combined with the often rather non-transparent manner in which companies implement it, are an important source of conflicts as villagers feel they are receiving much less profit than what they were originally promised¹¹.

Thirdly, the character of Indonesia's democratization process has also contributed to the spread of conflicts. After the fall of Suharto Indonesia embarked on a simultaneous democratization *and* decentralization process. The availability of democratically elected members of local parliaments (called DPRD) and, since 2004, district heads has provided protesters with new avenues to advance their grievances. At the same time these new, competitive elections have intensified the relationships between politicians and business actors. As politicians face the challenge to finance increasingly expensive election campaigns, political elites have often turned to economic elites for help. As a result it is frequently argued¹² that Indonesia's democracy is an 'oligarchy' due to the fact that many politicians are either wealthy entrepreneurs

” The existence of close ties and interdependencies between local politicians and company representatives constitutes both a cause of conflict as well as an obstacle for its resolution, because such ties enable companies to circumvent regulation and ignore community protests.

10 See Peraturan Menteri Pertanian no. 98/2013, pasal 15

11 See Colchester et al. (2006), Cramb and Curry (2012).

12 See for example Ford and Pepinsky (2014)

themselves, or reliant on such rich campaign donors. These close ties are not always legal: investigating agencies such as the KPK have uncovered evidence that local authorities are providing palm oil companies with licences as well support against protesting communities in exchange for bribes and campaign donations¹³. As a result some scholars have argued that local power-constellations have a considerable impact on the outcomes of palm oil conflicts and others highlight the impact of clientelistic exchanges between companies and politicians¹⁴. The existence of close ties and interdependencies between local politicians and company representatives constitutes both a cause of conflict as well as an obstacle for its resolution, because such ties enable companies to circumvent regulation and ignore community protests.

13 In 2018, the KPK arrested representatives of palm oil company GAR who had bribed Central Kalimantan parliamentarians for suppressing complaints about company violations. Both the company representatives and the parliamentarians were given jail sentences (see Tipikor Court (Indonesian Court for Corruption Crimes) Decision, Case Number 4/Pid.Sus-TPK/2019/PN Jkt.Pst as well media coverage: e.g. <https://www.cnnindonesia.com/nasional/20190704020417-12-408899/kasus-suap-izin-sawit-2-anggota-dprd-kalteng-divonis-4-tahun>). For other investigation into illicit exchanges of favours between companies and politicians, see EIA 2014, the Gecko Project 2017 and 2018.

14 E.g. McCarthy 2004, McCarthy et al. 2012, Rasch and Köhne 2016, Varkkey 2015.

Why Rural Indonesians Are Protesting Against Palm Oil Companies

Having sketched the broad context in which palm oil conflicts emerge, we are now in a position to discuss the actual trajectories of these conflicts. We start with a discussion of the grievances of communities: what kinds of problems and grievances give rise to palm oil conflicts, and which grievances are most common among communities protesting against oil palm companies? For all the 150 conflicts that we studied, we documented and categorized the grievances that communities expressed during their protests and during interviews. Table 1 provides an overview of our findings (as conflicts are usually triggered by two or more different grievances, the percentages add up to more than 100 percent).

Table 1. Types of complaints fuelling palm oil conflicts

Type of complaints (share of total cases)	Riau	West Sumatra	West Kalimantan	Central Kalimantan	Total (150 cases)
Land taken without Consent	32 (67%)	16 (64%)	15 (47%)	36 (80%)	99 (66%)
Problems with profit-sharing (Plasma)	25 (52%)	13 (52%)	21 (66%)	27 (60%)	86 (57%)
Plantation violates regulations	4 (8%)	5 (20%)	5 (16%)	17 (38%)	31 (21%)
Pollution & Environmental impact	4 (8%)	0	7 (22%)	8 (18%)	19 (13%)
Inadequate compensation	5 (10%)	3 (12%)	5 (16%)	7 (16%)	20 (13%)
Refusal of new plantation	0	0	2 (6%)	3 (7%)	5 (3%)
Loss of access to village and fields	2(4%)	0	1 (3%)	2 (4%)	5 (3%)
Labour conditions	8 (17%)	2 (8%)	6 (19%)	2 (4%)	18 (12%)
Others	3 (6%)	1 (4%)	2 (6%)	7 (16%)	13 (9%)

We find that palm oil conflicts are currently fueled mainly by two types of grievances: grievances over the way in which palm oil companies obtain control of land without community consent (involving 66 percent of the studied conflicts) and grievances over how companies are (not) implementing profit-sharing schemes, known as plasma (57%) (Table 1).

Land taken without consent

The grievances concerning land grabbing involve both demands to return land to the community as well as claims for fair compensation for land that companies have obtained. As discussed above, these land-related grievances have their roots in the way in which the Indonesian law curtails community control to land in areas designated as forest. By curtailing the land rights of common Indonesians while reserving for itself the right to award concessions, the Indonesian state has created a fertile ground for conflict: the result of this ‘concession system’ is that rural communities feel that their land is being stolen from them while at the same time the acquisition of this land by palm oil companies is (mostly) legal and backed by licenses from the government.

However, when companies obtain such concessions they are obliged – both by Indonesian laws such as the 2014 plantation law and 2007 Law on spatial planning to get the agreement of communities before incorporating their land into a new plantation¹⁵. An industry initiative, the Roundtable of Sustainable Palm Oil (RSPO, a multi-stakeholder forum with both palm oil companies and NGO’s as members) has also adopted an elaborate set of principles which, among other things, require its member-companies to acquire the free, prior and informed consent from affected communities before starting a plantation. To ensure that members uphold this standard, RSPO has established a complaint system where villagers can take their grievances when they feel a member-company has violated these standards¹⁶.

Despite the existence of such standards, many conflicts can be traced back to the haphazard process through which this agreement is obtained. Typically, companies start with a number of ‘socialization’ meetings after they receive a permit from the government, during which company representatives present their plans to villagers and promise monetary compensation and, sometimes,

¹⁵ If villagers actually formally own the land (as in the case of villages of transmigrants, who usually possess land certificates) the company has to buy the land or convince villagers to participate into a profit-sharing partnership agreement (such as the inti-plasma scheme).

¹⁶ See Köhne 2014, Hospes et al. 2017

jobs in the plantation. The offered ‘compensation money’ (*uang ganti rugi*) is often quite low - the amounts paid in the studied cases ranged from 500 thousand (about 50 dollar) per hectare in 2004 to 2 million rupiah (150 dollar) in 2014, with 20 to 40 dollar added for land planted with cash crops such as rubber. As these sums generally hardly compensate for the loss of livelihood implied by the loss of land, villagers often refuse such offers at first. From all the cases we studied, we found that in 67 cases (44.7% of total cases), no compensation was paid at all before community protests started.

Conflicts also arise out of the sometimes rather shady strategies that some palm oil companies employ to overcome such hesitation. Palm oil companies particularly target village heads and other local leaders with gifts, trips to the provincial capital or Jakarta and monthly allowances as a means to get their consent. Many companies also invite local youth – often those with some influence – to become *humas* (*hubungan masyarakat* or ‘community liaison’) in exchange for a salary (around 2.5 million rupiahs per month). These *humas* sometimes also get a fee of one to three million rupiah per hectare of land that they manage to ‘free up’. This is done partly by friendly visits and persuasion. But many stories suggest that these efforts often descend into outright intimidation or deception. In one case of PT. KHS (Central Kalimantan), for example, company representatives went around offering a ‘goodwill payment’ (*uang talih asih*) to villagers while asking them to sign for the receipt of this gift. These signatures were then later used as ‘proof’ that the villagers had consented to provide their land to the company. In a similar vein the attendance list of above-mentioned ‘socialization meetings’ are sometimes used as proof of consent. In the case of PT. PLD in West Kalimantan we encountered indications that the company (supported by the police) threatened villagers with lodging police cases for ‘obstructing development’ if they did not consent to the company using their land.

Some village heads and other individuals associated with a plantation company go as far as falsifying SKT’s (the local testimony of land ownership) to gain control over plots of land coveted by the company. In other cases the receipts of compensation money (*Surat Keterangan Ganti Rugi*) are falsified. In some cases this falsification is detected: for example, in Riau both the management of PT RAKA and a village head were taken to court for falsifying hundred such compensation receipts. In that light it is not surprising that village heads and elites are often among those who become noticeably richer after the arrival of a palm oil company, as evidenced from the frequent home renovations of village heads in the villages we visited. By providing salaries and regular bribes

to such local leaders, palm oil companies are succeeding in making community leaders complicit in the dispossession of other community members.

This complicity of community leaders and local authorities in the process of obtaining community consent greatly complicates the character and resolution of land-related conflicts. The grievances of villagers concerning palm oil expansion goes beyond straightforward complaints about land grabbing, as their complaints often have their roots in how village heads sign consent letters without consulting community members, how local bureaucrats falsify proofs of land ownership, and how muscular community members and police officials intimidate community members to ‘comply’. In other words, the collusion between community members, local authorities and palm oil companies creates messy and confusing situations that are difficult to clear up even for well-meaning palm oil companies. The effects of this collusion, however, is quite straightforward: the majority of the conflicts that we studied involved community members who complained that they lost their land without providing consent and without receiving compensation.

Poor implementation of plasma schemes

The second major type of grievances concerns the *implementation of profit-sharing schemes*. These schemes are often referred to as ‘*plasma*’ or Nucleus Estate and Smallholder (NES) scheme, which refers to the part of (profit from) the plantation that is reserved for communities next to larger company estates (the ‘inti’). As we mentioned above, palm oil companies incorporating community land into their plantation are required to provide some (at least 20 percent) of the resulting plantation (or the profits of this land) to the community¹⁷.

These *inti-plasma* schemes are a major source of grievances in our studied conflicts. These grievances take different forms. In some cases the conflicts concerns the absence of actual realization of plasma land. Often companies simply renege on their promise to provide plasma land. Another type of grievance concerns the sharing of the profits of the plasma plots. Profits are

¹⁷ This requirement was significantly diluted in 2013, when a ministerial regulation (No. 98/2013 on guidelines for plantation business license) decreed that this plasma land could also come from outside the concession – thereby providing companies with a convenient excuse for not providing any plasma when no suitable land could be found. In other words, while in theory Indonesian policymakers aimed to ensure that communities were compensated for the loss of land, in practice the exact nature of the regulations enable companies to renege on their promises to communities.

made once palm oil trees start to bear fruit (about 4-5 years after planting) and the costs of planting the oil palm trees (and the fertilizer, etc.) are deducted from these profits. These calculations and the subsequent sharing of the profits often remains very untransparent for villagers. In many, if not most, of the cases we studied, villagers were disappointed with the money they received after five years of waiting, going (in the case of PT. GIJ in Central Kalimantan) as low as 100.000 rupiah (8 USD) per hectare per month. In relatively better cases (e.g. in the case of PT ANI in West Kalimantan), villagers reported receiving on average less than 500 thousand rupiah (40 USD) per month – still much less than the two to three million rupiah per hectare that a plantation could yield. Such disappointment over the implementation of the plasma scheme often fuels considerable protests. This is exacerbated by the lack of monitoring and evaluation from local authorities (e.g. dinas perkebunan, dinas koperasi) on how these partnership arrangements are implemented on the ground. This messy and often rather fraudulent manner of implementing joint venture schemes constitutes a major cause of conflicts, as people mobilize to demand a fairer share of the profits of the plantation. A related grievance concerns the functioning of the community cooperatives set-up to manage the plasma scheme: as these cooperatives are regularly managed poorly, communities end up not receiving the profits to which they are entitled.

Licence violations

A third important source of community grievances concerns allegations of licence violations by companies. In 24 of the cases that we studied (or 16 percent) the grievances of communities concerned licence violations such as the establishment of a plantation beyond concession boundaries, or the operation of plantations without required licences. In Riau, for example, PT MAL expanded its plantation on land outside the HGU in two villages, namely Kuala Panduk and Desa Petodaan, even though these two villages were not included in the permits they had. The community stated that 1,800 hectares of community land was taken over by the company without their consent. In response to community protests, the Pelalawan district government has formed two verification and inventory teams in 2010 and 2016 for resolving the land conflicts, and has conducted field checks. However, although it is evident that PT MAL is expanding beyond its permit, to date there has been no meaningful action from the local government regarding the violation of PT MAL. Similarly, in West Kalimantan, PT Sintang Raya expanded its plantation in two villages -Olak-olak Kubu and Pelita Jaya- that are not included its HGU license and EIA documents.

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There are indications that such licence violations are indeed fairly common. The government audit board (*Badan Pemeriksa Keuangan*) found that millions of hectares of palm oil plantations across Indonesia do not have a HGU, which means they operate illegally and do not pay tax.¹⁸ Similarly, Forest Watch Indonesia (FWI 2019) documented that no less than 68 percent (14.8 million ha) of plantations with plantation licences (IUP) are operating without the required HGU licence, while on the other hand 36 percent of HGU licenses (over 4 million ha) are granted without IUP licence.¹⁹ Next to the HGU licences, palm oil companies operating in forest areas also regularly lack the required forest release permit from the Forestry Ministry (Eyes on the Forest 2016). Conversely, in other cases, forest release permits are granted for areas where plantations are actually disallowed, such as protected forest or deep peatland²⁰.

Indonesia has instruments and national laws such as Forestry Law, Plantation Law and Environmental Protection and Management Law that may also protect the rights of local communities. However, such instruments and national laws have not been able to deter and end violations, allowing palm oil companies to get away with violations.

18 <https://tirto.id/bpk-sebut-jutaan-hektare-lahan-sawit-milik-perusahaan-tbk-tanpa-hgu-egR4> and <https://ekonomi.bisnis.com/read/20150323/99/414644/perkebunan-sawit-banyak-perusahaan-beroperasi-tanpa-hgu>

19 https://fwi.or.id/wp-content/uploads/2019/10/HGU_Alternatif-Informasi-Spasial-sebuah-dorongan-untuk-lebih-terbuka_FWI_low.pdf

20 Meijaard et al. 2018; FWI 2019

Community Protest Strategies

Given these grievances regarding both the establishment and management of palm oil plantations, what strategies do communities adopt to express their grievances and realize their claims? To address this question, we coded and counted the different kinds of protest events organised by communities during the course of the 150 conflicts that we studied. Figure 1 provides an overview. Over the period of 2010-2019, we found that demonstrations and hearings with local politicians and bureaucrats are two most common strategies undertaken by community actors (247 and 170 times subsequently), followed by land occupations (105 times), attacks on company property (64 times) and petitions to local governments (50 times). In some indigenous Dayak communities, especially in Central and West Kalimantan, adat rituals (e.g. *hinting pali*) and sanctions (e.g. calling on companies pay certain amount of fines) are sometimes used. We documented 14 such protest events.

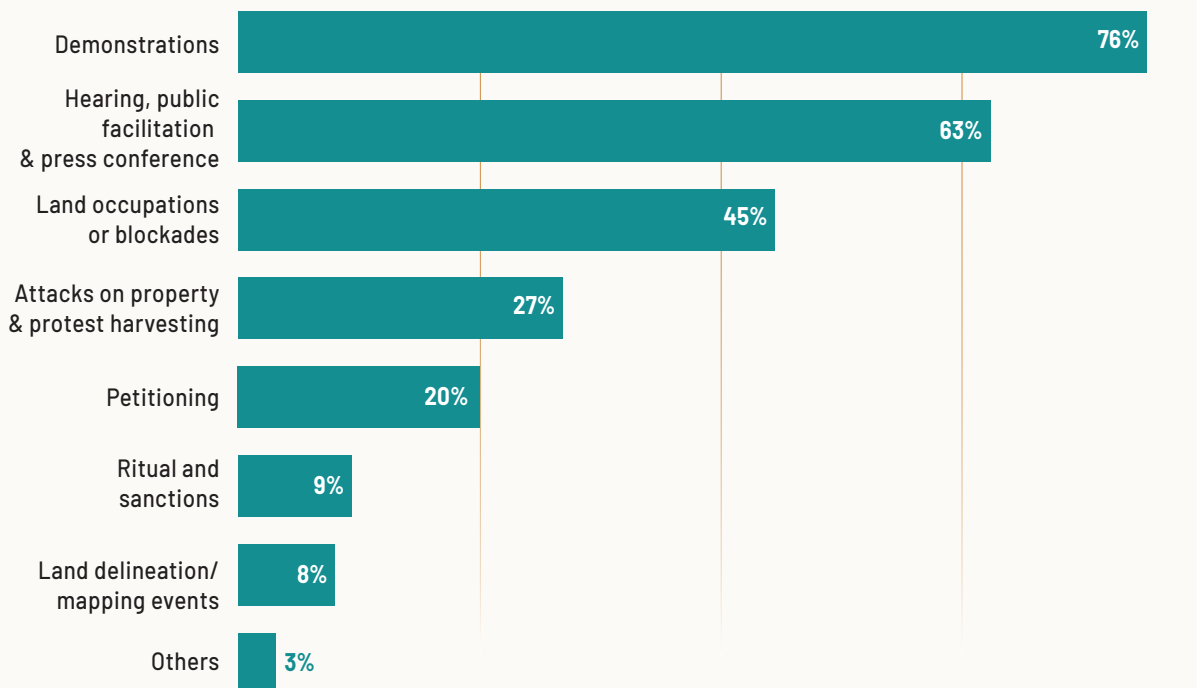


Figure 1. Types of protest strategies used by community disputants (adopted in % of studied cases)

While demonstrations are very common (involving 75 percent of the studied cases), a remarkable finding is that these demonstrations are mostly directed at local governments rather than companies. On the outset, many communities do start trying to negotiate with the company directly, but as companies often do not respond, communities then very commonly organize demonstrations in front of district government or the local parliament (DPRD) buildings. Generally speaking, the aim of these demonstrations is to convince local authorities to organize a hearing to discuss the issue. Hearings are common (involving 63 percent of the cases), rather formal events during which communities present their grievances to local authorities, while companies (if they attend, which often they do not) are given an opportunity to respond. Such meetings partially serve to shame the company through the coverage that these meetings get in the local media. But they also serve to convince local politicians and civil servants to engage in some sort of conflict resolution. These hearings are sometimes a prelude to active efforts to mediate the conflicts – which we will discuss below. In other words, we found that community protests are notably government-oriented, as arguably the most common element of protest strategies is the effort to get local authorities to pressurize companies.

In both the organisation of protests and the interaction with government authorities, local and national NGO's are often involved. While this is not the place for a full examination of their role in these conflicts, a number of aspects of their contribution deserve highlighting. NGO's play an important role in boosting the capacities of rural communities in articulating their grievances. Villagers involved in these conflicts generally have little education and limited experience in dealing with state institutions. Yet particularly when cases are reported to authorities and enter mediation processes, considerable skills are required: maps with GPS coordinates need to be made, proofs of land ownership and history need to be collected, a community organization needs to be formed and a large amount of letters need to be written. Particularly in the 17 cases that were reported to RSPO's complaint system, quite an extensive and elaborated communication and documentation was required. Another important contribution of NGO's lies in forging connections with national and even international NGO networks, thus

enabling communities to pressurize companies by generating national and international (media-) attention. For example, in 2007, Gemawan (an NGO based in West Kalimantan), in collaboration with Milieudefensie (Friends of the Earth Netherlands) undertook a joint field investigation and presented the findings regarding a conflict involving Wilmar group in West Kalimantan via press conference in the Netherlands. There were interviews with international media, such as, The New York Times, Reuter, VARA TV (Dutch TV), and others²¹. Such ‘internationalization’ of conflicts is, however, rare as most of the studied cases involved companies without such clear links to European companies. In our studied cases, only 7 cases (4%) involved international NGOs. Three of these cases resulted in either partial or largely successful outcomes for the affected communities.

Another remarkable finding is that in general, community protests remain relatively peaceful. Communities sometimes do adopt more confrontative strategies that disrupt the operations of the plantations such as land occupations and blockades to, for example, prevent heavy machinery from entering the plantation. Particularly in Central Kalimantan, sometimes such road blockades take the form of *adat* ritual called *hinting pali* (*portal adat*) in which the spirits of ancestors are invoked to seal the barrier – implying that individuals who break the blockade risk the wrath of these spirits. Another form of protest is the placing of a *portal*, a wooden gate, in front of the road leading to disputed parts of the plantation, generally with signboards expressing the claim to the land. Furthermore, community members also engage in ‘protest harvesting’, i.e. the harvesting of palm fruit bunches from disputed land (taking place in at least 29% of the cases). Yet road blockades are generally brief, land occupations are rarely sustained and we could find relatively few incidents of violence perpetrated by community actors. As we will explore below, most of the violence that we documented (Table 2) actually concerns acts perpetrated by either the police or by security forces hired by palm oil companies.

21 See for example http://gemawan.org/en/3512-laili-khairnur-milestone-of-social-empowerment-activist-in-west-kalimantan?fbclid=IwAR22J8aLqFTt6NiOBERnRLbMmTQH1siWX_FgyupMFVx4GjcWT2z-pz9k6ZE

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Table 2. Cases involving violent incidents and arrest

	West Sumatra	West Kalimantan	Riau	Central Kalimantan	Total (150 cases)
Incidence of Violence (cases)	8(32%)	6 (19%)	14 (29%)	16 (36%)	44 (29%)
Violence perpetrated by community alone	3	7	9	14	33
Violence perpetrated by company, police, preman, security officials, army	14	11	7	23	55
Violence perpetrated by both community and company	2	1	4	6	13
Arrests (cases)	7(28%)	10 (31%)	26 (54%)	20 (44%)	63 (42%)
no. of wounded (people)	60	25	72	86	243
no. of deaths (people)	0	0	14	5	19
no. of arrests (people)	107	144	236	302	789

Intimidation and Criminalization

To understand the intractability of palm oil conflicts as well as this pattern of community protests – its relatively peaceful nature, the avoidance of Indonesia’s legal system as well as the fear of arrests – it is important to also discuss the considerable risks that Indonesians face when protesting against palm oil companies. A worrying finding of our project is that the political rights of rural Indonesians – including their right to protest – are regularly being curtailed by intimidation, violence and the criminalization of protest leaders.

We documented at least 30 demonstrations or blockades that were met with a violent reaction from either the local police, mobile police brigade (Brimob), army or *preman* (‘thugs’). For example, when on 26 February 2005, 500 villagers occupied the premises of PT. MMS (Central Kalimantan), a large contingent of police officers came down and arrested 43 villagers. During the transport to the police station, several protesters were beaten and one of

them, Edon, was shot dead. More regularly demonstrations end in the way described by Nurulhuda (pseudonym, interview 17-7-2018), concerning a protest against PT. GAL: “In 2009 I attended a demonstration. People had carried weapons because they wanted to do a traditional *adat* ritual. Then suddenly a fight broke out. The police were beating people, and they were telling *preman* [goons] to attack people. Many people got injured then”.

In the case of PTPN V (Riau), in October 2013, about 800 villagers undertook a mass demonstration in front of PTPN V Sei Kencana estate. In their speeches, the protesters stated that the community had been very patient in dealing with PTPN V who had taken control of their customary land for a long time. Before the community even arrived, dozens of local police officials were ready in the demonstration site. After a few hours of demonstration, the situation became chaotic when there was a clash between community protesters and company’s security personnels. Later police and military personnel were also sent to the location. After the protest, the police (Brimob) did a ‘sweeping’ in the village: they walked through the village and knocked villagers’ houses and instructed male adults to go out, especially the houses of community leaders. During this sweeping, the police arrested 38 villagers.

This kind of (violent) intimidation is not only taking place during protests. We also encountered instances where police and security personnel visited villages with the purpose of intimidating inhabitants. We encountered 55 incidents of violence taking place outside the context of demonstrations. To



Photo: Courtesy
of Walhi Central
Kalimantan

provide just one example, on 23 July 2016 about 400 villagers from Olak-Olak and surrounding villages planned to stage a peaceful protest on disputed land inside the plantation of PT Sintang Raya (West Kalimantan). Before reaching the plantation residents were stopped by police officials. This led to a heated discussion and some physical violence between residents, police officers and representatives of PT Sintang Raya. In the week following these events, a heavily armed police force descended on Olak Olak village. They arrested 50 villagers and engaged in an extensive sweeping of most houses of Olak-Olak village, during which motorcycles and other belongings were confiscated. Thoroughly intimidated, most villagers fled from their village and sought protection in the office of the human rights commission (Komnas HAM) in Pontianak, the provincial capital.

Such acts of police violence are, to our knowledge, rarely investigated by supra-local authorities. Likewise we did not find any reports of any disciplinary action being taken against police officers. As a result several informants commented to us that they eventually concluded that anti-company protests inside or around plantations were ‘too dangerous’ and that “The system just works to scare people so that they do not defend their land”. This risk of violence explains why, as we noted above, the peaceful protests in front of government offices are more common than more confrontative actions near or inside plantations.

A related problem concerns the criminalization of protest leaders. A striking aspect of conflict trajectories is that they often (in 63 cases (42%) that we studied, see table 2) culminate in the arrest and imprisonment of community leaders. While some such arrests seem occasioned by actual violations, in other cases the accusations against villagers seem fabricated or at least trumped up. For example, in the case of PT. BAK (Central Kalimantan) local leader Hison was sentenced to a 5-month jail term in April 2014 for carrying a machete inside a plantation, which according to an old 1951 emergency law²², is a criminal offence in Indonesia. Hison brought this machete at the behest of the district head of Kotawaringin Barat, who had invited him to conduct a ritual slaughter of a buffalo. In the case of PT. BGA (Central Kalimantan), community leader Gusti Gelombang had managed to obtain documents that proved that the company obtained bank loans in a fraudulent manner. Instead of pursuing this matter, the local police arrested Gusti and put him on trial for illegally obtaining company documents – a charge of which he was

22 Article 1 point 1 of UU darurat 1951

subsequently acquitted by Indonesia's supreme court²³. In the case of Nagari Kapa (West Sumatra), the indigenous community group suffered the same fate. After Wilmar's subsidiary PT. Permata Hijau Pasaman 1 (PT. PHP1) had taken over their land in the 1990s, this community engaged in a long-running struggle to regain their land. In 2014 Kapa leaders filed a formal complaint with the RSPO. Soon after, several customary leaders of the Nagari Kapa community were interrogated by police and arrested. They were charged with misusing public funds (based on testimony from an employee of PT. PHP1) and given three months to one year jail sentences.

In all these examples the police and the courts were very willing to act on accusations of company actors against protest leaders, a willingness that contrasts quite sharply with the negligence of local authorities when it comes to pursuing allegations of licence violations of palm oil companies. The arrests and jail sentences of protest leaders are a particularly effective measure to discourage anti-corporate protest. Such arrests not only force communities to focus on freeing their community members, but they also generate fear for further police reprisals. In the light of these findings we conclude that the political rights of Indonesians affected by the expansion of palm oil plantations – in particular the right to engage in peaceful protest – are being curtailed. To protect these rights, more efforts are needed to investigate (police) violence and to ensure that critical community leaders are not criminalized.

**Political rights
of Indonesians
affected by the
expansion of palm
oil plantations are
being curtailed.**

”

23 See Kapoor et al. 2018

Effectiveness Of Conflict Resolution Mechanisms

In this difficult context – curtailed land tenure, regular yet unpunished licence violations, and the risk of violence and arrest – what mechanisms do communities rely on to address their grievances? Three main conflict resolution mechanisms can be distinguished: Indonesia’s court system, the dispute resolution mechanism set up by RSPO, and alternative dispute resolution provided by various local authorities and, more rarely, NGO’s. Using our documentation, we traced how often communities employed these different mechanisms as part of their efforts to address their grievances and their outcomes. Table three provides an overview of the use of these mechanisms.

Table 3. Usage of conflict resolution mechanisms

	Riau	West Kalimantan	West Sumatera	Central Kalimantan	Total (150 cases)
Mediation and facilitation	29 (60%)	23 (72%)	23 (92%)	34 (76%)	109 (73%)
Court	12 (25%)	5 (16%)	12 (48%)	8(18%)	37 (25%)
Negotiation	9 (19%)	12 (38%)	3 (12%)	5 (11%)	29 (19%)
RSPO	2 (4%)	5 (16%)	1 (4%)	9 (20%)	17 (11%)

Courts

A first striking conclusion is that villagers make relatively little use of Indonesia’s legal system, especially in West and Central Kalimantan. In West Kalimantan, only in 5 out of the 32 studied cases did villagers take their grievance to court. Similarly, in Central Kalimantan, only 8 out of 45 cases were brought to court. The number of court cases is slightly higher in West Sumatera and Riau (12 cases in each province), meaning that overall, communities turned to courts only in 25 percent of all studied cases. Because of the above-mentioned difficulty of proving land ownership, the high costs involved and the perceived corruptibility of the courts, litigation is perceived to be an unattractive option.

Our study of these 37 conflicts that went to court suggests that courts are typically ineffective at addressing community grievances. Aside from the considerable costs and time involved – many cases go all the way to Indonesia’s Supreme Court (Mahkamah Agung) – judges, as we explore in greater depth elsewhere²⁴, have displayed a tendency to rule not on the substance of (community-) claims, but on the basis of legal technicalities and procedural errors. Indeed, of the 37 cases examined, 10 were declared inadmissible mainly due to procedural reasons (see Table 4). Similarly, where companies have emerged victorious, judges tended to base their rulings on technicalities rather than on the merits of the claim, such as a plaintiff’s inability to describe the disputed land in sufficient detail or their failure to establish that the hundreds of parties to a class action are, in fact, entitled to benefit from that action. As a result of this tendency to rule on technical grounds rather than on substance, Indonesia’s courts are not building up jurisprudence that could help provide lasting resolutions to the current and future land conflicts.

Another important reason for the ineffectiveness of Indonesia’s courts concerns the implementation of its rulings. Sometimes communities booked notable victories in court: we documented 9 rulings in favour of the community, with three more mixed rulings. Yet even when achieving such rare successes (after, in most cases, persevering for many years as companies tend to appeal all the way to the supreme court), the court rulings often remain unimplemented. For example, in the case of Sintang Raya (West Kalimantan) versus villagers of Olak-Olak and Pelita Jaya (West Kalimantan), the district and national level State Administrative Courts (PTUN and PTTUN) have annulled the HGU certificate of PT Sintang Raya. The court revoked the HGU license of PT Sintang Raya and asked the BPN to re-issue it after excising local people’s land. Nevertheless, until today the HGU certificate of PT SR has never been revoked as instructed by the court.

While some court verdicts are too recent to evaluate their implementation, we found that of the 9 court victories of communities from 2020 or before, 5 rulings remain unimplemented due to BPN’s failure to fully enact the court’s ruling and the existing conflict within the community that obstruct implementation. This lack of enforcement of court rulings deserves serious attention, as such outcomes are not only unjust but also undermine confidence in Indonesia’s legal system.

24 Peterson et al. (n.d.)

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In short, while Indonesia's court system is quite swift in adjudicating cases against villagers protesting against palm oil companies, in the studied cases Indonesia's courts offer a rather ineffective mechanism for conflict resolution due to the high costs, the avoidance of substantive rulings and the lack of enforcement of its verdicts.

Table 4. Outcome of court cases

	Riau	West Kalimantan	West Sumatera	Central Kalimantan	Total
Declared inadmissible	0	2	5	3	10
Ruling in favour of company	5		3	2	10
Ruling in favour of community	4	1	3	1	9
Mixed ruling	0	2		1	3
Case withdrawn by claimant	3		1	1	5
Total	12	5	12	8	37

RSPO

Similarly, RSPO's conflict resolution mechanism plays only a minor role. Set up to provide an alternative dispute resolution mechanism, in theory the RSPO's conflict resolution mechanism offers a promising avenue since member companies need to abide by RSPO's principles to obtain and maintain a sustainability certification. Yet only in 17 cases (11 percent) did communities in our study bring their case to the RSPO. Our interviews suggest that informants are either not aware of RSPO's complaint facility or perceive this option as unattractive due to the perceived complexity of reporting a complaint to the RSPO. Furthermore, the studied cases suggest that even when cases were brought to the RSPO, successful conflict resolution was relatively rare (Table 5).

Table 5. Outcomes of cases brought to RSPO mechanisms

Outcome	No. of cases
RSPO dismissed the complaint	4
Community attempted to bring the complaint to RSPO but failed to register their complaint	6
RSPO ordered the company to implement Complaints Panel (CP) directives	3
The case is still ongoing	1
RSPO closed case because bilateral agreement outside RSPO mechanism had been reached	1
RSPO closed case because bilateral agreement within RSPO mechanism had been reached	2
Total	17

The three cases where the RSPO issued a directive, actually involve a single ruling: the RSPO's Complaint Panel issued one joint directive (as all three companies, PT Susantri Permai, PT Kapuas Maju Jaya and PT Dwie Warna Karya, are subsidiaries of one company) which ordered the three companies to halt their activities in relation to the absence of required licences. While the RSPO thus supported the complaints from communities, their directive did not have much impact, as all three companies declined to halt their activities.

The general pattern is that due to the complexities of RSPO procedures and limited capacities of the community, the community often fail to report their grievances effectively, while even if they succeed in doing so, the impact is limited. The RSPO does sometimes succeed in stimulating disputing parties to reach an agreement (such as the cases of PT BAS and PT HSL in Central Kalimantan), and a stern directive from the Complaint's panel did stimulate Wilmar (in the case of its subsidiary PT PHP1) to engage in constructive and, ultimately, successful mediation efforts. Yet given that our 150 cases include 64 member companies of the RSPO, this total of three success cases is relatively small.

Furthermore, we found that RSPO member companies only perform marginally better when it comes to resolving conflicts: of conflicts involving RSPO members, 34.4 percent (22 out of 64 cases) end up being at least partly resolved according to our informants. In conflicts that do not involve RSPO members, only 30.2 percent (26 out of 86 cases) get at least partly solved. This is a surprisingly small difference, given the fact that RSPO standards involve an obligation to resolve conflicts with communities.

Mediation and Facilitation

Given this distrust and inaccessibility of these more formal mechanisms, in most of the studied cases (73 percent of the cases) communities rely on alternative dispute resolution such as mediation and facilitation²⁵ provided by either local authorities or NGO's. Most commonly this facilitation involves a set of meetings facilitated by local authorities such as the district head (in high-profile cases) or local bureaucrats such as sub-district heads (*camats*) or department heads (*kepala dinas*). Initial discussions revolve around clarifying the basic facts about, for example, land boundaries or whether and how much compensation has been paid.

” Villagers regularly express their disappointment with the role of politicians and bureaucrats, accusing them of organizing these facilitation and hearing sessions merely for media attention and for soliciting bribes from companies.

These facilitation processes are generally lengthy due to the complexity of verifying land ownership, the reluctance of companies to engage in the government-led facilitation process and their regular refusal to implement agreements. We regularly encountered examples of companies stalling or obstructing mediation processes by refusing to attend meetings, to provide requested documents, or to implement an agreement. For example in the case of PT. SLM (Central Kalimantan) six ultimately unsuccessful mediation sessions were organized. In this case the local government played a very proactive role as it not only organized these sessions but also regularly wrote letters to PT.

25 For practitioners, the term mediation is distinguished from facilitation. In terms of process, mediation generally follows structured stages to reach a consensus or agreement between the disputing parties, starting from the pre-mediation stage (agreeing on the mediator, conflict assessment, actor identification, mediation management design), mediation (the negotiation process and finding points of agreement), and post-mediation activities (implementation of agreements, monitoring and evaluation). Meanwhile, what happens more often in the field is that politicians and local officials are limited to facilitating meetings between the disputing parties and asking both parties to find a common solution.

SLM's management to demand proof of having paid compensation. However PT. SLM did not attend five out of the six sessions and failed to provide the requested documentation. In a similarly lengthy process, both the DPRD and the district head organized several mediation sessions to deal with the land claims of four villages against PT. SSS (Central Kalimantan), but company representatives also generally refused to attend and little progress was made even after now 14 years of conflict²⁶. In the case of conflict between PTPN V and Senama Nenek Community (Riau), after years of lack of progress of conflict resolution attempts at the District Government level, *Bupati* of Kampar District gave up and decided to hand over the case to the Governor of Riau in May 2006. The governor then formed his own conflict resolution team to mediate the conflict. Several meetings were then conducted between 2007 and 2009, resulting in an agreement of PTPN V to return 2,800 ha of land to the Senama Nenek community and pay compensation of 5.3 billion rupiah for the period where the company used the land. Yet after this lengthy process the company refused to implement the agreement.

A remarkable aspect of these efforts of local governments to facilitate conflict resolution is their lack of teeth: while palm oil companies regularly refuse to participate constructively in such meetings involving allegations of serious (licence) violations, local governments generally avoid taking any kind of disciplinary action. At best local governments write a request letter to the company to temporarily halt the further expansion of the plantation. Villagers regularly express their disappointment with the role of politicians and bureaucrats, accusing them of organizing these facilitation and hearing sessions merely for media attention and for soliciting bribes from companies:

“When the DPRD mediated the case [involving PT. GAL in central Kalimantan], they only investigated. They did not really do anything. My suspicion was that this was an ATM for them [i.e. that the case was used to demand bribes from the company]. They kept asking us for documents, but when we gave these documents they said, oh we lost the documents and we can no longer work on this case. They just got involved to get known [i.e. for publicity]. They gave nice speeches about how we should do our best to gather documents, and then they were gone.” (Interview 16-7-2018).

26 See for example <https://www.borneonews.co.id/berita/14505-pt-sss-tak-hadiri-rapat-mediasi-dprd-merasa-dilecehkan>

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As another informant put it, *“The local parliament members just want a share of government projects. Most of them just sit quietly [in order to] get money”* (Interview, 23 July 2018).

Because of this lack of teeth and the potential collusion between government officials and palm oil companies, the informal dispute resolution headed by local authorities generally fails to produce tangible results. In this study we documented how often mediation and facilitation led to agreements between companies and communities, and to what extent these agreements were implemented. The results are sobering: we found that overall, only in 16% of the facilitation and mediation attempts the conflicting parties reached an agreement that was partially or fully implemented. It turns out that local authorities are failing in their efforts to facilitate conflict resolution: as the figure below illustrates, while district heads, governors, local bureaucrats, DPRD politicians and police officials have been regularly involved in facilitation and mediation, they rarely succeeded: of the, in total, 164 studied attempts by these government authorities to facilitate the resolution of conflict (excluding NGO, customary leaders and international institution), only in 23 attempts (14%) an agreement between companies and communities was reached and implemented. In 40 other cases (24%) an agreement was reached, but it was not implemented. It turns out that, while they are rarely involved, NGO's and professional mediators are more effective mediators: they succeed in brokering an agreement in 6 out the 7 conflicts they mediated. This finding suggests that when mediation is done systematically and facilitated by relatively independent and trained or experienced mediators, it can lead to positive results.

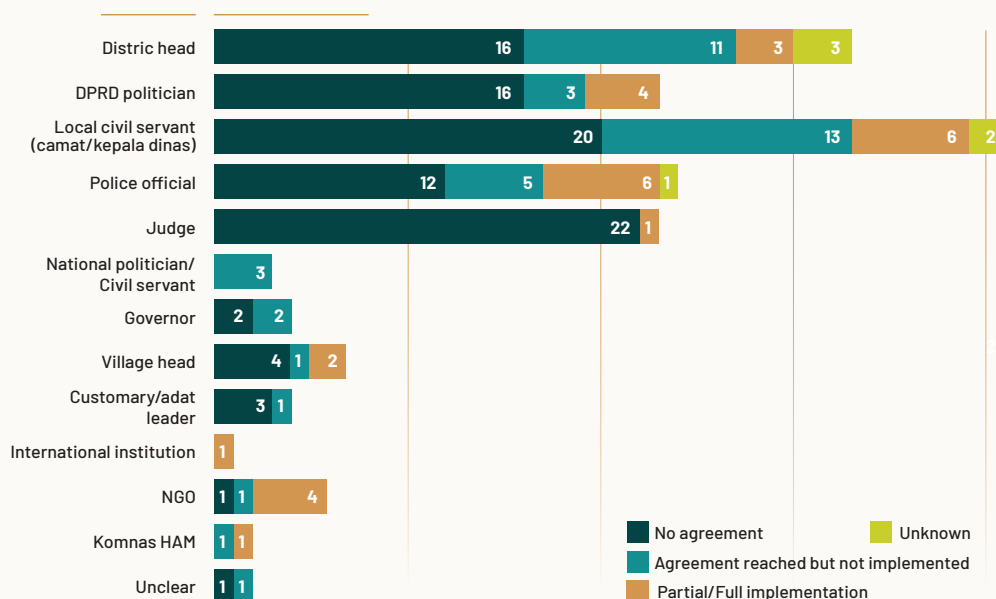


Figure 2. Outcomes of mediation and facilitation by various actors

Overall Outcomes of Palm Oil Conflicts

To evaluate the effectiveness of available dispute resolution mechanisms we documented the outcomes of these conflicts in terms of whether, and to what extent, communities were able to get companies to meet their demands. Such an assessment is complex not only because most conflicts never really ‘end’, but also because companies or communities rarely publicly announce agreements between them and because such agreements, court verdicts or RSPO judgements often remain unimplemented. To address this challenge, we opted to rely on subjective assessments of both our local researchers and the interviewed community representatives. The researchers and community representatives were asked to provide an assessment of the achievements of the community by ranking the outcomes of the conflict from one (we had no success at all) to five (we fully achieved our aims).²⁷

The results – shown in Table 6 – suggest that successful conflict resolution is rare. In four provinces, in 57 (38%) of the studied conflicts, community representatives reported that they did not achieve anything at all while in 45 cases (30%) they felt that they barely achieved a result – apart from minor token gestures of goodwill from the company (such as contribution of CSR money or more local people hired as labour, i.e. small benefits unrelated to the main claims of the community). In other words, in 102 (68 percent) of the studied 150 conflicts the communities did not (or barely) succeed in addressing their grievances, with very little difference between our provinces. We encountered only two conflict cases (PT UHP in Central Kalimantan and PTPN V in Riau) where community representatives felt that they had been fully successful (while we also documented 17 cases where communities succeeded ‘to a large extent’).

68% of the studied conflicts, the communities did not (or barely) succeed in addressing their grievances. ”

²⁷ While such assessments are unavoidably subjective, the agreement between these informants was generally high: in 84 percent of the cases all informants provided the same evaluation, while in 15 percent of the cases the informants differed only one point (in which case we adopted the highest evaluation).

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Table 6. Overall assessment of conflict outcomes in four provinces

	West Sumatra*	Riau*	West Kalimantan*	Central Kalimantan*	Total (150 cases)
No success at all	9 (36%)	23 (48%)	12 (38%)	13 (29%)	57 (38%)
Barely	7 (28%)	10 (21%)	9 (28%)	19 (42%)	45 (30%)
Partially	4 (16%)	9 (19%)	7 (22%)	9 (20%)	29 (19%)
To a large extent	5 (20%)	5 (10%)	4 (13%)	3 (7%)	17 (11%)
Fully successful	0 (0%)	1 (2%)	0 (0%)	1 (2%)	2 (1%)

*number of conflict cases

These findings suggest that all three of the main conflict resolution mechanisms – the courts, RSPO's complaint facility as well as informal mediation by local authorities – are rather ineffective in addressing community grievances. The result of this ineffectiveness of conflict resolution mechanisms is that conflicts drag on for many years and that they generally remain unresolved. We found in cases where some sort of resolution was reached, this took, on average, 9 years. The ongoing, unresolved conflicts have remained unresolved for, on average, 11 years.

Why is Conflict Resolution Generally Ineffective?

These sobering findings raise urgent questions: why do these conflict resolution mechanisms often fail to produce meaningful results for the affected communities? Our study of the trajectories of these cases suggests that conflict resolution efforts are hampered by four main obstacles.

First, the **weak land tenure of rural Indonesians** – discussed above – limits the effectiveness of Indonesia’s legal system and systematically weakens the bargaining position of communities, while at the same time provides leverage for companies. As the Indonesian state at present prevents citizens from obtaining formal ownership of their land in about sixty percent of the country, rural communities stand little chance in court. Lacking formal evidence of their land claim, the Indonesian courts generally prioritize the concessions of companies over the proofs of land ownership that rural Indonesians do possess (such as the ‘SKT’ (*surat keterangan tanah*), the ownership letters handed out by local state authorities). Yet our study also reveals that even when communities do possess strong land claims – such as in the case of transmigrant communities who do possess formal land titles – they are not noticeably more successful in addressing their grievances: of the 15 conflicts involving transmigrants that we studied, only 3 of them have reached a relatively successful outcome. This limited impact of formal land title on the outcome of palm oil conflicts suggests that weak land tenure cannot be the only explanation for the limited success of communities in addressing their grievances. The next factors matter.

Second, collusion between companies and local powerholders has rendered available dispute resolution mechanisms ineffective. At present there is **a lack of independent, trusted and neutral arbiters of palm oil conflicts** due to the strong ties of state authorities (and, often, financial dependence) between palm oil companies and state authorities. This collusion constitutes the main reason why the alternative dispute resolution facilitated by local authorities generally fails: due to their backing from local authorities, company representatives can ignore or stall such mediation processes without running a risk. Instead, the collusion between local authorities and companies has

facilitated the above-mentioned repression of dissent by criminalizing protest leaders. In the light of this systemic collusion, and given the scope and intractability of these conflicts, Indonesia urgently needs a new, independent more neutral bodies to handle and mediate conflicts²⁸.

A third explanation concerns **problems of community leadership and representation**. In quite a number of studied conflicts we found that conflict resolution efforts were hampered by contested and inadequate community leadership. As we discussed above, community leaders such as *adat* leaders or village heads often complicate matters by making deals with companies without properly consulting their community. At the same time conflict resolution efforts as well as effective community mobilization are regularly undermined by divisions within communities. As tensions rise, alternative leaders emerge (sometimes secretly supported by the company) who generally end up weakening both the organizational capacity and the bargaining position of the community. Such problems of community leadership greatly complicate the resolution of conflicts, as even well-meaning companies often struggle to identify leaders who actually represent their community.

A related fourth explanation for the intractability of palm oil conflicts lies in the big disjuncture between the **skill sets and organisational capacity of local communities** and the complexities of addressing palm oil conflicts. Affected communities often lack the necessary education and experience in advocacy and community organizing needed to find their way through a maze of complex laws, procedures and processes. Indonesia's legal regime related to land is mind bogglingly complex, the procedures for establishing and managing joint-venture schemes are intimidating while the official procedures of obtaining plantation licenses bear a complex relation to reality. On top of that all available conflict resolution mechanisms – the courts, local governments, the RSPO – all maintain their own complex procedures and they require communities to understand how to measure their land, produce proofs of land ownership and communicate their demands in a clear manner. As the successful cases that we studied (such as PT UHP in Central Kalimantan, or PTPN V in Riau) illustrate, the successful resolution of palm oil conflicts requires intense and sustained support from capable third parties such as NGOs and local governments. In that light it is lamentable and somewhat surprising that both Indonesian Government as well as the RSPO and development agencies spend relatively little effort and money on providing legal aid to affected communities. In order to address the grievances caused by palm oil expansion more efforts are needed to strengthen the capacities of affected communities.

28 Walhi Kalteng has undertaken initiatives to propose the setting up of a conflict resolution committee. A resolution to this end has been adopted by the previous governor but now lingers waiting for approval from the provincial parliament.

Reasons For Successful Conflict Resolution

Given these considerable obstacles, under what circumstances and in what ways can conflict resolution efforts succeed in achieving a fair and lasting solution? To this end we examined the 18 cases where communities felt that had completely or largely succeeded in addressing their grievances (annex A provides a very brief overview of these 18 cases). With the caveat that this policy report cannot do justice to the complexity of this material, our study of success cases suggests that there are three main lessons about how and when conflicts can be resolved most effectively.

1. A first lesson is that in order to successfully address their grievances, communities need to be well organised and united. For example, in the case of PT Usaha Handalan Perkasa (UHP), the community set up an effective organisation led by various community leaders. This organisation organised various successful demonstrations and proved effective in lobbying government authorities. In cases of PT HSL and PT RASR, local activists consistently led and coordinated the community, thereby preventing the kinds of community divisions that commonly prevented conflict resolution in other cases. In West Sumatra communities are benefitting from their relatively strong adat institutions such as the village adat councils (*Kerapatan Adat Nagari*, KAN) and their customary leaders. In all these successful cases these community institutions played a role in organising the community and negotiating with companies and authorities. It seems that the strength of West Sumatra's customary institutions is helping communities to maintain unity and to coordinate their actions - which might reflect and explain that, compared to other communities, conflicts have (slightly) better outcomes for communities in West Sumatra.
2. A second, less visible factor concerns the ability of communities to build political connections with sympathetic government officials and NGOs. In the case of PTPN V (Senama Nenek), the land conflict had gone on for about 25 years. In addition to the strong community unity and persistence, the case was finally resolved thanks to the capacity of adat leaders to establish good

relations with officials at district, provincial and national levels, including the inner circle of President Joko Widodo. The President eventually made a political decision to call on the company to return the community's customary land (*tanah ulayat*), right after he was elected for the second term. This case illustrates how many palm oil conflicts are settled not through a conventional conflict resolution mechanism (e.g. court) but on the basis of the ability of local actors to build connections with influential political actors. We found that the strength of a legal claim to land has no or very little impact on the outcome of conflicts: we found that communities with land certificates (i.e. transmigrant communities) are not more likely to achieve their aims compared to communities that lack land certificates. Political connections seem to have a stronger impact than the legal basis of community claims on actual outcomes of these conflicts.

3. A third general conclusion is that company membership in the RSPO can be an important supporting factor. RSPO requires its member companies to resolve social conflicts in their concessions as a condition for obtaining RSPO certification. While, as mentioned above, RSPO conflict resolution mechanism had limited success in solving conflicts, we did find that conflicts involving RSPO members are slightly more likely to be resolved. Many of the successful cases above involved RSPO member companies (e.g. PT ANI, PT Agro Wiratama and PT KAL). In the PT Agrowiratama case, for example, the community initially held a demonstration at the District Head's office to ask the *Bupati* to revoke the company's plantation permit in their village. The company then responded by conducting a series of meetings with the community. After an agreement was reached between the company and the community, the *Bupati* decided to officially enclave around 1000 ha of community land from the company's concession.
4. A fourth conclusion is that NGO support is important for communities, both to organise themselves as well as to bring their case (or grievances) to the attention of authorities at either national or international levels. In many cases, this requires support from NGOs. In the case of PT CRS, communities sought support from

Scale Up (an NGO) that brought the case to the RSPO dispute facility. Eventually both parties requested Scale Up to act as mediator in this case, which led to an agreement between the parties. Another example concerns PT Indosawit Subur (IIS): in this case the community successfully pressurized the company into coming to an agreement by reporting the case to Indonesia's human rights commission (KOMNAS HAM RI) after earlier mediation efforts by local authorities had failed.

A more general conclusion is that our detailed study of our 18 'success cases' is that these cases illustrate how difficult conflict resolution is. With numerous demonstrations and years of struggle (9 years in average) communities need to spend a lot of energy and resources to achieve success. Given their capacity to struggle for many years, and their success in building good political connections, successful communities have been exceptionally persistent and skilful in overcoming the obstacles that communities face when dealing with better-resourced and better-connected companies. In that light the successes that these communities managed to achieve, is a testimony to their stamina and skills, not to the effectiveness of the conflict resolution mechanisms.

Policy Implications of This Study

In the light of the finding that available conflict mechanisms are largely ineffective in solving palm oil conflicts, we derive from our study of 150 conflicts a number of policy recommendations on how conflicts can be avoided and conflict resolution efforts can be made more effective. Given the finding that over two-thirds of palm oil conflicts remain unresolved, and the considerable human and economic costs of such conflicts, this problem needs attention, creativity as well as funding from both Indonesia's government, donor organisations and civil society organisations.

Recommendations for the Indonesian government

We note that the Indonesian government has in recent years already stepped up its efforts: for example, some local governments have set up Desk Resolusi Konflik (Kapuas Hulu District), Bale Mediasi (West Nusa Tenggara Province) or Team for Prevention and Settlement of Land Disputes (Central Kalimantan Province) to address land-related conflicts, while the national government has recently adopted 2021 decree on the establishment of Team for the Acceleration of Agrarian Conflict Resolution and Strengthening Agrarian Reform Policy in 2021²⁹ which sets out measures to draw up and implement joint action plans to accelerate the resolution of agrarian conflicts and strengthen agrarian reform policies in Indonesia. While these measures are important steps, the findings of this policy report – particularly the low and slow rate of conflict resolution – suggest, however, that such measures could be strengthened considerably in the following five areas:



A provincial or district level mediation board is needed. In the light of the ineffectiveness of available conflict resolution mechanisms, and the limited success of local authorities to solve conflicts, there is a need for setting up a new impartial mechanism: a 'mediation board' or 'conflict resolution desk' that

29 Surat Keputusan Kepala Staf Kepresidenan No. 1B/T tahun 2021 mengenai Tim Percepatan Penyelesaian Konflik Agraria dan Penguatan Kebijakan Reforma Agraria 2021 tanggal 29 Januari 2021.

involve professionally trained mediators that will help facilitate the resolution of conflicts at local level. Responding to this need, some local governments have already taken such initiatives (mentioned above). Institutionally, such a mediation board could be established through either SK Bupati or Perda and funded by the government. Given the considerable suffering and economic damage caused by these conflicts, conflict resolution deserves more government funding. The recently adopted 2021 Presidential Chief of Staff's decree on conflict resolution also instructed the national-level team for acceleration of agrarian conflict resolution --consisted of some relevant ministries (e.g. Minister of Agraria and Spatial Planning, Minister of Environment and Forestry)-- to cooperate and coordinate with local government in accelerating the resolution of land conflict cases. The establishment of these mediation boards at district and provincial levels will support the national government objectives to accelerate conflict resolution processes.



Government supervision of FPIC processes is needed.

It is mandatory for companies to obtain consent from communities before commencing operations. Yet, as this report has detailed, much conflict is caused by inadequacies in the ways in which companies obtain this consent: consent from individual community members (rather than community leaders only) is needed, intimidation should be avoided, and a clear (implementation of a) compensation package needs to be provided. In recent years some palm oil companies have made improvements along these lines – while at present this is limited to only a few companies. Stricter supervision from Indonesia's government could serve to convince more companies to such improvements. At the same time communities need support to strengthen community representation when engaging with incoming palm oil companies: many conflicts originate from inadequate community leadership or the capture of it, as local leaders regularly consent to companies taking community land without adequately consulting with community members (and, often, without sharing the benefits they received for providing such consent). This constitutes another reason why, in our view, the practice of companies reaching agreements with only

community leaders (rather than individual community members) should end.



The capacity of government institutions to monitor and punish violations by palm oil companies needs to be strengthened. A considerable number of conflicts concern complaints about companies that violate either legal obligations (such as the provision of *plasma* plantations) or licencing procedures (such as the establishment of plantations beyond concession boundaries). Such conflicts could be prevented or resolved more easily if the Indonesian government would take a more active role in preventing and ending such violations. We documented numerous occasions where, despite extensive community protests, such violations continued for years, despite being relatively obvious and well-documented. This constitutes a category of conflicts that could be prevented or at least solved relatively quickly if Indonesia's government is committed to identify and end violations of its regulations.



In the light of these violations, the Indonesian government should be **open and transparent about the licences it provides for palm oil plantations**. In the light of the indications of regular licence violations – and the fact that these licences provide the legal basis for companies to obtain community land – the decision of the Indonesian government to keep secret all information regarding HGU plantation licences constitutes an unnecessary and unjustifiable obstacles for conflict resolution³⁰.



Indonesia's government needs to engage in a **more active monitoring of the implementation of joint-venture (inti-plasma) schemes**. A large group of conflicts (57 percent of the total) involves complaints about such schemes: either companies renege on their promise to provide *plasma*, they do not pay out any or very little profits of this scheme, or the management of the scheme (through a cooperation) is very untransparent.

³⁰ See FWI 2019 and <https://nasional.republika.co.id/berita/nasional/umum/pnzxy409/ini-alasan-pemerintah-tolak-buka-data-hgu-atas-lahan>

Many of these conflicts could be prevented if Indonesia's government would take a more proactive role in monitoring the implementation of such plasma schemes. This monitoring would be particularly effective if local governments would have the capacity to sanction companies that are found to be at fault.



Conflict resolution efforts could be made more effective by boosting the capacity of professional NGO's to assist affected communities.

As we discussed in this report, communities often find it difficult to obtain the necessary knowledge and skills to bring their grievances to conflict resolution mechanisms such as the courts or the RSPO. Furthermore, internal divisions and problems of community representation are complicating conflict resolution efforts. In that light we observed the importance of NGO support for affected communities. With NGO support, communities more regularly make use of formal conflict resolution mechanisms – such as the courts and RSPO's complaint system. Furthermore, we observed that when professional mediators and NGO's mediate between companies and companies, they are relatively successful – much more successful than the mediation of local authorities. In that light financial support for NGO's engaging in legal aid or mediation could be an effective means to accelerate conflict resolution.



The Indonesian government should **investigate whether intimidation and criminalization is indeed a common feature of palm oil conflicts**, and if so, takes measure to

prevent such practices in the future. In this report we noted that demonstrations are sometimes met by one-sided violence of the police (brimob) or actors associated with palm oil companies. Furthermore, we reported that the high number of community leaders (789, i.e. on average 5 persons for each studied conflict) that are being arrested. While some individuals indeed violated Indonesian laws, many community leaders are subsequently absolved by the courts. Both this intimidation and the criminalization of community leaders constitute infringements on the political rights of Indonesians and does not befit Indonesia's global standing as a successful democracy.



On a more structural level: **The prevention of future conflicts requires national legal reform to strengthen the land rights of rural Indonesians.** The weak land rights of Indonesian citizens constitute a root cause of the conflicts discussed in this report: as the Indonesian state still curtails the land ownership of Indonesian citizens in most of its territory (i.e. areas officially designated as forest), the Indonesian state is sparking conflict by awarding concessions to companies over land on which people live and work. This complex issue has been raised by numerous civil society organisations and politicians, as well as the resolution of Indonesia's Consultative Assembly (the TAP MPR IX adopted in 2001). To address this problem, civil society organisations have since long campaigned for greater recognition of customary (*adat*) land rights. Another type of solution constitutes the strengthening of individual land ownership: in this vein the current, ongoing efforts of the Indonesian government through its TORA program could potentially help prevent conflicts. Yet so far land titles are mostly given to people whose land ownership is well documented and these efforts have largely been limited to land *outside* forest areas. To address a major root cause behind the palm oil conflicts, efforts are needed to also strengthen the land rights of Indonesian citizens in forest areas.

Recommendations for the RSPO

In the light of our finding that both the usage and the effectiveness of RSPO's complaint system is limited, we recommend the following measures to make the RSPO more effective in resolving conflicts:



In the light of our finding that communities find it difficult to report their grievances to RSPO's Complaint System and that they generally need NGO support to do so, we recommend that more funding needs to be made available for communities and their assisting NGO's, so that they **increase their capacity to bring cases to the RSPO.**



An obstacle hindering the usage of RSPO's complaint system is the requirement that claimants need to be a legal entity. This requirement contradicts the principle that communities need to

be free to decide on their own representatives, and generates an unnecessary hurdle. It is recommended that the **RSPO should not require claimants to be legal entities** when receiving complaints from the community.



An important problem faced by the community using the Complaint System is the inequality of power and knowledge between the community and the company which causes the community's position to be weak in negotiations which can make the bilateral engagement option more profitable for the company. The RSPO should develop **bilateral engagement guidelines** so that implementation of the bilateral engagement is controlled by RSPO and NGOs assisting communities.



RSPO should take a stronger stance to enforce the resolution passed by the RSPO in November 2018 which called on members **not to divest operations which were the subject of complaints**. We encountered cases where companies sold off the concession while having a long running land dispute with local communities (e.g. the case of PT Mitra Austral Sejahtera (West Kalimantan) and PT Asiatic Persada). In such cases the sale of the plantation greatly complicates efforts to resolve conflicts.

Conclusion

In this report we presented the results of a large collaborative research effort to document the trajectories and outcomes of 150 conflicts between rural communities and palm oil companies. This assessment yielded a relatively bleak picture. Local communities are relatively powerless, they face intimidation from company representatives and the police, while available dispute resolution mechanisms are largely ineffective due to collusion between powerholders and companies. Despite considerable efforts - we documented, for example, 243 demonstrations and 177 mediation attempts - in 102 of the cases we studied (or 68 percent) communities felt that they did not (or barely) managed to address their grievances. Most conflicts end because communities simply give up, while a simmering grievances about injustices remain.

We attribute this intractable nature of palm oil conflicts to four main factors. We highlighted that the limited recognition of land rights of rural Indonesians constitutes a root cause of these conflicts. But we also discussed how currently available conflict resolution mechanisms – the courts, the RSPO, and informal mediation facilitated (mainly) by local authorities – are largely ineffective. While courts and the RSPO are difficult to access and distrusted by communities, informal mediation by authorities often fails due, partly, to a lack of carrots and sticks to pressurize companies but also, in some cases, due to the close relationships between local authorities and companies. In that light we proposed that more neutral mediation boards are urgently needed. We also noted that the tendency of local police to side with palm oil companies often leads to intimidation and criminalization, which infringes on the political rights of Indonesians.

While courts and the RSPO are difficult to access and distrusted by communities, informal mediation by authorities often fails due, partly, to a lack of *carrot and stick* ”

Another reason for the intractability of palm oil conflicts is that communities often lack the considerable skills, organizational capacity and stamina needed to address their grievances effectively. Those communities that achieved some sort of remedy for their grievances often struggled for years, managed to employ political connections as well as NGO support, and could maintain the unity of the community during, on average, almost a decade of struggle. Most communities lack such connections and skills, and their unity is easily

Communities often lack the considerable skills, organizational capacity and stamina needed to address their grievances effectively. ”

undermined by the material incentives offered by companies. In that light we argued for the need for more NGO support for affected communities. At present the NGO's that are active in our four provinces lack the capacity to support all affected communities: we found that only in 29 (19%) of cases communities receive intensive regular assistance from NGOs. Yet we noted that with NGO support,

communities are more likely to access the courts or RSPO's complaint system. We also found indications that NGOs are relatively successful as mediators between companies and communities. In other words, our findings suggest NGO support for communities, in the form of legal aid, community organizing or mediation, could help make palm oil conflicts less intractable.

The rapid expansion of palm oil plantations poses major challenges for Indonesia. Not only is the character of rural landscape changing rapidly, but the large-scale conversion of land into plantations has been accompanied with widespread conflict between communities and palm oil companies. These conflicts are causing considerable damage. Communities are losing access to the land on which they depend for their livelihoods, while widespread protests are not only raising operational costs, but also create considerable reputational damage. At the same time the regional economies are suffering because of the regular exclusion of communities from the profits generated by the palm oil sector. In the light of this considerable damage caused by the regular failure of communities and companies to reach effective agreements, more energy, efforts and creativity is urgently needed. Our study of the trajectories of 150 conflicts yielded a number of recommendation in this regard: after studying both successful and failed conflict resolution, we ended our report with a number of practical suggestions, ranging from the setting up of mediation boards, better monitoring of FPIC processes and the implementation of joint-venture schemes, as well as more efforts to end the impunity for companies that violate regulations and, conversely, the criminalization of community leaders.

While such measures require effort, money and political will, the challenges posed by the rapid expansion of oil palm plantations merit such commitment. The palm oil sector is important for Indonesia's economy. That importance cannot be an argument for maintaining the status quo and ignoring current problems. On the contrary, precisely because the palm oil sector for Indonesia is so important, more proactive steps need to be taken to address the suffering and damage caused by the intractability of palm oil conflicts. This report was written with the aim of contributing towards that end.

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Annex

Annex 1 . . Cases with relatively successful outcomes for communities

No.	Name of successful cases	Main grievances	Process of conflict resolution	Duration of conflict	Outcome
West Sumatera					
1	PT Mutiara Agam	Land taken without consent, inadequate compensation	This case had a lengthy trajectory in court, ending in a supreme court ruling in favour of the community. When the company delayed the implementation of the ruling, mediation facilitated by police officials led to an agreement.	15 years	The community received 202 Billion rupiah compensation and the company acknowledged that disputed land belongs to the adat community.
2	PT Agro Masang Plantation (Valentine)	Inadequate profit sharing (plasma)	Successful mediation was facilitated by DPRD politicians.	About a year	The company agreed to re-measure the land and provide in total 226 ha of land as plasma to the community.
3	PT Karya Agung Megah Utama	Inadequate compensation, land taken without consent	A mediation process, partly facilitated by the police, led to an agreement.	1 year	The company granted the community's demand for using their customary land and agreed to pay 250 million per year.
4	PT Agro Masang Plantation (MSJ)	Inadequate profit sharing (plasma)	The community won a case in court.	3 years	The community got their 600-ha-plasma land back.
5	PT Permata Hijau Pasaman 1	Inadequate profit sharing (plasma), illegal planting boundaries, and land taken without consent	After this case was reported to the RSPO after several unsuccessful rounds of mediation, mediators of the Impartial Mediator Network (IMN) managed to broker an agreement between the community and the company. Several (international) NGOs supported the community.	20 years	In the agreement, the company promised to provide plasma land, acknowledged land claims, pay a one-time compensation of 1.2 billion rupiah, employ more locals and pay 25 million rupiah per month to community institutions.

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No.	Name of successful cases	Main grievances	Process of conflict resolution	Duration of conflict	Outcome
West Kalimantan					
6	PT Agronusa Investama	Land taken without consent	Structured mediation by CAO-IFC led to agreement that was subsequently closely monitored by a monitoring team.	About 1 year	<ul style="list-style-type: none"> • Development of smallholder (plasma) plots (403 ha) • Compensation (300.000 rupiahs/ha) • Payment of village development fund (4 million/year for 5 years) • Restoration of community forest (327 ha).
7	PT Agro Wiratama	Overlapping claims/boundaries, leading to refusal of new plantation	The support of RSPO and NGOs helped to facilitate a successful negotiation process.	About a year	Following an agreement between company and community, District Head (Bupati) made a decree to enclave over 1000 ha of the community's land from the company's concession.
8	PT Palmdale Agroasia Lestari Makmur	Poor implementation of plasma that the company promised to community	The court accepted the accusation that the company failed to fulfil its promise through the plasma scheme.	About 10 years	Pontianak High Court ruled that PT Palmdale pay compensation to the community 5 Billion rupiahs. However, currently the company is still applying for 'kasasi' to MA.
9	PT Kayung Agro Lestari	Adat land taken without consent	After an advocacy by a local NGO, negotiation between company and community was successful in resolving the conflict. Company eventually agreed to return the land claimed by the community.	2 years	The company returned land claimed by the community.

No.	Name of successful cases	Main grievances	Process of conflict resolution	Duration of conflict	Outcome
Riau					
10	PTPN V and Senama Nenek Community	Land taken without consent	Initially the community petitioned DPRD, Bupati, and the Governor without meaningful results. The case was further brought to KOMNAS HAM and DPD RI. The conflict ended after President Joko Widodo issued a decree to return the land to the community.	25 years	2,800 ha of land was returned to the community
11	PT Peputra Masterindo and Sungai Jalai Community	Land taken without consent and problems with profit-sharing (plasma)	Early mediation facilitated by the police and DPRD did not lead to a resolution. The case ended only after the Village Head negotiated with the company.	14 years	Those who can provide proof of ownership of tanah pusaka may continue to work on the disputed land.
12	PT Citra Riau Sarana and Pangean Community	Land taken without consent	Community reported the case to RSPO and the CAO IFC/World Bank, which recommended the company to hold mediation with the community. By appointing Scale Up (NGO) as a mediator, the company and community eventually reached a resolution agreement.	6 years	The company provided 225 ha of palm oil plots to the Pangean community.
13	PT Inti Indosawit Subur and Ukui 2 Community	Land taken without consent	The community initially brought the case to the district, provincial and supreme courts only to find that their claims were declined by the court. The conflict parties reached an agreement after KOMNAS HAM mediated the conflict.	24 years	The community received compensation from the company after mediation by KOMNAS HAM.

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No.	Name of successful cases	Main grievances	Process of conflict resolution	Duration of conflict	Outcome
14	PT Sumber Jaya Indah (SJI) Nusa Coy and Ulak Patian Community	Problems with profit-sharing (plasma), labour conditions, pollution and environmental effect	Mediation facilitated by Dishutbun Rokan Hulu did not lead to an agreement. The Komisi IV DPRD then recommended sanctions against the company. While subsequent negotiations failed, the company did agree to return (some) land.	5 years	The company is willing and in the process of handing over 375 Ha of KKPA plots to the community.
Central Kalimantan					
15	PT. Usaha Handalan Perkasa	Land taken without consent	Mediation facilitated by local civil servants, with support from NGO's (Walhi, Pusaka, YPD), and helped by community's political connections	7 years	The company let the community reclaim their disputed land (but without a written agreement)
16	PT. Hutan Sawit Lestari	Land taken without consent, Problems with profit sharing (plasma)	Mediation facilitated by the district head with help from NGO.	13 years	Mediation resulted in an agreement to provide and arrange plasma via Koperasi Jaya Makmur. The community did not manage to reclaim their land.
17	PT. Gemareksa	Land taken without consent, Problems with profit sharing (plasma)	Case brought to court by the community. The lower court ruled in favor of the company, however the MA ruled that the villager was the rightful owner of the land.	8 years	After a ruling of the Supreme Court 24.8 ha of land was returned to the villager. However, the problems with plasma sharing have not been resolved
18	PT. Rezeki Alam Semesta Raya	Land taken without consent, loss of access to village and fields	The villagers have occupied the land. Subsequent lobbying of politicians did not yield structural solution.	8 years	The villagers have occupied and harvested the disputed land since 2017. However, the company is still operating despite revocation of their operation license.
				Average: 9 years	

Annex 2. Sources of this study

	Central Kalimantan	Riau	West Kalimantan	West Sumatra	Total
Interviews (May 2019-May 2020)	91	86	53	53	283
Newspaper articles	216	123	168	54	561
Online sources	190	273	143	71	677
Government documents	26	15	10	112	163
NGO and community documents	49	16	27	62	154
Academic studies	2	16	5	4	27

Annex 3. Case selection and total number of cases included in this study

	Long list*	Selected*	Dropped (after selected) *	Included in this study*
Central Kalimantan	218	80	35	45
West Kalimantan	69	62	30	32
Riau	226	70	22	48
West Sumatera	31	31	6	25
Total	544	243	93	150

*Jumlah kasus

This report presents the results of a first-ever study of general patterns and outcomes of oil palm conflicts in Indonesia. Using detailed reports based on extensive documentation on 150 conflicts between rural communities and palm oil companies in Central Kalimantan, West Kalimantan, Riau and West Sumatra, we discuss and analyze the grievances that spark conflicts, the strategies that communities and companies adopt to deal with these conflicts, as well the outcomes of these conflicts. Our main aim in engaging in such a broad analysis is to evaluate the effectiveness of the conflict resolution mechanisms that communities and companies currently rely on. At present, conflicting parties turn to three main mechanisms to address their grievances: adjudication by the courts, informal mediation and negotiation facilitated by local authorities, and the complaint system set up by the Roundtable on Sustainable Palm Oil (RSPO). In this report we evaluate the usage and effectiveness of these mechanisms and provide a number of recommendations on how the resolution of palm oil conflicts can be improved.

