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# インドネシアにおける土地権と紛争

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## 編者序文

中島成久（法政大学国際文化学部教授）

このCIASディスカッションペーパー第15号『インドネシアにおける土地権と紛争』は、編者を代表とする3年間（2007年4月～2010年3月）の研究プロジェクトの中で、特にインドネシアの土地権と紛争に関する研究の成果をまとめたものである。

2007年4月から2009年3月までは、「アジア太平洋におけるリージョナリズムとアイデンティティの現在——地域社会、国家、地域間協力の歴史的／社会文化論的研究」というテーマで研究を行なった。メンバーは、法政大学大学院国際文化研究科を中心に以下の方々である。中島成久（代表）、青山 薫（2008年度）、今泉裕美子、川村 湊、熊田泰章、曾 士才、高柳俊男、南塚信吾、山本真鳥（法政大学経済学部教授）、吉村真子（法政大学社会学部教授）。

2009年4月から2010年3月までの1年間は、過去2年間の研究をさらに深化させるために「土地権、環境、暴力——インドネシアにおけるアブラヤシ開発をめぐる諸問題」というテーマで研究を行なった。メンバーは次の方々である。中島成久（代表）、阿部健一（地球研教授）、安部竜一郎（立教大学他非常勤講師、JANNI〔日本インドネシア NGO ネットワーク〕運営委員）、岡本幸江（翻訳家、JANNI 運営委員）、永田淳嗣（東大准教授）、松野明久（阪大教授、JANNI 代表）、吉村真子（法大教授）。アカデミズムと NGO 活動を精力的にやっている方々との協力のもとにこの課題を追求していく方針を立てた。

本プロジェクトで用いる「リージョナリズム」とは、国家をディスインテグレーションに導く誘因という意味で用いている。その基本的なイメージは、開発により大きな影響を受ける少数民族民族集団の言挙げである。もっと政治学的な意味でのリージョナリズムに関する研究を期待されている向きもあるかとは思いますが、たとえば、インドネシアではアチェとか東チモールなどの専門家は、最初から加えていないので、そうした問題は研究の開始段階から扱う意図はなかった。

このような研究プロジェクトの活動の柱として、国際ワークショップを3回実施したが、代表の中島の研究テーマである「インドネシアの土地紛争の研究」をより深く追求した。それにより、この分野での世界の研究水準を知ることができ、関連する研究者・NGO活動家との交流も実施できた。さらに、研究会のメンバーを中心とした6回の研究会を実施した。残り5回の研究会での発表は、本ディスカッションペーパーの続編として、『シンボルとしての土地——アジア太平洋におけるリージョナリズムとアイデンティティ』というタイトルで出版する。

このCIASディスカッションペーパー15号には、3年間の研究期間中に実施した3回の国際ワークショップのためのペーパーと、編者による第1回研究会での発表をもとにした原稿を掲載する。関連するワークショップと研究会の詳細は以下の通りである。会場は、第2回以下のワークショップ・研究会は、すべて法政大学富士見キャンパスで行なった。

本ディスカッションペーパーの校正時間が十分に取れなかったために、英文執筆者の4名分の校正は著者との連絡不足でできなかった。内容的に不本意な表現が見られるかもしれないが、この間に事情を勘案され、ご宥恕願いたい。

■第1回国際ワークショップ、2007年12月1日、3日

テーマ：‘Peoples’ Right under the Palm Oil Boom in Indonesia’ (アブラヤシブーム下インドネシアにおける民衆の権利) ①、②

会場：法政大学富士キャンパス (12月1日)、京大地域研 (12月3日)

講師：

ノルマン・ジワン Norman Jiwan 氏 (「サウィット・ウォッチ」アブラヤシ開発ウォッチ)

アンディコ Andiko 氏 (「HUMA」エコロジーと慣習法に基づく法改革連合)

■第2回国際ワークショップ、2009年1月17日

テーマ：「スハルト退陣後のインドネシアにおける土地紛争」

講師：

アントン・ルーカス Dr. Anton Lucas 氏 (フリンダース大学社会科学部上級講師、アジア研究センター長)

“Struggling for land or money? the Cimaacan land dispute during the era of reformasi 1998-2008”

アフリザル Dr. Afrizal 氏 (アンダラス大学社会政治学部上級講師)

“Large-Scale Palm Oil Plantation Development, Recognition of Local People’s Customary Rights and Agrarian Conflicts in Indonesia After the Fall of President Soeharto: A Lesson Learned From The Province of West Sumatra and Riau”

■第3回国際ワークショップ、2009年11月29日

テーマ：「土地権、環境、暴力——インドネシアにおけるアブラヤシ栽培に関する諸問題」

講師：

ジョン・マッカーシー Dr. John McCarthy 氏 (オーストラリア国立大学講師)

「インドネシアのアブラヤシ地帯における農民発展のダイナミックス」

“Coming to Fruition: Understanding the dynamics of agrarian development in the Oil Palm districts of Indonesia”

ウタミ・デワイ Dr. Oetami Dewi 氏 (インドネシア共和国社会省企画局)

「西カリマンタンのアブラヤシ農園における地域住民の抵抗」

“Resistance of Indigenous People (Plasma Farmer) on an Oil Palm Plantation in West Kalimantan”

■「リージョナリズムとアイデンティティ」第1回研究会、2007年6月22日

テーマ：「祝福されるオランダ植民地支配——インドネシア、西スマトラ州の共有地返還闘争における過去の認識」

講師：中島成久 (法政大学国際文化研究科)

「開発の時代」と呼ばれる「スハルト新秩序体制」(1966-1998)では、「開発」のために伝統的な土地権が「公共性」の名の下に、つぎつぎに従来その土地を管理運営してきた住民の手から奪われていった。スハルト時代には、そうして強権的に奪われていった土地への住民の権利主張はしばしば激しい暴力の下、沈黙を強制された。ところが、1998年5月スハルトの辞任とともに始まった「改革」時代になると、それまで抑圧されてきた住民が自らの権利を主張し、正当な補償を要求し始めた。

本ディスカッションペーパーで取り上げた問題は、インドネシアにおける慣習法に基づく伝統的な土地権の管理と資源運用、およびそれにかかわる紛争の問題である。本ディスカッションペーパーでは、土地紛争に関する1回のワークショップと1回の研究会での発表と、アブラヤシ開発に関連した2回の国際ワークショップの記録を収録した。

改革時代の土地紛争の中にアブラヤシ開発にともなう紛争は含まれるが、両者は紛争にかかわる土地権と紛争の始まりにおいて、差があり、そこに注意を向ける必要がある。

いわゆる土地紛争の場合、オランダ植民地時代に「永借地権」(Erpacht)の設定されていた土地が多い。そのような意味で、慣習法上の伝統的な土地権のおよぶ土地である。これに対して、アブラヤシ開発の場合、1968年の「森林法」で国有地とされた「森林」が多い。そこは「無主の地」であることは稀で、「先住民」が住んでいて、彼らの土地権、先住民権が犯されたケースが多数見出される。また、多くは1980年代以降紛争が出現している。これは改革時代に入っても、基本的にはそのまま続いている、と見た方がいい。

インドネシアのアブラヤシ栽培は、1980年代に急速に拡大した。アジア経済危機後一時ブームは下火になったが、その後再び拡大を続け、最近ではマレーシアを抜いて世界最大のCPO(アブラヤシ粗油)生産国となった。年間800万トン以上を生産し、更に拡大の兆しがある。

アブラヤシは収穫後24時間以内にCPOに加工されないと商品価値が劣化する。そのため、アブラヤシ栽培が採算に合うには、1か所で1万ヘクタール程度の土地が必要である。しかし問題はその土地がどこから来るのか、ということである。多くの場合、スマトラやカリマンタン、さらに最近では西パプアの森林(泥炭湿地林)がアブラヤシ開発のために切り開かれている。土地がアブラヤシ栽培に向かない処もある。また、地元の住民の同意を得るケースは少なく、土地収用に際する補償も十分ではない。多くのプランテーションが何らかの紛争を抱え、その対策のためにも軍や警察を治安要員として利用していて、住民を監視威嚇している。

第I部、第II部、第III部の主要なテーマは、アブラヤシ開発にともなう諸問題である。

ジョン・マッカーシー氏、ノルマン・ジワン氏、アンディコ氏は、1998年以降のインドネシアの「改革」時代の「地方分権」時代における、アブラヤシ開発を地方政府レベルでの資源管理政策の在り方を比較検討している。地方自治時代になって、県レベルで開発政策が決定できるようになった。スハルト時代の中央集権化により、上からの開発政策が直接住民に押し付けられてくるが多かったが、地方自治時代においては、より地域住民の参加を得て、民衆的な開発と資源管理がなされると期待された。しかし、現状では「裏切られた」と言っていいたろう。ただ、リアウ州のシアック県では未利用の「国有地」が小規模農民に付与され、また開発計画の策定でも徹底的な住民参加の原則が守られて住民の開発へのインセンティブは非常に高い。その結果、環境などの面にも配慮した開発がなされているという。こうした事例もあるので、改革は完全に失敗に終わった、と断定するには早すぎるだろう。

ウタミ・デウィ氏とアフリザル氏は、アブラヤシ開発の負の側面に注目している。デウィ氏の調査は、1970年代半ばから始まった政府系農園による「中核農園-プラスマ農園」プロジェクトの西カリマンタンでの詳細な追跡調査である。「中核農園-プラスマ農園」とは、その後のインドネシアにおけるアブラヤシ開発のモデルとなった方式である。

民間企業や政府系農園が「中核」となって農園を開発し、土地を提供してくれた地域住民に土地の提供と引き換えに平均2ヘクタールの「プラスマ（小規模）農民」とアブラヤシ開発に参加してもらおうといういわゆる「inti-plasma」計画は、アブラヤシ国営農園が開発の主体であろうと、民間資本が主体であろうと、その経営形態はほとんど変わらない。アフリザル氏の発表は、西スマトラとリアウ州でのミナンカバウ系住民の土地権の問題を検討している。

アントン・ルーカス氏の発表は、インドネシアにおける慣習法に基づかない土地権の闘われたケースである。外島と異なりジャワでは、共有地権はほとんど消滅し、小規模土地所有制が卓越していた。植民地時代には、1870年以降「永借地権」（Erapcht）が設定され、西ジャワでは茶農園が大規模なプランテーションを発達させた。インドネシアの独立後、そうした土地は近隣農民の「占有」する所となった。こうした土地は周辺農民の共有地ではないが、長年農民が耕作してきたという歴史的な事実は存在した。

しかしながら、1960年の「土地基本法」の成立により、事態は大きく変わった。「土地基本法」は人びとのアダットに基づく「共有地権」を認めているが、「それは公共の利益のために制限される」と規定された。

「永借地権」の設定された土地は事業権が設定されると「土地基本法」で規定されたが、残存永借地権の残存期間に限り有効か、「土地基本法」施行後20年間経過すると、事業権は失効する、ともされている。「土地基本法」成立と前後して、ジャワを中心として「土地改革」（Land Reform）の動きが急速に高まった。インドネシア共産党の強い影響力の下、オランダ時代に「永借地権」が設定された土地を土地のない農民に分与しようという運動であった。

しかし、1965年の政変を機に、「公共的な目的のため」に多くのアグリビジネスに事業権が与えられ、「不法占拠」する農民はそうした土地から追い出された。ルーカス氏の報告するチマチャンのゴルフ場は、グデ・パングランゴ国立公園に接する17haという「狭い」ゴルフ場である。独立以後、旧永借地権の設定された土地で、農民が有効に管理している場合、「土地改革」により農民に分配される方針であった。また農民はローカルのレベルでの土地権を意味する「納税証明」を受け取ってもいた。それでも、1987年ゴルフ場開発は強行された。

1998年のスハルト退陣後、土地を「奪われた」農民がゴルフ場に入り、耕作を開始した。しかし数年後、土地権を持つ企業が安い補償金で農民を追い出し、再びゴルフ場の経営に乗り出した。住民の闘いは表面的には敗北したが、若者を中心にグデ・パングランゴ国立公園のエコツアーという運動にその闘いの火は受け継がれている。

中島成久は、西スマトラにおける共有地における土地紛争を検討し、ゴム、アブラヤシ、牧場などの開発の対象にされた共有地の返還を求める住民が、スハルト時代よりもオランダ植民地時代を「高く」評価する背景を分析している。オランダ時代の「永借地権」とミナンカバウ社会のアイデンティティ形成を歴史人類学的に検討している。

中島成久編

Nakashima, Narihisa(editor)

『インドネシアにおける土地権と紛争』

Land Right and Conflicts in Indonesia

編者序文 中島成久

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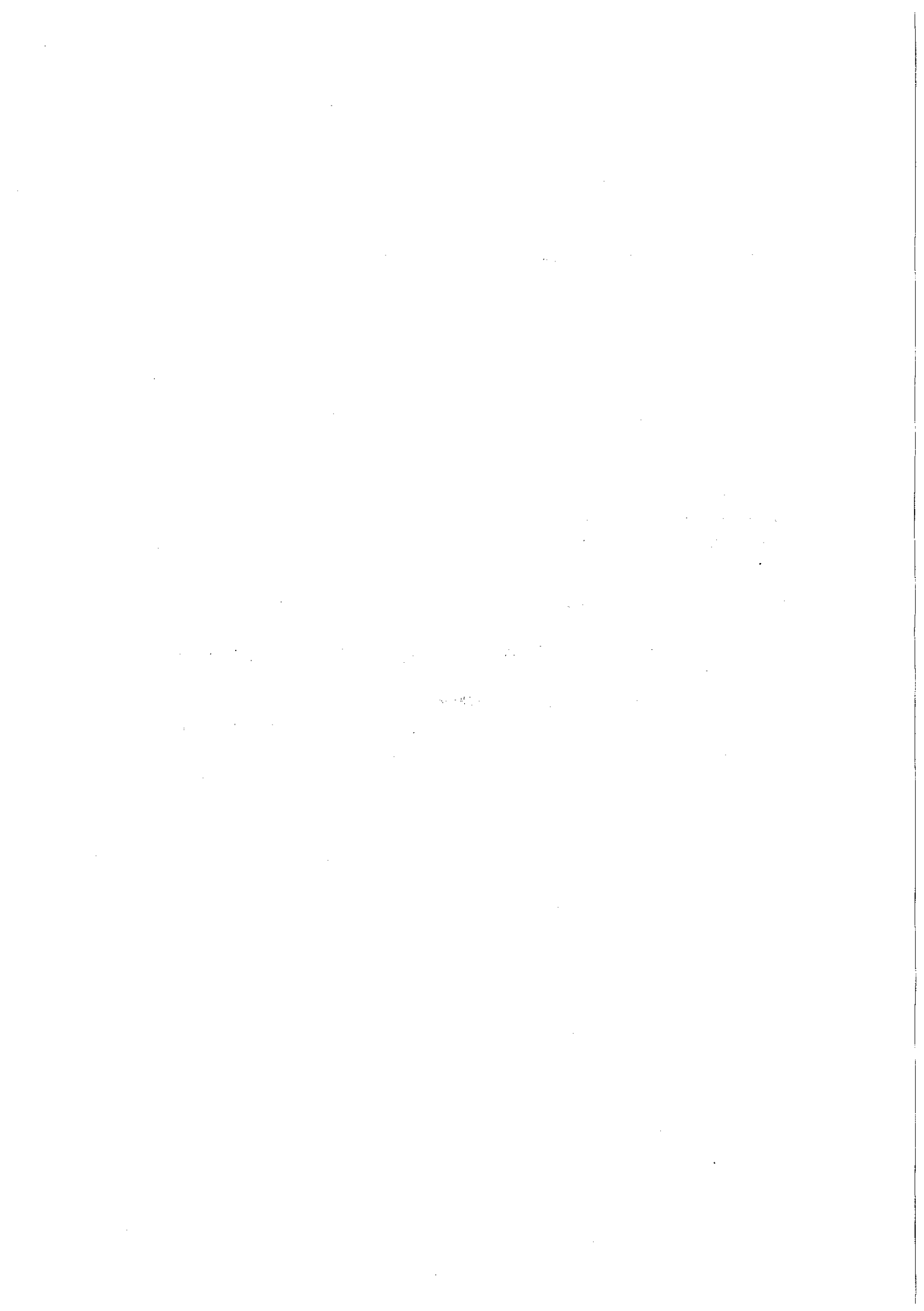
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## Part I Land Right, Environment and Violence: Problems of Oil Palm Development in Indonesia

### Chapter 1 Coming to Fruition: Understanding the dynamics of agrarian development in the Oil Palm districts of Indonesia<sup>1</sup>

John McCarthy, Piers Gillespie, Zahari Zen

#### Summary

Current changes in globalized agriculture raise critical questions regarding the link between rapid agricultural development and escalating inequality, social and political tensions, environmental problems and climate change impacts. This paper considers the Indonesian case. Here, increasing global demand for vegetable oils and biofuels has led to an intermittent oil palm boom, with the area under oil palm doubling in a decade and more than eight million hectares mapped for development.

With this commodity boom offering new opportunities to rural landowners, an optimistic view suggests that, with the right assistance, the poor may farm their way out of poverty. State policy posits oil palm cultivation as an answer to the “agrarian question” concerning how economic development can be brought to the country side. However, as oil palm expansion involves the transformation of large scale agrarian landscapes into areas of intensive oil palm monocultures, it occurs at the nexus of a set of perplexing questions regarding poverty, livelihood security, resource conflict and environmental sustainability.

Drawing on field studies in three Indonesian oil palm districts – in the Sumatran provinces of Riau and Jambi together with West Kalimantan on the island of Borneo – this paper examines the salient processes shaping outcomes in these different contexts. It examines how state policies and modes of intervention, corporate strategies, local politics and clientelism, the spread of commodity markets for oil palm, as well as land institutions and landowner agency articulate in three different contexts. It argues that, despite a large range of contextual variation, an underlying set of processes shape outcomes leading to characteristic trajectories of agrarian change.

For a number of decades state policies have promoted contract farming that twins the expansion of corporate agribusiness with the development of smallholder ‘plasma’ peripheries. This model is clearly adapted to the specific commodity characteristics of oil palm. However, asymmetrical power relationships shape the institutional contexts where these schemes are implemented, combining with the insecure nature of indigenous tenurial rights to weaken the bargaining position of local landholders and the distributional outcomes that emerge.

As seen in the Jambi case, in a highly uneven fashion, the earlier phase of state supported smallholder schemes led to pro-poor outcomes, promoting the emergence of significant numbers of “progressive” smallholders in particular Nucleus Estate Schemes. However, as seen in the West Kalimantan case, over time the modes of state support for contract farming schemes have shifted. With the gradual withdrawal of the state from direct involvement in agribusiness-smallholder ‘partnerships’ the terms of smallholder engagement with oil palm have shifted and the outcomes for

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<sup>1</sup> Paper presented at International Workshop on “Land Right, Environment and Violence—Problems of Oil Palm Development in Indonesia,” at Hosei University, Tokyo on November 28, 2009.



smallholders declined. At the same time, as seen in the Jambi case, the spread of commodity markets for oil palm has followed the liberalization of plantation laws. With particular rural classes better positioned to make use of these opportunities, sharp agrarian differentiation has occurred between those able to take up oil palm and those who are effectively excluded.

This paper advances three sets of arguments. First, we explain the substantial variation both in arrangements and outcomes across and within jurisdictions in terms of the confluence of broad structural features – particularly the commodity specific characteristics of oil palm, broad policy settings, predominant agribusiness strategies and the tenurial insecurity of local landowners – with contingent local factors – principally local geographical and temporal characteristics, the strategic interests of powerful local state based actors, the capacity of the local state, and village capacities for agency and collective action. Second, we identify two distinctly different modes of coordinating agricultural activities – through evolving public-private ‘partnerships’ or through spreading commodity markets. We argue that each shapes the possibility of smallholder ‘upgrading’ into oil palm production in different ways, leading to different distributions of income and risk among the actors involved and culminating in distinct patterns of agrarian change. Third, given the dispersed nature of capacities required for pro-poor outcomes, we argue that effective ‘local governance’ depends upon the capacity of the local state to coordinate policy networks that provide the policies and the local institutional support necessary for pro-poor outcomes. In contrast, we argue that current ‘partnership’ models in Indonesian oil palm characteristically under-provide the state oversight and support required and hence produce regressive outcomes for local landowners.

If better outcomes are to emerge, the Riau case suggests, there is a need for re-thinking agrarian policy. Pro-poor outcomes are more likely to occur in the presence of re-configured forms of state intervention that combine the provision of support for smallholders who would otherwise be excluded with the underwriting of more secure forms of land tenure.

**Key words:** oil palm, biofuels, agrarian change, governance, Indonesia, rural development

## Introduction

Over recent decades an agricultural transformation has altered agricultural land uses across Asia. This transformation entails the movement away from extensive forms of agriculture integrating subsistence elements alongside cash crop production to more intensive production systems, including oil palm. In Indonesia, where the roots of this transition stretch back to the colonial period, local smallholders now follow on the heels of state supported plantation expansion and development schemes, cultivating this African crop in greater numbers than ever before. With an average increase in vegetable oil prices of more than 97 percent during the boom years between 2002 and early 2008, global demand has largely driven these changes (FAO, 2008). At the same time, the biofuel policies of developed countries have sought to enhance energy security and mitigate climate change, while ostensibly supporting agriculture and rural development inflating the price of palm oil, a key biodiesel crop.<sup>1</sup> Indonesia responded by increasing the area under oil palm from 4.2 million hectares in 2000 to 6.2 million hectares, with millions of additional hectares either in transition or set aside for further development.<sup>2</sup> This boom has transformed livelihoods and ecosystems across large swathes of the archipelago's outer islands.

These developments resonate with the deep structural shifts taking place in globalized agricultural systems where commercial farming generates higher returns by producing a higher quality and a greater quantity of agricultural commodities within rapidly consolidating global food chains (Vorley and Fox 2004; Vorley, Fearn et al. 2007). The optimistic view is that globalized agribusiness – including for biofuels – can offer new opportunities to swathes of the rural poor who, with the right assistance, may 'farm their way out of poverty' (World Bank 2007). In other words, oil palm could provide an answer to the classical 'agrarian question' of how economic development can be brought to large areas of the country side. Accordingly, policy makers and international development agencies focus on the need to provide rural communities with the capacity and resources to benefit from integration into the global economy (Griffin, Khan et al. 2002; UN Millennium Project, United Nations et al. 2005).

However, there are significant risks. Large scale and well documented environmental problems are associated with

agro-industrial development associated with oil palm as well as agricultural expansion into forested frontiers (McCarthy and Zen (in press); Donald 2004; Sandker 2007; Shield 2009; Tan 2007). Further, production surpluses generated from selling agricultural products to global markets haven't always translated into higher incomes for the poor. Analysts have asserted that the power of global agribusiness actors in 'buyer-driven global food chains' in liberalized and deregulated markets together with other associated changes often marginalise smaller farmers, relegating them to the status of residual supplier (Vorley, 2004). They also worry that the drive to large scale farming, especially for biofuels, might push the poor off their land, replace food crops, drive up food prices, and lead to more poverty and hunger (ICRISAT 2007). Some scenarios suggest that the majority of impoverished smallholders face the inevitable alternatives of impoverishment, finding off-farm livelihoods or becoming migrant labourers (Bryceson 1996; Vorley and Fox 2004).

The literature on agrarian transitions suggests that structural adjustment, market liberalization and the on-going capitalist transformation of agriculture can lead to a variety of outcomes. These include renewed proletarianization and land concentration, the intensification of social differentiation and the transitions away from strictly agrarian modes of livelihood and/or enhanced economic security for farmers able to embrace the opportunities provided by embracing the global economy (Bryceson and Vali 1997; Rigg and Nattapoolwat 2000). Studies in other parts of the world (Kay 2002) suggest that changes in agriculture in developing countries do not follow a unilateral path; rather we tend to see the emergence of a 'mosaic of social, economic and spatial changes' (Fold; Wilson and Rigg 2003). Global processes are complex and have diverse impacts across different locales. While global demand can lead to the transformation of landscapes, livelihoods and social relations, often this does not occur in an expected fashion. Rather, transformations involve cumulative, unplanned processes shaped by local socially meaningful practices that occur at the intersection of transnational pressures and localized constellations of power (Li 2002). Empirical work that seeks to explain processes of change as they are experienced at the local level is required to understand the specific effects of these changes (Rigg and Nattapoolwat 2000) At present it remains contested how the Indonesian transition fits into these scenarios.

This paper will consider the following questions: What characteristic processes of agrarian change are associated with oil palm? How do processes – related with state policy interventions, corporate strategies of accumulation, the agency of

local landowners and entrepreneurial classes, and land institutions – work together in oil palm frontiers to drive these processes? Third, how are specific modes of public and public-private governance leading to particular outcomes?

### **Framing processes of agrarian change**

The analysis of agrarian change requires unpacking the complex encounters between outside capital, state policies and modes of intervention, local level land institutions and landowner agency. In other words, we need to understand a number of distinguishable processes and comprehend how they work together to generate characteristic patterns of agrarian change. A key to understanding agrarian change remains how the 'production, exchange, and consumption of commodities are constitutive of social relations' (Bridge and Smith 2003). In particular, commodities tend to be suited to particular institutional forms. These forms tend to correspond with the pathways through which an agricultural commodity is taken up and inserted into specific circuits of accumulation, and how it fits with specific state agendas and clientelist contexts. Accordingly processes tied to particular institutional arrangements tend to culminate in characteristic changes in agrarian structures (e.g. Little and Watts 1994 ; Li 2002; Sikor and Vi 2005).

A focus on the state remains critical (Sikor, T and Muller, D, 2009). States can govern access to productive resources through territorialisation and other strategies that promote enclosure and privatization of large expanses of land (Vandergeest and Peluso 1995; Nevins and Peluso 2008). Moreover, as seen in 'nucleus estate schemes' (NES) and their derivative 'partnership' models, states can also attempt to ensure that rural landowners reap the benefits of international agricultural markets by addressing the problems of governance and oversight, capital, knowledge, marketing skills and economy of scale facing the rural poor (Kay 2006). Yet, in many respects, until recently the state remained largely absent from agrarian and forested spaces in South-East Asia that remained politically and physically remote (Hirsch and Warren, 1998). Even where the state became important, over the last decades the reform of agricultural policy has often involved state withdrawal from direct intervention at the 'interface between macro-economy and rural household decision making' (Ellis 1998). Recent research has shown how the state may not be essential to processes of agrarian change associated with the spread of commodity markets lead agrarian change. Here,

the growth in demand for agricultural products and in the supply of inputs and service connected with shifting agricultural markets and technologies leads to the spread of commodity markets (Sikor and Vi 2005: 408). While this may require little involvement from the state (Li, 2002, 2008), there is considerable diversity regarding how commodity markets for specific products may emerge. Different histories of state involvement and commodity production 'condition practices and strategies' in distinct ways. Accordingly, this can lead 'to different distributions of income and risk' among the actors involved (Sikor and Vi, 2005 p409) and culminate in distinctly different patterns of change.

The 2008 World Development Report argued that governance remains critical to pro-poor outcomes. With the reduced role of the state, these questions have been reframed by a literature concerned with 'local level governance' – how networks of public and private sector institutions may enable, facilitate or constrain changing production processes. To be sure 'public governance' by local and regional government agencies can support the 'upgrading' of agricultural production (Humphrey and Schmitz). However, policy networks also play a critical role, acting as 'mechanisms of political resource mobilization in situations where the capacity for decision making, program formulation and implementation is widely distributed or dispersed among private and private actors'. In such situations policy resources may be too 'dispersed and context (or actor) dependent', ensuring that a network is 'the only mechanism to mobilize and pool resources'.<sup>3</sup> From this perspective successful regions tend to emerge where governance systems 'embrace enabling and facilitating institutions both within the local state and civil society'.<sup>4</sup> Here, local industrial policy can play a critical role. For instance, where policies underpin the 'development and rapid diffusion of knowledge' (P8), mobilizing significant resources, creating infrastructure and supporting services, training, marketing and information and the provision via state-private partnerships, it can leverage a region into 'a developmental pathway characterized by rising skills and product quality' (Humphrey and Schmitz P9).

Another critical focus of development policy is land tenure, which is often seen as a key to facilitating more intensive production, improved income distribution, the provision of safety nets for the poor, and promoting sustainable resource management (DFID 2002). For some, certified land tenure has become the key to the provision of credit and to access to capital for the poor (de Soto 2000). Others have argued that the recognition of 'customary' or 'traditional' land rights

remain fundamental to tenurial security and equitable rural development (Fitzpatrick 2005). Yet, both these policy narratives have been challenged in the literature (Cousins and Claassens 2006). Nevertheless, state policies and poorly functioning land institutions often continue to leave the rights of the poor at risk and contribute to corruption and social conflict. Given that wide ranging agrarian reform tends to occur only in exceptional circumstances that involve considerable conflict, pragmatically orientated policy discussions and advocacy have bypassed difficult questions of agrarian reform and sought to improve existing governance processes for land tenure. A key focus here has been on how to provide procedural and distributional justice for poor rural populations facing rapid agrarian transitions, including by providing for free, prior and informed consent during processes of tenurial change (Cotula, Dyer et al. 2008).

The agency of local actors is an important factor in outcomes. Local landowners react to new opportunities and become agents of market formation, albeit often through the cumulative unintended processes that connect farmers to large economic forces (e.g. Sikor and Vi 2005; Li, 2002). Change is often led by the particular rural classes able to seek out opportunities offered by particular commodities, market opportunities and state interventions, exploiting these advantages to push processes of agrarian differentiation. A key problem remains that of how local agency articulates with local forms of organization and underpin the collective action required 'to identify, halt, or manage the process of agrarian differentiation' (Li 2002: 430).

This paper explores how social, political and economic relationships work together to shape outcomes in a highly uneven, context specific fashion. Using extended case approaches and qualitative methods (Burawoy 1998 ; Flyvbjerg 2001; Small 2009), we derive our conclusions from three contrasting sites selected to elucidate very disparate situations within the agrarian mosaic of the oil palm crop in outer island Indonesia. Based on Flyvbjerg's notion of the importance of the paradigmatic case, the individual case studies were chosen to represent innovative, interesting and diverse schemes and outcomes (Flyvbjerg 1991, 2006). The sites were selected to include a policy/scheme, the Jambi case, where, following a transition from state-led development to a laissez-faire situation, landholders attempt to engage with oil palm outside a smallholder scheme in a context shaped by the unbounded extension of commodity markets for oil palm. This was contrasted with a plantation developed under the modified 'partnership' model, the Sanggau case. Here,

a resource-poor district government set out to facilitate palm oil development with a policy model that offers attractive terms to investors with minimal effective state engagement. The third site, the Riau case, represents a return to an earlier era of planning where the state set out more directly to use oil palm as an instrument of pro-poor policy by investing in supporting oil palm developments targeted for poor landowners by providing technical assistance and low interest credit for landowners under the core-periphery nucleus-plasma modality.<sup>5</sup> The case studies used qualitative methods that involved the review of existing documents and studies; key informant interviews with key district officials, planners, scheme managers and community leaders; focus group discussions with identified groups, including participants and non-participants; and a questionnaire survey of landholders. Finally, the research involved analysing the dominant processes affecting outcomes under each governance arrangement in terms of the policy model involved, the processes at work, and the general patterns of outcomes that are emerging. Thorough cross-case comparative analysis in contrasting district and village contexts, we explore the salient dynamics at play. Rather than generalizing out from a specific case, this approach enables us to analyse how, despite enormous variability, the confluence of paradigmatic dynamics and processes working at different levels leads to characteristic patterns of agrarian change.<sup>6</sup>

This paper advances three sets of arguments. First, we explain the substantial variation both in arrangements and outcomes across and within jurisdictions in terms of the confluence of broad structural features – particularly the commodity specific characteristics of oil palm, broad policy settings, predominant agribusiness strategies and the tenurial insecurity of local landowners – with contingent local factors – principally local geographical and temporal characteristics, the strategic interests of powerful local state based actors, the capacity of the local state, and village capacities for agency and collective action. Second, we identify two distinctly different modes of coordinating agricultural activities – through evolving public-private ‘partnerships’ or through spreading commodity markets. We argue that each shapes the possibility of smallholder ‘upgrading’ into oil palm production in different ways, leading to different distributions of income and risk among the actors involved and culminating in distinct patterns of agrarian change. Third, given the dispersed nature of capacities required for pro-poor outcomes, we argue that effective ‘local governance’ depends upon the capacity of the local state to coordinate policy networks that provide the policies and the local institutional support necessary for pro-poor outcomes. In contrast, we argue that current ‘partnership’ models in

Indonesian oil palm characteristically under-provide the state oversight and support required and hence produce regressive outcomes for local landowners.

This paper will proceed in three sections: first, we examine the policy context, second, we discuss the three case studies, before finally drawing conclusions.

### **The policy context**

The colonial period (from the 1870s) involved a familiar mechanism of plantation expansion in Indonesia . By extending the status of state legal domain over large areas and allocating concession rights to foreign private sector investors, the colonial state provided for the enclosure and privatization of customary and forested lands. While allowing for the expansion of oil palm plantations, during the New Order period (1965- 1997), the state sought to avoid recreating a 'dual economy', with capital intensive oil palm plantations existing as enclaves within an extensive 'traditional' agricultural landscape (Ahmad 1998; McCarthy & Cramb). While the first generation of plantation sector initiatives sought to work directly with smallholders to increase their welfare, later policy makers took up modified versions of out-grower schemes pioneered elsewhere by multi-lateral donors such as the World Bank. These 'nucleus estate schemes' (called NES or PIR) provided a mechanism that combined the enclosure and leasing of lands for estate 'cores' with extensive state support for contract farmers within 'plasma' peripheries (White 1997). In other words, these policies combined the objectives of agribusiness expansion and pro-poor growth that remains controversial to this day (McMichael 2009) .

The commodity specific characteristics of oil palm created distinctive opportunities and limitations for the Nucleus Estate institutional form (Little and Watts 1994 ). Oil palm cultivated in the intensive fashion favoured by modern agribusiness requires specific technical inputs including high quality hybrid seedlings, fertilizer, and careful land preparation and husbandry. It is a rich farmer's crop with high capital requirements: according to one estimate, plantations need to invest between US\$ 2,500-3,500 per hectare (Chalil and Ahmadi-Esfahani 2006). Compared to other



commodities, such as coffee or cocoa, oil palm is difficult for smallholders to produce without the requisite credit, access to technology and extension. Further, as fresh fruit bunches (FFBs) need to be crushed within 48 hours of production, productive palm oil areas need to be established within easy access to a processing facility. Taken together, these characteristics ensure that smallholder agriculture can readily be tied to a dependent contract relationship with a 'partner' or 'step-father' estate and its processing facility. The logic underlying NES arrangements involves organizing production in ways that 'link smallholders by contract to a larger agribusiness core' that exercise various forms of control during the production process (White 1997). These amount to modes of coordinating agricultural activities that clearly subordinate producers under 'quasi-hierarchical' forms of governance (Humphrey and Schmitz). At the same time, while advancing plantation development, NES type arrangements seek to provide smallholders the means of overcoming the 'thresholds of inclusion and exclusion' (Fortin 2005) – in the form of the administrative, economic and social barriers that prevent access to skills, technology, and markets – which the poor were unable to cross on their own.

NES developments became attractive to investors in plantation estates and oil palm mills because they offer investors advantages while helping to avoid significant risks. Plantation expansion depended upon gaining access to contiguous areas of increasingly scarce land. If local landowners could be induced to give over areas of land for the development of core plantation estates as a condition for participating, this model would allow for processes of 'primitive accumulation by enclosure' that involved the alienation of substantial packages of land without the plantation actually buying the land itself (Nevins and Peluso 2008). As the state supported credit arrangements rather than plantation capital financed these peripheries, the increased economy of scale came at proportionately little expense to the estate core. Further, the smallholders in the 'plasma' area formed a pool of labour which could be used by the estate casually as required without the requirement of taking fulltime responsibility for a workforce (Levang 2003). Yet, to work effectively the NES form needed to guarantee consistent quality and supply to achieve projected economies of scale while avoiding plantation losses from 'supply chain failure'. To ensure that smallholders would perform appropriately, contracts obliged smallholders to enter into specific production and price arrangements with the plantation core through cooperatives (White 1997). In this way small holder producers were tied to plantation supply chains by obligatory credit repayment arrangement subsidized by the state.

Here, state engagement had been critical in providing for a means of successful smallholder 'upgrading' into oil palm production. This included investing in developing producer capacities, underwriting the risk of guaranteeing smallholder credit repayments, for instance regulating the process and ensuring that smallholders would not obtain secure land titles until they repaid their loans. Although this arrangement lessened the grip of intermediate traders by cutting the marketing channel, the state needed to manage the danger of an estate purchasing monopoly/monophony arrangement unless careful safeguards were developed and implemented by the state.<sup>7</sup> Without such effective state involvement in these public-private 'synergies and joint action', the smallholder-plantation partnership would either fail to occur, or (as it has after 1998) take place on less favourable terms for smallholders.

However, the end of the authoritarian New Order, the ascendance neo-liberal agendas, the shift to decentralization and the withdrawal of large scale subsidies from the state or multi-lateral donors in the post-authoritarian period represented a shift from the earlier form of engaging smallholders in two respects. First, new liberalized laws granted district governments the authority to issue licences for oil palm factories.<sup>8</sup> Consequently, large numbers of stand-alone factories emerged outside of contract farming arrangements. Rural areas witnessed the spread of independent oil palm commodity markets that more or less involve coordination through the market. As we will see in the Jambi case, this has had profound consequences in particular rural contexts.

Second, in the absence of state subsidies or compulsion, companies expanding into new areas were less prepared to include a smallholder component along the generous NES proportions that provided for a seventy-thirty split in favour of smallholders. With the state no longer operating in the highly authoritarian and centralized manner, large numbers of latent disputes re-emerged as villagers demanded compensation for past land seizures (Lucas and Warren 2003; Afrizal 2007). Disputes also erupted over production arrangements between estates and smallholder peripheries, while there were also many examples of poor technical management by smallholder cooperatives in the peripheries that were often riddled with corruption. With weak capacity to control smallholder peripheries, at times larger agribusiness cores witnessed smallholders selling outside the estate. In many cases plasma lands had spiralled into patterns of under-

production, thereby affecting the security of their supply chains. Consequently, by this time the outcomes achieved by various NES schemes were established to be rather erratic (Zen, Barlow et al. 2005; Vermeulen 2006). Expanding plantations sought to maximize their direct control over production, thereby lowering the risk of poor performance by smallholder suppliers. These dynamics come into play in the next phase in the development of 'public-private governance' under the 'partnership' policy.

Focusing on finding ways to align the objectives of investors and the perceived risks and opportunities of smallholders, international agricultural policy has emphasized 'partnerships between external investors and small-scale rural producers', which, 'within a conducive policy framework' are held to provide better opportunities for 'poverty reduction, agriculture-led development and economic growth' (IFAD, 2009: 23). With the state taking more of a 'steering' or coordinating role and withdrawing from the provision of subsidies, redraws the balance between private sector and the state in 'public-private governance' arrangements. In parallel with a Malaysian model, in 1999 Indonesia's Ministry of Agriculture developed a 'partnership' policy that allowed for a number of 'partnership' and joint venture arrangements (McCarthy and Cramb 2009). Members of a smallholder cooperative might obtain share certificates or a proportion of production output in return for an in kind contribution of land (Ministry of Agriculture 1999). A later law specified that companies should include a community component of not less than 20% of the development area, with this community element to be operated through unspecified 'modes of credit, grants or shares in production'.<sup>9</sup> Depending upon their capacity to negotiate an arrangement with communities, a plantation might replace the 60-70% smallholder component specified under NES to a minimum 20% smallholder component.<sup>10</sup> Plantation investors could retain control of the plasma periphery along Malaysian lines, avoiding the production problems plaguing plasma peripheries by making use of the elastic legal formulation in the framework legislation that allowed for a large degree of local discretion. At the same time, following decentralization, district governments enhanced their authority to implement broad national policy and to craft their own policies and oil palm related schemes.

Clearly, the distinctly different modes of coordinating agricultural activities – through evolving public-private 'partnerships' or through spreading commodity markets – and the conditions under which a scheme takes place shapes the possibility of 'product upgrading', the shift from jungle rubber into more lucrative forms of oil palm, as well as

'process upgrading', the reorganization of agricultural production using high input agricultural technologies encompassed by successful forms of oil palm cultivation. It is the substantial variation both in arrangements and outcomes across and within jurisdictions which we will now examine.

### **Laissez-Faire in Jambi**

In the hilly district of Tanjung Jabung Barat, on the East Coast of Sumatra, the process of transformation began during the New Order period. In a pattern characteristic of areas of lowland Sumatra, village smallholdings were sandwiched between timber and oil palm plantations within a spatially differentiated landscape. These enclosures cumulatively dismantled the wider portfolio of extensive livelihood activities that had previously sustained local livelihoods (McCarthy, 2007). Significant numbers of transmigrants moved into these areas to participate in oil palm smallholder development schemes (NES). As in many other cases, transmigrants that remained in the schemes beyond the difficult early years experienced marked livelihood improvements (Levang 2003).<sup>11</sup> As one study concluded in a similar area, NES scheme participants had average incomes approximately 50 per cent above the poverty line (Susila 2004). Policy makers anticipated social differentiation between successful transmigrants and local landowners by modifying later schemes to seek more effectively to include local landowners. However, these schemes remained unsuited to the practices and culture of local landowners. Local ethnic Malay landowners were reluctant to leave their older settlements to become poor day labourers on the oil palm estates waiting for their oil palm smallholdings to be returned. The vast majority of Malay villagers remained dependent on increasingly smaller areas of low productivity per hectare 'jungle rubber' that involved 'traditional' technology, utilizing unselected seedlings, low fertilizer inputs, with rubber planted in high density plots without effective soil conservation or plant maintenance (Joshi, Wibawa et al. 2002).

In the mid 1990s, transmigrant success began to demonstrate that oil palm offered returns to land and labour that 'compare favourably with other land use activities including rubber' (Papenfus 2002; Belcher 2007). The next generation of smallholder developments, known as KKPA co-operative schemes, targeted local landowners *in situ*.<sup>12</sup> Participating villagers were entitled to see 70 per cent of the land they contributed to these NES type schemes returned as productive

oil palm smallholdings, as well as a pro-rata entitlement from any village common lands enclosed by the development. While the state subsidized credit granted by commercial banks, the state itself had much less direct involvement in what were now primarily private sector driven developments. In general, KKPA schemes insufficiently provided effective mechanisms – between plantation managements and community cooperatives – to ensure transparency and accountability in land preparation, tenure, credit and market arrangements (Potter and Lee, 1998; Colchester, Jiwan et al. 2006). In the meantime the economic crisis of 1997 affected incomes of landowners who remained dependent on rubber. Large numbers of villagers were left waiting for their entitlements to mature without effective safety nets, or the land certificates, or cash flow that might be used to obtain bank credit. Many sold on their oil palm entitlements in crisis sales before they became productive. In the most extreme case of a remote village surveyed for this study, only 10 of 160 families retained their KKPA oil palm entitlements. As villagers also sold on underproductive rubber lands during this period to newcomers opening oil palm, the rapid agrarian change associated with oil palm had led to increased landlessness and a marked concentration in landownership in this village.

However, village agency remained important: this outcome was not inevitable. In the next survey village, landowners received their oil palm entitlements in two tranches. Here most landowners sold on the first oil palm smallholding to be returned – their individual land entitlements that had fallen within the scheme area. However, the process of dividing up the village common lands within the scheme area became subject to dispute and a long delay. Some activist village leaders persuasively advocated the advantages of oil palm smallholdings. Further, in this readily accessible village, landowners learnt from the example of prosperous transmigrants and incoming migrants interested in obtaining oil palm. Following informal discussions and interactions within village networks, the majority of villagers resolved to avoid selling up the pro-rata village land entitlements. As an estimated 80 per cent of landowners managed to retain between one and two hectares of KKPA land, this village emerged as the most prosperous ethnic Malay village in the sub-district during the oil palm boom. After the KKPA oil palm became productive, villagers combined income from productive oil palm with rubber sharecropping, wage labour opportunities in the oil palm smallholdings of larger landowners, and the tapping of remnant rubber gardens within a diversified portfolio.

In contrast, in a comparatively inaccessible rubber producing village, villagers faced greater economic, geographical and social isolation. In the absence of effective leadership and handicapped by the slow circulation of information regarding the prospects offered by oil palm within relatively closed social networks, villagers proved unable to act collectively to take up the opportunity provided by a company wishing to open a KKPA development during the early 1990s.

Landowners belatedly responded to the success of NES farmers, only cutting down their rubber gardens to plant poor quality unselected oil palm seedlings a decade later when the oil palm boom was well underway.

The process of agrarian differentiation now speeded up as with the spread of commodity markets for oil palm outside of the smallholder schemes took hold. Participants in the earlier schemes had gained oil palm technology and knowledge, and the ability to use their certified land entitlements to borrow from banks to expand production. With high commodity prices, they rapidly repaid their debts and began to accumulate capital and then land. The emergence of free-standing factories outside of the core estates provided wider marketing channels. Significant numbers of ethnic Batak in-migrants moved in from older northern oil palm districts with knowledge, oil palm technology and capital derived from kinship networks and previous experience in oil palm enterprises, buying up land that was readily available in the emerging land market. Actors with positions in local government and business networks began to follow, translating their power and finance into oil palm entitlements.

In this district, the local government had yet to develop the interest or the capacity to support poor farmers. Despite repeated village requests for assistance, including for high quality planting material, the local district parliament channelled available development funds elsewhere. Arguing that oil palm expansion was already sufficiently provided for by plantations, the district agricultural service focused on a small scale smallholder rubber development projects. In effect, the local state presided over a *laissez faire* situation, allowing the process to run its course.

The Jambi case study shows how oil palm had been inserted into an already differentiated social landscape. Here, village elites had long used crisis sales to accumulate land under 'customary' title which they managed under a sharecropping regime.<sup>13</sup> Village leaders and brokers extended these practices, working in collusion with cooperative, company or sub-district officials who facilitated crisis sales, with sub-district elites, provincial and district investors, and

the family of the district head buying extensive holdings. With spiralling land prices and large sums of money on offer, many rubber farmers sold off their individual land entitlements to marry a child, meet a pressing debt, or entertain consumer desires. While five years earlier there were only a handful of landless farmers, by 2009 an estimated 30 per cent of villagers in this more remote location were now landless.<sup>14</sup> A village teacher described this as a process of creating 'coolies' – day labourers without any livelihood security. The formal state agencies remained largely absent. With the district assembly and executive effectively deciding not to provide a program to support villagers taking up oil palm, they allowed for the continuation of an oil palm expansion process dominated by those with the capacity to surf the oil palm wave. Meanwhile state-based actors actively worked alongside village elites to enlarge their landholdings in a fashion that led to the eclipse of poor landowners.

The two processes provided for different patterns of inclusion and exclusion for village landowners. On the one hand, the imperfect 'partnership' arrangement between the company and smallholders found in the KKPA scheme, as a village leader argued, provided the opportunity for the inclusion of poor villagers in the subsequent oil palm boom. While KKPA schemes were also associated with the exclusion of the poor, as we have seen, social learning could occur in a timely fashion in parallel with the state supported partnership arrangements with a plantation to ensure better outcomes. At least in this one case, a KKPA scheme returned a proportion of highly productive oil palm lands back to villagers, providing for a system that shared some of the lucrative benefits of oil palm production among ordinary villagers. In the successful KKPA village the benefits derived from oil palm entitlements were reinvested in land outside the scheme, thereby allowing villages to emerge with more diverse livelihood options. If this diversity included other crops, such as high yielding rubber, it would provide a portfolio of income opportunities better suited to handling market fluctuations. On the other hand, the laissez-faire process associated with the spread of commodity markets for oil palm more sharply led to widespread exclusion, agrarian differentiation, and a permanent shift in the nature of land ownership in the more remote rubber villages.

#### **'Guided' Partnerships in Sanggau**

In contrast to this Jambi case, the hilly district of Sanggau in West Kalimantan retained considerable hinterland areas. These included former production forest and extensive areas under Dayak 'traditional' agriculture. Here, the district administration mapped out large areas for oil palm development and sought to attract investors. Drafting pro-investment policies, the district issued more than 12 new plantation licenses in just a few years, thereby providing for more than 240,000 hectares of new oil palm. To understand the dynamics shaping the application of the 'partnership' policies to oil palm here, we analysed developments in a remote sub-district in the north of Sanggau where in 2004 a company had obtained a 'location permit' encompassing 20,000 hectares of land .

On paper, Sanggau's legislative framework provided for negotiation and limited forms of 'free, prior and informed consent'.<sup>15</sup> For instance, under district plantation legislation, a company wishing to develop an area needed to obtain the consent of participants who would sign over parcels of land for inclusion in the scheme. Further, the company needed to pay compensation for the core estate lands, while smallholders also had a right to obtain information regarding the amount of credit to be paid off.<sup>16</sup> To facilitate this, a company needed to embark on a 'socialisation' process. In this case the company recruited local community leaders to inform people of their intention and convince them to participate. Participating farmers needed to process a land document with the village head and submit this to the company. Subsequently, a company surveyor would measure the land for signature by the individual land owner, the head of the sub-district (Camat) and the local customary (*adat*) leader specifying the precise location and extent of the land to be surrendered. The landowners then granted the land to the company during a ceremony witnessed by the sub-district government head and documented with a photograph.

Despite an acknowledgement of the principles that would provide for fair procedures in legislation, the practices for obtaining consent, providing compensation, explaining oil palm processes and farmer costs, and dividing up plantation benefits remained far short of due process. In providing compensation for the estate lands, the project used a customary term (*uang derasah*) to describe this payment, a term that signified a traditional payment for the cutting of the trees on borrowed land rather than an expression that might indicate outright sale. Accordingly, most villagers



believed they were lending the land for later return rather than selling it on for perpetual alienation under a state plantation concession (HGU). While this process failed to meet the standards of informed consent, it did allow the company to obtain estate land with a nominal payment (25,000 Rupiah) for each productive tree growing on the land. As a decision by the District Head and the Head of the Executing Team for Plantation Projects (TP3K) set out the schedule for these payments, this was a district government sanctioned process. This in effect, continued past practices where uncertified lands subject to extensive traditional land uses were held effectively to be state land, and villages were compensated for productive trees rather than for the land itself.

While the legislation provided for access to information regarding credit arrangements, several smallholders insisted the process had yet to inform them of the specifics of the credit arrangement . A farmer's group operating under a cooperative set up by and dependent upon the company would control future credit and benefit sharing arrangements, and participants would receive their land certificate after the finalization of the credit debt. In the intervening years, landowners would remain unaware of how much they owed, and when their land would be returned. Clearly the absence of effective forms of villager representation and deliberation in the consent process and the lack of effective guidelines and oversight contributed to this lack of clarity. At the early stage of the plantation, the arrangements provided neither an apparent means to enable effective, locally accountable villager oversight and supervision of the cooperatives' processes for distributing benefits, nor an independent oversight protocol, nor an independent plantation advisory body to provide supervision. Indeed, at the time of writing, the formal advisor (*penasehat*) for the cooperative remains a full time salaried employer of the actual plantation.

Sanggau's processes mark an apparent shift in the role of the state: with the state withdrawing from direct engagement to a formal oversight role, the key relationship was now that between the company and the participating smallholders in conjunction with the cooperative. Yet, despite this evident change, the district government remained involved with crafting plantation legislation and discharging its autonomous responsibilities for granting location and plantation permits. On paper this would provide for the oversight of land and credit arrangements, for supervising 'partnership' arrangements, and applying administrative sanctions and sorting out conflicts. In reality, with poor development

budgets in a remote area lacking basic infrastructure, the local state lacked the capacity to implement such procedures effectively.

Our observations suggest that the political economy of oil palm in Sanggau led to a clear policy bias in favour of investors. As district policy documents suggested, in an impoverished rural context, Sanggau district leaders viewed oil palm as the key to extending the capacity of the local state across the remote corners of the district by generating district government revenue, developing infrastructure and improving the welfare of the community. Yet, the district had to compete with other districts seeking to attract oil palm investment. From a local government perspective, the logic was clear. As one senior economic advisor with the Sanggau district government ruefully noted: 'We don't have anything else to bargain with investors except land. We can't argue for infrastructure, a good and educated workforce, a steady supply of electricity, quick access to overseas market - we have none of these things. So the only thing we have currently is land to offer investors, and it is the only thing they are interested in'.

The difficult bargaining position Sanggau officials are in is also evident in a comparison with the more attractive plantation environment of Sumatra where infrastructure and marketing channels are more highly developed. In Sumatra, communities had on occasion negotiated arrangements whereby 50 per cent of the land passes into the possession of the core estate in return for 50 per cent of the land being returned as village plasma smallholding under the central government's partnership framework. However, in the case studied here, the company could persuasively argue that any less than an 80 per cent arrangement in favour of the core estate would make it uneconomical for the company to invest in such a remote location. Consequently, the company obtained the consent of the district administration for a partnership model that offered smallholders the minimal possible landholding ratio allowed under national law. As this commitment to the 80:20 arrangement was made prior to hamlet level consultations, the consultation process was highly circumscribed. While the plantation neither forced nor coerced local landowners into joining the scheme, this amounted to a form of instrumental or guided participation where villagers faced the minimal choice of either joining in, or opting-out.

To put this new partnership arrangement in perspective, the research compared the distributional outcomes pertaining to both land and the division of benefits under this scheme with a plantation developed under a (KKPA) scheme. Under this earlier arrangement, village land provided for development would be divided in a 70:30 land ratio favouring farmers with 30 per cent of the monthly plasma yield deducted for repayment of smallholder credit with an additional 20 per cent subtracted to meet other costs. Now, a decade later, under Sanggau's 'partnership' model, the developer could retain up to 80 per cent of the land for the core plantation, returning only 20 per cent of the land enclosed by the development to participating smallholders. Further, the plantation would then deduct a percentage of the monthly yield for production costs and credit repayments. A village survey was carried out in a neighbouring plantation that had already come into production under such a 'partnership' arrangement. Here, under a 30:70 production division in favour of favouring the plantation, local farmers received 30 per cent of the monthly yield from their smallholding, which was then cut again for plasma plantation costs and credit repayments. This demonstrates how the newer 'partnership' arrangements in Sanggau represent a step backwards for smallholders in terms of economic wellbeing and land ownership when compared to plantation arrangements from the Suharto period.

In Sanggau, a clientalist context shaped the implementation of oil palm policies. Several respondents described how district decision makers, including the district head and the head of the regional assembly, held shares in plantation companies, setting up a conflict of interest that affected official oversight. Key actors exercised powers to influence processes to serve their interests and those of their corporate partners, thereby altering the functioning of district government processes. This created major disincentives for lower level officials who might otherwise be expected to take up a critical supervisory role. An official at the Sanggau Ministry of Plantations office confided that: "We are faced with a impossible situation here at the Plantations office, underpowered and unable to really play our role in any proper capacity. If we try and take things further, then there will always be a phone call from a senior official in Jakarta that will put pressure on us to back off and just do our jobs 'properly'. This kind of phone call always comes, telling us not to be personal in our attack on a given company and stick to the regulations. The message is always clear".

As a consequence, while the form of 'free prior and informed consent' (FPIC) principles may be identified in district

regulations, the substance of these provisions remained missing at the point of implementation, particularly in regards to informed consent and independent oversight. While the land agency formally carried out its responsibilities with respect to land titles, the substance of fair procedures in land tenure arrangements remained lacking in practice. While regional legislation facilitated the creation of cross-agency teams to provide 'continual guidance', an effective oversight capacity was yet to materialise. Asymmetrical power relationships shaped the institutional contexts in which negotiations occurred and consent was elicited and combined unfavourably with the insecure nature of indigenous tenurial rights to weaken the bargaining position of local landholders (cf Cotula, Dyer et al. 2008). While presenting the appearance of community consultation, the process for translating informal rights into formal legal entitlements left landowners vulnerable to manipulation by land brokers often working on behalf of the plantation. In Sanggau, poor procedures in these 'partnership' schemes lead to poor distributional outcomes, creating grievances that will not be readily resolved, and thereby inevitably sowing the seeds for future conflict.

#### **State led development in Siak**

In the Central Sumatran province of Riau, in a similar fashion to Jambi, large numbers of indigenous ethnic Malays reside in impoverished enclaves squeezed between oil palm and timber plantations. After 1997, in the wake of a nascent movement for Riau separatism, the problem of the marginalized Malay emerged as a politically charged issue, culminating in the re-division of oil revenues and the provision of large provincial and district development budgets (Wee, 2002). In the coastal district of Siak, landowners had also requested an oil palm smallholder scheme during routine village development meetings, however, in contrast to the Jambi case, the administration decided to use oil palm as an instrument to aid marginal Malay farmers under the partnership framework.

In pursuing this project, a number of factors worked together to provide the Siak district government with the type of state capacity lacking in the other cases. First, in addition to endowing the administration with financial capacity, Siak's oil revenues also absolved it from the revenue hunger that shaped Sanggau policy. Second, the new district head (Bupati), a technocrat with a background in district administration, demonstrated the ability to develop the policies, the

structures, and the administrative apparatus required to implement a smallholder scheme.<sup>17</sup> Third, as the district had just emerged as a newly created jurisdiction from the post-Suharto redistricting process, Siak's administration remained emancipated from the rent seeking elite that had captured the policy process in the other two cases. The new Bupati used the financial resources and his networks to recruit the professional technical and managerial skills available by offering extra allowances and other incentives. To prevent irregularities, the Bupati also developed an oversight process supported by the nationally respected Indonesian Oil Palm Research Institute in Medan. Consequently, development-minded state managers and planners emerged with the autonomy of decision making and action required to craft policy and to implement them in favour of disadvantaged Malays.

The Siak project set out to directly finance and administer its scheme in partnership with the state-owned oil palm enterprise (PTPN 5) acting as the land developer. In the first phase of a much larger scheme, the scheme developed a 3,500 hectare area of oil palm across seven villages, aiming to ensure each household obtained three hectares of productive oil palm. The district team set out to identify the poorest villagers, prioritizing landless individuals resident in the villages and who had clear, locally recognized land entitlements. Participation was voluntary, and villagers could opt-out and have their land enclaved. Commercially driven schemes had in the past required participants to pay back credit at rates of interest that stretched smallholder finances, and in many cases this had led to crisis sales in the period before the oil palm becomes highly productive. To avoid this problem, the Siak government subsidized smallholder loans from the district budget, with participants only paying half the commercial interest rate.<sup>18</sup>

Given the administrative ambiguities and inconsistencies associated with Indonesia's dualistic land tenure system, Siak's project planners lacked accurate land tenure data regarding traditional land titles. The Siak implementation team intended to use areas listed as 'empty state land', areas considered by villages as common lands still under forest cover, unproductive rubber lands, and areas customarily utilized for short term swiddens. Plantation licenses had enclosed large amounts of village common lands in many villages as well as the remaining 'mineral' lands outside of Siak's extensive peat swamp forests. The land shortage forced the scheme to focus on marginal peat lands that were more expensive to develop and more distant from established infrastructure.

Due to the land shortage, the scheme needed to trade-off its distributive objective, helping as many poor farmers as possible, with the need to provide sufficient benefits to existing landowners to ensure their involvement. However, by including large areas subject to permanent individual ownership under 'customary' land tenure, this trade-off limited the number of poor people the project could assist. Some target villages were left out, and in two villages less than fifty percent of households were included. In other villages, rather than receiving three hectares of oil palm as originally planned, participants only obtained one and a half to two hectares. Some 714 households who were unable to receive oil palm plots requested to be included in later schemes.

As we have seen in the other cases, a key mechanism of agrarian differentiation associated with oil palm expansion worked through the privatization and on-sale of village land. The mechanism readily comes into play, as in Sanggau, when processes of registering land rights to facilitate development work intensify the vulnerability of the poor. The scheme had anticipated this problem by developing a land inventory listing those with entitlements, measuring the land, and verifying entitlements through village based processes. These involved repeated village meetings led by the elected representatives of each village, that sought to inform villagers, to gain their consent, and to oversee the decision making process. While these measures sought to avoid manipulation from the outside, it raised a key problem in at least two villages: representation and accountability within village structures. In villages where the scheme could not include everyone, village heads had to choose between the competing claims of returning residents, new migrants, and those without land. As one actor involved in the process explained, in choosing between supporting the claims 'if there is not enough, whoever is strong will come out best'.<sup>19</sup> Yet this thorough process for the collection of data, for accessing land, and for settling land entitlements, limited the significance of these problems and ensured that large scale conflicts were avoided.

The project faced significant challenges. While in the past there had been a limited market for land, with the oil palm boom and the prospect of highly productive smallholdings on the horizon, brokers and actors moved in, strengthening the land market. Villagers sought to obtain letters from village heads asserting their prior claims over swidden plots

which they had used in the past or opened up new plots to assert a traditional claim over land. In two villages headmen facilitated sales, in one case allowing villagers to on-sell 60 plots of scheme land. However, methodical scheme processes attempted to avoid the problems and conflicts that have emerged in other schemes after participants unwittingly traded their entitlements for one-off payments. To reduce the risk of brokers targeting the poor, the project kept the list of those with verified entitlements confidential. Further, the scheme allowed that initially farmers would obtain their benefits as members of a farmer group within a specific block rather than a specific plot of land, reducing the possibility of the selling-on of land. The scheme also disallowed people who claimed to have purchased land to participate in the farmer cooperatives if they were not listed on the original register.

At the time of the research the district was yet to distribute the oil palm to participating farmers.

Significant delays due to administration problems continued to plague the project. Amid allegations of mismanagement by the contractor and with the budget for plantation preparation exhausted, large areas of plantation land had become overgrown with weeds. However, despite these setbacks, the scheme had brought largely unproductive land into oil palm production. Many participants would receive three hectares of highly productive oil palm, in excess of the amount received in earlier NES schemes. The scheme also provided subsidized credit and high quality planting material, and with farmers retained alternative income from outside rubber gardens. Consequently, although the functioning of the farmer's cooperative, the international price of oil palm, and the production levels achieved in the future would affect outcomes, there were solid grounds for expecting that the scheme to elevate participants above the poverty line in a similar fashion to the earlier successful NES.

The scheme raises four significant issues. First, the scheme amounted to a strategy developed at a decentralized level by officials with decades of implementing earlier smallholder schemes in other areas of Riau. In other words, experts drove the scheme from above in the absence of the strong horizontal networks of civil engagement or community based organizations that might provide countervailing demands from below. Even though the early results appeared promising, arguably, the scheme remains vulnerable to capture by the vertical and clientelist networks apparent in village level institutions in Indonesia. Related to this is the second issue. In contrast to Sanggau, the Siak district

administration had made little attempt to systematically write into law operational procedures – such as free, prior and informed consent – under which the scheme operated. This might arguably make the scheme vulnerable to a shift in the nature of the district administration should there be a significant shift in economic or political circumstances. Yet, the lack of legal formalization also provides a further insight. Paradoxically, the quality of leadership and the availability of technical expertise and other contingent factors that provide for state capacity and support pro-poor projects within a clientelist context can contribute to raising the quality of governance processes, while the existence of formal legal good governance processes in legislation may fail to provide for better outcomes.

Third, the project points to the limitations of pro-poor policies without the inclusion of more encompassing land reform policies. The Siak scheme set out to improve beneficiaries' livelihoods by developing policy measures that aimed to reduce poverty and to establish a favourable environment for the development of productive smallholder agriculture. Yet because corporations owned the greater part of land and resources in Riau (Wee 2002), the pattern of land ownership bequeathed from the past limited the scheme: it could not touch the prevailing pattern of land ownership. A land reform program would be required to support more extensive poverty alleviation objectives. Finally, and perhaps most importantly, smallholder development schemes of this type require large subsidies. As in the past, it remained unlikely that resource poor districts such as Sanggau could attain the fiscal capacity to use oil palm development to support poverty alleviation in this way (Barlow and Tomich 1991).

## **Conclusion**

While it may be compelling to provide a simple narrative for understanding the transformative processes associated with oil palm in terms of how it provides a means of advancement or marginalization for the rural poor, this study suggests that outcomes are highly varied. Despite key structural similarities with respect to outside commodity markets, broad policy frameworks, agribusiness strategies and the tenurial insecurity of local landowners, we find significantly different outcomes across equivalent geographical and social spaces. In analysing the underlying dynamics and processes at work, we argue that it is important to understand the confluence of broad structural features with specific, local contextual or contingent factors in specific locations. In this conclusion we will consider in turn, first, the dynamics



shaping social-private 'partnerships' arrangements and the spread of commodity markets, second, the characteristic processes of agrarian change associated with oil palm, and third, the role of particular modes of public and public-private governance in these outcomes.

The characteristics of oil palm as an agricultural commodity presents particular barriers for smallholders that shape the pathways through which it is taken up. In Indonesia we can distinguish two particular arrangements, each corresponding with particular circuits of accumulation, involving different challenges for smallholders; tending to accord with particular state and clientelist agendas, and culminating in characteristic trajectories of agrarian change : first, contract farming involving social-private 'partnerships' between plantations and smallholder cooperatives, and, second, the emergence of autonomous smallholder through the independent spread of oil palm commodity markets.

Geographical and temporal factors varying across sites play a key role in affecting outcomes in each oil palm district. The locations studied here were at different temporal stages in the transition into plantation-agribusiness shaped landscapes. For example, in the frontier areas of Sanggau land remained available, while infrastructure was poorly developed. The presented a distinctly different set of dilemmas and opportunities for state planners, potential investors and local smallholders. In contrast, the forest frontiers in Siak and Jambi were practically closed, and oil palm development could only occur in the interstices between large scale plantations where free standing oil palm mills have rapidly emerged.

The strategic interest of local government leaders and politicians were critical in shaping the trajectories in each case. In Sanggau, state planners saw the stock of available land as a means of attracting investment, accumulating revenue and rent, extending the reach of the state into remote corners of the district. In contrast, in the Jambi case, in the context of expanding commodity markets for oil palm, accumulation strategies by strategically placed players within and outside the state focused on controlling smaller parcels of oil palm land. In the third case, in a highly contingent manner, Siak witnessed the emergence of district leadership committed to pro-poor outcomes.

State capacity remained a key element: it is significant that of the three districts, only the Siak state had the capacity to underwrite credit arrangements for smallholder peripheries and to attempt to implement pro-poor policies. The Siak intervention rested on the reconstitution of a kind of 'developmental state' with the capacity to implement its goals, 'over the opposition of powerful social groups, or in the face of difficult economic circumstances' (Skocpol, 1990, p9). Critical elements of this capacity derived from the availability of revenue to respond to local needs and the emergence of a Weberian style bureaucracy autonomous of a rent seeking elite with the administrative capacity to implement the program effectively. In Siak, once again in a highly contingent fashion, a district developmental state had emerged that could combine these characteristics with a strategic interest in using oil palm as an instrument for pursuing pro-poor outcomes. Yet it is important to note that the Siak state worked with wider policy networks – involving parastatal agencies and research institutions – to mobilize resources and to implement its program. In contrast, in the other two oil palm districts, policy networks coalesced either around the extension of plantations with minimal smallholder components and the expansion of oil palm commodity markets respectively, in each case settling the areas concerned into a developmental pathway characterized by increasing land concentration and rural marginalization.

At the village level, smallholder cooperative-agribusiness 'partnerships' fundamentally involve an exchange where landowners obtain access to technology and development capital and access to market in exchange for providing significant areas of land to 'core' plantations. A number of key dynamics shape how this works out. First, there are a set of what we might consider contingent, contextual factors, including the timing of the oil palm cycle with respect to commodity price fluctuations and economic crises, how the geography of the particular site shapes access to market and accessibility of information. This also depends in part on other factors, such as the state of rural infrastructure including roads, and how the historical experience of the particular community shaped their attitudes and proclivities towards oil palm. Village capacities also affect landowner agency, depending on the existence of committed locally accountable leadership in the village, and local social learning that in turn requires effective linkages to external social networks (Bebbington, Dharmawan et al. 2006: 1972). Such complex processes help underpin forms of collective action and recursively shape the possibility for agency in the face of locally embedded power relations.

On this note, in all the sites studied here, oil palm was inserted into already differentiated social landscapes where strong asymmetrical power relationships shape outcomes. In all cases, such socially embedded relationships readily combine with the insecure nature of local tenurial rights under state law to weaken the bargaining position of local landholders facing outside investors and spreading commodity markets for oil palm. In all cases the possibility of elite manipulations within and outside the village heightened the possibility of highly uneven distributional outcomes.

Drawing these considerations together, we can make some conclusions regarding the characteristic processes of agrarian change associated with Indonesia's experience of oil palm. Historically, state policy with respect to oil palm favoured this particular institutional form that invoked private-public partnerships, in the process creating a public-private, state-agribusiness supported process of agrarian change. As the Jambi case demonstrated, although this worked very unevenly, in particular places it supported the emergence of a cohort of 'progressive smallholders' (Zen and Barlow). In the process it generated an incipient form of agrarian differentiation, thereby setting the grounds for the second process associated with the spread of commodity markets for oil palm fruit.

In a fashion analogous to that found in the coffee production in the high-lands of Vietnam and Cocoa production in the highlands of Indonesian Sulawesi, the spread of commodity markets corresponds with the differential control over or access to capital, technology, knowledge and (to some degree) labour (Li 2002; Sikor and Vi 2005). Rural elites are able to draw on and extend routinized modes of resource control - including advantages in status and access to the state - within already vertically differentiated villages. However, in contrast to these other cases, in oil palm this works in parallel with previous schemes that provided participants with the means to accumulation of capital and knowledge required to extend oil palm into new areas. The lucrative returns provided by oil palm schemes provide an engine for a rapid new round of agrarian differentiation. At the same time insecure local land endowments allows for the rapid privatization of village common lands and the increasing commoditization of production. In a highly uneven way this oil palm scenario increases the inequities in access and control over rural resources: it generates agrarian differentiation.

An emerging literature raises the concern that booming markets for agrofuel feedstocks will increase demand for land: as more powerful actors gain and secure access to land, this will lead to the commodification and individualization of land rights previously held in common to the detriment of the livelihood security of vulnerable smallholders (IFAD, 2009; Cotula, L., N. Dyer, et al. 2008). By providing for sharper processes of exclusion, the expansion of plantations in Sanggau and the workings of the oil palm commodity markets in Jambi appears to corroborate these concerns. With the effective withdrawal of the state from directly underwriting effective public-private partnerships in most agricultural frontiers, poor villagers faced eking out their livelihoods in the absence of effective safety nets at a time when the enclosure, division and on-sale of village common lands had already begun to undermine 'traditional' agricultural practices that had worked to provide livelihood security (McCarthy, 2007). Here the State's de facto *laissez-faire* stance allowed for a sharp process of agrarian differentiation that left impoverished local farmers unable to cross the 'thresholds of inclusion and exclusion' associated with oil palm.

Internationally biofuel expansion raises serious concerns where tenure is insecure and land is becoming increasingly scarce for smallholders just as demand for agrofuels and outsourced food production is increasing (IFAD, 2009). In this Sanggau case, oil palm expansion with nominal state involvement in oversight under the modified 'partnership' model is sharpening the problem and incidence of impoverished 'marginal farmers' (*petani gurem*) who hold less than 0.5 ha of arable land. State statistics suggest this the category of farmers is now growing rapidly: already by 2003 it included approximately 33% of farmers outside Java (Badan Pusat Statistik 2004). However, the outcomes were not preordained: in highly contingent circumstances, where more generous models of social-private 'partnerships' converged with social learning, leadership and the exercise of local agency, local landowners might use the opportunities offered by particular schemes to integrate oil palm within diverse livelihoods (cf Potter).

Returning to our original theme, we note the critical role of 'local governance'. The earlier authoritarian period provided for a form of 'industrial policy', involving national level policies and local institutional support for emerging plantation-cooperative partnerships. The uptake of oil palm by smallholders in this period depended upon the mobilization of capacity for decision-making, program formulation and implementation and the pooling of resources for

smallholder integration into oil palm through policy networks across private and public actors. While the outcomes of these forms of governance are highly uneven, in contrast to the spread of independent commodity markets, they did provide capital (credit) and technology to smallholders who would otherwise be excluded, with underwriting more secure forms of land tenure under state legal protection within smallholder schemes. In contrast, current 'partnership' models with much less state oversight and support have much more regressive impacts on smallholders.

In this study, only the Siak decentralized state embarked on a project that sought to better connect smallholders to global oil palm markets through strengthening the competences of the poor. In contrast, as the Sanggau case illustrated, under other 'private-public governance' or 'partnership' approaches the state provides an 'enabling' environment for private sector actors who directly manage the plasma periphery, with the state only retaining the key roles of creating, defining and enforcing laws pertaining to plantation development. In this sense, this 'partnership' mode corresponds to a form of governmentality 'imbued with aspirations for the shaping of conduct in the hope of producing certain desired effects and averting certain undesired ones' (Rose 1999: 52). These desired effects included the maximum expansion of estates through circumscribed, instrumental forms of participation. While this 'guided participation' may fail to provide an objective chance for local landowners to make considered and informed decisions about the benefits and consequences of becoming oil palm smallholders in a partnership system, it seeks to work to diffuse conflict and minimize the potential disruption to plantation production and expansion. These desired effects also extend to developing state infrastructure into remote areas, increasing local government revenues, all the while supporting the clientelist arrangements upon which district politicians depend.

A focus of recent reform has been on improving governance procedures and laws. The revision of weak and loose legal and policy formulations that provide for regressive forms of 'public-private governance' is essential. However, the revision of governance processes on paper is insufficient: lack of due process resulting from manipulation of implementation processes in the absence of effective representation and accountability mechanisms in decentralized governance as much as due to poor legal formulations. Other reforms are designed to provide for free, prior and informed consent (FPIC), secure land tenure, and effective extension services. While clearly such approaches can help,

the key problem here is that FPIC concepts are grafted onto contexts where pre-existing socio-political relationships both enable and constrain action in ways that often work against the grain of FPIC objectives. Consequently, as other research has suggested, legal reforms alone may not convert into the on the ground mechanisms that provide better distributional outcomes, especially where negotiations and participation continue to take place in the context of asymmetries in knowledge regarding legal understandings, negotiating skills, and power disparities between the parties in the absence of central government oversight (Cousins 2007; Cotula, Dyer et al. 2008) and demand-side pressures from local civil society (Luebke 2009). This points to the limitations of the policy shift that devolves authority to the local state and attempts to provide for processes of FPIC that on paper might seem to enable communities to negotiate directly with investors to ensure that their rights are converted into benefits. Tenurial insecurity can combine with the lack of effective land governance practices at the village level, leaving discretionary power in the hands of state actors – or plantation consultants – overseeing these processes. Improving governance arrangements on paper may not be sufficient to ensure better outcomes in remote rural contexts where the overall context works to achieve the opposite outcome (Dove and Kammen 2001). The way processes of oil palm development work with contingent factors – particularly those that provide for effective local government leadership and state capacity to achieve pro-poor outcomes – will determine whether oil palm is used as a source of funds for the district government, clientelist agendas, private sector accumulation, and/or as an instrument for helping rural people. Indonesia's current 'partnership' model of agricultural development entails an effective withdrawal of state engagement – at least at the central and provincial levels – from providing budget and oversight for smallholder schemes. As this leaves outcomes much more dependent upon the specific district context, the 'partnership' model represents a step backwards when compared to the earlier state supported mechanisms for agricultural development.

Outside interventions might aim to build capacity among landowners prior to the initial plantation negotiations together with the horizontal networks of civil engagement, community based organizations, and locally accountable producer organizations that may provide some countervailing demands from below.<sup>20</sup> Yet, as this research finds, the 'upgrading' of smallholders into more lucrative forms of production is likely to occur when policy improvements converge with forms of local governance that depend up local state formation and capacity, the leadership and political interests of

strategically placed local actors , and effective village institutions and landowner agency and unity. Such contexts may be difficult to engineer.

It is now more widely recognized that there has been an over-reliance on market led approaches, with calls for a re-engagement of the 'visible hand of the state' in providing 'core public goods', regulating natural resource management, and securing desirable social outcomes (World Bank 2007). Yet, while the 'idea of the state' helps us to imagine a coherent national state extending from central to local agencies, under the name of the 'state' a disparate set of actors and practices occur (Abrams 1988). The state is spatially diverse (Bavinck 2003): the state capacity and interest central to pro-poor policy depends upon first, how localized political processes enable particular political projects to emerge in a location; and, second, upon how this combines with the specific state capacities, including the ability to mobilize the types of policy networks that we argue are more likely to provide pro-poor outcomes. As this study suggests, the critical combination of required circumstances central to better outcomes is highly contingent. This presents a considerable dilemma for both the advocates and critics of a pro-poor, agribusiness-led biofuel future.

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<sup>1</sup> Green technology consultancy Pike Research predicts that the global biofuels market will triple from \$76 billion today to nearly a quarter trillion dollars in 2020; see <http://www.pikeresearch.com/research/biofuels-markets-and-technologies>, accessed at August 25, 2009. Developing countries' policies have also been quick to try and capitalize on the palm oil price increase. See Instruction of the President of Indonesia No1/2006 regarding the supply and utilization of Biofuel as alternative fuel (President of the Republic of Indonesia); enacted January 25, 2006; Presidential Instruction No5/2006 on National Energy Policy.

<sup>2</sup> See Food and Agricultural Organisation of the United States, (FAOSTAT) at <<http://www.faostat.org>>

<sup>6</sup> Kensis and Schneider 1991 41-2 quoted in Humphrey and Schmitz p29

<sup>6</sup> Hudson 1998 quoted in Humphrey and Schmitz

<sup>6</sup> In keeping with qualitative methodological approaches, this research aims to provide greater insight into causal processes and mechanism rather than achieving statistical representation across the population of similar cases. (Buroway 1991; Small 2009).

<sup>7</sup> To overcome this exploitative arrangement, a 1998 reform determined that a special provincial government team (Tim Penentuan Harga Pembelian Tandan Buah Segar be formed (TBS) to set the oil palm price. SK Menteri Kehutanan dan Perkebunan No. 627 tahun 1998, later Permentan No. 395/ 2005.

<sup>8</sup> See the 1999 anti-monopoly law (UU No 5 tahun 1999) regarding 'monopolistic practices and unhealthy competition'; the plantation law (UU No 18/2004) and Ministerial Regulation (Keputusan Menteri Pertanian No 357/Kpts/HK.350/5/2002).

<sup>9</sup> . Interviews with company personnel, Jambi 2007. See also ministerial regulations (e.g. Peraturan Menteri Pertanian No 26/2007); Fadjar (2006).

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<sup>10</sup> Earlier schemes this did not necessarily involve a 70:30 division in favour of indigenous landowners. For instance, PIR-trans schemes integrated very large numbers of transmigrants while KKPA schemes often did not work out as planned, with large areas of land effectively failed to be redistributed to participating smallholders (see Nakashima).

<sup>11</sup> For discussion see Zen and Barlow (2005).

<sup>12</sup> *Kredit Koperasi Primer untuk Anggota* or Prime Cooperative Credit for Members

<sup>13</sup> The 'customary' (*adat*) status of local land rights is contested in this context. The 'customary' (*adat*) territorial boundaries inherited from the colonial period were not recognized under post-colonial law and the vestiges of *adat* authority structures were effectively dismantled during the New Order period. However, villages have continued to extend claims over village common lands within these former territorial boundaries (McCarthy 2007; Mubyarto, 1992). Within village areas farmers may prove their individual rights based on a letter of payment of land tax, a letter of acknowledgement of rights provided by the village head, or a document of title from colonial times (Fitzpatrick, 2006). However, in many cases 'customary' or 'informal' rights exist that are recognized, transferred and inherited within the village based on a history of prior use that is marked by the cultivation of permanent trees without formal proof of ownership.

<sup>14</sup> Village survey, March 2009.

<sup>15</sup> Peraturan Daerah No.3/2004. Further information on FPIC can be seen in Tamang (2005) or Colchester (2007)

<sup>16</sup> The amount of compensation for these lands was set at the district government level, and not solely by individual companies.

<sup>17</sup> For instance, the district had set up its own land agency in order to identify, select and inventorize potential farmers and areas of land.

<sup>18</sup> Interviews with the project designers, April 2008 and May 2009.

<sup>19</sup> While the process may have allowed space for legitimate claims to be acknowledged, it occurs in the absence of effective village level mechanisms for downward accountability this might mediate claims and resolve conflicts in a more equitable fashion (Cousins p20).

<sup>20</sup> For a discussion of policy options in the Indonesian context, see Zen, McCarthy and Gillespie (2008).

## **Chapter 2 Resistance of Indigenous People on an Oil-Palm Plantation in West Kalimantan<sup>1</sup>**

**Oetami Dewi (Ministry of Social Affairs, Republic of Indonesia)**

### **1. Introduction**

Oil palm plantation has been a major role as a foreign exchange of state income since the Dutch occupation. The government has an economical reason to boost the foreign and private investment in oil-palm plantation which expands a new foreign exchange after the petroleum export is fading.

The government assumes that oil-palm plantation is an important factor in economical structure of a state, so the government gives facilities to the oil-palm plantation in order to get inexpensive land, labor, and political protection that are given by the government to the investors.

Economical consideration is not just enough to develop the oil-palm plantation in Indonesia which is in truth the plantation is not only a production system, yet it is a unit of community. The existence of oil-palm plantation community depends on a unit of production. The structure of people and person to person relationship in the community reflect from economic organization that manage the production system. As the result, the research on social-political influences of the plantation on society needs the research on the dimension of the oil-palm plantation as a social system.

Government efforts boost plantation growth by giving the facility to obtain cheap land which is realized by the Department of Forest and Plantations. The Department has issued SK Menhutbun (ministry decree) no. 367/Kpts-11/1998 that changes the forest-convention into the oil-palm plantation areas. By 1998, the total area of plantation in Indonesia was 2.633.899 ha. The government policy on the plantation development helps the forest conversion area and capital privatization. On the other hand, the policy tends to ignore the existence of indigenous people. The implication of this causes some agrarian conflicts which are hardly unsolved. This social problem also is triggered by the social structure of rigid society of the plantation, the difference in materialistic life-style which is different among the employers, the workers. In addition, exaggeration of political protection given by the government towards the plantation investor, it causes the plantation society of internal and external conflict.

### **2. Community Social Economy System before the Oil Palm Plantation Establishment**

The Land of Kalimantan was pure forest, a tropical jungle. Tens of big river and hundreds of small rivers divide the land of Kalimantan. Forest is the natural ecosystem influencing the community social ecosystem that lives around the area. Forest is the

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physical ecosystem that brings big influences to Dayak people's life. They hunt, collect, grow rice and cultivate in the forest. Several hundred years ago and even thousands years ago, Dayaknese lived in the physical environment in the form of jungle and river divided the forest as the main road to support their physical mobility. The agricultural system developed by Dayaknese, by the outsider is called moving cultivating system and by the western people is called slash and burn cultivation, need a wide area of forest. Cultivation at around 2 to 4 hectares is done by a family in 2 years, then it will be left to find new forest land (primary forest own collectively and area reserved for cultivation) to open new field.

This agricultural system is an adaptive form to tropical forest ecology that widely spread. Every family before the year of 1980 was estimated to own a forest land of about 40 hectares as their slash and burn cultivation area. Every family can do the field between 2 to 4 hectares at a harvest time. They plant paddy, corn, nuts, cassava and vegetables. In the past time, one family will turn back to work on the ex-field after they are moving for ten times. In such an agricultural system, every family will need forest preservation land for about 20 to 40 hectares. The ex-field will grow free or as the secondary forest filled by trees with a diameter of 20 cm. The fields are considered fertilized enough to be reopened as the cultivation field. Besides, they also plant rubber tree. Their household economy orientation is subsistent or oriented to the fulfillment of household needs. In normal situation where population is relatively small and land provided is wide enough so this agricultural system is sustainable enough whether in the way of nature preservation or the subsistence of farmer's family. Long house as the staying place for one community of Dayaknese in the past and the place for a family to stay at recent time is built using wood produced in the forest. Their house is built along the river side. Almost all physical needs of Dayaknese are fulfilled through forest harvest.

The social organization for the traditional community in past can be seen from the pattern of their living place. *Radakng* house or long house consisted of several rooms described their social organization. Actually, the inhabitant of *radakng* house is a social community tied to the area awareness and form based on genealogical factors. Family of Dayaknese is realized in the form nuclear family or big family live in a *radakng* house (long house). Such social frame play important role as the family tying rope so that every one in the village will feel that they are a part of this family. For that reason the social unity of Dayaknese form based on genealogical factor<sup>1</sup>.

Alliance leader in every area at Landak regency have different kinds of calling such as: *Tamongokng*, *Timogo'ok*, *Timangong*, *Timanggung*, *Temongokng*, *Temanggung*, *Patingi*, *Singa*, *Macan Pateh*, *Kepala Kampokng*, *Domong*, *Nata Peggawa*, etc. This alliance area in the past was formed by village government called: *kampokng*, *kampung*, *ketomonggokngan*, *ompuuk*, *ompu'*, *ompu'-ompu'*, *empi'ek*, *ampenank*, *pagao*, *benua*, *bonua*, etc<sup>2</sup>. This alliance leader was chosen based on the criteria such as their mastering to the tradition, tradition law and managerial ability. People in this alliance are genealogy group, group leader and his community is the people in one of friendship bound. A leader is not more than a primus inter pares amongst the group. The power and authority of the lead or the tradition character only limited to local group covering some *radakng* located in one river flow or small river.

The livelihood means of the Dayak community is shifting cultivation worker as the basic of forming the territorial area in community area. So the genealogy and territorial area is a unity of social politic forming integrative unity. To Dayak community, land doesn't only economical valuable but having magical relationship with their life and pride. In the way of community territory, tradition community is the leader and land owner in the area of *kampokng* that is approved and respected by all. People from other group must respect this existence. In the other words, Dayak community form neighborhood group consist of small alliance and traditionally having a governmental system. Based on the area law, it is called tradition area. In the area with clear friendship bound from the same descent will appear *genealogische rechtgemainschap*. This alliance have strong bound for its relation with the area and plants above it<sup>3</sup>.

Forest as a part of *genealogische rechtgemainschap*, also a social ecosystem for Dayak people, the culture of Dayak can be pull out from their adaptation result with the forest environment. All of Dayaknese culture aspect in the past can be pull out from the place they live and built their evolution. Myth of the nature in some sub ethnic of Dayak is symbolized with Enggang bird and forest. Enggang bird symbolized pure land where God and magical leader stay while forest as the Enggang bird stay in the world symbolized nature where people live. In the religious practice of Dayak people always need some kinds of forestry plants, besides the breed like pig, dog and chicken or at least egg. The traditional medical of Dayak people also depends on various kinds of plants in the forest.

In the side of economy and politic, forest is functional unity that can be pulled out from Dayaknese way of life. Forest is the place where they get medicine when they sick, forest also is the place where they get fruits and hunts. Community access to forest and their right to facilitate forest also guarantee by tradition law. Forest in the control of pure Dayak community government. Forest as the whole concept from the existed natural resources around the habitant where Dayaknese integrated in their life pattern. Dayaknese community in the past as self governing community master the system of natural resources facilitating distribution around it.

Dayak community in the past develop the adaptive agriculture system with the natural environment and own capacity to preserves it. That agriculture system is a tool of technical knowledge in doing the field, the religious magical rules in processing the field, and land distribution system by the social politic institution named tradition government.

Forest in Dayak economical system in Ngabang (Landak regency) in the past is community natural resources. The relation between a family or someone with the land is temporary. The more intensive a family process the land then the stronger his relation with the land. The ownership of family on the field at forest is signified that the family is known by the community that the family has ever opened a field in certain area. The ex field left can be opened by others without the permission of the family that opened it first. The family that will open the ex land will have to pay *tancam beliung*. This money is symbolic as the permission and respect to the people who first open it.

The jungle with big trees of diameter more than 60 cm and the preservation area for this field is treated as the land of community; whoever the local inhabitant or stranger that has permission from the village leader can open the field as plantation or the location to



live. In the past there is a gardening of oil palm, Dayak community in Ngabang respect the land as public goods or communal land. Family of people that process the land is considered to have the right to process it. The land is also respected not just for the main production factor in the agricultural system, but also the high religious value. The one who open the land must do the permission ritual to *Nek Pnompa* or God that it will be far from the bad evil soul as the forest inhabitant and get good harvest. This ceremony signifies the relationship between the farmer and his land.

The village of Dayak community before the oil palm plantation is a community that runs self governing community. This community as self governing community is formed based on the dynamic political culture and also as the result of social adaptation faces that those communities. That community is a unity of social politic, law and culture. They are autonomous, not under the authority of other social politic unity. Every village dominate a number of own natural resources in the form of forest and area.

Every Dayak community develops tradition law related to the system of natural resources processing. The function of tradition social institution developed based on the relationship between man and forest environment as the settlement area is ecological wisdom that had been hold tightly as the base in processing the forest resources continuously. This ecological ability kept on going until the entrance of oil palm plantation at Ngabang in 1980.

The Dayak community at Ngabang as self governing community has the same faith with other autonomous communities in all Indonesia especially the one out of Java, destroyed by the new era government through the implementation of Role number 5 Year 1979. Pattern uniformity of village government from Aceh to Papua not only ignore UUD 1945, admitting the traditional tribe community legitimacy, but also destroy the village organization community in all Indonesia, at least all area outside Java. The village leader not anymore the tribe community leader, but as the helper of president<sup>7</sup>. The bribed tribe community by the power of supra structure believed in the country make the appearance of country process on tribe community<sup>8</sup>. In West Kalimantan the tribe community destruction process happened when there is a policy of *regrouping kampung* into village at 1985. All Dayak community right to determine self governing system and the right on resources empowerment disappeared; all of them are expropriated by country. The tribe leader is not admitted as the community leader. The tribe law is no more admitted as the social regulation that bounds the community. The fact is bankruptcy of traditional institutions and tribe community<sup>9</sup>.

The implementation of Rule number 5 Year 1979 about the Village Government has disappeared all authority of *Timanggung* in *kampung* (one unity of social, economy and politic of Dayak people). The Dayak community has lost their smallest tribe institution, while the replacing was village governmental institution that can wholly replace the real tribe institution. The process systematically has marginalized the role of traditional leader in Dayak community. Besides, indirectly the social rule system of Dayak people was no more admitted as the law source for their own tribe. The lost of tribe law has cause the community lost their social law that arrange the balance of economy, politic and social resources exchange. This traditional institution destruction process became stronger with the appearance of the policy to stop replacing the dead *timanggung*. Instead, the government forms Subdistrict Dayak Tribe Board, Regency

Dayak Tribe Council and the Council of Dayak Tribe in West Kalimantan. This policy subordinates the tribe institution below country empowerment.

Dayak community as the inhabitant in West Kalimantan ignores the development program, especially in the case of land facilitating allocation. Stepanus Djuweng stated that actually there is not any Land Using Pattern Agreement in West Kalimantan but there is a "seize" to indigenous peoples that admitted as country land at one side<sup>12</sup>. The land was culturally a part of local inhabitant. The land is more than just an agricultural production factor but the land has the meaning of culture, social, politic, spiritual and their descendent futures. *"The very basic characteristic of the Dayak is their attachment to land and the Earth's resources. In land in the oral history of human being. Land is not only an economic resource, but it is the basic for cultural, social, political and spiritual activities. For the various Dayak sub-group in Kalimantan, land link the past, present and future generations"*<sup>13</sup>. Land, forest and other natural resources in Dayak community life pattern is public goods run communally not individually.

### **3. Plasma Farmer Position to Company**

Perusahaan Inti Rakyat (PIR) V Ngabang is a plantation pattern placing company as the center and Ngabang community as plasma farmer. PTPN XIII (State-owned Plantation) develops this pattern in the hope that it could create the harmony friendship relation with plasma farmer. The main purpose for PIR BUN pattern development is to combine plantation system and vertical integration between plasma farmer and capital giver in order to get benefits for both sides.

PIR pattern basically is contract farming that places farmers (plasma) into the situation of depending on the company (center). This dependency occurs in the unbalanced economical exchange, farmer only gets little farming land and the workers himself while company empowers the seeding technology, after harvest processing and production marketing (*Crude Palm Oil*). Even companies also input fertilizers and drugs. Plasma farmers can only work as good as possible controlling the oil palm plant without any ability to control market and the purchasing price of TBS (tandan Buah Segar). The determination of TBS is done by company, Trade and Industrial Council, and Cooperation.

One of the mechanisms that always been tried in the implementation of contract farming is the control of plasma farmer organization. Plasma farmer always managed to organize in the limit determined by center side. The limitation in farmer organization can lower down farmers' restless and needed by company to ease the operational processing of production relation. So, the limitation of farmer organization doesn't mean that there is no organization for plasma farmer. The center side always tries to provide organization for the farmers with the function and activities managed by the company. The government tries to control farmer organization by forming Himpunan Kerukunan Tani Indonesia (HKTI) that becomes a bounding to all farmer organization in Indonesia<sup>20</sup>.

Farmer organization like Farmer Group is "formed" by government functioned as tool to eliminate farmers from the movement that could oppose farmer with country. The farmer group forming can be seen as government effort to reduce farmer organization that

potentially political orientated like the farmer organization in old era, become the organization with economical orientated. This is related to the basic of political strategy in new era not only marked by the inclining to tie every radical movement, but for every movement or organization in mass, including political parties, labor organization and farmer organization<sup>21</sup>. Through floating mass strategy, country is successful in eliminating the political mobilization for and by farmer in village<sup>22</sup>. The floating mass policy to village area is a successful key of new era in creating village integration stability in country structure as precondition for economical development<sup>23</sup>.

Trijono stated that New Era places government in the position of community dominant *vis-a-vis*<sup>24</sup>. In such position, farmers always lose against the country right collaborated with global capital power in the back of IMF aid program shelter. In the other sides, the turning of country to capital right because of "international capitalist regime as donor and guarantor determined that aid receiving countries should be ready to do their rights"<sup>25</sup>.

Indonesia agriculture development priors the agricultural sector modernization and industrialization program has been successful done the capitalism penetration in the village area. Government through mass de-politic strategy and farmer mass organization changes is successful in "moderating" farmer that it won't give any chances to farmer mass to absorb collective and radical rebel movement ideologies. Besides, farmers won't have chances to build associational organization to gather farmers mass passing the community limit and farmer friendship network.

#### **4. State-Owned Plantation Limited Company (PTPN) XIII in the Sub-district of Ngabang, in the District of Landak, West Kalimantan**

Kalimantan is one of the place that the government prefers to develop oil-palm plantation estates on the consideration that the big island has a vast area of "no man's lands" claimed as State lands. PTPN XIII the first State-owned company to be granted concession to develop oil-palm plantation in West Kalimantan. The plantation system adopted is the so-called People's Nucleus Oil-Palm Estate (Perusahaan Inti Rakyat Perkebunan – PIR Bun).

PIR-Bun is operated on the conception that those who have capitals help the economically unlucky groups in a mutual beneficial cooperation. From the beginning, the government of the New Order regime assumes that the peasant-planters' economy can be improved through an integrated system of institution and the production factors from planting to marketing<sup>26</sup>.

The Agricultural Minister Decree No. 668/Kpts/KB.510/10/1985 of 4 October 1985 defines the People's Nucleus Oil-Palm Estate as an operation pattern of plantation development in which the large-scale plantation (managed either by State-owned or private companies) as the nucleus (core) of the business helps and assists the *plasma estates* (peasant-based smallholding clusters) around in a sustainable, beneficial cooperation system<sup>27</sup>.

People's Nucleus Oil-Palm Estate aims at developing local economy while taking into account the spatial arrangement aspect that include area for agricultural undertakings, housing or settlement, production infrastructure in consideration of sustainability of

natural resources and environment. It is expected that the People's Nucleus Oil-Palm Estate will become solid ground on which strong agro-business grows. This effort is started by establishing cooperatives that are expected to support the production activities, processing and marketing. Externally, the efforts to develop the People's Nucleus Oil-Palm Estate is linked with the pursuit of establishing regional economic development areas<sup>28</sup>.

The nucleus estate serves as a pilot of technology transfer, management and marketing. The *plasma estate*, on the other hand, is to supply produce to be processed in the factory of nucleus estate. Following the rule, the peasants should cede 7 hectares of land to the company. Out of this 7 hectares, 4 hectares will be for the nucleus estate and will be managed by the company. The peasant-planters will receive 3 hectares of land. Out of the 3 hectares of land that the planters get back, 2 hectares will be for oil-palm plantation, 0.75 hectare for subsistent crop and 0.25 hectare for housing (the house is 5 by 6 meters) and yard. In practice, the native planters cede the lands collectively to the PTPN XIII, and the company distribute the *plasma* plots to the planters.

## 5. Land Deliverance Process at PTPN XIII in Ngabang

The Dayaks, the native of this area, are horticulturalists (agriculturalists with swidden/slash and burn cultivation). They manage their dry rice fields in a rotation. Michael R. Dove, who for years studies slash and burn cultivation states that the swidden cultivation adopted by the Dayaks in West Kalimantan is the best adaptation of the community to their natural and social environment. The adaptation can be understood in the context of balance between the limited labor input and the natural resource available. The economic choice as horticulturalists/swidden cultivators is an efficient decision in their socio-economic context. This is proved with the fact that they can sustain the socio-economic system for hundreds and even thousands of years. Michael R. Dove can prove that the swidden cultivation of the Dayaks in West Kalimantan does not affect negatively towards the forests and the soil as renewable resources. The Dayaks manage to develop their *ecological wisdom* which is up to know firmly practiced in the sustainable natural resource management.<sup>29</sup>

The Dayaks have specific tenure system which is different to the individual system as applied in urban areas. Land is an inseparable part of an integral system in the Dayak culture. The tenure system links closely to the social systems and the customary laws. Property and ownership legitimacy is not based on the formal legal system but rather on the customs and customary laws. Land ownership goes into different categories such as individual ownership, ownership of a certain family and communal lands (locally referred to as *tanah adat*).

The Oil-Palm Estate established by PTPN XIII in Ngabang requires a vast area of land. The land needed by the PTPN XIII are in the territory (ancestral domains) of the Dayaks. The lands need to be delivered from the Dayak communities to the company and the deliverance needs support from Dayak leaders as locally called *timbanggong* and *pasirah*. PTPN XIII needs cultural legitimacy in the deliverance of lands which are before constitute inseparable parts of the everyday life of the Dayaks in Ngabang.

Persuasive approach towards leaders of Dayak communities does not always go smooth; incentives are needed to ease the persuasion. The incentives can be in the form of money. A *timanggong* who already ceded all his land in his territory (the territory is locally called *binua*) to the PTPN XIII claimed to have received Rp.150.000,-, involved in a company-sponsored comparison study program to North Sumatera for 15 days, and received Rp.10.000,- as per-day honorarium. In other cases, however, some community leaders were only supplied with liquor, and then when they got drunk enough, they have to put their signatures in blank papers which were later forged into documents of land deliverance from the communities to the company.

**Table 1**  
**Plasma Smallholding Plantations (Position of December 2004)**

No	Location	Target (Ha)	Realization (Ha)	Agricultural Lands (Ha)	Yards
1.	TM				
	- Plantation Section VI	500	480,0975	74,9821	52,2290
	- Plantation Section VII	800	779,1968	121,2888	77,7051
	- Plantation Section VIII	500	485,7573	75,0309	50,1435
	- Plantation Section IX	600	552,4284	91,0489	60,1949
	- Plantation Section X	640	682,0228	98,8058	67,2333
	- Plantation Section XI	528	552,5973	79,5867	54,0154
	- Plantation Section XII	800	809,8147	120,2731	82,5189
	- Plantation Section XIII	700	690,1518	111,9434	74,4858
	- Plantation Section XIV	600	646,8591	89,8070	60,5670
	- Plantation Section XV	250	234,0204	38,3741	25,3490
	- Plantation Section XVI	550	564,1969	84,4519	55,9567
	- Plantation Section XVII	300	316,4548	45,1320	30,0365
	- Plantation Section XVIII	532	541,2272	81,1593	54,8902
	- Plantation Section XIX	290	281,4386	43,5000	29,0400
	- Plantation Section XX	150	143,2790	22,5000	16,7310
	- Plantation Section XXI	260	240,9069	39,0000	27,6730
	- Plantation Section XXIII	239	239,0000	-	-
	<b>Total</b>	<b>8.239</b>	<b>8.239,4495</b>	<b>1.216,8840</b>	<b>818,7693</b>
2	TBM				
	- Plantation Section XXIII	561	561,0000	-	
	<b>Grand Total</b>	<b>8.800</b>	<b>8.800,4495</b>	<b>1.216,8840</b>	<b>818,7693</b>

Source : Selayang Pandang PTP Nusantara XIII (Persero) PIR V Ngabang, West Kalimantan Barat, December 004

To ease the land deliverance, the company made promises to the communities. In information giving, the company usually uses the logic that why the estate is to be established in remote area is because it will build roads in isolated areas. Roads for the isolated area is regarded a solution for economic development. However, it seems that the company breaks the promise since after 25 years of operation, the Ngabang PTPN XIII never built tarmac roads except the one that People's Nucleus Oil-Palm Estate Office V to the nucleus plantation. Government officials from the level of governor to the level of sub-district head are involved in the process of taking over of lands from the communities to the company. After the persuasive approaches of the government-backed company, through the tactics of material incentives and promises of economic development for isolated areas and also repressive approaches, the leaders of the communities in Ngabang finally collectively ceded all the lands in the customary territory to PTPN XIII for oil-palm estates.

Through such deliverance, the Plantation Company (PTP) VII can afford to establish a plantation estate of 14, 666, 103 hectares in area. The estate is managed in people's nucleus—company pattern in which peasant-planters cede their lands collectively to the PTP VII, out of which the 3,830 hectares to be core, company-managed plantation and 8,800. 4495 to be smallholding clusters managed by the planters, 1,216. 8840 hectares of lands for subsistent crops and housing. The 818,7693 hectares of lands ceded back to the planters, are split into two allocation: 2 hectares for oil-palm and 0.75 hectares for housing and yards to every family of planter. There are 4,400 families of planters in People's Nucleus Oil-Palm Estate (Perusahaan Inti Rakyat – PIR) V in Ngabang. (Table 1 and Table 2).

**Table 2**  
**The Area of Core Plantation (up to December 2004)**

No	Location	Target	Realization	Description
1	<u>TM</u>	701 Ha	687 Ha	
	<u>Plantation Section I</u>	751 Ha	751 Ha	
	<u>Plantation Section II</u>	748 Ha	748 Ha	
	<u>Plantation Section III</u>	601 Ha	595 Ha	
	<u>Plantation Section IV</u>	699 Ha	699 Ha	
	<u>Plantation Section V</u>			
	<b>Total</b>	<b>3.500 Ha</b>	<b>3.480 Ha</b>	
2	<u>TBM</u>	1200 Ha	350 Ha	
	<u>Plantation Section VA/B</u>			
	<b>Total</b>	<b>4.700 Ha</b>	<b>3.830 Ha</b>	

Source : Selayang Pandang PTP Nusantara XIII (Persero) PIR V Ngabang, West Kalimantan Barat, December 2004

## **6. Planters' Resistance to PTPN XIII PIRBUN V in Ngabang**

The People's Nucleus Oil-Palm Estate planters in Ngabang tended to decline due to the old age of the oil palm trees that already exceeded the productive age and already got to replanting time. The decline of productivity of planters' oil palms were also due to the poor treatment since the trees were never fertilized following the plantation standard. The fertilizer supplied by the company was sold by the planters. The old age of the trees and

the poor treatment made the productivity declined. The oil palms in the company-managed-core plantation were treated well and still produced fruits. The planters believed that the company adopted double standard in oil palm management, the company was deemed unserious in directing and assisting the smallholding *plasma* plantation, the company only gave attention to the core plantation.

Actually the planters were already disappointed since the opening of the estates. The planters, for example, complained why they got only one parcel of oil-palm plantation although they had more than ten hectares of land before the establishment of the estate? The planters also complained why the areas with rich soil go into the core plantation and the smallholding plantations were located on infertile lands. In addition they also wonder why tens of Javanese families could have plantation parcels at the smallholding plantation? The Javanese families bought the parcels from the staff of the PTPN XIII in early 1980s. However, the fact is judged as injustice by the Dayak planter who lost their agricultural lands and their communal lands on the promise that the estate would boost the well being of the local communities. Other problematic reality on the highlight of the Dayaks was the fact that the job posts were dominated by the Bataks and Javanese except for unskilled job posts, guards and foremen. Also, the well being of the staff appeared to be different. The staff have cars, housing facilities far more luxurious than the planters or the local Dayaks.

All forms of restlessness of the planters during the New Order reign had never been addressed. Now, when the militaristic New Order regime got weakened and the Dayaks' identity pride hiked after the Dayak—Madurese violent clash, the planters were encouraged to conduct resistant acts. Political opportunities like the decreasing repressive approach and the growing discourses on reforms (*reformasi*) and the growing identity of the Dayaks post the violent clash gave significant drive for the planters to launch resistant acts towards the company.

The theft of oil-palm fruits belonging to the core plantation was conducted by the planters collectively. The company called the action collective looting. The thieves equipped themselves with machetes and home-made guns to threat the company guards.

The planters got encouragement to conduct resistant acts towards the company due to political opportunity, i.e. the political freedom and the growing ethnic identity as a growing local power. Resistant acts of the planters include:

#### a. Oil-Palm Fruit Theft

The production of oil-palms belonging to the smallholding *plasma* plantation declined since the legal status of PTP VI changed into PTPN XIII for since the time, the fertilizer supply from the company to the planters was stopped. The company argued that they stopped the supply because the planter never paid for the fertilizer.

Table 3  
*Plasma Smallholding Plantation Production (Position of December 2004)*

Tahun	Area (Ha)	Target (Kg)	Realization (Kgs)	Ton/Ha	Achievement (%)	Discription
2000	7.997,8910	87.908.000	75.398.040	9,43	85,77	Below the Target
2001	7.997,8910	85.680.000	63.000.350	7,88	73,53	Below the Target

2002	7.997,8910	141.250.000	110.957.570	13,87	78,55	Below the Target
2003	7.997,8910	62.678.000	59.308.410	7,42	94,62	Below the Target
2004	7.997,8910	62.714.000	58.024.870	7,26	92,52	Below the Target

Source: Selayang Pandang PTPN XIII (Persero) PIR V Ngabang, West Kalimantan December 2004

The average production of planters' smallholding *plasma* plantation in the past years tended to be below the production target. (Table 3). The achievements of *plasma* smallholding plantation were below the core plantation. Even in 2003 and 2004 the production of *plasma* smallholding plantation were below 50% compared to the average production of the core plantation (compare Table 3 to Table 4). As the latest data of 2004 showed that the production achievement was 7.26 tons per year, it means the monthly production was 605 kilograms to every hectare. On the basis of oil-palm fruit Rp. 585 per fresh fruit stem, the selling price was Rp. 354,000 per month. A planter with one parcel of oil-palm plantation of one hectare, therefore had average income Rp.708.000,- per month. The story blurred the gap reality of planters. If the data of planters' income up to December 2004 is scrutinized, we will see the data that the income of planters with plantation parcel of 1982/1983 planting time, in January 2004, the highest income of planters reached Rp.7.150.000,- while the lowest was Rp.173.000,-<sup>30</sup>. However, the average production achievement of *plasma* smallholding plantation per year to every hectare is questionable since a part of the production was the one stolen from the core plantation.

The low income of the planters and the fact that there is no alternative to get another additional income drove the planters in the Sub-Village of Gasing Pal X to steal oil-palm fruit belonging to the PTPN XIII. The company plantation is located just next to the plasma smallholding plantation of planters of the Sub-Village of Gasing Pal X. they stole the fruit in groups of tens, even hundred of men, women and children. The theft is usually conducted as the company guards and the police are not patrolling. It can be done both day and night. Stealing in crowd of people is a tactic to discourage the company guards who patrol in group of smaller number than the planters. This tactic is also to ease the planters to be alerted at the coming of guards or police and ease to them to flee carrying the fruit. Basically those who steal the fruit belonging to the core plantation are not afraid of the guards since they equipped themselves with home made guns. In addition, the company guards are also the natives of the area and they know one to another well, resulting that the guards are reluctant to be strict.

Hidden theft is also done by the women who pick the fruit at the core plantation. The mode is that they hit many times the stems to pick so the individual fruit fall down from the stems. As the fruits in stems are loaded into trucks, the women collect the fallen fruit. This is regarded as additional income from the fruit picking job. On average, they can collect 10 to 20 kilograms of fallen fruit every day.

The collected stolen fruit then goes to illegal buyers in the village at a price lower than the company standard. Often these stolen fruit is directly exchanged for rice, sugar, cooking oil or cigarette. The illegal buyers then sell the fruit to the company. The company delivers recapitulation note of fruit bought by the company in the names of



individual planters to the cooperative every month. The People's Nucleus Oil-Palm Estate Company Office (PIR) V Ngabang then pay the buying price to the cooperative.

An informant who often conducts the stealing claimed that he had to do it since there was no other opportunity to get additional income for his family. Stealing fruit from the core plantation then became common practice so that the PTPN XIII guessed that not only planters who did the theft but also government-school teachers in the area also did the same practice. However, it is not easy to catch the thief and prove the crime. On 27 November 1999 the company arrested two leading figures alleged with fruit theft. But no one was willing to be witness. The company could not prove the crime and even the case ended at the fine of Rp. 1,084,000.- imposed to the company for slander under the customary laws. The unwillingness of the people to become witness of theft case shows the strong solidarity of the planters as fellow villagers and as the Dayaks in facing the company (PTPN XIII).

The stealing of oil-palm fruit from the core plantation has annoyed the company. On October, 20, 2001, the company sent a letter to the Dayak Customary Council. The administrator of PIR V Ngabang wrote in his letter that the company had no idea to solve the problems of oil-palm fruit theft. Persuasive approaches attempted towards the Dayaks leaders were also ineffective. Repressive approach was avoided in the bad memory of the case of 1997 in which a mobile-brigade police officer shot dead a villager of Amboyo Inti village which inflicted the protest of thousands of Dayaks. The protestors attacked and set into fire the mobile-brigade police office in Ngabang. An Area Development Officer stated that the root of the theft problem was the low income of the planters. Some plantation parcels of the plasma plantation were even no more productive. As far as this problem is not yet solved, the theft will always happen since the planters have no alternative for additional income.

**Tabel 4**  
**Core Plantation Production (Position of December 2004)**

Year	Area (Ha)	Target (Kgs)	Realization (Kgs)	Ton/Ha	Achievement (%)	Description
2000	3.500	51.886.000	57.602.520	16,46	111,02	Over the Target
2001	3.500	58.450.000	50.499.800	14,43	86,40	Below the Target
2002	3.500	61.250.000	52.596.420	15,03	85,87	Below the Target
2003	3.480	64.312.000	54.869.710	15,77	85,32	Below the Target
2004	3.480	65.914.000	64.267.970	18,47	97,50	Below the Target

Source: Selayang Pandang PTPN XIII (Persero) PIR V Ngabang, West Kalimantan, December 2004

#### **b. Land Reclaiming**

Some villagers of Sub-Village of Ampar Saga of the Amboyo Inti Village in the Sub-District of Ngabang built houses, shops, store house, workshop and church building on the seedling area of the company. The PTPN XIII listed that there were 58 illegal

buildings and 5 illegal vacant lands on the company's concession lands. (See Table 5). All the illegal buildings were on the strategic location, that is at the junction of the main road linking Pontianak and Kuching and the road to the Office of PIR V Ngabang. This location was formerly seedling area of PTPN XIII.

The villagers of Ampar Saga who erected buildings on the former seedling area argued that due to the population growth, they needed more lands for their houses. They also argued that the land was formerly their customary land.

The PTPN XIII could not accept the villagers of Sub-Village Ampar Saga occupying the company's land. The three persons starting the company's land occupation were brought to Mempawah District Court. At the district-level court, PTPN XIII won the case. However, as the defendants appealed to the Supreme Court, they won the case and were rehabilitated. The victory of the three villagers of Sub-Village Ampar Saga firmly convinced the other villagers that they built houses on the seedling area on the conviction that such conduct is right and legal.

**Table 5**  
**Total legal Objects and Their Legal Status**

No.	Type of Legal Objects	Total	Legal Status
1	Church building	1	-
2	House	37	12 with legal private property title/s
3	Integrated Shop-House	4 blocks / 13 apartments	4 apartments legal
4	Impermanent Kiosks	9 buah	6 with legal private property title/s
5	Workshop	1 buah	with legal private property title/s
6	Shop	1 buah	with legal private property title/s
7	Timber Store House	1 buah	with legal private property title/s
8	Vacant Lands	5 parcels	with legal private property title/s
	Total	63 lots	30 titled

Source: Letter of PTPN XIII PIR Ngabang Administrator to the head of BPN (National Land Agency) the district of Landak 26 October 2004

The villagers' effort to reclaim their land was also done by planting rubber trees on the core plantation. On August 2, 2005 PTPN XIII PIR V Ngabang found thousands of rubber young trees planted on the Plantation 2 of the core oil-palm plantation. The company directly uprooted all the rubber trees planted by unknown persons. However, one could guess who the culprit were since the villagers next to the Plantation 2 were having ceremonies of starting paddy sowing called *bahuma*. The company gave all the uprooted rubber trees to the police and deployed spies among the planters. This measure was taken to avoid compensation demand from the villagers in relation to rubber trees uprooting by the company. The young rubber tree planting was an effort by the villagers to reclaim their land now in control of the PTPN XIII.

### **c. The Application of Customary Laws**

The everyday life of the Dayaks is still closely linked to their tradition. They respect highly the norms and try to accord their conducts to the norms. If somebody's conduct is out of the standard of the norms, he or she can get sanction under the customary laws.

Somebody who receives sanction will get embarrassed since he or she is regarded to have hurt the feeling of all the community. He or she will become the object of gossips.

Customary laws, as part of the norms which regulate social relation and association, include regulating community members' day-to-day conducts. The customary laws also regulate the community members' relation to their environment; this links to activities such as cultivation, hunting and gathering forest products. Dayak communities develop customary laws in relation to natural resource management. The social functions of the institutions that they develop on the basis of relations of human beings to their environment constitute *ecological wisdom* which is so far used to pilot their sustainable forest resource management. Customary laws regulate disputes among community members from the light ones like one's behavior that hurts others to the heavy one like quarrel and murder. The level of sanction is determined by a council of leaders and depends upon the level of wrong-doing that one commits. The heavier the case, the higher is the level of the customary court to settle the case. A sub-village level case can be settled at the sub-level customary court by the *Pasirah*. However, when the disputing parties do not get satisfied with the decision of the sub-village level court, they can appeal to village-level customary court headed by a *Pagaraga*. The highest customary court is at *binua* level, and the court is headed by the *Timanggong*.

The imposition of sanction upon ones found guilty is not based on the principles of "eye for an eye." The more serious the guilt somebody commits, the heavier the sanction is. For this he or she should pay the fine in natura: pigs and Chinese jars. The pigs and the Chinese jars in the customary court system are not meant to reflect the material values. Rather, they are believed as parts of the conditions to meet to restore social "balance" have been disturbed by the incidents of, for example, quarrel or murder. In this conception, it does not mean that the one with serious "crime" should be imposed the heaviest fine so that he or she should sell all of his or her property to pay the fine. The fine is just symbol of peace making and efforts of restoring social balance. Therefore the concepts of justice in the customary court are complex in the sense that it employs spiritual perspective and put the efforts to restore social balance in the priority.

The ideal conception of the customary justice, however, applied more in the past. During the New Order reign, government policies tended to marginalize customary institutions. One of the policies was the Law No. 5 of 1979 regarding Village Administration. This Act which mandated the grouping of villages with low populations and ordered formation of village administration resulted in the marginalization of customary offices such as the *timanggong*. The such as the Dayaks. Act did not recognize community-self governance among indigenous communities. Indigenous community/peoples concept was denied in this Act. The uniformed village administration system is the one referred to the existing system in the communities in Java. The village head should be one with Junior High school educational background. This requirement obviously did not give opportunity to the customary leaders to be village heads. As a result, the village head office then went to young people with good education background but know very little on the customary laws, rituals, local knowledge and ecological wisdom. This resulted in conflicts among community members. Crisis of leadership prevailed<sup>31</sup>.

Over two decades of implementation of Act No 5 of 1979, customary institutions among the Dayak communities got weakened. Leadership of the indigenous communities were paralyzed. The respect of customary laws declined. The leaders of indigenous communities were no more independent, they were not for their communities anymore.

Meanwhile, people who do not have the capacity in customary (adat) leadership and knowledge came up in the semi-chaos situation came up to the arena of customary court that they created by themselves in motive of making money through blackmailing. These “criminals who based their operation on the ‘customary (adat) laws’ were called locally *preman adat* (criminals who make use of ‘adat’ for their operation). They tended to ‘handle’ big cases so that they could impose heavy fine in the form of money and made use of the mass to assert their will. Another similar phenomenon is commercialization of customary laws. In this case, one alleged guilty is imposed a heavy fine so that he or she gets difficulty in paying the fine. The “adat” law commercialization was often applied in traffic incidents. Often those who were fined had to sell their houses to pay the fine.

The fading out of the true functions of customary institutions and laws make them no more *attribute of intention of universal application*. This attribute should determine that decisions made by the ruling class constitute ones that go through a long span of time and applicable to similar cases in the future. The customary laws in the past, which served to restore social balance in the communities do not apply recently due to abusive practices. Practices of abusing power in the name of *adat* (customs) (locally termed as “premanisme adat”) and customary law commercialization (*komersialisasi hokum adat*) prevailed along the road that links Pontianak (the provincial capital) and Kuching (the capital of Sarawak state, Malaysia) and Sanggau

Abusing power in the name of *adat* was a phenomenon along the aforementioned road, especially in the period of post 1997 Madurese—Dayak violent clash. The Madurese—Dayak violent clash of 1997 started when a group of Madurese youth molested and hurt a young Dayak in Sanggau Ledo of the District of Sambas (now Sanggau Ledo belongs to the district of Bengkayang. The brawl, however, developed into widespread collective violence toward Madurese communities in different places. The sub-districts of Mandor, Sengah Temila and Ngabang (they now belong to the district of Landak) became the “fighting field”. Thousands of Madurese got killed and tens of thousands others fled to safe places. This collective violence boosted a kind of pride that the Dayaks deserved to the attribute of unmatched “warrior” group. This pride spread especially in areas where the Dayaks are majority. The euphoria of winning the war against the Madurese and of driving away Madurese from areas that were parts of “Dayak cultural territories” roused exaggerating confidence. The situation developed to an anarchy when a Dayak leader lost in the district head (bupati) competition in the district of Pontianak in 1998. The disappointed mass set the House of Representative building into fire. In the period post the incident, the “urakng diri” (we, fellow Dayaks) mass stated that they have no more confidence to the government and some of them started the action of stopping and burning passing by vehicles. In response to the situation government agencies changed the license plates of their vehicles from red (government agencies’ vehicles) to black one (private vehicles).

The Malays and non-native ethnic groups described Ngabang during that period as being governed by a “jungle law”. In the name of the “adat” some Dayaks could assert

their will to people from outside of their community. In other cases, some Dayaks built hut shops in front of the shops belonging to the Chinese on the argument that the land was their 'ancestral domain'. Also the Dayaks put poles on the lands belonging to the Malays on the same argument. As for the lands left by the Madurese, all of them were already in control of the Dayaks, on some of which they already built permanent houses. Any non-Dayak in the area should be subject to the will of the mass of the Dayaks. A restaurant owner in the bus terminal in Ngabang told that once a drunk Dayak youth hit the glass of the display window of his restaurant. The glass broke and the Dayak young man bled. The strange thing was that it was the Padang-born restaurant owner who received 'adat' sanction. He had to pay for the treatment of the young man's wound and he had to pay the 'adat' fine for Rp.1.500.000,-.

At the institutional level, the government-created Customary Board (Dewan Adat) had opposite interests from the communities who wanted the original structures should have full roles. Almost all of the existing adat leaders were the ones appointed by the government. Therefore, it can be understood why some *timbanggong* backed up gambling and bootlegging business<sup>32</sup>. The described situation pictures the fading of the values embedded in the customs of the Dayak communities. The phenomena of *destruction* and *deculturation*<sup>33</sup> which caused the local institutions to fade in the indigenous communities of West Kalimantan reflected in the conducts of the people along the road from Pontianak to Ngabang<sup>34</sup>. The indigenous communities living along the road had to face direct imbalanced social interaction with social groupings outside their communities and this shocked their values. So an anomaly occurred among the indigenous communities. Gambling, alcohol and prostitution-like entertainment emerged as another social problem for the communities.

The destroyed customary institutions along with the disappearance of the ancestral lands which actually sustained the communities' economy while the new economy-political system did not accommodate the interests of the Dayaks, prompted resistance in the name of customs (adat) and the native ascription. This situation emerged as a result of the capacity decline of the institutions of the Dayak communities in Ngabang in solving various facing social problems. At the same time there was a phenomenon of relative deprivation, i.e. the tension between what the Dayak deserved to have such as the well being and the opposing day-to-day reality. The Dayaks, as the natives of the land, deserved to have what have been promised by the project. Creating welfare for planters was the legitimacy ground of the oil-palm estate establishment. The economic-growth occurred but the fruit was not distributed evenly especially to the Dayaks as majority of population of the area. Everything seems blur at present. But, one certain thing is that the Dayaks also want to enjoy material facilities as the company management and the staff as well as government officials and other people belong to the ruling class who can have access to the benefits that the company provides. On the other side, at the socio-economic relational system that the company created, the company puts Ngabang-native-Dayaks at the marginalized position..

In the situation the Dayaks as the natives of Ngabang lost their cultural orientation and living in an unfavorable socio-economic condition, the Dayaks incline to escape to the past. In the past, when everyone respected the norms and customary laws, the communities lived in a situation not as complicated as the present, when the well-being of

the community members did not differ sharply as it now. The customs and customary laws is expected to serve as a shield and at once serves as weapon to face the “strong enemy”, i.e. the strong collusion between those who control the company and the officials of the local government. The spirit to re-apply the customary laws is more as an expression of accumulated disappointment for being neglected as natives living on their own lands.

The Dayaks inclined to apply their customary laws in every social conflict. The customary laws were applied on the community disputes with the company and on other cases concerning communities outside the Dayak. The office of PIR V Ngabang was often imposed customary sanctions in many disputes involving Dayak community members and the company. The office had to pay customary fines for over ten of millions rupiahs every year. In one of the cases, a foreman harshly shouted at a Dayak planter. The Dayak reported to the timanggong that he was offended for being harshly shouted at by the foreman. The timanggong then filed customary sanction to the office.

An example of imposing sanction to non-native was when in 2002 a relative of a Batak company employee of Gasing Pal X village died. They had burial ceremony for 2 days. The relatives of the mourning family gathered and they all spoke Batak. The Dayaks who came to express condolence got offended at their speaking Bataks on the Dayak lands. “Why they did not speak Bahasa Indonesia in a place where the majority were Dayaks,” they argued. At the agreement of the leaders and community members, the mourning Batak family was fined one million rupiahs for not respecting local communities

#### **d. Selling Oil-Palm Fruit Stems to Other Company**

In a contract farming production relation system, called locally as Perusahaan Inti Rakyat—PIR (People's Nucleus Company), the company is positioned as a monopoly bearer of certified seedlings, oil-palm treatment and processing technology. The *plasma* smallholding planters are engaged in a contract to sell all their produce to the company (in this case the PIR V Ngabang). The company provides transporting system for the oil-palm fruit from the plantation to the factory. However, the transport cost of the oil-palm fruit is on the planters in the reduction of the selling price of the fresh oil-palm fruit stems which is paid by the company every month. However, the planters often break the contract. They sell the fruit they produce to the factory in Tayan of approximately 50 kilometers from Ngabang since the factory does not cut the selling price for the transport cost. The planters sell the produce to Tayan factory since they can get the profit as much as the transport cost reduced from the selling price by the Ngabang factory.

A planter who sold the fruit stems to Tayan factory stated that he did that because the PTPN XIII no more paid attention to the plight of the planters. On the situation that the production of the plantation went down and the planters' income declined, PTPN XIII did not do efforts to solve the problem. The planter claimed to have the right to get additional income. In order to transport the fruit stems to Tayan factory, he had to coordinate with other planters in his group. Beforehand, they already made cooperation with the fruit transporting truck drivers. During the day, the fruit stems were mounted into the trucks and in the night the fruit was transported to Tayan. Daylight

transporting was avoided since the only route was through the police office of Landak district and it was to the opposite direction to the road to PIR V Ngabang factory.

#### **e. Planting Uncertified Oil-Palm Seedlings**

The office of PIR V Ngabang strictly forbids planters to plant uncertified seedlings. The planters who want to develop his or her own plantation should buy certified seedlings provided by the PTPN XIII and recommended by the Forestry and Plantation Service of Landak District at the Marihat Seedling Center. Without the Marihat certificate, the company will not buy the fruit stems because produce from uncertified trees will destroy the quality of CPO produced by the factory. However, the planters have tricks to deceive the company. A planter from Gasing Pal X sub-village told that he planted oil-palm seedlings from his own plantation and developed another 2 hectares plantation. When the new plantation gave produce, he mixed the fruit stems with the ones from his certified *plasma* plantation and then collected together with produce of other planters of his group. This practice was easy since the company never controlled the origin of the fruit stems. The planters did not care of the CPO quality produced by the factory.

#### **f. The Demand to Recruit More Local People to Work at PTPN XIII**

A timanggong who chaired Dayak Customary Board of Ngabang Sub-District, in 2000 sent a letter to the manager of PTPN XIII PIR V Ngabang with copies to the governor, Landak District Head, and Director of PTPN XIII questioning why the "sons of the region" (the natives) of Ngabang were not placed as company staff and leaders in the structure of PIR V Ngabang Office. So far the native Dayaks were only placed as labourer and guards. The timanggong's demand was actually responded by the company since a year later two Dayak laborer were appointed as foremen assistant I in Meliau (of Sanggau district) plantation. The two men were in the board of management of Dayak Customary Board of Ngabang sub-district. The two were in control of lists of permanent staff and loose workers to prove that there were not Dayaks to be in the position of permanent staff. The two were widely respected by the community members.

There are a lot of expressions of the community members to describe the lifestyle of the staff of PIR V Ngabang Office to reflect the wide economic gap between the staff and the planters or people of Ngabang in general. A leading figure in Munggung sub-village who had a profession as elementary school teacher told that the leaders in PIR V Ngabang Office brought nothing when they came to Ngabang to work. However, three months later they could afford to buy cars. On the contrary, the *plasma* planters and other Ngabang people had worked for tens of years but their fate did not yet change. He questioned what the contribution of the plantation to the people of Ngabang. There were a lot of native young people who got high education, but the PTPN always said that the quality of human resource of the local people was not sufficient. He said, "The natives are not inferior compared to those coming from Sumatera and Java. They just do not get the opportunity and trust."

The study conducted by Sri Haryaningsih et. al. in Parindu sub-district in the district of Sanggau shows a similar phenomenon, i.e. the natives are marginalized. The study uncovers that the PTPN XIII in Parindu recruits more people from outside the province (63.31%) compared to local people (36.69%).<sup>35</sup> This means that the locals have lost their communal lands and their individual lands to contribute to the development of oil palm

plantation. But they have the least opportunity to fill the workforce of the company. It seems that the oil-palm estates are established to the welfare of the people from outside the province and not the locals who have lost their agricultural lands.

The phenomenon is similar to what Michael R. Dove describes. He says that the Dayaks around the oil-palm plantations in West Kalimantan actually do not take into matters the Bataks coming to work in the plantation. What they do not want is that people from outside build a kingdom and become kings on the lands of the Dayaks. Those from outside the region can be rich as far as the natives can enjoy the well being equal to others. Basically the Dayaks do not want to be oppressed on their own lands.

#### **g. Land Concession Expiration Issue**

The People's Nucleus Oil-Palm Estate (PIR) V Ngabang was established in 1980. The lands were primary and secondary forests and the dry rice fields of the local people. The Dayaks as the natives and majority of population in Ngabang sub-district have specific tenure system which is different to the individual system as applied in urban areas. Land is an inseparable part of an integral system in the Dayak culture. The tenure system links closely to the social systems and the customary laws. Property and ownership legitimacy is not based on the formal legal system but rather on the customs and customary laws. Land ownership goes into different categories such as individual ownership, ownership of a certain family and communal lands (locally referred to as *tanah adat*).

Therefore, they have the category of customary forests or lands, community's property that can be converted into agricultural fields by community members both collectively or individually in the representation of the family in the community.

The land deliverance to the company was done in many ways, through various persuasive approaches. The leading figures of the community were approached with the promises that they would be recruited by the company and information that the people who ceded their lands would get plantation. *Timanggong Binua Pantu Seratus*, *Timanggong Binua Nahaya* dan *Timanggong Binua Sapari* were leading figures representing the communities to cede the community lands to the company in an official ceremony in the office of Ngabang sub-district government, attended by the Governor. *Timanggong Binua Sapari* ceded land which are now turned into the Plantation 1 to Plantation 5, *Timanggong Binua Nahaya* ceded land as vast as a plantation, and *Timanggong Pantu Seratus* ceded lands enough for 2 plantations. However, when the estate has been established, not all the people who have lost their lands get the plantation parcels. In Gasing Pal X, out of the 100 families who have ceded their lands, only 80 of them get the oil-palm plantation parcels. This situation maybe has connection to the fact that in some plantations some people coming from outside area, such as the Bataks and Javanese have obtained oil-palm plantation parcels through purchasing them in the start of the plantation in 1981 – 1982 for approximately Rp.300.000,- per parcel.

The economic problem, especially of the Dayaks at present is complicated since the production goes down and the family burden gets heavier. In 1981 – 1982 when the plantation was opened, their children were still very young. Now their many of their children who get married already but some of them are still dependent on their parents. When the plantation parcels were distributed, the rule was that children would



not get the parcels. A local, although he or she ceded tens of hectares of lands he or she would get only a parcel of 2 hectares and 0.75 hectare yards and modest house although he had 5 children. Now, when their children already get married, and the number of family members increases while the lands do not grow in area and the agricultural technology they have is still the extensive cultivation. The Dayaks have not yet developed intensive cultivation. So it means that in Ngabang sub-district the pressure of the population to the environment is quite heavy.

Now, after the 25 years of operation, the community members start to question on the legal status of the plantation lands managed by PTPN XIII PIR V Ngabang. The land concession should have expired by now and the people expect they can manage and control the lands that they relied on to sustain their life. On September 9<sup>th</sup>, 2004, four timanggongs, comprising three Dayak timanggong and one Malay timanggong saw the manager of PTPN XIII PIR V Ngabang to question the Land Concession because they got information that the land concession of the plantation was extended another 10 years. According to the timanggongs, this was the unfair thing that the PTPN XIII did to the people of Ngabang. The timanggongs sent letter to the manager of PIR V Ngabang twice but the two letters went unreplied.

#### **h. Burning Oil-Palm Trees at Core Plantation**

The Dayak cultivators develop the so-called swidden cultivation. In dry season they open a forest, felling the trees and burn it for a field to cultivate paddy, corns and vegetables. The normally open secondary forest. Long before they opened primary forests for the fields. The forested lands that they open are communal lands. But now, when most of the lands of the Dayak communities in Ngabang are already converted into oil-palm plantation, they leave the swidden cultivation activities. But it seems that the drive to open land for agricultural fields by slashing and burning never dies although they have no more secondary forests. For the past three years, every dry season somebody began to set fires at the core plantation. There was a tendency that the fire was directed to burn the oil-palm trees. The last incident was of August 7<sup>th</sup>, 2005. The fire at Plantation 2 burned 20 productive oil-palm trees. The fire spread but the fire could be controlled. The fire at the core plantations is estimated done intentionally. It seems that the doer wants to do the "earth torching" of the company-managed core plantations. The culprit is not yet identified but it seems he or she has been driven by the people's motivation to open an opportunity to do slash-and-burn activities to start a rice season as soon as the oil-palm trees get burned.

### **7. Conclusion**

The resistance of the planters is generally understood as a reaction towards a threat to a secured state or a loss of social mechanism that sustains the basic needs of the families of the planters. The threats to the subsistence of the planters come up in various forms such as commercialization and capitalization of agricultural system in the rural areas, intervention of new agricultural technology that is more capital-intensive than labor-intensive, demographic pressure, green revolution and some others. When the planters begin to perceive marginalization in their economy, they try to express resistance.

The approach to explain the threats to subsistence and the moral and institutional grounds to sustain it can be categorized as economic-moral approach. This approach stresses more on the normative aspect of the planters' society to sustain the security of their subsistence. In this perspective, the planters are portrayed to have different economic system from the societies of the other segments. The planters' economy is characterized by their subsistent agricultural undertakings which is directed to meet the family needs and not market-oriented. Sustainability of meeting the family need is more meaningful than short-termed big profits with the risk of the fall of family economy.

The horticulturalists in West Kalimantan have also subsistent mode of production, but this applies due to the limitation in labor force not due to the limitation of lands as often expressed in the frame of economic-moral theory of the peasants. In the past, food shortage had never happened in the horticulturalist communities of the Dayaks because the forests were still rich in providing food: fruits, tubers, fish and beasts. In the past the forests served as reserves for agricultural lands and as a place to collect additional food. In addition, the forests also provided valuable products such as *damar* resin, rattan, honey which could be changed into cash.

The opening of oil-palm estates on the lands of the horticulturalists changed the structure of economy of the local people, from the subsistent, multicultural cultivation to market-oriented monoculture cultivation. The drastic change in the structure of economy happened in almost the same time as the change in socio-politics through the re-grouping of low-populated villages and the change from traditional leadership to a uniformed-village administration that integrated self-local governed of Dayak villages into a hierarchical State bureaucracy. This socio-economic change has shocked the Dayak societal system joints. Community's obedience towards their social norms and their leaders decreased.

The resistance of the horticulturalists-turned-oil-palm planters developed after the decrease of the productivity of their smallholding plantation which meant also the decline of their welfare which was accompanied by the increase in the population number. The *plasma* smallholding plantation planters, engaged in the contract farming with the oil-palm estate company were in the position of dependence on the company; they hardly had bargaining position at all. In the context of economy-politics structure built by the State during the New Order regime, peasants were indeed in the marginal position in the structure; they had no opportunities to build extended horizontal solidarity-based organizations. The State and (private and State-owned) companies gave them "package" of organizations like "farmers' groups (*kelompok tani*) and village cooperative (*Koperasi Unit Desa—KUD*) which served more as instruments to mobilize peasants and farmers to support the programs created by the State and capital institutions.

On the other side, the management of PTPN XIII PIR V Ngabang succeeded in building cooperation with the local government, the police and the military, politicians and communities' leading figures in securing its strategic position as State-owned company and in guarding itself from any form of resistance from the *plasma* smallholding plantation planters and the people around the plantation location. Thus, there was no adequate political opportunity for the planters to address their problems. In such condition, it is understandable that they tended to choose covered resistance through

oil-palm fruit theft, oil-palm tree burning, planting rubber trees on the plantation area and planting uncertified oil-palm seedlings.

Besides the limitation of political opportunity, other factors that influenced covered resistance of the *plasma* smallholding plantation planters, were the absence of leadership that could coordinate the movement, and the absence of ideology as the “spirit” or motivation driver and as the frame of conceptualization of the problems of the planters as well. The aspect of communality of the Dayaks can also be taken into account. The Dayaks generally live in low-populated villages and are engaged in a local system of norms, that is the *adat* (customs) which applies in the village level or in the higher *binua* (an entity consisting of a federation of villages). In such situation, the solidarity that they build is communal in nature and it does not enable them to build extensive horizontal solidarity except for special issue concerning their primordial identity like the one shown during the ethnic violent clashes. The fragmentation in the customs and the customary laws of the Dayaks is made use by the company to solve as well as to isolate socio-economic problems of the Dayak planters concerning with their relations to the company and of the Dayaks in general. Through this mechanism, the “fluctuation” of *plasma* smallholding plantation planters can be solved by the estate company.

Mostly, a big plantation is built by emphasizing the agribusiness management which has a purpose of maximizing the profit and not really counting on the cultural social aspect in the planning and implementation of a big plantation. But the solid base in creating a sustainable palm plantation development is by giving top priority to the welfare of *plasma* farmers and to watch over the transformation process of the economic affairs which is on the side of the local community. As long as the plantation community (plantation laborers and *plasma* farmers) and the local community are not living prosperously and are living in hardship, then there is no adequate conflict resolution except the artificial repressive approach. The key to success for the oil palm farmers is that the company and the local region government do not force the land acquisition system in big scale. The community is not forced and intimidated to hand over their land to the company. Besides that, the company gives chances to the farmers to become oil palm plantation entrepreneurs in small scale.

#### Endnotes :

<sup>1</sup> Mudiyono, 1994, “Perubahan Struktur Pedesaan Masyarakat Dayak: Dari rumah Panjang ke rumah Tunggal”, in Paulus Florus; Stepanus Djuweng; John Bamba; Nico Andasputra (Editor), *Kebudayaan Dayak: Aktualisasi dan Transformasi*. Jakarta: LP3ES – Institute of Dayakology Research and Development – Penerbit PT Gramedia Widiasarana Indonesia, page 212 – 213.

<sup>2</sup> Edi Petebang (Editor), 2000, *Kedaulatan Masyarakat Adat Yang Teraniaya (Prsiding Lokakarya Masyarakat Adat Kalimantan Barat Menyongsong Milenium Baru)*. Pontianak: Lembaga Bela Banua Talino (LBBT), Aliansi Masyarakat Adat Kalimantan Barat (AMA), Pemberdayaan Pengelolaan Sumber Daya Alam Kerakyatan (PPSDAK), Program Pemberdayaan Sistem Hutan Kerakyatan (PPSHK), Program Pemberdayaan Sistem Tani Asli (PPSTA).

<sup>3</sup> Mudiyono, 1994, page 213

- <sup>4</sup> Pujo Semedi H. Yuwono, 1996, "Demokrasi di Kalangan Masyarakat Dayak", in Mohammad Nadjib, dkk (Editor), *Demokrasi Dalam Perspektif Budaya Nusantara*. Yogyakarta: LKPSM, page 199.
- <sup>5</sup> Pujo Semedi H. Yuwono, 1996, page 199.
- <sup>6</sup> Pujo Semedi H. Yuwono, 1996, page 201.
- <sup>7</sup> Taufik Abdullah, 2001, "Kerawanan Sosial di Tanah Air: Sebuah Refleksi", in Andi Syamsu Rijal (Editor), *Kumpulan Makalah Diskusi Sejarah Lokal Sub Tema Konflik Komunal dan Ketersingkirian Sosial*. Jakarta: Proyek Peningkatan Kesadaran Sejarah Nasional Direktorat Jenderal Kebudayaan Departemen Pendidikan Nasional, page 26.
- <sup>8</sup> AAGN Ari Dwipayana, 2002, "Masyarakat Adat dan Pluralisme" in *Taining of Trainers: Desentralisasi dan Demokratisasi Masyarakat Adat* held by Institute for Research and Empowerment in Ambarukmo Palace Hotel, Yogyakarta date on 22-25 October.
- <sup>9</sup> Bambang Hendarta Suta Purwana, 2003, *Konflik Antarkomunitas Etnis di Sambar 1999: Suatu Tinjauan Sosial Budaya*. Pontianak: Penerbit Romeo Grafika.
- <sup>10</sup> Kartika and Gautama, 1999, *Menggugat Posisi Masyarakat Adat Terhadap Negara. Prosiding Sarasehan Masyarakat Adat Nusantara Jakarta 15-16 Maret 1999*. Jakarta: Sekretariat Aliansi Masyarakat Adat Nusantara, page vii.
- <sup>11</sup> Djuweng, Stepanus, 1997, *Indigenous People and Land-Use Policy in Indonesia: A Dayak Showcase*. Pontianak: Institute of Dayakologi Research and Development, page 23-25.
- <sup>12</sup> Djuweng, 1997, page 26-27.
- <sup>13</sup> Djuweng, 1997, page 12.
- <sup>14</sup> Gunawan Wiradi, 2002, "Kata Pengantar", in Rikardo Simarmata, *Kapitalisme Perkebunan dan Konsep Penilikan Tanah oleh Negara*. Yogyakarta: Insist Press, page v.
- <sup>15</sup> Riwanto Tirtosudarmo, 2002, "Migrasi dan Konflik Etnis: Belajar dari Konflik di Kalimantan Barat dan Kalimantan Tengah", *Analisis CSIS Tahun XXXI/2002, No. 3*. Jakarta: CSIS, page 341-352.
- <sup>16</sup> Green Revolution is the result from agriculture research funded by Rockefeller Foundation in Mexico resulting best paddy seed called high-yielding varieties. The purpose of this research is the effort to produce paddy as much as possible so that the need in food will be cheap to the citizen in disappearing people's restless and creating condition that can press the industrial working wage to become low. Lappe, Frances Moore; Joseph Collins; and Cary Fowler, 1976, *Food First. Beyond the Myth of Scarcity*. New York: Ballantine Books, page 121. Other economical politic aspect for this agriculture research is the effort of United Sttes in blocking "Red Revolution" run by Lazro Cardenas through the land reform policy in Mexico in the previous time. Agriculture modernization through Greeh Revolution in a counter to the village development model done by the government of Cardenas that considered too "left". See Lappe; Collins; and Fowler, 1970, page 123-127.
- <sup>17</sup> Bachriadi, Dianto, 1995, *Ketergantungan Petani dan Penetrasi Kapital: Lima Kasus Intensifikasi Pertanian Dengan Pola Contract Farming*. Bandung: Akatiga, page 172.
- <sup>18</sup> Salman, Darmawan, 1996, "Protess Petani dan Integrasi Pedesaan. Tinjauan Umum Era Order Baru", *Prima No. 7*. page 56.
- <sup>19</sup> Soetrisno, Loekman, 1991, "Kata Pengantar", in Roland Bunch, *Dua Tongkol Jagung. Pedoman Pembangunan Pertanian Berpangkal pada Rakyat*. Jakarta: Yayasan Obor Indonesia for World Neighbors, page xix.

- <sup>20</sup> Bachriadi, 1995, page 163-164.
- <sup>21</sup> Hadiz, Vedi R., 1996, "Buruh dalam Tatanan Politik Awal Order Baru", *Prisma*, No. 7, page 5.
- <sup>22</sup> Hart, Gilliant, 1989, "Agrarian Change in the Context of State Patronage", in Gilliant Hart; Andrew Turton; Benjamin White (Editor), *Agrarian Transformation: Local Processes and the State in the Southeast Asia*. Berkeley: University of California Press, page 33.
- <sup>23</sup> Salman, 1996, page 57.
- <sup>24</sup> Trijono, Lambang, 1994, "Negara dan petani di Masa Order Baru: Politik Pertanian dan Respon Petani di Indonesia", *Prisma* No. 12, page 73.
- <sup>25</sup> Bachriadi, 1995, page 172.
- <sup>26</sup> Soetrisno, Lockman dan Retno Winahyu, 1991, *Kelapa Sawit: Kajian Sosial Ekonomi*. Yogyakarta: Aditya Media, page 94.
- <sup>27</sup> General Directorate of Plantation, 1990, "Pengembangan Perkebunan Dengan Pola PIR", a paper presented at *Penataran Bupati/Ketua TP3D II Wilayah PIR Seluruh Indonesia di Jakarta 28 Mei – 2 Juli 1990*. Jakarta, page 4.
- <sup>28</sup> Birowo, A.T., 1984, "Aspek-aspek Ekonomi Pertanian", *Berita Antropologi*, No. 13 Year VI Nopember. Jakarta: UI, page 163; Direktorat Jenderal Perkebunan, 1990, page 5.
- <sup>29</sup> Michael R. Dove, 1985, "Foreword.", Michael R. Dove (Editor), *Peranan Kebudayaan Tradisional Indonesia Dalam Modernisasi*. Jakarta: Yayasan Obor, pp xi-lviii. Michael R. Dove, 1994, "Kata Pengantar: Ketahanan Kebudayaan dan Kebudayaan Ketahanan", in Paulus Florus; Stepanus Djuweng; John Bamba; and Nico Andasputra (Editor), *Kebudayaan Dayak: Aktualisasi dan Transformasi*. Jakarta: LP3S; Institute of Dayakology Research and Development; and Gramedia Widiasarana Indonesia, pp xxiii-xlii.
- <sup>30</sup> See, Selayang Pandang PTP Nusantara XIII (Persero) PIR V Ngabang, West Kalimantan December 2004.
- <sup>31</sup> S. Masiun, 2001, "Kebijakan Pemerintah Terhadap Masyarakat Adat dan Respon Ornop Berbasis Masyarakat Adat Dayak di Kalimantan Barat", in Nico Andasputra, John Bamba, Edi Petebang (Editor), *Pelajaran Dari Masyarakat Dayak: Gerakan Sosial & Resiliensi Ekologis di Kalimantan Barat*. Pontianak: Published in Collaboration of WWF – The Biodiversity Support Program (BSP), Wahington DC, USA and Institut Dayakologi (ID), Pontianak-Indonesia, pages 58-59.
- <sup>32</sup> Interview with Paulus Florus, 6 July 2004.
- <sup>33</sup> Terminology used by Lockman Soetrisno, 1998, page 71.
- <sup>34</sup> Interview with Albert Rufinus, 11 July 2004.
- <sup>35</sup> Sri Haryaningsih et al., 1999/2000, A report on Study on the Development of Oil-Palm Plantation and the Impact to Socio-Economic Environment of the People (the Case of Parinddu Sub-district, in the district of Sanggau, West Kalimantan). Pontianak: Faculty of Social and Political Sciences, Tanjungpura University (unpublished).

## **Part II Land Disputes in Indonesia After Suharto's Resignation**

### Chapter 3

#### Land, Livelihood and Village Governance: The Cimacan Land Dispute 1987-2008 <sup>1</sup>

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#### ABSTRACT

This paper analyses the Cimacan land dispute between peasant farmers, golf course developers and the state since the end of the Suharto era, which saw peasant farmers thrown off their land by the state and private developers in thousands of land disputes through Indonesia. The paper will show how the bureaucracy, the developer and the Indonesian legal system concluded to disenfranchise peasant cultivators of rights to former tea plantation land (that was going to be redistributed to them under the land reform programme in the 1960s). NGOs located in Jakarta close to the dispute had little impact on the dispute after the developer sued farmers for 'illegally' occupying the land. The introduction of Village Representative Councils (BPD) in 2001 was a change for farmers and the village to seek fairer compensation. The construction of golf courses closer to Jakarta and the opening of a new toll road to Bandung have left the Cibodas Golf Resort without a future.

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<sup>1</sup> Paper presented at International Workshop on "Land Disputes After Suharto's Resignation," at Hosei University, Tokyo on January 17, 2009.

## Introduction

'Even if it is only the size of a finger, a piece of land will be defended until death'.<sup>2</sup>

The Cimacan golf dispute was one of a number of high profile land disputes which erupted in the late 1980's in Indonesia. The New Order economic development policies had created an insatiable demand for land, and the priority of the government was to facilitate economic development at all costs. This resulted in hundreds of land disputes throughout Indonesia, mostly in Java, but also in Bali, Lombok, and West and South Sumatra. The reasons for this predominance of land disputes in Java include the active reporting of disputes in the national press, the location of peasants organizations particularly in West Java, in particular the West Java Peasants Union [SPJB - Sarekat Petani Jawa Barat], and since *reformasi* by the Pasunden Peasants Union [SPP - Sarekat Petani Pasunden]; the location of activist student groups and legal aid institutes groups providing advocacy for peasant movements; and the close proximity to the central government bureaucracy and the national parliament in Jakarta. Cimacan was thus one of many cases which attracted wide attention in the late 1980s, and again during the early *reformasi* period (Setiakawan 1989a, 1999b; Fidro and Fauzi 1995<sup>3</sup>; Lucas and Warren 2000).

As mentioned above, the demand for land for development projects was the main reason behind these land disputes. These included industrial development (both private and state owned), such as oil and gas, petrochemicals and cement, and agribusiness – plantations including the Nucleus Estate Smallholder or NES scheme (PIR-Bun- Perusahaan Inti Rakyat – Perkebunan) for oil palm, aquaculture, industrial forestry leases (exploitation of old growth forests plantation forestry), the development

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<sup>2</sup> The Javanese is '*sadumuk bathuk sanyari bumi ditohi satumekaning pati*' (*Walau hanya sebesar kening sejenal tanah akan dibela sampai mati*). See Bachriadi and Lucas 2000: xiii; Setiakawan 1991: 3.

<sup>3</sup> Fidro and Fauzi identified 28 major unresolved land disputes in the mid 1990s.

of tourist resorts including golf courses (including the case study in this chapter) and land for public projects. These include three national parks and dams, including one for hydroelectricity (Setiakawan 1991, Fidro and Fauzi 1995), and two cases where land distributed under the government's land reform program in the 1960s was stolen by the village headman and his cronies after 1965.

Various methods of obtaining land from peasant farmers were used during Suharto's New Order. Developers used various forms of intimidation and subjugation (*penindasan dan penaklukan*) including terror, physical violence, bulldozing, surveying and erecting ownership notices on the land cultivated by peasants, preventing farmers from protesting, detaining and jailing peasants, forcibly evicting villages en masse (*bedol desa*), isolating villages from supporters outside the village, and shooting peasants (Fidro and Fauzi 1995:i-xv). More specific methods included delegitimizing proof of land rights, paying compensation not agreed to by farmers, manipulation of agreements through falsification of signatures, and labeling protesting peasants as people who "make trouble" (*mbalelo*) or who "former PKI". Land dispute cases seldom went to court, and developers made sure decisions were in their favour, through bribery and corruption.

In this article we will first review the case study of a tourist development project, namely the Cibodas Golf Course resort and villa in Cimacan village in the Puncak resort region of West Java, how farmers lost their land rights there, and the impact on peasant livelihoods. We will then look at the struggles for compensation during the *reformasi period*, the role of the new village representative council (BPD, Badan Perwakilan Desa), and what has happened since peasants agreed on and received cash compensation. Finally we will look at how the dispute has affected village governance.

### **Background to Dispute**

Cimacan is a large and some parts semi-urbanised village of 16,000 people located in the subdistrict of Pacet on the main road between Puncak Pass (Jakarta's hill



resort) and the district capital of Cianjur, a *kabupaten* which produces 22 per cent of the of West Java's total vegetable production<sup>4</sup>, in a productive market garden economy using the *tumpang sari* cultivation system, with an abundance of water during the dry season.<sup>5</sup> At least 16 varieties of vegetables as well as ornamental garden plants are grown commercially. Because of this, when PT BAM leased 31.6 ha of this land from Cimacan village for a golf course and tourism facility in 1987, 287 farmers and 500 farm labourers lost their cultivation rights to the land. Like other land disputes, loss of land without adequate compensation meant loss of livelihood and was a catastrophe for the Rarahan vegetable growers.<sup>6</sup> The Pacet subdistrict of which Cimacan is the largest village, contributes 60% of the regional budget (ABPD) of Cianjur kabupaten. This income comes from the Puncak accommodation and tourism industry, including levies (*retribusi*) on vehicles and more than 100,000 annual visitors to the Cibodas botanical gardens and the Mt Pangrango-Gde National Park, both located on the western boundary of the golf course. According to the village head, levies (*retribusi*) on vehicles and the tourists they bring to Cimacan raises Rp.1.5 billion per annum for the kabupaten (interview, 2 July 2002). But much to the frustration of both the village administration and the BPD, this income at present goes entirely to Cianjur kabupaten not to the village. Since Undang-Undang 22/1999 and UU 25/ 1999 (*Tentang Perimbangan Keuangan Antara Pemerintahan Pusat dan Daerah*) were promulgated, the village head said in 1992 the local Cianjur kabupaten government had not shared

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<sup>4</sup> This production is achieved on only 23,500 ha, which is only 8.4% of the total area planted to vegetables in West Java, suggesting that yields in Cianjur are high (Hardjono 1990: 3-4).

<sup>5</sup> The *tumpang sari* system is not the same as that found in forestry reclamation areas, where the State Forestry Corporation allows farmers to plant vegetable crops between young hardwood seedlings (Hardjono 1990:v)

<sup>6</sup> Rarahan is the name of one of the four hamlets (*dusun*) where the golf course is located. One block called Kebun Sadri is where the gold course is located and the other block called Ciburuy where the luxury villas were to be located. In between there is a parking lot and food, vegetable and souvenir kiosks serving the hundreds of tourists who come to the Cibodas Botanical Gardens and Mt Gde Pangrango National Park every week. Because of the dispute developer had to demolish two villages on the orders of the Rudini, then Minister of Internal Affairs in 1989. Nothing has been built on the Ciburuy block since then.

any of the levies collected in the village. This was the main financial issue relating to decentralization in Cimacan. Another was to find a resolution to the long running agrarian dispute over compensation for village land leased for a golf course.

### **Causes of the land dispute**

The Cimacan peasant farmers had cultivated village land (*tanah kas desa* also called *tanah titisari*) for which they paid an annual rent, since the early 1970s. As part of their attempt to strengthen their case for formal rights to the village land, peasant cultivators asked that they be issued with regional development levies (IPEDA - *Iuran Pembangunan Daerah*) called locally *girik*, in 1977<sup>7</sup>. The farmers duly received and paid their IPEDA levy to the village. In Java this was considered to be recognition of occupancy, in the absence of any formal agreement to cultivate the land from the village. Their claim initially had the support of the village headman, although subsequently he accused the leaders of the farmers who organized the development levies of being ‘communist troublemakers’ (Bachriadi and Lucas 1981: 51<sup>8</sup>). After holdings meetings with cultivators with no resolution, the Cimacan Village Community Resilience Board (LKMD<sup>9</sup>) and the headman unilaterally leased out the land to a Bandung developer to build a golf course. Thus the dispute was caused by the village administration leasing 31.6 hectares of village land on which 271 families had grown vegetables and flowers for a livelihood since the 1960s), to a Bandung developer to build a 19 hectare 9 hole golf course and luxury villas. Since 1987, the dispute has been in and out of the district, provincial and finally the Indonesian Supreme Court, with all judgments upholding the validity of the developer’s leases (Bachriadi and Lucas 2000: 32-41).

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<sup>7</sup> For IPEDA and its relation to land taxation under the New Order see MacAndrews 1986: 62-68

<sup>8</sup> The then village head also accused farmers of not paying rent for the land.

<sup>9</sup> On the role of LKMD since 1980, see Antlov 2000. For a summary of the oral presentation of this conference paper see Kana, Pradjarta, Suwondo et. al 2001: 75-79.

### Loss of Livelihood caused by land dispute

The total losses of income and livelihood from the land being taken from local peasant farmers was estimated as follows (Bachriadi and Lucas 2001: 17)

Table 1  
Farmer's Losses Caused By Construction of Cimacan Golf Course in 1989

	Compensation demanded by disposed farmers	Annual value of production before evictions <sup>3</sup>	Loss of income per <i>patok</i> <sup>4</sup>	Average loss of income per family	Total loss of production ( <i>kebun Sadri dan Ciburuy</i> = 790 <i>patok</i> )
First Cianjur court case (28 peasants/125 blocks)	Rp.112. 607,000 <sup>1</sup>	Rp.121.400.000	Rp. 888.000	Rp. 4.021.000	Rp.711,000,000
Second Bandung court case (176 petani/430 <i>patok</i> )	Rp. 831.977.000 <sup>2</sup>	(not known)	Rp.4.727.000	Rp. 4.727.000	Rp. 1.53 billion

- Notes:
1. Jawaban Konpensi/Gugatan Rekonpensi Dalam Pekara Perdata No. 28/Pdt/G/1989 Pengadilan Negeri Cianjur, LBH Jakarta, 4 December 1989. 38.
  2. Gugatan Perbuatan Melawan Hukum No 2/Perdt/LBH/1990-01, LBH Jakarta, 10 February 1990 90.
  3. Data from interviews in Cimacan 1999.
  4. One *patok* is 400m<sup>2</sup>

The cases of the families of three peasant cultivators, Emus Muhidin, Gogo Gojali and Dja'i illustrate the plight of these peasant farmers and their families. Before PT BAM expropriated 15 *patok* belonging to the first family, they had a sack of rice (25 liters) and Rp 7 million in a savings bank. When the PT BAM foreman (*mandor*) and his assistants destroyed the farmer's gardens, Emus had 7 *patok* of carrots and onions ready to harvest. As a result of being evicted, two children dropped out of school, and it was difficult to afford to buy rice for the family. His wife tried to sell vegetables in a retail stall outside the gates of the Cibodas botanical gardens in the weekend, not always profitably.

Gogo Gojali and his family were worse off. He managed to save some of his onion plants from being destroyed, and planted them again, but then *mandor* working for PT BAM dug them up and through them away. Six of his children dropped out of

school. He pawned his house for Rp. 500,000 to rent land elsewhere. But after two harvests, which paid off the loan, the land was sold. Now he is a labourer (*buruh cangkul*), and is often sits at home with nothing to do. "If I was still a vegetable, my kids would be self sufficient, maybe they could buy a car, or I could go on the pilgrimage to Mekka. It's hard for me to by enough food for my family let alone buy things for my kids."

Finally a 70 year old peasant Dja'i recalls:

Can you imagine, before I had 6 *patok* [2, 400m<sup>2</sup>], including broccoli, onions, green vegetables, orchids, roses and garlic. Also I kept a place to grow strawberries. I could sell Rp 62,000 worth of strawberries per week. I could get Rp. 2 million a year, sometimes Rp12 million. This was OK for my wife and kids. Don't you think it was crazy that I received *pangjeujeuh* money for this?! Just imagine only 30 rupiah [per square meter], not enough for even one cigarette. Now I am like you know someone....who just sits around in the sun after his morning bath. Well, there is no other work. At the best I can go to Cibodas on Sundays and look for something to do there. Whatever it is I will do it. Two of my kids had to drop out of junior high school. In fact all their older siblings finished senior high school. I feel sick in the stomach thinking about it. That damned golf course. I hope I can get my land back and work it again. Even if I have to start from scratch I want my land back!<sup>10</sup>

From this farmer and from the figures in Table 1, the extent of the losses of these peasant farmers is clear. From the sale of vegetables they received an income of roughly Rp. 4 million per year or Rp. 335,000 per month. These estimates show why peasants refused PT BAM's compensation offer of what the developer called "consolation money" (*uang pangjeujeuh*) of Rp. 30 /m<sup>2</sup> or a total of Rp. 15 million. It

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<sup>10</sup> 'Dja'i, 70-an th., petani Cimacan' *DeTik*, 26 May 1993.

was nowhere near the market price of land in the village, and as one farmer remarked, remarked at the time, it was not enough to buy one cigarette.<sup>11</sup>

Having briefly looked the background to the Cimacan land dispute, how it occurred and the impact of loss of land on peasant families, we will now see what happened to the ongoing struggles for justice during the *reformasi* period

### **The impact of *reformasi* on the Cimacan land dispute**

In 1998 shortly after the overthrow of Suharto, the peasant farmers of Rarahan hamlet in Cimacan village inscribed the words "This is the people's land" (*Tanah Untuk Rakyat*) with their hoes into one of the golf course greens. In 2000, supported by the new political momentum of *reformasi*, AMUK, (Aliansi Masyarakat Untuk Keadilan, Community Alliance for Justice) was formed to get the land back from the developer. As part of the AMUK struggle, parts of the land was re-occupied and cultivated by villagers. But as in the late 1980's the political struggle alone could not resolve the dispute, because the 30 year leases do not expire until 2017. AMUK needed a legal resolution to the dispute. So it campaigned for the village headman to sign a Release of Rights (*akte pelepasan hak*), which would in effect be a cancellation of the lease. This failed because of intervention from Cianjur district government under pressure from the developer, which threatened through manipulation of the court. After evicting the cultivators with hired thugs (*preman*), PT BAM got the decision in was seeking from the Cianjur district court, namely reaffirming the legality of the original leases of village land given to the developer in 1987 (Interviews in Rarahan DATE). WHAT ABOUT COMPENSATION?

After the court decision validating the original leases, some leaders of the Rarahan community (where the disputed land was located) decided that the any further legal attempts to regain their land would be a waste of time. (This was the opinion of

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<sup>11</sup> According to a land broker, the market price of land at that time in Rarahan was between Rp.15-20.000/m<sup>2</sup>. Another farmer said that farmers were demanding Rp. 5000/m<sup>2</sup> as compensation on both blocks, and Rp. 156 million for a total of 31.6 ha.

the NGO SKEPHI after PT BAM took 28 farmers to court in 1989). Nor could they get their land back by political action (see below). Instead they would try to negotiate with the new developer. In order to do this they needed political authority from the village. The one way to get that authority was to get representatives of the 287 dispossessed landholders elected onto the newly created Cimacan Village Representative Council (BPD, Badan Perwakilan Desa). Three members of AMUK did get seats on the new Village Council, one was chosen as vice chairman, and it was they who got the BPD to negotiate with the new developer. Let us see how this Village Council worked in Cimacan

### **The new village representative councils (BPD)**

Under Suharto's New Order, most of Indonesia's 61,000 villages were part of the 'floating mass' which had no political representation (political parties were not allowed to campaign at the village level). There was no space for change, innovation or expression of grass roots political aspirations. There was very little room for public shows of dissatisfaction, and "clients of the state" tightly controlled political life. Two generations of ordinary Indonesians lost important political skills, like how to raise issues, lobby for their interests, or build constituencies (Antlov 2000). All the members of both the LMD (Village Assembly) and the LKMD (Lembaga Ketahanan Masyarakat Desa, Village Community Resilience Boards) set up in 1980 as the vehicle for government development projects, were appointed by the village headman. His accountability speech to the LMD could not be rejected. The headman and the village secretary were *ex officio* chairman and secretary of both the LMD and LKMD. There was no separation of powers between legislative and executive at the village level (Antlov 2000)

A comparison of the old and new village government laws (Regional Autonomy Law (UU22/1999) and the earlier New Order Law 5/1979 on village government) show how real the changes were meant to be (Antlov 2000). Under the new law village heads had to not only share power with elected BPDs, but had to be

responsible to them with an annual accountability report, which BPD could reject, at least in theory. Even sharing power was difficult for many headmen. The extent to which this happened varied depending on whether a village head was elected before or after *reformasi* began. Headmen elected during the *reformasi* period had to adjust to the new political situation. In theory the headman was appointed by and responsible to, the BPD, for a maximum of two five year terms, or ten years (under the New Order it was two eight year terms). BPDs were supposed to be elected, but this depended on the implemented regulations at the district (*kabupaten*) level. BPD had the power to draft village legislation (*Perdes-Peraturan Desa*). Villages could bypass subdistricts (*kecamatan*), and deal directly with district governments (Antlov 2000).

The election of village councils was one of the reforms brought in by the Regional Autonomy Law 22/1999 to encourage more democratic village governance. The law has expanded public space at the village level, and village society would be less likely to be 'co-opted by outside interests' (Tumpal Saragi 2002). While elections for headmen had been chosen by direct elections since before independence or earlier (although terms of office were progressively shortened from two terms of eight year to five), village assemblies (LMD) and the various village councils created during the New Order were always appointment by the headman, who was the most powerful individual in the village. Under the New Order "village politics were monopolised by clients of the State" (Antlov 2000). Village institutions (LMD - Lembaga Musyawarah Desa, Village Assemblies) and later from 1980 LKMD were stacked with these clients of the state appointed by village headmen, whose decisions they had rubber-stamped throughout the New Order. Public displays of dissatisfaction were treated with suspicion, the *kabupaten* and the military monitored administration at all levels down to every village. This all added up to 30 years of unrepresentative village government during the New Order.

Other issues have emerged from research on BPDs (Antlov 2000, Christina M 2001, Ketut Suwono 2001, Supini 2001, Sutoro Eko 2001). Their findings reflect what has happened in many villages, including the majority of villages in Cianjur district,

and are mostly pessimistic view about the role of BPDs. According to this research, village councils were not functioning according to the intention of UU 22/1999, because Ministry of Home Affairs regulation (Permendagri 64/1999<sup>12</sup>) has (deliberately) emasculated the Regional Autonomy Law by keeping power centralised in this powerful Ministry. Money politics was alive and well in village councils (Budiyono 2000). Many of the New Order village institutions mentioned earlier (LMD and LKMD) which should have been dissolved after UU 22/1999 was promulgated were still in existence. Political parties had too much influence on some BPDs. The need for BPDs was questioned when communities already have interest groups that are informally promoting more transparent government (Ketut Suwondo 2000, 2001). In one village in Bantul kabupaten, village officials were anti-BPD, for financial and social reasons – it would increase conflict between members of local village elites (Latief 2000). With political parties now able to campaign at the grass roots level, village councils could end up controlled by political parties. There was concern they would take over village lands used to pay officials (*bengkak*), or they would act like courts and put the village head elected during the New Order on trial (*menghakimi*) for past mistakes. Jokes were being made about the name Badan Perwakilan Desa, changed (*diplesetkan*) to Badan Pemborosan Desa – ‘Wasteful Village Councils’, implying they had no financial management skills (Sutoro Eko 2001). As vice chair (and former AMUK member) of Cimacan BPD (Dede Dachroni) describes the BPD in 2003:

The Cimacan BPD meets twice a week or more often if there is a *rapat mendadak* (unexpected meeting). Our BPD is the most active in the whole subdistrict [14 villages]. We had the first ever *reformasi* village head election in the whole of Cianjur [383 villages CHECK]. We were the trailblazing village (*desa pelopor*). Most South Cianjur BPD don't understand what their role is, they are in competition with the headman or want or dismiss him. They look for his mistakes. This is because during the New Order there were lots of policies that weren't any good. Now new headmen come in – they can't solve the problems which have built up (*bertumpuk*). At first our new headman had an

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<sup>12</sup> For a comprehensive critique of Kepmendagri 64/1999, see Antlov (2000).



allergy about working together (*alergi kordinasi*). He went here and there trying to solve the land dispute. He took farmers to meet Koliba investors in Jakarta, he wanted to solve the land problem on his own.<sup>13</sup> He failed because he had to involve the BPD. But now we work together [*mau sejalan*]. Our BPD is the most active in the whole subdistrict [Pacet] (Interview in Cimacan 01.07.2003).

The Cimacan BPD fits into the progressive category, of those which have brought democratic reforms to the village.<sup>14</sup> As we have seen it was democratically elected and had only two clients of the state (Antlov's term) one village official and one former military member (see Table 1) the rest were traders, farmers and former members of AMUK. It avoided fights with headman Dullah, who after trying to go it alone, decided to cooperate with the Village Council. The thirteen members were elected in a transparent process relatively free of money politics. Only two of its members were 'clients of the state' a village official and a village youth leader (see Table 1). During its 5 year term (2002-2007) apart from negotiating land compensation, the Cimacan BPD organized an election for village headman; passed village regulations to regulate village tax levies; it passed village regulations on local levies and taxes, reformed village neighbourhood associations (RT), issued ID cards locally, and resolved smaller land manipulation cases by village officials and other governance issues<sup>15</sup> Along the way the Cianjur district tried to put obstacles in the way of the Cimacan BPD.

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<sup>13</sup> Koliba were one of the largest real estate developers in Cimacan, with extensive landholdings. It was they who set up a new company PT Bukit Asri Padang Golf to buy out the original developer PT BAM. The local manager was an Australian, hence the possible association of Koliba with Coolibah, a type of Australian Eucalypt.

<sup>14</sup> See Anton Lucas 'Regional Autonomy and Village Governance Issues in West Java: Cimacan Village Council (BPD) in Cianjur kabupaten in the era of *reformasi*', paper to 4<sup>th</sup> International Yayasan Percik-ford Foundation Seminar, *Dinamika Politik Lokal: Partisipasi dan Demokratisasi*, Salatiga 14-18 July 2003.

<sup>15</sup> These included regulation on the sharing of local village taxes and levies (*retribusi*), issuing of ID cards locally in the village, managing kiosks of souvenirs and food and vegetable sellers outside the Cibodas Botanical Gardens (Lucas and Warren 2003)

These obstacles were subtle but obvious in the minds of ex-AMUK, who believed Cianjur wanted to control the BPD. After its election by popular vote in January 2001, the Cianjur district delayed the inauguration of the Cimacan BPD for four months (until every village in the district had elected a BPD). For a time the village head was reluctant to share power. The Cimacan BPD's biggest problem inherited from the New Order regime was the above mentioned golf course dispute. No fewer than 9 subdistrict officers and 4 bupatis (not to mention West Java governors; heads of the National Land Agency (BPN) offices at district, provincial and national levels; district and provincial assemblies (DPRD) and the national parliament, had been unable to resolve this dispute. Neither could the Indonesian courts (including the Supreme Court) deliver a verdict which upheld the rights of cultivators (Bachriadi and Lucas 2001: 32-41). All had given verdicts upholding the validity of the 30 leases the developer had obtained from the village administration. What hope did a newly elected village council, mostly from NGO backgrounds, with no experience in administration, have of succeeding where others had failed?

The political situation in Cimacan and the election of a strong BPD was connected to its location at the center of the local tourism economy, as a visitor centre for the Cibodas Botanic Gardens and the National Park. Because of its close location to Jakarta, more than 100,000 visitors per year visit both venues on weekends and public holidays. The Puncak Pass region to the north of Cimacan is a popular destination for Jakarta elite on weekends, and for the seminar circuit. The horticultural industry - flower growers selling ornamental plants - has weathered the economic downturn, and developing markets outside Java<sup>16</sup>. Cimacan has by and large weathered the 1997 economic crisis better than other villages in West Java, which have had to implement similar democratic reforms with less favourable economic conditions (Antlov 2000).

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<sup>16</sup> On a visit to BPD chairperson Lukmanul Hakim, he had just struck a deal to send on truckload of ornamental plants to Palembang in South Sumatra worth Rp. 35 million. His position on the new BPD was not unrelated to his prominent in the ornamental plants business.

Secondly protests and demonstrations over the disputed golf course development have politicised Cimacan village for many years. As a result of this long dispute, public expressions of dissatisfaction and conflict are not a new phenomenon in Cimacan, as one BPD member put it 'We were trained by conflict (*Kita dilatih dengan konflik*)'. It began back in 1987 when they lost their land because the Bandung property developer used blatant KKN (*korupsi, kolusi, nepotisme*, corruption, collusion and nepotism) tactics to obtain two 30 year right of use (*hak pakai*) leases over the village land<sup>17</sup>. Farmers and NGOs began a campaign against the developer, and the State (the village, the kabupaten and provincial government, and the regional and national land boards), while trying to enlist the support of the kabupaten and DPRD to get back their land. Through their long struggle for justice, countless demonstrations and visits to local and regional legislatures, and the national parliament, farmers and their leaders learnt new political skills. They learnt how to lobby for political support, and how to work with NGOs and students committed to their cause<sup>18</sup>. Because the golf course dispute was still unresolved when the elected Cimacan village council took office, their first task was to find a solution. Many Cimacan BPD members were children or relatives of the original group of dispossessed landholders. They had grown up in households accustomed to conflict, angry and frustrated at being dispossessed of their livelihoods and loss of educational opportunity for their children. For these reasons it was inevitable that Cimacan would start out some activist members of the BPD, initially with lukewarm support from the village head.

### **The process of election of Cimacan BPD**

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<sup>17</sup> The court process was corrupted by the developer PT BAM handing out large sums of money to the judiciary, as well as the Cianjur kabupaten administration. The presiding judge Benjamin Mangkoedilaga, previously something of a hero in NGO circles for his courageous defense of the weekly newsmagazine *Tempo* in a landmark court case, also asked PT BAM for money, according to a company director who was later sacked (Bachriadi and Lucas, 2001, 68, 113 note 91)

<sup>18</sup> For how NGO-student alliances formed over land disputes during this period see Lucas and Warren, 2003.

The Cimacan BPD was elected on 22 February 2001, but not formally installed until 22 May 2001. The Cianjur district village government office (Dinas Pemerintahan Desa) told the BPD it could not be formally inaugurated before every village council in each of the district's 335 village councils had been elected.

The Cimacan BPD was chosen by direct election, in a 'first past the post' method of election. Eight thousand residents over the age of 17 were eligible to vote, 6000 registered, but only 3967 turned out to vote for 13 out of 38 candidates. None of the three women candidates were elected. (See table 1).

Table 1

**Composition of Cimacan Badan Perwakilan Desa (elected 22 February 2001)**

Name	Age	Education	Current Occupation	Hamlet (dusun)	Votes Obtained
1.Dede Dachroni <sup>19</sup>	25	Secondary School	Farmer/AMUK	4/Singabaron	757
2.Mafudin Ruhiyat	59	Primary School	land broker/ Cimacan village official	1/Cimacan	646
3.Lukmanul Hakim	36	Diploma 3 SLB (?)	Flower grower P3 activist	2/Rarahan	410
4.Ayi Suherman	29	Secondary school	KarangTaruna (village youth leader)	3/Lemah Duhur	310
5.Momo Kosworo	33	Secondary School	hotel employee AMUK	4/Singabaron	289
6.Ajang Suwandi	29	Secondary School	fuel seller/AMUK	2/Rarahan	247
7. Ondaya	60	primary school	retired military	1/Cimacan	210
8.Dada Djumena	57	Secondary School	Flower sellers cooperative	1/Cimacan	201
9.Ayep Syaifuddin	37	Senior High School	Farmer/ Youth hostel board	4/Singabaron	aprox. 200
10.Dadang Djuhaini	29	Senior High school (?)	Flower cooperative member 1	1/Cimacan	189
11.Dui Rahmad Bahu	35	Senior Secondary School	fruit seller/ pemuda	4/Singabaron	187
12.Rachmad Sjarifuddin	29	Degree in public administration	al Hikmah mosque official/Muslim NGO	1/Cimacan	160
13.Budi Utomo	25	Senior Secondary School	Shop assistant youth leader	1/ Cimacan	152

Source: data from interviews in Cimacan village, September 2001, July 2003 and August 2004

- Notes: 1. Of the 13 elected members 4 were from families who were involved in the original golf course dispute.  
 2. Three members have subsequently resigned, and have not yet been replaced. Member no.4 resigned because Cimacan BPD members are not paid (the work is voluntary); no. 6 resigned because he felt pressured by AMUK, and no. 13 because he moved to another village.  
 3. Of those members whose political affiliations can be identified, two are PAN members, one is P3, one is Golkar, one is PIB, and others are 'non party', Golput [*golongan putih*] or affiliation unknown.  
 4. Out of 38 candidates who stood for election, there was only one woman, who was ranked no 14 in the voting order. In the subsequent village head elections, one of the five candidates was a woman who received 66 votes; the winning candidate had 2732 votes.  
 5. Members 1, 5 and 6 were founders of the locally based NGO AMUK (Aliansi Masyarakat Untuk Keadilan) which was a key player in the last (and failed) attempt to get the land returned to the farmers in 2000. They resigned from AMUK before standing for election for the village council.  
 6. Because the village head (*Kades*) election was held in September 2001 (8 months after the BPD election), there were no unsuccessful *Kades* candidates standing in the Cimacan BPD elections.

As mentioned earlier, a group of Rarahan hamlet activists had set up an advocacy group called AMUK (*Aliansi Masyarakat untuk Keadilan*) early in the

*reformasi* era. They campaigned for the cancellation of the leases and return of golf course land to the original cultivators, compensation for loss of income, and court trials of officials involved implicated in the original corrupt deal with the developer. However AMUK and three of its most talented leaders stood for and were elected to the BPD (see table 1). However the district court upheld the legality of the leases, so Pemda Cianjur, worried that the developer would demand a big compensation pay out, told the village not to cancel them. At the point, the three AMUK BPD members changed their minds about campaigning for the return of the land. Instead election to the BPD gave them authority to negotiate a compensation deal for the village and for the remaining cultivators<sup>20</sup>.

Twelve of the 13 members had non-government backgrounds. The families of the three ex-AMUK members on the BPD had lost their land to the golf course development. They had grown up in families who were bitter towards the village head (whose action in 1987 cost them their livelihood and an education), bitter towards the legal system (which delivered no justice to them), and bitter towards the state which sided with the developer.

The Cimacan BPD was elected by a democratic vote, from a field of 38 candidates. Each of the four hamlets (*dusun*) in Cimacan (Singabaron, Cimacan, Rarahan, and Lemahduwur) registered those residents eligible to vote. There was no notion of equal hamlet representation on the BPD. There were 38 voting boxes each with the picture and name of a candidate. In a 'first past the post' system, the first 13 candidates with the most votes were elected. All were Muslim, 8 had some secondary education (SLTA), two had primary school, and one had a degree in public administration. None of the BPD members had any connections with the existing Cimacan village administration<sup>21</sup>, although one member has been in another Cianjur

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<sup>20</sup> Interviews with Dede Dachroni and Momo Koesworo in Cimacan, July 2003

<sup>21</sup> This administration consists of the village head, secretary, 8 officials, 5 hamlet heads (*kepala dusun*), 10 RW and 57 RT. It also includes two security officers, a Babinsa, and a Babinmas. Outside the

village administration, including a year as village head, in the 1980s. All were working part time in a range of occupations, including the lucrative plant nursery industry, which is now developing bonsai export markets to the Outer Islands, EEC countries and Japan.

Until 2004, Cimačan BPD members were volunteers and not paid for attending meetings (see below). BPD had to find its own budget through fund raising by voluntary contributions from owners of luxury holiday villas, and small hotels. The one attempt to raise money through a levy met with a storm of protest and the BPD had to back down quickly. The village headman provided a meeting room in the village office, which became the BPD headquarters.

Under the Regional Autonomy Law, BPD had to supervise the election of village headmen. Before the land compensation issue could be negotiated, a new village head had to be elected. Sp the first matter, which BPD had to deal with, was the election of a village head.

### **Elections for Village Headman**

*'Pemda [Cianjur] is worried that they are losing control of the process'* (BPD member)

Cimačan BPD established its authority in village affairs by successfully running a democratic election for village head in September 2001, the first village to be allowed to do so in Cianjur kabupaten. However BPD members were frustrated by the lack of cooperation from Cianjur district administration on a number of issues.

The first problem (as already noted) was that, although BPD was elected on 22 February 2001, Cianjur did not formally inaugurate the village council until 22 May 2001. *Pemda* Cianjur said the reason for the delay was that all 335 villages in Cianjur district had to choose their councils before they would formally inaugurate them.

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administration are BPD and LPM (Lembaga Pengembangan Masyarakat, Institute for Community Development), and the PKK (the women's group) and the family planning group.

However this did not stop Cimacan BPD held meetings to discuss minor issues, such as who was responsible for repairing a bridge damaged in a flood, or a dispute over payment for the new market building in Cibodas.

#### **A new deal for landholders.**

Attempts to obtain additional compensation for farmers began early in the era of reform before the formation of village councils in Cianjur district. In 1999 the original golf course developer (PT BAM) claimed to have paid Rp 600 million to three farmers representatives. According to AMUK informants, the developer gave the money to the Cianjur district administration. They claimed that farmers only received Rp 300 million via the head of the village government section of the Cianjur district administration. In the end farmers only received Rp 70-80 million, while two of their leaders absconded with the rest.

But first the Cimacan BPD had to supervise the election of a new headman. The term of office of the retiring village head (Haji Dachlan) ended in January 2000 but was extended as acting headman for six months. As a caretaker headman he had no authority to make new decisions, including resolve the golf course dispute. BPD wanted to settle the compensation issue, complicated by money politics. Cianjur local government officials stood to gain a second time if Cianjur local government rather than the new village council controlled the negotiations.

There is a close connection between the headman election (Pilkades) and resolving the golf course dispute. There is someone in Cianjur local government who wants to delay a compensation settlement between the village and the developer, so he can get money from the developer. This person is the head of the [Cianjur district] village government office (*Kabag Pemd*). If BPD resolves the conflict, *Kabag Pemd* can't ask the developer for money. That's why we want a quick election [for village head]. There is about 5 other land cases still unresolved [in Cimacan village]. Some involve village officials who put what other village land into their own names. BPD wants to investigate this (Dede Dachroni, interview in Cimacan on 30 June 2003).



After it was elected, BPD told the 287 families involved in the original dispute that the Village Council was seeking a resolution to their compensation claims, as soon as the headmen election was held. Getting their land back was no longer an option:

'If people keep demanding that the golf course land be returned under these political conditions, they might end up with nothing... How long do the people have to keep struggling? I felt sorry for people having to wait another 16 years till the end of the leases to get their land back. We have to use political power (*kekuatan politis*), not legal power (*kekuatan hukum*). Even if the court sits in session one hundred times, it won't solve the problem' (interview in Cimacan, 2.07.2003).

The issue for the BPD was reach agreement with the golf course operator on a fair and reasonable compensation for community's loss of cultivation rights to the village land (*tanah kas desa*) in 1987. It was clear to BPD leaders (who had followed the events in 2001) that farmers would not get back cultivation rights, because 'the developer can still buy political power', and also bribe the court to get a decision in their favour. (Interview, 28 August 2001).

In a nasty split, AMUK the NGO formed early in the *reformasi* period to resolve the land dispute, fell out with BPD over this issue. AMUK argued they represented the majority of farmers who wanted their land back. Secondly they wanted the village to keep its communal land (*tanah kas desa*) including the two blocks leased to the golf course. A particular issue in the community was compensation for crops planted at the start of the *reformasi* era, which had been destroyed during 2000 by developer's gang of thugs (*preman*). After the Cimacan village attempt to cancel the developer's lease on the village land failed in 2001 (see below), and PT BAM won its court case against Cianjur district for compensation if the leases were cancelled, AMUK split. It's 3 founders left and got elected to the new Village Council. The Council's view was that the land would never be returned until the end of the lease, and 17 years was too long to ask people to wait. They wanted instead to negotiate a new compensation deal with the developer, for both cultivators and the village based on market value of the land.

In 2002, the developer sued the Cianjur district government in the district court in a civil action demanding compensation of Rp. 30 billion if they revoked the two 30 year leases on Cimacan village land. The court did not grant the compensation, but did uphold the validity of the leases. This effectively put an end to the peasant's political struggle to reclaim their land. The Cimacan BPD knew that the Cianjur district administration would never agree to the cancellation of the developer's lease (*akte pelepasan hak*) by Cimacan village, because it could not afford to pay compensation. If the peasant farmers continued to demand the return of their land they would have to wait 17 years, ie. Until the 30 year lease had expired. The Village Council said 17 years was too long to wait for a resolution of the conflict.

It took two years for the Village Council and the village administration successfully negotiated a compensation payment of Rp. 2.5 billion (or 8000/m<sup>2</sup>) for 231 remaining families who had lost their cultivation rights 17 years previously; a land swap (*ruislag*) to compensate for the loss of 31 hectares of village land (*tanah kas desa*) to the original developer and a Rp.2.5 billion contribution to the village budget. The Cimacan BPD wanted to avoid the corruption scandals attached to the first compensation payment, so it asked the developer to transfer compensation directly in farmers' bank accounts opened specially by Bank Mandiri for the purpose. On signing a formal release of cultivation rights (*pelepasan hak garap*) farmers received a bankbook with the compensation payment already deposited in their account. Eight farmers refused the compensation payment on the grounds it was too small.<sup>22</sup>

### **Students, farmers and NGOs in the Cimacan dispute**

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<sup>22</sup> These 8 families included Bi Neni the ex wife of Dudu Masduki, the original leader of the farmers movement to obtain taxation levies in the late '70's. They objected to the Rp. 8000/m<sup>2</sup> saying the village got too much (Rp. 8000/m<sup>2</sup> for the village budget) plus a land swap in a neighbouring district (which was said to be worth Rp. 12,000/m<sup>2</sup> although this was never valued). The argument was whether or not the village budget contribution was part of the value of the land swap or not.

In Indonesia NGOs and students have had a history of involvement in land disputes starting back in the Suharto era (Lucas and Warren 2003: 115). In Cimacan it was student nature lovers from SKEPHI on weekly climbing walks in the National Park who first learnt about the land dispute from their local guides. A founder of SKEPHI recalls

We were training students from several universities as environmental activists. Then we sent them back to their old high schools as 'environmental education facilitators'. Each week as part of their training these student nature lovers (*pecinta alam*) would climb Mt Gde Pangrango on Saturday night. They often stayed in the houses of local [Cimacan] villagers. Both had concerns about the environment. They took villagers as guides up the mountain. It this group of nature lovers that found out about the plans to turn the national park buffer zone into a golf course. We told the people "If you just hold meetings with the developer [the struggle] won't get anywhere without any *solid* resistance. You won't be taken seriously". They presented the case at one of the training sessions for facilitators. There was an environmental issue in the land dispute, the disappearance of the buffer zone for a golf course. And farmers were being evicted (interview with Indro Cahyono, 25.03.1999).

However SKEPHI's involvement in Cimacan dispute did not last. When the developer sued 28 farmers in the district court for illegally returning to cultivate the land leased from the village, and the Jakarta Legal Aid institute became involved SKEPHI withdrew. According to the SKEPHI leader again:

SKEPHI's model was "people's action" based on how to give the people the courage to demand their land. This approach needed some time to work. You had to hold meetings with villages in what we called "participatory training" for villages. We called this *solid* action. What do we mean by that? Organizing the community who are protesting, so they have a programme, routine meetings and fundraising, called the *jumputan* system, meaning all the protestors agreed on their contribution, e.g. people decided to regularly donate half an ounce of rice, this was collected and sold for photocopying and transport expenses. I was against the LBH involvement in the dispute, we needed a non litigation-approach. The litigation way prevented people from demanding their 'real' land rights via political struggle. It prevented

them getting access to national and international NGOs, and access to important groups like journalists, so the local government would not be able to act in a too authoritarian way. The LBH approach had the effect that all the villagers were lead to believe that resorting to the courts was an alternative to non-litigation. Why didn't LBH explain the non-litigation alternative? LBH wanted to show that Cimacan was part of their success story. But in doing so the crucial environmental and agrarian aspects of the dispute were lost under the banner "This is a legal case". So this became a problem because it split the pure political movement in Cimacan. SKEPHI wanted advocacy not litigation. LBH came to Cimacan and said "you can win legally". We knew that behind the law [in Indonesia] there is power (Indro Cahyono, Interview, 23.03.99)

However the experience of NGOs at the village level saw the phenomenon of NGO involvement in a different way. Amir, whose family was dispossessed farmers, was an original leader of the social movement in Cimacan, and had studied law at Pakuan University in Bogor, says:

Our struggle got support from many quarters. The first group to be involved came from the Students Nature Lovers group, besides them there were activists from UNTAG, UK (Jakarta) Unpak (Bogor) and many others. It was a pity that the involvement of these groups was on and off (*terputus-putus*). It was limited to organizing demonstrations to the national parliament, the Minister for Home Affairs, or to other government offices. After that they didn't check what happened after the demonstrations in a routine way. It was the same with the NGOs such as WALHI, SKEPHI and YLBHI (Legal Aid Institutes) which were active in the beginning, but have never contacted the community again for two years (Amir 1995:158)

So although SKEPHI's skepticism about litigation and that farmers could never win in because of the 'power' behind the courts, ie that the developer would manipulate the court [*main hukum*]) proved correct, the farmers skepticism about NGOs and their inability to sustain long periods of advocacy of the kind that ironically SKEPHI considered important continued over into the *reformasi* period

The main reason why the BPD did not want to continue the struggle for land rights (as opposed to compensation for loss of income and livelihood) was they felt the community were reluctant to have anymore outside NGO involvement. 'We are sick of being exploited by NGOs from Jakarta (*Kita bosan dieksploitasi LSM di Jakarta*)' said one BPD leader. The same mistrust as well as their own 'on and off tactics' prevented NGOs from being effective in Cimacan. Even SKEPHI, which publicized the dispute in its English language environmental human rights magazine *Setiakawan*. While this and similar publicity from WALHI helped publicize the dispute, NGO advocacy could not be sustained. Farmers felt that outside NGO involvement had other political motives, such as getting press coverage for them.

#### **Village Council initiatives to solve the Cimacan golf course land dispute**

Cimacan farmers put pressure on BPD throughout 2002 to find a solution to the compensation issue. The original developer had transferred the ownership of the golf course to Koliba a real estate developer, which formed a subsidiary, PT Bukit Asri Padang Golf to run the golf course. BPD involved the peasant farmers in the negotiations and the company agreed to a compensation rate of Rp. 8000/m<sup>2</sup>, without pressure from the village government or the BPD. BPD had to decide who qualified for compensation and review each individual claim. There were accusations that farmers were claiming more land than they had originally cultivated, and new claimants namely relatives of community leaders had registered for compensation, and that certain community leaders had received additional compensation from the developer. To avoid further accusations of corruption and nepotism, BPD asked the developer to pay the compensation directly into bank accounts of former cultivators. At a ceremony held in the golf clubhouse, each landholder after signing a formal release of cultivation rights (*pelepasan hak garap*) settlement agreement was given their Bank Mandiri pass book, with the compensation already deposited in it. BPD encouraged

the farmers to accept the offer, as the wife of one ex AMUK activist and BPD leader put it, ‘so we could be a harmonious community again’ (*kita bisa rukun kembali*).

### **Compensation for the village**

The compensation for cultivators was only half the monetary compensation paid by the developer. They paid a further Rp. 2.5 billion rupiah to the village for loss of income from the village land. Other said this cash payment was part of the land swap whereby Koliba provided 28 ha of much less fertile land in other village as new village land. What did the village do with this compensation? Rp. 1.75 billion was invested at 11% interest, in order to pay wages of the village head, village officials, and the BPD<sup>23</sup>. An additional Rp. 24 million has been spent on grants of Rp. 3 million to each of Cimacan’s 8 primary schools for financially disadvantaged students. The remaining Rp. 750 million has been spent on village infrastructure. This includes buying land for cemeteries in each of Cimacan’s five hamlets (Rp. 50 million for each cemetery); construction of a new soccer field and access road; repairs to irrigation channels (Rp.17 million) and grants of Rp 1 million to each of Cimacan’s 28 local mosques (*mesjid Jami*) used for Friday prayers (interview with Cimacan BPD chair, 13 August 2004).

The BPD has also negotiated compensation in kind for the loss of 31 ha of village land (*tanah kas desa*) in the form of a land swap (*ruislag*) in a neighbouring village. Community opinion was divided on this issue by mid 2003. A group not directly involved in the dispute (the idealists) wants land values to be considered in deciding the land swap (i.e. that the land being offered as *ruislag* should have a higher value than the current golf course land)<sup>24</sup>. The second group, the realists on the BPD said that keeping the village communal land was more important than the land value

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<sup>23</sup> Monthly wages for officials include village headman who is paid Rp. 750,000, village officials, Rp. 250,000; RW/RT, Rp.30,000; BPD chair, Rp.500,000, BPD members after the compensation was paid got Rp. 350,000. Village security personal Linmas (formally Hansip), Babinsa and Babinmas are also paid Between Rp. 80-100,000 out of the interest on the golf course money.

<sup>24</sup> The *ruislag* land located in Sukoresmi village, is rain fed (*sawah tadah hujan*), not irrigated (*sawah teknis*) and therefore less fertile. The *ruislag* land being offered by the company to the developer is valued at Rp. 10,000/m<sup>2</sup>, much less than the market value of the Cimacan golf course land.

was not the main issue, but simply that the village does not want to lose its *tanah kas desa*. But even the realists say that the land swap is important because it is part of the moral solution to the land issue, which is not just an economic problem.

### **Village land that went 'missing' during the New Order**

Village land was illegally taken by village elites and by the Cianjur district during the New Order. By 2000 So far BPD has got back 2400m<sup>2</sup> of village land secretly put into the names of three former village officials (the former subdistrict head of Pacet, the former headman, and the former head of Rarahan hamlet, where the golf course is located). BPD has succeeded in getting this stolen land returned to the village<sup>25</sup>. Other cases of village land taken for the Indonesian Scouts for a camping ground, and land taken by the Minister of Youth Affairs for a youth hostel, are on BPD's list of unresolved issues to be looked into once the golf course compensation issue is resolved.

### **Recapitulating the Cimacan village dispute**

The Village Council was elected for a five year term from 2001- 2006. During this time PT BAM sold the leases to Koliba a real estate developer, and its subsidiary PT Bukit Asri Padang Golf. The new developer offered to resolve the dispute, and offered compensation of \$8000/sq.m. The three ex members of AMUK (the NGO set up to get the land back from PT BAM the original developer) convinced the other 8 members of the Village Council that they could not expect a higher offer. This compensation was paid into the accounts opened in the names of former landholders. At a formal ceremony at the golf course, every landholder signed a document giving up their cultivation rights and got a Bank Mandiri deposit book with the amount of

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<sup>25</sup> Because the land stolen did not earn income, land was swapped for 1.5 ha of irrigated rice land (with a gross return from three harvests per year of Rp. 7.5- 10 million) to augment the village budget (APBDes – Anggaran Pendapatan Belanak Desa)

compensation deposited. The village of Cimacan also received the same amount of compensation, which the BPD invested and which was to be used to pay salaries for village officials. Some landholders used the compensation payments for extensions on their houses, a small minority bought land.

### **The future of the golf course**

Since 2006 the number of tourists visiting the Puncak-Cibodas resort region including the Cimacan golf course has declined. There are bigger golf courses closer to Jakarta, and since the Cipularang toll road linking Jakarta to Bandung opened in 2006 CHECK DATE, local tourists prefer to go to Bandung for the weekend. The toll way is relatively free of the 5-10 hour traffic jams experienced getting to and from Puncak-Cibodas resort. Investors now buy weekend villas in Bandung rather than Cipanas. According to one pessimistic view from outside Cimacan, Hotel occupancy rates the Puncak Pass Cipanas region have declined from 90% to 20% (Interview in Cianjur 16.07.08)

This decline in tourism in the region has impacted on the Cimacan golf course. While still the only course in Puncak, Jakarta golfers now play on other courses nearer Jakarta around Bogor. In Bogor (where there are 3 golf courses) or Bandung on weekends to play golf. This has impacted on the Cimacan golf course, where casual employees, most of whom worked there for the last 15 years on below standard minimum wages, have recently lost their jobs.<sup>26</sup>

### **The impact of the revised 2004 local government act of 2004 at village level: “half hearted regional autonomy”**

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<sup>26</sup> Cadies are on call, but only a handful are finding work, basically work for tips. 21 golf course and garden workers, 9 security officers, 9 working in the clubhouse and restaurant. Considering the promises of employment made by the first developer, very few local villagers have benefited from employment. The daily casual wage when the golf course opened in 1989 was Rp 2,500 per day it is now Rp. 24,650 per day, or Rp 493,000 per month well below the Cianjur district current minimum wage of Rp 616,000 per month.



Even as the first regional autonomy act (UU 22 1999) was promulgated, the powerful Ministry of Home Affairs decided it had given too much autonomy to district and village level government. The subsequent promulgation of Home Affairs Ministerial decree (Kepmen) 64/1999 which implemented the regional autonomy act, was an attempt by one of the most powerful ministries during the New Order to water down regional autonomy at the village and district level.<sup>27</sup> In a further effort to reign in regional autonomy, the revised local government act, (UU No 32 2004 *Tentang Pemerintah Daerah*) reduced district and village level autonomy; the main impact of the act at the village level was the Village Representative Councils (*Badan Perwakilan Desa*), now became purely consultative bodies (*Badan Permusyawaratan Desa*, Village Consultative Council). These reconstituted Councils were no longer elected, but appointed by 'deliberation and consultation' (*musyawarah dan mufakat*). The new councils had only two functions; to decide village regulations together with the headman, which should 'reflect the people's aspirations' (UU No 32 2004, article 209-210). In subsequent enabling legislation the emasculation of the BPD went further. While the BPD is defined as the body to implement village government (*Badan Penyelenggara Pemerintahan desa*) (article 29) the BPD will consist of the hamlet heads (*kepala dusun*) 'adat leaders, professional groups, religious leaders and other prominent persons' (pasal 29 and 30: PP No 72 2005), namely the same elite village groups in power during the New Order.

In Cimacan the elected BPD's five year term of office ended in 2006. Following the revised Regional Autonomy mentioned above, the new Council was no longer elected, but constituted by 'mutual deliberation' as set out by the Cianjur District regulation of village government. This meant each of Cimacan's five hamlets

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<sup>27</sup> For how this Ministerial Home Affairs decree restored the power of the village headman see Antlov (2000). Kepmen 64/1999 (Ministerial Ordinance: General Manual of Regulations About Villages –*Pedoman Umum Pengaturan Mengenai Desa*) treated villages like they were still under the power of the village headman during New Order, a fact which Antlov does not find surprising, as it reflects the thinking of then Minister of Home Affairs Syarwan Hamid, and his staff, in a Department which was 'the major actor behind laws 5/1974 and law 5/1979 [on village government] and thus the establishment of a uniform and authoritarian local government structure' (Antlov 2000: 12). Ministerial Decrees are executive orders not subject to any parliamentary scrutiny.

(dusun) choosing 4 candidates that were chosen by the Dusun head, according to different criteria. These 20 candidates then met and chose 11 members of the new BPD. As a former member of the elected BPD said ‘The mechanism for choosing BPD members is not effective. It is only a ‘Forum’ now’. Because members were appointed by hamlet heads, who are themselves appointed by the headman, who now has the same powers as during the New Order. In short with the restructured BPDs we see a return to the old village oligarchy structures, and the BPD has become a rubber stamp forum (BPD *ketok palu*).

Since Suharto’s downfall, Cimacan has held two elections for village head. Representatives of dispossessed farmers who stood for election were unsuccessful. In 2002 was a ‘client of the state’ namely a former member of the LKMD won the election by 200 votes. He retired after one term, and in 2007 there were three candidates, a religious figure, and two candidates representing dispossessed farmers, which split the vote. As a result the religious leader, a hamlet head for more than 20 years, won the election.<sup>28</sup>

The Cimacan outcome reflects a general trend in land disputed districts south Cianjur (and probably elsewhere in West Java, except in areas where the Pasunden Peasants Union (Sarekat Petani Pasunden – SPP) has been strong), where candidates representing farmers involved in land disputes were unsuccessful in village elections during the era of *reformasi*. There are several reasons for this. Firstly they don’t have the financial backing needed to run a campaign.<sup>29</sup> Secondly farmers and their supporters “did not have a political base from which to fight a village election” (*basis petani belum siap untuk diajak bertarung di Pilkades*) (interview in Cianjur 16.06.08). While peasant farmers are often local heroes, agrarian reform is not an issue which seems to get votes.<sup>30</sup> As one district politician said “what is the point of a candidate in a

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<sup>28</sup> Figures on these two elections

<sup>29</sup> In the 2007 Cimacan elections, one of the candidates representing dispossessed farmers spent 50 million on his unsuccessful campaign.

<sup>30</sup> Compare the situation in Cianjur with Gaurt and Tasikmalaya where the Sarekat Petani Pasunden has given farmers a political base to campaign for village headman.

village election talking about agrarian reform if no-one at the district or provincial levels ever talks about it?” Thirdly candidates are elected usually either because of their prominence (*ketokohan*), in religious affairs or village administration, or because they are family of a previous village headman. Thus partly explains why ‘clients of the state’ have won both elections in Cimacan since *reformasi* began (although it was Dede Dachroni a farmer whose family had lost their land in the golf course dispute who won the most votes in the BPD elections in 2001 see Table 1). Dullah elected in 2002 as we have seen was a former member of LKMD, while Haji Sapandi (who won against Ujang and Dede Dachroni from two peasant families who lost their land in the golf course dispute), was a former hamlet head (*mandor dusun*) for more than twenty years experience. Even in Cimacan village “the older you are the more experience you have had” helps decide elections.

How did this failure of farmer’s representatives to win village headman elections affect the outcome of the Cimacan land dispute? It is hard to see how the farmers or the village would have got more compensation. But the election program of both peasant farmer representatives who lost showed ‘what might have been’, included a belief that regional autonomy was based on democracy, reforming village government structures (overlapping of responsibilities of the headman, dusun heads, kampung heads (RW) and neighbourhood (RT) associations, village regulations to protect the community, greater involvement of local mosques and prayer houses in village governance, and involving NGOs in this process. The problem was that neither farmer candidate could not stand, which could well have ensured that the other would have one, surely a tragedy for the village of Cimacan (Dachroni 2007; Ujang 2007).<sup>31</sup>

However to end there is not the whole story. We started with the involvement of an environmental NGO's involvement in the Cimacan land dispute. This was the SKEPHI

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<sup>31</sup> FIGURES ON LAST PILKADES ELECTION

sponsored nature lovers who were being trained as environmental education facilitators, learning from their Rarahan guides and home stays about the dispute while climbing in the TNGP national park in the late 1980s. Twenty years later there is a new generation of environmental activists based in Cimacan village, the Raptor Conservation Society. While education about conservation endangered flora and fauna in the national park is a major objective<sup>32</sup>, this NGO is broadening its program. Faced with another generation of farmers who have lost their land - some 530 cultivators whose land is now suddenly inside the new TNGP boundaries (due to the extension of the park around Mt Gde and Mt Pangrango by some 1600 ha).<sup>33</sup> For fund raising purposes the villages have been declared “conservation villages”. (*desa konservasi*). Cimacan is not one of these (because it is too wealthy in relative terms to the isolated villages), but the latest group of cultivators to loose their land (not to a golf course for a national park) are being trained with a Rp. 55 million USAID funded programme for new livelihoods (poultry, ecotourism, creation of corridors for endemic fauna, reforestation, vegetables, bio-gas, recycling). Furthermore it seems that the Jakarta elite have taken up the “Adopt a tree in the National park” programme in a big way. In Cimacan, although not designated as a conservation village) two of the three AMUK members elected to the Cimacan BPD in 2002 are supporting the programme. The leader of the programme, also member of one of the peasant families who lost their land to the golf course developer says “PT Bukit Asri Padang golf [[ Usep says Asri Mulia [the current developer can’t do anything with the land because it is a protected area (*kawasan lindung*) and you need permission from neighbouring landowners to develop it. These are the State Forestry Corporation, the National Park and the Cibodas Botanic Gardens. The latter two will never agree.” (Suparman Interview, 19.07.08). If agrarian activism

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<sup>32</sup> Sixty nests of the highly endangered Javan Hawk Eagle have been identified. USAID has funded Rp 10 million for an action plan for a corridor for endangered fauna Rp 50 million for an action plan for conservation villages, and Rp. 65 million for a study of the natural springs and how to protect them (Suparman interview 19.07.08) (Suparman et al 2008)

<sup>33</sup> The boundaries of national parks all over Indonesian have been enlarged in he last two years.

could not save the farmers' land from becoming a golf course, environmental activism may save it from becoming luxury villas.

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## Part II Land Disputes in Indonesia After Suharto's Resignation

### Chapter 4

“Large Scale Palm Oil Plantation Development, Recognition of Local People's Customary Rights and Agrarian Conflicts in Indonesia After the Fall of President Soeharto: A Lesson Learned from Provinces of West Sumatra and Riau”

Dr. Afrizal<sup>1</sup>

#### ABSTRACT

A world's agreement stipulates that customary rights of indigenous people based on their customary laws on land must be recognized and respected. United Nation's declaration of indigenous rights specifies that the state must acknowledge indigenous people's rights over natural resources. Roundtable Sustainable Palm Oil's (RSPO) principle and criteria also state the same thing. In Indonesia, NGO activists also call for the recognition and respect of indigenous people's rights over natural resources. All of these are intended to protect local people's rights over natural resources.

This paper demonstrates that in the Provinces of West Sumatra and Riau although the local governments recognize the existence of customary land, this official recognition did not lead to the fulfillment of local people's rights over natural resources when land was allocated by the government for the establishment of investors' large-scale palm oil plantations during the New Order. This resulted in widespread conflicts between holders of customary land and palm oil plantation companies in these two provinces when political changes after the fall of President Soeharto in mid-1998 created an opportunity for local people to carry out collective actions. In this paper, the attention will be given to the explanation of why widespread conflicts occurred between holders of customary land and palm oil plantation companies despite of the recognition of customary rights of local people by the local government.

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<sup>1</sup> A sociologist, who are a senior lecturer of the Department of Sociology Faculty of Social and Political Sciences, Andalas University. Paper presented at International Workshop on “Land Disputes After Suharto's Resignation,” at Hosei University, Tokyo on January 17, 2009.



## Introduction

The communal property is known as one of main types of property besides private individual property, state property and open access (Benda-Beckmann and Benda-Beckmann (2006, p.194). Customary land is such kind of the communal property. In Indonesia, it is well-known as *tanah ulayat*, which is defined as the land owned collectively by indigenous people based on their customary laws (Harsono 1999, pp. 271-273).

Since recently, world wide people have demanded for the recognition and respect of indigenous people's rights over natural resources. This is stipulated by United Nation's declaration of indigenous rights, insisting that the state must respect indigenous people's rights over natural resources. The Indonesian government was among other governments that signed the declaration. To make palm oil production to be also socially acceptable, the Roundtable on Sustainable Palm Oil (RSPO)<sup>2</sup> set up principles and criteria to be fulfilled by the businesses involved in the production of palm oil. The RSPO emphasizes the important of respecting local people's customary rights over land by palm oil companies. This is clearly insisted by the criteria of 2.3 of the RSPO stipulating that "(u)se of the land for oil palm does not diminish the legal rights, or customary rights, of

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<sup>2</sup> The RSPO was established by businesses involved in the production and trading of palm oil and NGO to make the production of palm oil does not endanger the environment and people's right. Its main members are Malaysian and Indonesian palm oil companies, European processing and retailing companies and NGOs (WWF, Oxfarm and Sawit Watch (Colchester and Jiwan 2006, P. 2).

other users, without free, prior and informed consent (FPIC) (Colchester and Jiwan 2006, P. 48-9).

In Indonesia, NGOs also demand for recognition of and respect for indigenous people's rights. For example, a national NGO named Aliansi Masyarakat Adat Nusantara (AMAN) focuses its action on this issue. It expressed its demand for the state to recognize indigenous people's rights over land, control over natural resources, and use of their customary laws (ICRAFT, ANAN and FPP 2003, p.2). In the Provinces of West Sumatra and Riau, local NGOs also speak up for the recognition of and respect for local people's customary rights over natural resources. LBH-Padang and Qbar are two main figures of local NGOs in West Sumatra, while *Aliansi Masyarakat Adat Riau* (AMAR) and Walhi are two main figures of local NGOs in Riau carrying out activities demanding recognition of and respect for indigenous people's rights over natural resources in the two provinces.

Based on a study in the Provinces of West Sumatra and Riau, this paper shows that official recognition of customary land did not lead to the respect of local customary laws and the fulfillment of local people's rights over natural resources when land was allocated by the government for the establishment of investors' large-scale palm oil plantations during the New Order. As will be demonstrated below, this brought about widespread conflicts between holders of customary land and palm oil plantation companies in these two provinces, many of them were not resolved until mid-2008. This paper scrutinizes the conflicts by paying attention to the relationship between the conflicts, the development of large-scale palm oil plantations and ways in which the government treated local people's customary rights over land in the Provinces of West Sumatra and Riau.

## **The Trend of Palm Oil Plantation Development in Indonesia**

Although palm oil plantations have existed in Indonesia since 1911, there was a new phase of its development after 1940 although by that year it was already one of the important crops in the country. It was only 1.2 thousand hectares in 1916 and increased little to 109.6 thousand hectares in 1940, and even up to in 1978 the area increased only to 250,000 ha. But then, this increased dramatically to more than 2 million ha in 1998/1999. By 2004, it was reported about 4.1 million ha of land and in 2006 about 6.1 million ha of land were used for palm oil plantation but concentrated only in the Island of Sumatra and Kalimantan. Some 50% of them were controlled by private large-scale plantations. There were 170 palm oil estates recorded in 1985, which was number four after rubber, tea and coffee in that year. By 1999 the number of palm oil estates had jumped four-fold to 683 (Biro Pusat Statistik, 1985, p. 248 and 1999, pp. 208-9, Soetrisno et al. 1991, pp.72-75, PDBI 1998 in Basyar 1999, p. 35 and Colchester et al., 2006, pp. 21-22). This makes "Indonesia now leads the world...and set to become the number one palm oil producer overtaking Malaysia by 2010, or even earlier" (Colchester 2006, p. 25).

The factor that is responsible for the remarkable development of palm oil plantations was the Indonesian government's agricultural policy. In 1990s, both the central and the local governments encouraged and facilitated the development of palm oil plantation development. Their choice was to promote the development of large-scale palm oil plantations by inviting investors. They allocated land above 1000 hectares for the investors with many companies were allocated land between 5000 ha to 10.000 ha<sup>3</sup>.

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<sup>3</sup> Based on the analysis of a number of land allocation agreement letters made by the local governments in the Provinces of West Sumatra and Riau.

The governments also provided the needs of the investors to establish their large-scale palm oil plantations by issuing authorizations of utilising land and guaranteeing investors to be able to control land in long term by issuing long lasted Commercial Use Leases, HGU).

The trigger factor behind the government's policy was the decline in oil export revenue. This encouraged the government to promote agro-industries (Fauzi 1999, 162-186; Langill 1978, 184), which was viewed by the government as "a major catalyst for economic development" (Kuntjoro-Jakti 1981, 42).

To prevent the large-scale plantation investors' monopoly on palm oil plantations and wanted that local people had share in the plantations, from 1974-1975 the governments introduced and applied a new mode of plantation production, the Nucleus Estate and Smallholder (NES) mode of plantations, to improve the well-being of small farmers (Soetrisno et al. 1991, p. 94-95). Even in 1986 the President issued a decree to support this model (Asian Agri 2007). Under this scheme, a plantation consists of two parts: a nuclear estate that is the belongings of big investors; and smallholding plantations (*kebun plasma*), which is the possessions of small farmers<sup>4</sup>.

Both plantation investors and the state play significant roles in the NES development. The former is responsible for developing of plantation smallholders (*kebun plasma*), improving the management quality of plantation smallholders and buying their palm oil fruits. The latter is responsible for recruiting recipients of the plantation smallholders, organising land for the plantation and providing loans for the development

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<sup>4</sup> A big investor is supposed to organize the establishment of smallholding plantations. The ownership and the control of the plantations must be transferred to their recipients when they have produced.

of the smallholder plantations<sup>5</sup> (Soetrisno 1991, pp. 99-100). The recipients of smallholder plantations obtain three plots of land from the state: two hectares of plantation land; 0.75 hectares of land for farming and 0.25 hectares of land for settlement (Soetrisno 1991, p. 99).

### **The Magnitude of the Conflicts**

In the Provinces of West Sumatra and Riau local people actively carried out collective actions against palm oil plantation companies and even local governments to request what they call their rights over land utilized by palm oil companies. The conflicts occurred since the early 1980s when the process of land relinquishments was done by both the local governments and palm oil plantations companies, calmed down until early 1998 but these mushroomed since mid-1998 when the President Soeharto resigned as the President of the Republic of Indonesia<sup>6</sup>. As will be discussed below, many of the conflicts were not resolved until the end of 2008.

#### ***In West Sumatra***

The area of palm oil plantations in West Sumatra is number five in Indonesia with the area about 430.000 hectares (see Colchester et al. 2006, p. 24 and BPS Sumatera Barat 2008). There were about 41 large-scale palm oil plantation companies operated in

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<sup>5</sup> The recipients of smallholder plantation must pay back the loan to the government by installments of 30% of their sales. These installments are collected through plantation companies that embrace the smallholder plantations and buy their product.

<sup>6</sup> See Afrizal 2006 and 2007 to know more about this.

the province<sup>7</sup> and controlled about 137, 250 ha of land<sup>8</sup> (BPS Sumatera Barat 2008, p. 252). Each of the company has 2000 and above hectares of palm oil plantations.<sup>9</sup> They operated in six districts, which are West Pasaman District, South Solok District, Dharmasraya District, Agam District, South Pesisir District and Sawah Lunto Sijunjung District.

Almost all of the large-scale palm oil plantation companies have been in conflict with local people since mid 1998.<sup>10</sup> Each plantation company was in conflicts with about seven groups of local people in average.<sup>11</sup> Based on this figure there were more than 300 cases of conflicts between local people and palm oil companies through out West Sumatera since the fall of President Soeharto.

### *In Riau*

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<sup>7</sup> The West Sumatran Plantation Agency's report of 2001. There was no change in the number of palm oil companies since 2001.

<sup>8</sup> The area of independent smallholding palm oil plantations (the plantations which are not tied into a nucleus state and in most cases owned by local people and usually less than 3 ha) in West Sumatera are nearly 300.000 ha (BPS Sumatera Barat 2008, p. 250). The area of palm oil plantations in West Sumatra reported by BPS Sumatera Barat is almost similar with the figure reported by Sawit Watch. The report mentions 489,000 hectares of palm oil plantations in West Sumatra (Colchester et al. 2006, p. 24).

<sup>9</sup> This figure is obtained by analyzing land alienation letters and Use Lease certificates of a number of palm oil companies.

<sup>10</sup> Interviews with a number of informants in 2002 and 2008 in West Pasaman; personal communication with the Head of Village Government Division of South Solok Head' Office, the Secretary of Sungai Rumbai Sub-district of Dharmasraya District; the head of Government Division of South Pesisir Head's office.

<sup>11</sup> Based on analyzing Kinali Su-district office's reports of 2001 on palm oil plantation disputes, PT. TSG's reports of the company's disputes with local people interviews with a number of informants in Nagari Kapar and Sungai Aur of West Pasaman District.

The Province of Riau has the largest palm oil plantations in Indonesia with the area nearly 1, 5 million hectare (see Colchester et al. 2006, p. 24). There were about 160<sup>12</sup> large-scale palm oil companies operated in nine districts that are: Kampar, Pelalawan, Pekanbaru, Rokan Illir, Rokan Hulu, Bengkalis, Siak, Indragiri Hulu and Kuantan Singingi districts. Each of the company has 5000 and above hectares of palm oil plantations.<sup>13</sup>

Since 1998 about 60<sup>14</sup> of the 160 large-scale palm oil plantation companies (or 37.5%) were in conflict with local people.<sup>15</sup> Mundung dkk. (2007) say that 71% of the conflicts between local people and plantation companies it identified happened after 2003. These were spread over nine centers of palm oil plantation districts in Riau. Its data is plausible because local informants in almost all of 22 villages of four districts around Tesso Nillo Forest Park visited reported that between three to four groups of villagers

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<sup>12</sup> Data based of Scale Up 2008. Scale up is a Pekanbaru-based NGO focusing its activities on the resolution of conflicts between local people and palm oil companies. It uses a renegotiation approach with its role as a mediator.

<sup>13</sup> This figure is obtained by analyzing the information compiled by Mundung, dkk. 2007.

<sup>14</sup> This figure is obtained by analyzing the information about conflicts happened between local people and palm oil plantation companies in the Riau Province compiled by Mundung, dkk. 2007, protest letters sent by local people to palm oil companies and the local government collected during my study in Riau and interviews with informants in the Kampar District. The number of palm oil companies that were in conflicts with local people could be much more than 60, but because of limited sources the other palm oil companies' conflicts with local people are not known.

<sup>15</sup> In the Province of Riau, conflicts between local people and companies did not only happen between local people and palm oil companies but also between local people and companies of forest concession holders and timber grower companies. During my visit to 22 villages around Tesso Nillo Park in mid 2006 informants also says that local people were in conflict with companies of forest concession holders and timber grower companies such as PT. RAPP and RAP. Local people's letters to local government collected in mid early 2008 also mentioned their conflict with PT. RAPP and RAP.

were in conflicts with palm oil plantation companies operated in the villages.<sup>16</sup> In addition, the participants of Free, Prior and Informed Consent Workshop who were from different villages of different districts in the Province of Riau (some of them were from villages beyond the 22 villages around Tesso Nillo Park) reported that they themselves and other people in their villages were in conflicts with palm oil plantation companies run a palm oil plantation in their villages.<sup>17</sup>

The number of cases of conflicts between local people and palm oil companies could be higher than the number reported by Mundung, dkk. They say that the number of conflicts between local people and plantation companies during 2003-2007 were 66 cases. The Tim's calculation is based only on people's reports of their cases to local NGOs and media's reportages. It was found that many cases of local people conflicts with palm oil plantation were not reported to local NGOs. As companies were in conflict with three to four different groups, it seems that the number of cases of the conflicts could reach more than 200 cases.

### **The Forms of the Conflicts**

The conflicts between local people and palm oil plantation companies were opened in these two provinces. Local people expressed their protests, demands, disappointment and anger directly to palm oil companies and to local state apparatuses such as to the head of districts and to district parliaments. They talked with and sent

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<sup>16</sup> Interviews with formal and informal leaders in 22 villages around Tesso Nillo Park, July-September 2006 and August 2008.

<sup>17</sup> I was one of the participants of the workshop, held by Forest People Program in cooperation with Sawit Watch and Scale-up.



letters to the company managements, they often did these also to the state apparatuses. In both provinces, carrying public demonstrations in local people's effort to achieve their goals was also quite common. They demonstrated before local governments, local parliaments and palm oil companies. For example, a group of indigenous people of Riau, Talang Mamak, during 2004 demonstrated before a palm oil company office, PT. Inekda, the Indragiri Hulu head's office and Indragiri Parliament office. The people of Nagari Kinali and Kapar in the West Pasaman District of West Sumatera did more than ten public demonstrations during 2000-2004.

In many cases, the conflicts even were developed becoming violent ones in these two provinces. The patterns of the violent conflicts are no different in the two provinces. Local people attempted to press the company managements by blocking the access of companies to given plots of land or to their plantations and cultivating companies' plantations.<sup>18</sup> Violent actions were employed more by local people after the fall of President Soeharto than was before. The table 1 below shows the frequency of use of violent actions by local people in a village in West Sumatra before and after the fall of President Soeharto.

**Table 1.** Tactics of the People of Nagari Kinali in Claiming Their Rights From Oil Palm Plantation Corporation

Actions	Number of Actions		Total
	Before mid-1998	After mid-1998	
Writing letters and physical meetings	10	17	27
Prohibiting companies' activities	1	1	2
Harvesting companies' plantations	0	4	4

<sup>18</sup> Interviews in West Pasaman District of West Sumatra, 2002 and 2008, Kampar District of Riau, 2008 and media's reportages.

Destroying companies' plantations	1	2	3
Cultivating reclaimed Land	0	3	3
Demonstrations	0	4	4
TOTAL	12	31	43

Source: Afrizal (2007, p. 121)

The violent actions carried out by local people in many cases were responded by company managements by inviting the police personnel or the army personal to come in to manage the situation. The police and the army personnel, then, did repressive actions to manage the situation. They quite often intimidated even arrested local people who they though the leaders of the actions. In West Sumatera, the police arrest of local activists because of their action against plantation companies were at least four times during 2000-2007.

All of these tell us that local people applied steps in their struggles. They carried out violent actions when their protests and demands by lobbying company official such as by sending protests letters to company managements and by doing physical meeting with company officials were not responded by palm oil companies or they were not satisfy with the ways in which the companies responded to their protests and demands. The violent actions of local people responded with also violent actions by palm oil companies. So, the study shows that violent conflicts in agrarian conflicts is the further development of the conflicts after peaceful tactics were unsuccessful.

### **Issues of the Conflicts**

Conflicts are about contradictory of interests among parties who are involved in any conflict, be it conflict between individuals or between groups of people. In this paper the contradicted interests are called the issues of conflicts. This section will discuss the

issues of conflict between local people and palm oil companies in West Sumatra and Riau Provinces. It is found that there are four issues of conflicts between local people and palm oil plantation companies in the Provinces of West Sumatra and Riau, these are: defending land, compensations for land and schemed smallholding plantation (*kebun plasma*).

### ***Defending Land***

Local people in the Provinces of West Sumatra and Riau struggled to defend a plot of land being utilized by palm oil plantation companies. As has been mentioned previously, the companies required thousands hectares of land as they need to develop large-scale palm oil plantations. Local people attempted to defend the whole land or part of the land that is controlled by the companies. This happened in many places both in the Provinces of West Sumatra and Riau. Local people argued that the companies utilized the land without asking their consent and therefore accused the companies of encroachment.

In West Sumatra, this usually happens to small plots of land within or adjacent to the large plot of land provided by local leaders to plantation companies. These several examples shown by the table below illustrate the situation.

**Table 2. Local People Defended Their Land In Nagari Kinali**

<b>Protesters</b>	<b>Date</b>	<b>Complaint</b>	<b>Land size (ha)</b>
Farmers association of Padang Sungkai/Air Meruap	Oct. 3 1997	PT. TR was accused of taking over fish ponds without consent.	70
Eight kinship group leaders	Oct. 25 1996	PT. AMP was accused of planting beyond land provided.	Unknown

M. Dt. Majobasa, M. Zaman and Samsir	Oct. 24 1999	PT.PN VI was accused of taking farming land without consent	Unknown
Bukini and six friends	June 19 1996	PT. PMJ was accused of taking rice fields without consent.	Unknown
Farmers associations of Aur Serumpun and Batang Lambau hamlets	April 10 2000	PT. PN VI was accused of taking farming land by force.	197
130 Javanese transmigrant farm-households	July 17 1998	PT. TSG took their land without agreement.	87

- Sources: 1. *Daftar Investor Perkebunan Sawit Di Kecamatan Kinali 2001.*
2. See the letter of the Dewan Pengurus Daerah to DAN DEM POM 1/6 Sumatera Barat on 16 October 1997 (author given a copy of the letter from *datuak* BBS).
  3. See the letter of the leaders of the farmer associations of Aur Serumpun and Batang Lambau hamlets to the director of PT. PN VI on April 10, 2000.

In the Province of Riau, the situation is different from that of in West Sumatra. Here local people challenged palm oil companies to defend large area (1000 to 7000 hectares) of land that is being utilized by palm oil companies. Usually, the land is former forest concession of a given company, which was reallocated by the local government to the palm oil plantation companies. From analyzing the media's reportages during 2007, it is known that there are at least five cases of such conflicts in the Province of Riau reported by the media in that year. But from the information compiled Mundung, dkk. 2007, it is known that there are at least 20 cases of such conflicts in the Province of Riau from 2003-2007. The quotation of a newspaper's report illustrates the situation.

*Puluhan warga Desa Kijang Rejo, Kecamatan Tapung, Kabupaten Kampar, Provinsi Riau, bersama mahasiswa berunjuk rasa memprotes penyerobotan lahan perkebunan rakyat seluas 3.000 hektar oleh perusahaan perkebunan kelapa sawit PT ATS, Kamis (12/4), di depan kantor Gubernur Riau. Sebelumnya warga sempat berunjuk rasa di halaman kantor Kepolisian Daerah Riau. Dalam unjuk rasanya, warga dan mahasiswa mendesak Pemprov Riau dan DPRD mengeluarkan surat penghentian aktivitas pembukaan lahan oleh perusahaan.*

*Penyerobotan lahan terjadi dalam 1,5 bulan terakhir (Kompas, 13 April 2007)*  
Ten of Rejo Kijang Village people of Tapung Sub-district, Kampar District of Riau Province supported by university students demonstrated on Thursday (4/12) against PT. ATS that was accused of committing land encroachment of 3000 hectares of their plantation land in front of the Riau Governor's office. They asked the government and the local parliament (DPRD) of Riau to stop the company's activities in clearing the land. The company has begun to clear the land since 1.5 month ago (*Kompas, 13 April 2007*).

### ***Compensations For Land***

In West Sumatra, local people protested to palm oil plantation companies demanding the fulfilment of *siliah jariah* be made. This is the communal land improvement compensation as the compensation for improvements carried out by local landholders on their communal land, such as creating irrigation schemes.<sup>19</sup> Companies did not make the communal land improvement compensation because the need for this payment to be made was not identified at the time of the process of customary land acquisition carried out by the local government land alienation committee. As a result, the company management did not recognise the necessity of this payment (Afrizal 2005, p. 123-125, 2007, 105-107).

The background of this demand is that in most cases kinship group leaders requested that palm oil plantation companies pay *adat* payments (customary dues) because they had not sold their communal land neither to the state nor to the companies. The companies gave them the requested *adat* payments. However, local people also demanded that the companies pay compensation for communal land improvement

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<sup>19</sup> In the Province of Riau this issue is not important.

because part of the land that the companies now utilised had been local people's cultivated communal land.

### **Schemed Smallholder Plantations (*Kebun Plasma*)<sup>20</sup>**

In West Sumatera, both the local government and plantation companies had promised landholders that they would gain schemed smallholding plantations in return for the land they provided to the companies through local governments or directly to them. However, the promised schemed smallholding plantations were not provided, while companies concentrated on their own estates. This occurred to nearly all of 41 large scale palm oil companies.<sup>21</sup> In certain cases, smallholding plantations were developed by estates even the plantations have produced, but the were kept by the companies. smallholding plantations were not developed at all, while local people provided land for this. In the other cases, smallholding plantations were not developed at all, while local people provided land for this. Until the end of 2008, local people were still waiting for the schemed smallholding plantations to be transferred to them.

In many cases, the promises of schemed smallholder plantations are stated explicitly in the letters of communal land alienation (the land alienation transfer statements).<sup>22</sup> For example, the letter of communal land alienation of nine kinship group

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<sup>20</sup> A 2 hectares of palm oil plantation that is owned by an individual farmer but organized by an estate.

<sup>21</sup> Interviews with a number of informants in 2002 and 2008 in West Pasaman; personal communication with the Head of Village Government Division of South Solok Head's Office, the Secretary of Sungai Rumbai Sub-district of Dharmasraya District; the head of Government Division of South Pesisir Head's office.

<sup>22</sup> See for example the statement letters about nine kinship group leaders of Nagari Kinali providing their communal land for PT. AMP, 9 April 1993, by two local kinship group leaders Kinali for PT. AMP,

leaders of Nagari Kinali stipulated that 'based on providing land mentioned in the first point, the second party (the *Bupati* of Kabupaten Pasaman) has an obligation to organise the development of plantation in the form of step father and step child (smallholding plantations)'.<sup>23</sup> The letters mention that about 60 to 70% of total land provided for investors by local landholders was for the nucleus estate of the corporations, while 40 % to 30% was for smallholding plantations.<sup>24</sup> There was a different case of a palm oil company. Although, schemed smallholding plantations are not mentioned in the letter agreeing to transfer communal land to the company, both the *Bupati* of Kabupaten Pasaman and the management of the company had promised orally to landholders that they would be provided with the schemed smallholder plantation (*Singgalang* 29 November 1989).

In the Province of Riau this issue is also important. Local people there were also in conflict with large scale palm oil plantation companies because of schemed smallholder plantations. At least there were 15 cases of conflicts between local people and various palm oil plantation companies because local people demanded schemed palm

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29 November 1994, by two kinship group leaders for PT. AMP, 22 May 1995, and by eleven kinship group leaders for KUD Harapan Kinali, December 8, 1994.

<sup>23</sup> See the statement letters about nine kinship group leaders of Nagari Kinali providing their communal land for PT. AMP, 9 April 1993.

<sup>24</sup> See the statement letters about nine kinship group leaders of Nagari Kinali providing their communal land for PT. AMP, 9 April 1993, and by two kinship group leaders of Nagari Kinali for PT. AMP, 29 November 1994.

oil plantations from the company. Like in West Sumatera, until the end of 2008, local people were still waiting for the schemed smallholder plantations.<sup>25</sup>

### **Process of Land Acquisitions**

As will be discussed below the ways in which local governments allocated land to palm oil investors or the ways in which palm oil companies controlled land contribute to the conflicts.

#### ***In Riau***

In the Province of Riau, local people's consent was hardly obtained by the local government or by palm oil companies when the local government allocated plots of land to palm oil companies or before the companies began to use the land for their palm oil plantation establishment. The local governments provided land to palm oil investors without having consultation with villagers. It seems that the reason why the local government did not ask local people's consent is that they allocate former forest concession land of a given company to palm oil plantation investors. In this case, it seems that to the local government they just reallocate a piece of land that had been utilised by a company.<sup>26</sup>

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<sup>25</sup> Personal communication with the leader of Scale Up, data-based of Tim Litbang Data FKPR (2007) and interviews with a number of informants in Desa Kunto of Kampar District in 2008 and in 22 villages around Tesso Nillo Park in 2006.

<sup>26</sup> The statement that the land allocated by the local government for a palm oil plantation investor is former forest concession of a company is found in many *surat penyerahan tanah* (land allocation letters) issued by the provincial government of Riau and the district governments of the Riau Province.



As a result, in the most cases, in Riau palm oil companies obtained permits of land use only from the local government.<sup>27</sup> The companies thought that this was enough for them to obtain land use permits only from the government and they argue that local people's consent was not needed (for example, see *Riau Pos*, 5 April 2007).

The palm oil companies' standpoint was contested by the indigenous people of Riau. Different from the palm oil companies' opinion, local people insisted that their consent was needed when the land in question to be used by palm oil companies. This is because to them the land was their land. They argued that the land is their customary land (*tanah ulayat*). This concern was voiced by local people in many districts in the Provinces of Riau.<sup>28</sup> This is one example.

People of Kuala Cenaku Village demanded that a company must return a plot of land controlled by the company. ... Our customary forest land in our village was also taken by the company for its palm oil plantation without our permission/agreement. Actually, we do not allow our customary forest land to be converted becoming palm oil plantation of the company, said the head of Kuala Cenaku Village, Mursyid M Ali (*Kompas*, 25 January 2007).

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<sup>27</sup> Interviews with a number of informants in 22 villages around Tesso Nillo Park in 2002, In Kuntu Village of kampar District in 2008 and personal communication with NGO activists in Pekanbaru in 2008. The data is also obtained by analysing the data based of TIM Litbang FKPR 2007). The participants of the Free, Prior and Informed Consent workshop from four districts within the Province of Riau, held by Forest People Program in cooperation with Sawit Watch and Scale-up in 2007, I attended says that their land was taken by palm oil companies.

<sup>28</sup> Interviews with a number of informants in 22 villages around Tesso Nillo Park in 2002, In Kuntu Village of kampar District in 2008 and personal communication with NGO activists in Pekanbaru in 2008. The data is also obtained by analysing the data based of TIM Litbang FKPR 2007). The participants of the Free, Prior and Informed Consent workshop from four districts within the Province of Riau, held by Forest People Program in cooperation with Sawit Watch and Scale-up in 2007, I attended says that their land was taken by palm oil companies.

## In West Sumatra

It is found that there were palm oil companies that had taken over land by force from local landholders. Sometime, police personnel get involved in supporting the companies. The table 2 below shows examples of local people's land taken over by force by plantation companies in a nagari in West Pasaman District of West Sumatra.

**Table 3.** Local People's Protests over Illegally Taken Land In Nagari Kinali

Protesters	Date	Company and complaint	Land size (ha)
Farmers association of Padang Sungkai/Air Meruap	Oct. 3 1997	Backed up by two army personnel, PT. TR took their fish ponds by force.	70
Eight kinship group leaders	Oct. 25 1996	PT. AMP was accused of planting beyond land provided and hiding documents showing the real size of its plantation.	Unknown
M. Dt. Majobasa, M. Zaman and Samsir	Oct. 24 1999	PT.PN VI took their farming land without their consent	Unknown
Bukini and six friends	June 19 1996	PT. PMJ took their rice field without their consent.	Unknown
Farmers associations of Aur Serumpun and Batang Lambau hamlets	April 10 2000	PT. PN VI took their farming land by force.	197

Sources: 1. *Daftar Investor Perkebunan Sawit Di Kecamatan Kinali 2001.*

2. See the letter of the Dewan Pengurus Daerah to DAN DEM POM 1/6 Sumatera Barat on 16 October 1997 (author given a copy of the letter from *datuak* BBS).

3. See the letter of the leaders of the farmer associations of Aur Serumpun and Batang Lambau hamlets to the director of PT. PN VI on April 10, 2000.
4. Interviews with *datuak* BBS, 7 May 2002; ABMA, 25 April 2002; *datuak* MM, 27 April 2002; *datuak* LJJN, 21 April 2002; and IMS, 7 May 2002, Nagari Kinali.

Nevertheless, unlike in Riau, in West Sumatra both the local government and palm oil companies did attempt to obtain permits from local people before controlling a piece of land in a given nagari (village). However, as will be demonstrated below from the study in the West Pasaman District it is found that the process of making decisions about the alienation of land was challenged by local people.

It appears that two patterns of land acquisition procedures had occurred, direct and indirect. The first consisted of land being directly alienated from local kinship group leaders to investors, formalised in a signed agreement letters and officially endorsed by the head of the sub-district (*kecamatan*) and the leader of the Nagari Adat Council (KAN).<sup>29</sup> The second or indirect procedure took place by ways of local governments through the Land Alienation Committee alienated customary land of local communities from local kinship group leaders and then the local government provided the land to investors.<sup>30</sup> In this case, the kinship group leaders provided their communal land to the head of the district, signing land alienation letters or agreement letters. The second procedure was the major way of the customary land alienation from local landholders to

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<sup>29</sup> See for example the statement letters about kinship group leaders of Nagari Kinali providing their communal land for PT. TR 5 July 1991; to PT. Arthasolid/PMJ, 22 May 1995; and to PT. INKUD, 4 December 1994.

<sup>30</sup> The committee consisted of Pasaman District officials led by the *bupati*.

private investors in West Sumatra (Afrizal 2005 and 2007 as well as Colchester et al. pp. 129-165).

Either through the first or the second pattern, both the local government and palm oil companies contacted customary leaders, called *ninik mamak*, to attend physical meetings organised by the local government or by the companies, in the district capital, sub-district capital or in the village. In this first meeting, the local government's and companies' representatives asked and even forced<sup>31</sup> the invited customary leaders to make a decision that they agree to let palm oil companies to use their customary land. In most cases, the customary leaders made decisions in the meeting. This means that decisions about the alienation of customary land were made only by and among customary leaders.

The decisions made by the customary leaders under the above mention situation were protested by many members of the local community and kinship group. They did not approve the decision of customary land alienation made by their customary leaders. This was responsible for several cases of conflicts between local people and palm oil plantations as local people oriented their action toward the companies. The emerged after the fall of President Soeharto, probably because people were so scare of the police when they carry out overt protests in that time. This is two examples of local people's protests to palm oil companies that happened .

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<sup>31</sup> Informants said that customary leaders who apposed the local government's intention in the meetings were intimidated by the local government officials (interviews in West Pasaman, 2002 and 2008).

Table 4. Two Examples of Local People's protests To Palm Oil Companies Because They Objected to Decision Made by Their Customary Leaders

NO	Villages	Events
1	Kinali	One member of kinship group harvested a company's palm oil plantation because he disagreed with his kinship group leader decision to provide his kinship group's customary land to the company.
2	Kapar	About 100 people of Nagari Kapar protested their customary leaders' decision to provide village customary land for a company's palm oil plantation. They also occupied about 400 hectares of land provided by the kinship group leaders to accompany.

Sources: Interviews in Nagari Kinali and Kapar in 2008.

Local people's protests to the decisions made by their customary leaders to allow palm oil companies utilized customary land are because of the ways in which the decision was made were against local customary laws of customary land alienation mechanism. The customary land is owned collectively by village communities or kinship group. Therefore, according to local customary rules, decision of customary land alienation must be made in *rapat nagari* (village meetings) or *rapar kaum* (kinship group meetings). What happened was the customary leaders were conditioned to make a decision and they made a decision to provide the customary land without obtaining agreement from other

components of customary land holders such as female members of the village community or matrilineal kinship groups and the others non customary leaders members of communities or kinship groups.<sup>32</sup>

### **Customary Rights of Indigenous People to Land Is Officially Recognized**

#### ***In Riau***

It is found that the government and the government officials in the Province of Riau recognized the indigenous people's customary rights over natural resources, such as land and forest, in Riau. Firstly, although there is no formal recognition of local people's customary rights by the provincial government, provincial government officials, such as the vice governor, the provincial secretary, acknowledged the existence of customary laws and customary land in the Riau Province. Moreover, the Riau Provincial Parliament urged the provincial government to recognise the customary rights by issuing a provincial regulation. The parliament head says that local people's map of customary land is the basis of the existence of customary land (*Kompas*, April 13, 2007). Secondly, the formal recognition of customary land has been made by the government of Kampar District since 1999. In mid 1999 the local government issued the District Regulation No. No. 12 about *Hak Tanah Ulayat* (customary land).<sup>33</sup> The regulation stipulates that the customary

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<sup>32</sup> Interviews in July-August 2008 in West Pasaman.

<sup>33</sup> Copy of the regulation is with the writer.

land is the collective belonging of the indigenous people of Kampar District and its relinquishment must be based on agreements of the customary land holders.

### **In West Sumatra**

Like in the Province of Riau, in West Sumatra, the land that has been utilised by large-scale palm oil plantation corporations was local people's customary land. Local people themselves claimed the land as land to which they have customary rights based on local Minangkabau customary laws. In their terminology the land is called *tanah ulayat* or *tanah kaum* (for more information, read Afrizal 2005 and 2007).

Different from Riau, in West Sumatra, local governments and palm oil plantation companies recognised the land as the *hak ulayat* or *tanah ulayat* of local people. This appeared in any land alienation agreement letters signed also by the head of the district (*bupati*) and certain cases also by company managements.<sup>34</sup> This is one example showing that the local government recognised the land that was in the process of alienation was the customary land of local people.

*SURAT PERNYATAAN BERSAMA KESEPAKATAN NINIK MAMAK PEMANGKU ADAT/PEMILIK DAN PENGUASA TANAH ULAYAT ...*<sup>35</sup> (THE

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<sup>34</sup> See for example the land alienation letters of kinship group leaders of Nagari Kinali providing their communal land for PT. TR 5 July 1991; to PT. Arthasolid/PMJ, 22 May 1995; and to PT. INKUD, 4 December 1994; and also kinship group leaders of Nagari Kapar providing their communal land to PT. PHP, 1997).

<sup>35</sup> See the letter of agreement of a number of customary leaders in Sungai Aur Village in providing their customary land to PT. Pasaman Marama Sejahtera, December 11, 1999.

COLLECTIVE STATEMENT LETTER OF CUSTOMARY LEADERS/THE OWNERS AND AUTHORITY HOLDERS...)

*TENTANG (ABOUT)*

*PENYERAHAN TANAH ULAYAT ADAT UNTUK PERKEBUNAN...(PROVIDING CUSTOMARY LAND FOR A PLANTATION COMPANY...)*

*Pada hari ini senin tanggal 11 Desember tahun seribu sembilan ratus delapan puluh sembilan, kami yang bertanda tangan di bawah ini: Ninik Mamak Pemangku Adat/Pemilik dan penguasa tanah ulayat kaum dalam wilayah Nagari Sungai Aur, Kecamatan Lembah Melintang,...(On Monday December 11 nineteen ninety-nine, we whose signatures are below: customary leaders/the owners and the authority holders of customary land within the area of Sungai Aur Village, Lembah Melintang Sub-district...)*

*P E R T A M A (FIRST)*

...

*K E D U A (SECOND)*

*Menyediakan dan menyerahkan tanah ulayat kaum...(allocate and provide our customary land)*

- *Sebelah utara berbatasan dengan tanah ulayat Nagari Sungai Aur. (On the North side. It is bordered with the customary land of Sungai Aur Village)*
- ...
- *Sebelah barat berbatasan dengan tanah ulayat Nagari Ujung Gading (On the West side, it is bordered with the *customary land* of Ujung Gading Village).*

*K E T I G A (THIRDTH)*

...

*, maka status tanah dengan sendirinya kembali menjadi tanah ulayat kaum...(so that, the status of land must be returned to our *customary land*...)*

*, maka tanah bekas perkebunan kembali tsb kembali menjadi tanah Ninik Mamak milik ulayat adat Nagari Sungai Aur (so that the returned land becomes customary leaders' land, the *customary property* of Sungai Aur Village)*



*K E E M P A T* (FOURTH)

Penyerahan dan penyediaan Tanah Ulayat kaum dimaksud..., untuk penyerahan Tanah Ulayat kepada... ..(The customary land is provided and allocated to...)

*Dengan ini pula pihak kedua (Bupati Kabupaten Pasaman<sup>36</sup>) menyatakan telah menerima penyerahan Tanah Ulayat dari pihak pertama...*(Here with the second party (the head of Pasaman district) accepted the *customary land* from the first party...)

Demikianlah..., pemilik dan penguasa Tanah Ulayat...(That is all...the owners and the authority holders of the *customary land*)

*Pihak kedua: (the second party:)*

*BUPATI KEPALA DAERAH TINGKAT II*

*KABUPATEN PASAMAN (THE HEAD OF  
OF PASAMAN DISTRICT)*

*Pihak pertama...(The first party*

*penguasa Tanah Ulayat...*

*(the authority holders of  
customary land*

*DAFTAR I (LIST I)*

*Nama Ninik Mamak...(the  
names of customary leaders*

*Penguasa Tanah Ulayat...*

*(The authority holders of customary land)*

In the letter quoted above there are 13 times of phrases *tanah ulayat* (customary land) emerged. The phrase refers to land owned, the land provided and the land accepted. The most important one is that the phrase of *tanah ulayat* appears after the sentence of "(d)engan ini pula pihak kedua menyatakan telah menerima penyerahan Tanah Ulayat dari pihak pertama" ("here with the second party accept the customary land provided by the first party"). The second party in this case was the head of Pasaman District. This

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<sup>36</sup> In bracket is from the writer.

means that he as the head of Pasaman District recognized and agreed that the in question is the customary land of local people.

### **Conclusion**

This article demonstrates the portrait of the recognition of indigenous people's customary rights over natural resources. Although indigenous people's customary rights to land are recognised by local governments and palm oil companies, the rights of indigenous people to the land is not well protected by the government. This is indicated by the fact that the promises for schemed smallholding plantations made by local governments and palm oil companies were not delivered and the acquisitions of land for the development of large-scale palm oil plantations did not follow local customary laws and in many cases ignore the existence of the customary land. This explains many cases of conflicts between palm oil companies and local people in the Provinces of West Sumatra and Riau occurred after 1998, when a political opportunity is opened for local people to carryout collective actions to challenge palm oil companies to demand their rights to land after the fall President Soeharto.

What happens is that despite of the government's formal recognition of customary land, when the land was taken by the local governments and palm oil companies for the establishment of large-scale palm oil plantations local customary mechanism of customary land was not followed. In West Sumatra the decisions made by customary leaders to provide their community's or kinship group's customary land were not based on consultation with and agreements from various elements of the community or the kinship group as required by local customary laws. This was conditioned by the ways in

which the local government's and companies' officials obtain permits from customary land owners.

The case of Riau even shows that the local governments and palm oil companies did not respect at all Riau indigenous people's right to land when the land was allocated by the local government for the establishment of large scale palm oil plantations, even though the existence of the customary is recognised in one district and bur provincial government officials.

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## Part II Land Disputes in Indonesia After Suharto's Resignation

### 第5章 祝福されるオランダ植民地支配——インドネシア、西スマトラ州の共有地返還闘争における過去の認識<sup>1</sup>

中島 成久

はじめに

「祝福されるオランダ植民地支配——インドネシア、西スマトラ州の共有地返還闘争における過去の認識」というテーマについてご説明します。まずスハルトが1998年に退陣してから、インドネシアでは「改革」(レフォルマシ)の時代に入りまして、スハルト時代に抑圧されていたさまざまな主張というものがオープンな形で議論されるようになりました。

ミナンカバウという母系制社会の居住地で有名な西スマトラ州においては、スハルト時代に軍や地方政府が、母系社会の共有地をさまざまなビジネスの対象地として開発し、ほとんどなんの対価や保証も無しに使ってきました。人びとはスハルト時代には軍、警察の暴力が怖くて、不満を述べるのが公然とは出来なかったわけですが、スハルトが退陣してからは、自分たちの共有地を返して欲しいという主張が西スマトラの各地で激しく展開されるようになったわけです。

私の知っている限り現在20箇所以上の地域でそうした声が挙がっているし、まだ公然とした声の挙がっていない地域や、一度言挙げはしたものの軍、警察、地方政府の強硬な態度に挫折した地域もあり、今後ますますそうした要求は増えていくでしょう。<sup>2</sup>

そうした地域としては、まず、1958年の「国有化」によって国家に帰属した施設での運動があります。パダンセメント、テルック・バユール港、それにオンビリン鉱山の3つがそれです。パダンセメントでは、パダンセメントの位置するナガリ・ルブック・キランガンが、より上位の行政機構であるパダン市に対してパダンセメント社が支払う鉱山使用量の適切な分配を要求して紛糾しています。<sup>3</sup>テルック・バユール港では、港が一望できる場所に海軍が観光施設を建設していて、その土地を所有しているナガリと紛争が起きています。<sup>4</sup>オンビリン鉱山では、石炭の採掘権料の支払いを求めて、紛糾しています。<sup>5</sup>

その他の事例では、個々のナガリの共有地にゴムやアブラヤシ、それにコーヒーの農園の建設、あるいは観光施設やゴルフ場の開発などが推進され、その共有地の返還を求める闘い、あるいは適切な補償を求める闘いという特徴を指摘できます。その他に、1974年に水道法が施行されてから発生した水の問題があります。

ナガリにある水源が周辺の市や県の水供給公社(PDAM)によって上水道用水として利用されてきたのですが、多くの地域でその対価が支払われておらず、1998年以降対価の支払いを求める闘いが繰り広げられました。さらに、水に関する運動としては、マニンジャウ湖やシンガラック湖の豊かな水を利用した水力発電に伴う補償を求める闘いがあります。また、まだ西スマトラでは顕在化はしていませんが、ミネラル・ウォータービジネスのために、ナガリの水源が使われているケースがあり、いずれ補償を求める闘いが起こるでし

よう。<sup>6</sup>

インドネシア全般におけるこのような共有地の返還闘争に関する研究はまだ始まったばかりです。<sup>7</sup> 1998年スハルト退陣後、西ジャワのタボスの住民がスハルト・ファミリー専用の牧場として開発された土地に入り、ゴルフ場を掘り返して元の農地に戻すという闘いを繰り広げた。しかし、スハルトの息のかかった業者や地区警察からの暴力的な弾圧を受け、彼らの闘いは表面的には頓挫した。<sup>8</sup>

また、インドネシアでは1980年代からアブラヤシ栽培が本格化するが、その農園開発のために、スマトラやカリマンタンの多くの土地が民衆の権利を犠牲にして推進されていった。この背景には、1967年の「森林法」の制定により、インドネシアの森が「公共性」の名の下に、強権的な開発を進めうるようになったことが挙げられる。しかしながら、住民の闘いは負け続けたわけではなかった。東ジャワのジュンブル県のジュンガワー Jenggawah では、スハルト時代に国営タバコ農園に土地事業権 (Hak Guna Usaha; HGU) が付与され、その返還を求める農民の闘いに警察機動隊から激しい暴力が注がれたこともあったが、粘り強い裁判闘争を経て、スハルト退陣後農民の全面的な勝利で終わった事例があることを指摘しておきたい。<sup>9</sup>

西スマトラにおける個々の事例の詳細な検討というものを今進めているわけですが、今日は異業種の方がたくさんいらっしゃいまして、細かい話をするよりも、この運動というものが一体インドネシアの改革の時代においてどのような位置を占めているのか、あるいはポスト・コロニアリズムという研究分野の中でどのような形で位置づけられるのかという観点からこの共有地返還闘争の問題を検討してみたいと考えています。

私は、法政大学比較経済研究所の英文紀要に書いた論文で、西スマトラにおける共有地返還闘争の意味として、開発の正当性をめぐる問題を指摘しました。<sup>10</sup> 多くの運動に携わっている人々が、軍や地方政府が行っているビジネスの公共性に対して疑問を感じ、大きな憤りを持っています。そうした人びとは吐き捨てるようによく言いました。「彼らは公共性の名の下に民衆の共有地を使っているけれども、それは公共性に値しない。私的な利益の追求のために我々は犠牲にされているのだ」と。

そうした共有地の多くは、オランダ時代に長期の賃貸契約の下に外国企業に利用されていました。オランダ語で *Erpacht* といいます。英語の *Lease* です。外国の企業はミナンカバウの人びとと契約を結び、借地料を支払っていました。それなのにインドネシアが独立してから、特にスハルト体制になってからは、そういう従来植民地時代のオランダでも認めていた共有地に対する住民の権利というものをほぼ完全に否定してきたのは解せない、ということです。「プメリンタ・ソウダラ」(Pemerintah Saudara、インドネシア語で兄弟政府のこと) は、同じインドネシア人の政府でありながら、何故そういうことをするのか、その理由が非常に納得できない、と人びとは口々に言うわけです。そうした底辺に住み、体制により不利益をこうむり、暴力的な支配にいまだに苦しんでいる人びとの声というものを、学問のタームとしてどのように考えたらいいのかということが今日の私の大きなテーマになります。

## 1 ミナンカバウとリージョナリズム

### 1-1 パドリ戦争、カマン戦争、PRRI

ミナンカバウという地域はインドネシアの中でリージョナリズムの伝統が非常に強いことで知られています。19世紀前半にパドリ戦争（1821～37）というものがありました。これはパドリ派と呼ばれたイスラム宗教改革派が西スマトラで勢力を持つに連れて、ミナンカバウ保守派＝権力側はオランダの軍事力で改革派を一掃しようとしたわけです。それに対して改革派はオランダに対する抵抗運動を開始し、抵抗は15年以上も続きましたが、1837年リーダーのイマム・ボンジョルの降伏で終結しました。

この反乱を終結するためにオランダがミナンカバウ保守派に約束したのが、「プラカット・パンジャン」です。反乱終結後はその約束はほとんど反故にされ、西スマトラでコーヒーの「強制裁培制度」が始まりました。これによりオランダは巨額の利益を得るのですが、次第にこうした方式では利益が出なくなり、また批判も高まると、「強制裁培制度」を止め、それぞれの住民一人一人に税金をかける人頭税を課しました。これに対する抵抗は西スマトラ各地で起きたのですが、アガム県のカマンでは1908年、激しい武装闘争が起きました。これがカマン戦争と呼ばれるものです。オランダはその鎮圧のために、妥協を重ね、最終的には1914年の「ナガリ法」を制定し、ミナンカバウ共同体の自律性を法的に認めたわけです。<sup>11</sup>

そしてインドネシアが独立してからP R R I (Pemerintah Revolutioner Republik Indonesia、インドネシア共和国革命政府)という反政府運動が起きました。これはスカルが共産党を自分の支持基盤に組み込んでいく過程で、それに反対する勢力がおこした反乱で、1958年から60年まで続くのですが、西スマトラが最初の拠点となってなりましたが、最終的には中央政府によって制圧されていきます。<sup>12</sup>

## 1-2 「独立期」におけるミナンカバウの活躍

こうした反乱の面だけではなく、西スマトラはインドネシアの独立運動、ナショナリズムを考えていく上で非常に大きな役割を果たした地域であることを指摘しておきたいと思います。初代副大統領のモハマッド・ハッタ、マルクス主義者のタン・マラカ、イスラム教育のハジ・アグス・サリム、などなど、そうそうたる人物を輩出しました。

現在の西スマトラの人口が400万と言われていまして、2億人を超えるインドネシアの中でほんの数パーセントを占めるに過ぎないわけです。けれども、この地域は母系制社会の構造と密接に結びつく、男性がムランタウという形で外に出て行く伝統があります。外に出て行って故郷に帰ってくる人もいるし、ジャカルタなり他の地域に定着して、ミナンカバウ人のコミュニティを作っていくという伝統があります。西スマトラ以外に住むミナンカバウ人の人口も400万人と推計されています。

つまり、ミナンカバウという社会は外からの動きに対しては非常に開かれた世界ではなかったのかという考えがあります。その証拠として中村先生が生涯をかけて追及されている、サレカット・イスラームというイスラム同盟の支部もすぐ西スマトラでできました（1912年）。ディニアという民間の学校も1924年できました。このディニアという教育施設はタン・マラカが提唱した教育組織で最初中ジャワのスマランで創設されるのですが、このディニアの支部も西スマトラですぐに出来ました。それからインドネシア共産党も非常に強い地域でした。インドネシア共産党は3回も蜂起をしたとインドネシアの歴史では語られています。第1回目が1926年で、2回目が1948年、3回目が1965年です。もっと



も、3回目の蜂起の真偽のほどは明らかではありません。第1回目の26年の蜂起では、15人ぐらい逮捕されました。タン・マラカはこの蜂起には反対で、たまたまシンガポールにいて、逮捕を免れました。<sup>13</sup>

ミナンカバウは農耕を基盤とする母系制社会でのんびりとした社会というようなことを考えているととんでもない間違いです。この辺のダイナミックな側面というものはどうしても考慮しておくことが必要であります。

## 2 土地、村落共同体、地方自治

### 2-1 ミナンカバウ母系制と土地「所有」

#### ① カウム、スク、ナガリ

ミナンカバウの母系制を考えていく上で、土地との関わりは無視できない。土地無しにミナンカバウの母系制というものは存在し得ない。カウムというのは人類学の専門用語で言えば、母系リネッジに当たります。母系制の原理が系譜の上でも明確に辿る事の出来る最大の範囲がカウムというもので、このレベルでの母系制の意識というものは現在でも非常に強いものがあります。カウムのレベルで共有地もあります。

スクというのは、母系氏族(クラン)でして、いくつかの明確な系譜関係でつながれるカウムがある共通の母系の祖先から分かれてきたと考えられていて、それがスクです。スクにも共有地があります。

最後にナガリという単位があります。英語では単にvillageと表記されている例が多いのですが、慣習法共同体と私は訳しています。ナガリを作る条件がありまして、最低4つのスクが無いとナガリは構成できない。一つのナガリにはスクが4つないといけない。スクは4分の1という意味があり、4つで完全だという意識があるのですが、実際には4つどころか10とか15とかスクがあってもっと複雑です。しかし、理念的には4つのスクがあってナガリが構成されていると考えられています。

このナガリの中でアダットと呼ばれる慣習法の具体的な適用がなされていく。どういう形の婚姻がいいのか、どういう形の婚姻がインセストになるのかということが決まってくる。ナガリが違っていると慣習法の適用では微妙に違ってきます。インセストの範囲が違ってきます。共有地の実際の管理・利用の詳細を決めるのはこのナガリです。

#### ② 「共有地権」 Hak Ulayat

土地との関係でいうとそれぞれの段階で、Hak Ulayatという共有地権がある。これはナガリ全体で大きな共有地があり、その中に部分的にスクという共有地があり、あるいはさらにカウムという下位の共有地があると考えていいと思います。

### 2-2 土地とアイデンティティ

#### ① 土地「所有」の主体

あるスクではそのスクの(プンフルーとかニニック・ママックとか呼びます)がいますが、そのリーダーはどのような人がカウムの財産を継承する権利があるかということを決めていく。あるいはスクではどのような人々が財産の継承権を持つかを決めていきます。

西スマトラのように男性がムランタウで村の外へ出て行く場合、男性を頼って女性が村

を出て行くというケースもあります。そうした場合、女性であっても、村を出てしまうと基本的には継承の権利はなくなります。村に帰ってこない限りは母系の継承ラインから外れますから、その辺で複雑な問題が出てきます。

ミナンカバウの土地所有というのは、総有制といってもいいのですけれども、全てのメンバーにオープンというわけではありません。状況に応じて、その権利を持つ主体は、常に変わっていきます。カウムのレベルでは、カウムの財産である土地や建物を最終的に売ることも可能なのですけれども、必要なときには土地を抵当にして、お金を借りるということがしばしばあります。

全ミナンカバウの土地の8割はまだ共有地なのですが、水田や家屋敷などの8割ぐらいは抵当権が設定されています。つまり、ある土地をめぐる権利関係がものすごく複雑になってきていきます。ある人が、「自分の土地で耕作をしている」といった場合、そこで得られる収穫物の全部を自分で処分できるのではなく、その半分は借金の形に返済をせざるを得ないというケースがよくあります。お金を借りているので別の人のために働いているというような一種の小作関係のようなものが結構ありまして、その問題は頭に入れておく必要があります。<sup>14</sup>

## ②土地権の正当性(ナショナルリゼーションによる国有化か、農地法に基づく土地権の転換過程か、リーガル・プルーラリズムに基づく共有地の認定か)

こうした土地に対する彼らの権利が、インドネシアが独立した後に大きな変化をこうむりました。1958年に国有化が宣言されました。最初に述べましたように、西スマトラではパダンセメント、テルック・バユール港、それにオンビリン鉱山の3つが国有化の対象になりました。それから重要なものが、1960年の土地基本法です。この法律では共有地権そのものを認めるという姿勢なのですから、それは公共の利益の下に従属するというような事が規定されています。

それでもスカルノ政権時代にはこの規定は抑制されていましたが、スハルトの開発の時代になってからはほとんど歯止めを失ってしまいました。その詳しい実態については、後で述べることにします。こうした開発優先の思想に対抗するものとして、リーガル・プルーラリズムというような主張がよく聞かれます。国家の側ではすでにHGU(土地事業権)の設定された土地は、国家の土地として主張して、民衆の共有権を否定していくことが多いのですが、リーガル・プルーラリズムに基づいて民衆の共有地権をどこまで認めることができるのか、そうしたせめぎあいが、非常に大きな論点として見出すことが出来ると思います。

### 2-3 西スマトラの地方自治

#### ① ナガリ自治という言説(20世紀初頭)

ミナンカバウ母系制を考えるうえで、ナガリの自治制というものが、植民地時代およびインドネシアの独立後の体制の中で、全体の統治機構の中でどのように位置づけられてきたかということは重要な問題です。20世紀の初頭にナガリ自治という言説が確立していきます。これは1914年にナガリ法というものが出来て、それによって地方自治の最小の単位がナガリであると認められた結果です。ミナンカバウの母系制の本質として、よくナガリ

共和国という言葉で呼ばれますが、そうした言説が確立したのがこの頃です。

現在の西スマトラには540程のナガリがあります。これは固定しているわけではなくて、増えたり減ったりしています。人口が増えていくにつれてナガリが大きくなっていくと、分裂し、別のナガリが生まれるという生成発展の歴史を繰り返してきました。<sup>15</sup>ナガリが認められるには、少なくとも4つのスクが必要だと言いましたが、そのほかに、2000人以上の人口、モスクの存在などの要件もあります。共有地返還闘争の過程で、ナガリ内で対立が大きくなるケースがよくありましたが、そうした場合でも、解決策の一つとして、ナガリの独立ということがよく議論されますので、ナガリの数というのは固定していません。

とにかくナガリというものが一種の共和国を作っていて、ミナンカバウはそういうナガリの連合であるという考え方が20世紀初頭に出来上がってきて、ミナンカバウという民族集団というものが認識されていく。これはオランダによってそうした言説が作られていったと、ジョエル・カーンというオーストラリアの人類学者が言っています。<sup>16</sup>

## ② 1979年「デサ法」によるナガリの解体

地方自治という観点から見ると独立後も大きな変化はなくて、ナガリが最小の自治の単位であるということはスカルノ時代にもスハルト時代の初期までは受け継がれてきました。しかしながら、スハルトがその支配体制を確立し、国内の法、行政の体系を「開発独裁体制」にふさわしいものにしていく努力の過程で、いくつかの重要な変化が起きました。

まず、1974年の婚姻法の改正です。それまでは婚姻というものは、個人の問題であって、国家は介入しないという原則がありました。イスラム法と各民族集団のアダット（慣習法）に基づいた手続きですまわせていたのです。ところが、イスラムの一夫多妻の原則は近代国家にふさわしくないと主張する近代派女性の強い圧力で、一夫多妻を事実上禁止する婚姻法が制定され、特に公務員にはその規定が厳しく実施されていくようになりました。<sup>17</sup>

婚姻法に続く大きな動きは1979年の「村落法」の制定です。オランダ時代にインドネシアは20以上の異なった「慣習法共同体」が認知され、そこでは独自の行政組織が植民地末端の行政機構を担いました。ところが1979年の村落法は、全インドネシアの末端の行政機構を、ジャワの村（デサ）を基準とした行政単位で統一しようという動きでした。ミナンカバウのナガリは平均数千人の人口を抱えていましたので、いくつかのデサに分割されていきました。そして、村長を住民の直接投票で選ぶわけで、元公務員とか、退役軍人が選ばれることが多く、慣習法に基づくナガリのリーダーシップと大きく衝突しました。これは中央集権を末端にまで徹底したいという政府の方針の現れであったのですが、スハルト退陣後、脱中央集権化の流れの中で、大幅な見直しをされることになりました。<sup>18</sup>

## ③ 1999年「地方自治法」によるナガリの復活

1998年のスハルト退陣後、99年に地方自治法というものができて、スハルト時代を特徴づけた中央集権的化に対する批判として、脱中央集権化（インドネシア語で

Disentralisasi) の動きの一環でナガリが復活します。実際に各ナガリが復活するのは、それぞれのナガリの準備状況によって違いますが、早いところでは2001年から元のナガリが、行政の末端機構として機能し始めました。ナガリ長は選挙で選ばれます。ここでも、元公務員とか退役軍人がナガリ長に選出されることが多く、ナガリの復活がすぐに、ミンカバウ民主主義の復活とはなりません。ナガリ長の多くは、ナガリの代表であるという意識よりは、政府の末端機関であるという意識の方が強い、と言わざるを得ません。

### 3 オランダ時代の永借地制 (Erpacht)

#### 3-1 領土宣言

「はじめに」で紹介しましたように、オランダ時代に Erpacht という永借地制というものが確立しました。これを手掛かりに西スマトラでのオランダの植民地支配の実態を、ジャワとのアナロジーで捉えてみるとその特徴がよくわかります。ジャワでは19世紀の1830年代から強制栽培制度が始まって、ジャワの稲作適地では強制的にサトウキビを栽培させられていきます。そして栽培させたサトウキビを砂糖に加工し、それを世界市場に売ることによってオランダ植民地政府は巨額の利益を得ました。しかし、そうした経営方式がうまくいかなくなって1870年に、ジャワでは農地法というものが宣言されて、資本家による植民地経営への参加という道が開かれていきます。<sup>19</sup>

ちょうど同じように西スマトラでは、1870年に領土宣言がなされました。これは、ミンカバウの人びとが作っている水田と宅地以外は、Waste Land (荒野、無主地) であるということで、すべてオランダ領であるという宣言がなされていきます。領土宣言によってオランダは、水田と宅地以外は Waste Land ということ、その Waste Land の処分権は国家が持つと宣言したわけです。その背景には、1840年始まった西スマトラでのコーヒーの強制栽培制度<sup>20</sup>が次第に行き詰まり、ジャワと同じように私企業の資本投下による開発ということが構想されたわけです。

だが、それはバダヴィアの植民地当局の考え方であって、西スマトラで実際に行政を行っている人々は、とてもそれを実行できなかった。つまり、共有地として利用されている土地はミンカバウ人の意識の中では明確ですから、西スマトラ州の行政を直接になっている役人たちは怖くて手が出せない。共有地には領土宣言がされているけれども、「下手に手を出したらかみつかれてしまう」と恐れていたわけです。土地への自由なアクセス権というものは、西スマトラではほとんどないという風に現場の行政を担っている人びとの間では考えられていました。

こうした矛盾を解決する一番いい方法は Erpacht という長期のリースをすることでした。1876年に最初にリース契約が行われました。19世紀の終わりまでに、2,600バウ bouw (バウというのはオランダ特有の土地の計量法で、1バウが約0.7ha、2,600バウは約1,500ha) の土地に永借地権が設定されました。

ジャワとスマトラの Erpacht と耕作地の比較がありまして、これはジョエル・カーンが載せている資料なのですが、スマトラでは全体の17%に過ぎないのに対してジャワは24%と非常に高い割合で借地権が設定されていて、それだけ西スマトラでの借地権の設定が進んでいなかったということになります。

表1 西スマトラとジャワの耕作地と長期借地権設定率

	Land on Erpacht	Land under cultivation	ratio
West Sumatra (1926)	657, 938ha	113, 600 ha	0.17
Java and Madura (1934)	4, 388, 777ha	1, 0464, 000 ha	0.24

### 3-2 領土宣言批判

領土宣言をして、水田と宅地以外はオランダが自由に使えるのだとバタビア当局が言いながらも、実際は現地の慣習法の重みを知っている人々が領土宣言に批判をしていくわけです。領土宣言をしてバタビアからは積極的にミナンカバウの土地を利用せよという通達がしばしばくるわけですが、現場ではそうにもいかず、バタビアの指令をサボタージュしているわけです。

ジャワでの強制裁培制度が1970年に終わったのに対して、西スマトラのコーヒーの強制裁培制度は曲がりなりにも20世紀初頭まで続きました。そこから上がる利益が初期のころと比べるとうまみのあるシステムにならなくても、ずるずるとその制度を維持してきたわけです。その背景には、この制度に協力した現地人コラボレーターが存在が重要です。彼らは「プンフルー・ララス Penghuku Laras」と呼ばれていて、通常のアダットの規定が及ぶ最大の範囲であるナガリを超えて、複数のナガリを管理する現地人役人でありました。当然オランダによって厚遇され、通常のみナンカバウ人では考えられないほどの土地を与えられ、ミナンカバウ社会の階層化を進展させました。<sup>21</sup>

しかしながら、ついにオランダも西スマトラでの強制裁培による収益をあきらめざるを得なくなる時がやってきました。それに代わって考えられたのが、各住民一人一人から税金を徴収する人頭税方式です。1908年です。これに対してアガム県のカマン（ブキティンギの北）で西スマトラ最大の反乱が起きた。何故反乱が起きたかという、それまではナガリの指導者が、彼の管轄下にあるだれがどの程度のコーヒーを納入したかを管理していたのであるが、一人一人税金を納めないとならないとなると、そうした権威の体系が崩壊してしまう、ということが大きな理由だったと、この反乱を分析したケン・ヤング Ken Young は言っています。<sup>22</sup>

こうした反乱の深い背景を当局は認めざるを得なくなり、1914年にナガリ条例というものができます。ナガリをミナンカバウにおける最小の自律的な行政組織として認め、そこでの共有地権も認めたわけです。しかし、オランダは、こういう共有地権のほかに鉱山開発権とか保護林を設定します。ミナンカバウの社会が流動的になってきて、人口移動が激しくなっていくと、従来利用していなかった土地に移動して、ナガリを作っていくということがしばしば起こりました。火山の多い地域で、従来利用されてこなかったところに人が入ると、自然破壊を引き起こすことが多いので、起伏の激しいところは保護林にされていきました。ソロック県では75%が保護林に指定されてしまいました。<sup>23</sup>

## 4 共有地返還闘争

#### 4-1 1960年「土地基本法」と共有地権の行方

これまでの話の中心は、オランダ時代の地方行政とミナンカバウとの関わりであったわけですが、共有地返還闘争を理解していく際に、独立後の1960年に「土地基本法」が成立しましたが、その影響を考えてみたいと思います。「土地基本法」はインドネシア語で、Undang-undang Pokok Agraria といい、日本の専門家の間では「土地基本法」と訳されています。インドネシア語の字義どおりでは、「農地基本法」ですが、加納啓良氏によると、狭義の「農地」だけではなく、土地制度全般を規定する法律だから、「土地基本法」と訳すということです。

とにかく土地基本法によって植民地時代の複雑な法体系を一元化しようということで、土地に対する法整備を行ったということです。しかし、これは非常に複雑で、水野広祐さんの研究から見ると、<sup>24</sup>土地基本法というものは基本的に慣習法に基づく共有地権を認めているけれども、実際には公共性というか、例えばそこに有益な資源があった場合にその資源をどうするかとか、水源地の問題など、そうした土地に関する管理、使用、賃貸、新たな開墾の問題が細かく各条例で規定されていきます。

それから土地の私有権を主張する者は土地登記をしなければならないということがあるのですが、これは複雑な上に非常にお金がかかることでありまして、私の知る限りミナンカバウの共有地で土地登記などされてはいません。これもまた紛争の原因になる理由です。

#### 4-2 永借地権から事業権へ

土地基本法の第3条と5条で、共有地に関する規定が述べられている。「アダットに基づく共有地権を認めるが、それはより上位の法律に違反しないこと」という制限がつけられている。だがスカルノ時代には、この規定が突出することは少なかった。さらに、土地基本法は旧プランテーションの不法占拠の解決について規定している。農業大臣の1962年書簡によると、「政府や他の政府機関が使用していない国有地は原則として農業用地として使われるべきであり、農民に再分配されるべきである」として、土地改革の方向性を明確に示している。

現在の土地紛争でもっとも重要な規定が、土地基本法第二部の「土地転換に関する条項」である。その第I条と第II条でオランダ法時代における私有権(eigendom)は土地基本法下の「所有権」への転換が規定されている。第IV条では、旧地方領主の発給した「農業租借権」へ、事業権が発給されることを条件付きで認めている。そして第III条で「永借地権」の設定されたプランテーションに「事業権」(HGU)が与えられることをつぎのように規定している。

- (1) この法律が制定された時に大規模プランテーションにすでに与えられている永借地権は、その借地権の残存する期間に限り事業権が与えられるが、その事業権は20年を超えることはできない。
- (2) この法律が制定された時に小規模な農業目的のために既に与えられている永借地権は失効する。そして農業大臣が規定する大臣令によって解決されるべきものとする。

#### 4-3 共有地返還闘争——カパロ・ヒラランの事例より

カパロ・ヒラランの例について簡単に説明します。これは皆さんにお配りした英文の

論文で詳しく書いてあります。<sup>25</sup>このカパロ・ヒラランの例だと1904年にオランダの私企業に470ヘクタールが貸与されました。ここをタンディカット・ラマ Tandikat Lama といいます。それから1923年にドイツの企業に63ヘクタールが賃貸されました。ここをタンディカット・バル Tandikat Baru といいます。その最初の頃に何を作っていたかは分かりません。

大木 昌さんという西スマトラの植民地時代の経済の問題を研究されている方の研究だと、<sup>26</sup>西スマトラにゴム園が入ってくるのが1916年です。インドネシア全体でもメダンの近郊のデリが一番早いんですけども、それでも20世紀に入ってからのことです。<sup>27</sup>とにかく、1916年以降にゴムを植えたようです。もっとも、地元の住民の話では、日本の占領軍がゴムを植えたという証言をする人もいましたが、あまり信用できない。というのも、日本軍の必要としたのは米であり、ゴムは二の次であったからです。北スマトラ辺りではゴム園を水田に転換させたところもあるのですが、カパロ・ヒラランでは、ゴム園は無傷で残りました。

その後1958年のPRRIの反乱までは、ベテランと地元の住民で共同で管理をしていたのですが、PRRIの反乱軍を鎮圧するためにジャワのディポヌゴロ師団が西スマトラに入ってきました。彼らがこの支配地に介入して経営に口を出し始めると。そのためにプランテーションの労働者としてジャワからジャワ人を移住させます。カパロ・ヒラランの共通地に近いタロというナガリの一支村（ミナンカバウ語ではジョロン／コロンと呼ぶ）にジャワ人が集中して住むようになります。そして、1965年の政変を機に、パダン軍分区の支配下に落ちました。その後、軍は「協同組合 Koperasi」を作り、その「協同組合」がプルナ・カルヤ社を経営し、退役軍人を中心に経営に当たりました。

1998年5月スハルトが退陣してから、全国的な「改革」の動きに刺激されてナグリ全体でタンディカット・ラマとタンディカット・バルにある農園の返還闘争が起きました。大きな返還闘争が組織されていきましたが、村が全部一つの意見にまとまったかというところではなくて、タロの住民は返還闘争に反対しました。

彼らは、カパロ・ヒラランの共有地はすでに政府の土地になっているとして、返還闘争の根拠はないと主張しました。その背景としてタロには、ミナンカバウ人もいるんだけれども、ジャワ人も3分の1はいまして、共有地権を否定して、会社の経営と利益を自分たちで独占したいという野望がありました。また、1999年の「地方自治法」により、昔のナグリが復活することになりましたが、そうになると、軍に協力的であったタロの人びとは孤立するのを恐れて、独立したナガリの創設を言い出すなど、返還闘争の足を引っ張りました。

軍は、いったんは住民の主張を認め、一時金を支払い、これまでの運営を謝罪し、これからは会社と村で共同して農園の運営をしていくことを約束したのですが、住民の足並みの乱れに自信を持ち、約束を反故にしてみました。軍が住民の主張を認めるのは相当なことでありまして、最初に述べましたように東ジャワのジュンブル県のジュンガワーを除いたら、あまり例のないことです。

インドネシアを家族国家と呼ぶ研究者がいますが、それは軍や警察、大学等の一つの組織が、スハルトを頂点とする一つの家族であるということで、家族は家族の成員の面倒を見ないといけないとされています。<sup>28</sup>インドネシアの公務員は非常に数が多くて給

料が非常に安いんです。公務員の給料だけではとても食えないので、他にアルバイトをすることが事実上奨励されていて、そのような裏の給与の源泉を独自に持たないと生活できないわけです。だからその上から下までいろんなビジネスに手を出します。

そういう状況を考えると、カパロ・ヒラランのケースでは、曲がりなりにも軍が今までやりすぎたとか、これからは利益を折半しようと思ったということは非常に大きな意味があって、私はこの事例にその意味で注目しています。しかし村の中の混乱により、プランテーションは経営効率が非常に悪くなった。つまり労働者が働かなくなったというか、今まで律儀にゴム園に行って、タンピングをやってゴムを収穫して、それを軍を通して卸していたのですが、「もっと高く買うよ」という民間の仲買が公然と出てくると、そっちの方に卸すようになって、軍には卸さなくなるわけですよ。それだけ軍の統制が利かなくなってきたわけです。経営状況が悪くなって、結局2004年には、軍に与えられていた土地事業権（HGU）が剥奪されて、会社も無くなってしまいました。しかし土地の使用権、用益権は地方政府に移るということになって現在は小康状態になっています。

## 5 共有地返還闘争における「声」——歴史を語る主体

西スマトラの共有地返還闘争は、個々の事例により、その背景も運動の展開も大きく異なります。カパロ・ヒラランでも軍による威嚇の効果は大きいのですが、警察による直接的な暴力が日常的に振るわれている事例もあります。あるいは、PDAMによる水利用の場合には、1998年以降地方政府に水利用の利益の還元を獲得した地域が少なくとも二つはありますが、カパロ・ヒラランでは、パダン・パンジャン県全体と新ミナンカバウ空港に水を供給している水源がありますが、まだその権利の主張には入っていません。また、ミネラル・ウォーターの会社が二社あり、一社はインドネシア第二位の生産を上げていますが、そこの交渉は全く行われていません。人びとは、共有地問題で頭が一杯で、とても他の問題にまでは手が回らない、とも言えますが、内部の抗争がそこに大きく投影されているようです。

スピヴァックは、「サバルタンの語り」の主体を問題にしています。「サティ」という寡婦の殉死の習慣をめぐる、「サティ」という用語の使用が、植民地支配に抵抗する側からも、それを推進しようとする側からも、異なった意味作用を伴って使われてきた実態を明らかにし、「サバルタンは語る主体ではなかった」と結論付けるわけです。<sup>29</sup>スピヴァックの議論は、フーコー批判の側面が大きく、「フーコーの主体の概念では、結局はヨーロッパ中心主義を超えることはできない」とまで言うわけですが、ミナンカバウにおける共有地返還闘争をめぐる、その主体をめぐる、いくつかのポイントを指摘しておきたいと思います。

### (1) インドネシアの正史への挑戦であるということ

「インドネシアはオランダの350年にわたる植民地支配のくびきを断ち切って独立を遂げた」とよく主張されますが、特に1965年の政変後成立したスハルト新秩序政権の開発政策への疑問と、開発の正当性、を問う闘争であること。

### (2) 母系社会のアダットを根拠とする闘争であること

政府・軍の開発政策への不満、批判の根源に、母系社会ミナンカバウのアダットが規



定する「共有地権」があり、それはオランダ支配の時代には認められていたということ。彼らの批判の根拠は、基本的人権などの近代法に依存してはおらず、過去認められていた「権利」を起源とする。独立後「土地基本法」「森林法」「水道法」などが制定され、政府・軍の開発を正当化する法律が数多く制定されてきた。しかしながら、そうした法体系に基づく開発には住民は計画段階からまったく参加しておらず、開発の恩恵を得ることも、開発のための補償も受けていないことへ大きな不満を募らせている。彼らが抱くその不正義感の背景には、個人としての権利ではなく、民族「集団」としての権利が背景にある。

### (3) 闘争の主体は必ずしも、村全体を代表することはないということ

闘争の主体は闘争の根拠を慣習法に求めるが、現実の闘争では、慣習法を担う主体は各村において大きく異なる。軍・政府との関係のみならず、村びと同士、近隣社会同士の利害関係が闘争の在り方を大きく規定していて、闘争の現実を複雑にしている。

### (4) 闘争の行方

1999年の「地方自治法」施行後のミナンカバウ社会では、「保守化」が進行しています。これは、ナガリの復興が進むと同時に、イスラムの規定を遵守する条例がいくつかの県では制定されてきました。フランスの「ベール禁止法」に対抗する形で、「公共の場ではベールをつけること」を強制する条例が施行されている県もあります。こうした中、闘争は、イスラムとアダットとの共存というミナンカバウにとっては古くて新しい問題の中で、進展する可能性があります。ナガリの復活という事態の中で、闘争に有利な状況がすぐに生まれてくるというわけではなく、ナガリの自律とインドネシアの地方政治、という枠組みの中でこの闘争は今後続いていくと思います。

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<sup>1</sup> この論文は、「アジア太平洋におけるリージョナリズムとアイデンティティの現在」第1回研究会（2007年6月22日）での口頭発表を元にして、2008（平成20）年3月祝福されるオランダ植民地支配——インドネシア、西スマトラ州における共有地返還闘争における過去の認識、「異文化」（論文編）第9号、81-110頁、法政大学国際文化学部として出版されたものに、一部追加訂正を加えたものである。研究会では、コメンテーターを中村光男千葉大学名誉教授にお願いした。この研究会は、大学共同利用機関京都大学地域研究統括情報センターの共同プロジェクト「21世紀の国家像」からの資金援助を得ている。

<sup>2</sup> ここでいう地域とは、主に「ナガリ」である。ナガリとは、母系地域共同体のことで、ミナンカバウ慣習法の基礎であり、地域政治の基礎でもある。

<sup>3</sup> Afrizal, *The Nagari Community, Business and the State: The Origin and the Process of Contemporary Agrarian Protests in West Sumatra, Indonesia*, Thesis for PHD, The Flinders Asia Centre, School of Politics and International Studies, Faculty of Social Sciences, Flinders University, 2005, pp163-4.

<sup>4</sup> このケースについては、パダンにあるNGOのPBHI(Perhimpunan Bantuan Hukum Dan Hak Asasi Manusia Indonesia、インドネシア人の法的援助と基本的権利のための連合)が支援している。

<sup>5</sup> Erman, Erwiza, *Illegal Mining in West Sumatra: Access, Actors, and*

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Agencies in the Post Suharto-Era, *Dinamika Kota Tambang Sawalunto* edited by Alfian Miko, Padang, Andalas University Press, 2006 参照

<sup>6</sup> 中島成久 水をめぐる紛争、西スマトラの水利事業、「異文化」(論文編)第11号、法政第学国際文化学部、2010年

<sup>7</sup> Bachriadi, Dianto and Antón Lucas, 2001. *Merampas Tanah Rakyat: Kasus Tapos dan Cimacan*. Jakarta, Kepustakaan Populer Gramedia, Anton Lucas and Carol Warren, *The State, The People, And Their Mediators: The Struggle Over Agrarian Law Reform in Post-New Order Indonesia*, *INDONESIA* 76 (October 2003), などを参照。

<sup>8</sup> Dianto Bacriadi & Anton Lucas, *Merampas Tanah Rakyat, Kasus Tapos dan Cimacan*, KPG(Kepustakaan Populer Gramedia), 2001 参照。

<sup>9</sup> Jos Hafid, *Perlawanan Petani: Kasus Tanah Jenggawah*, Pustaka Latin, 2001.

<sup>10</sup> Narihisa NAKASHIMA, On the Legitimacy of Development: A Case Study of Communal Land Struggle in Kapalo Hilalang, West Sumatra, Indonesia, *Journal of International Economic Studies* (2007), No.21, pp145-160, The Institute of Comparative Economic Studies, Hosei University.

<sup>11</sup> Rusli Amran, *Sumatra Barat PLAKAT PANJANG*, Penerbit Sinar Harapan, 1985.

Ken Young, *Islamic Peasants and the State: The 1908 Anti-Tax Rebellion in West Sumatra*, Yale University, 1994. Joel Kahn, *Constituting the Minangkabau: Peasant, Culture, and Modernity in Colonial Indonesia*, BERG, 1993

<sup>12</sup> Audrey Kahin, *Rebellion to Integration, West Sumatra and the Indonesian Polity*, Amsterdam University Press, 1999, Chapter 8.

<sup>13</sup> Audrey Kahin, *ibid.*

<sup>14</sup> Biezeveld, Renske Laura, Right to Irrigation and Drinking-Water, in *Between Individualism and Natural Resources in a Minangkabau Village*, Eburon, Delft, 2002 参照。

<sup>15</sup> 大木 昌、『インドネシア社会経済史研究、植民地期ミナンカバウの経済過程と社会変化』勁草書房、1984年

<sup>16</sup> Joel Kahn, *ibid.*

<sup>17</sup> Narihisa NAKASHIMA, The State Ideology of *Rumah Tangga* (Household) and the Minangkabau View of Gender and Power, *IBUNKA*(Other Cultures), Faculty of Intercultural Communication, Hosei University, 2002. Narihisa NAKASHIMA, Ethnicity and Religion in Suharto's New Order: Minangkabau Society under the Marriage Law of 1974, in *Nation-State, Identity, and Religion in Southeast Asia*, pp25-54, ed. by Tsuneo Ayabe, Singapore Society of Asian Studies, 1998. 中島成久、「インドネシアの母系社会における国家とエスニシティ——ミナンカバウ家族の言説をめぐって」『国家の中の民族、東南アジアのエスニシティ』綾部恒雄編、明石書店、1996年

<sup>18</sup> Kato, Tsuyoshi (1989), 'Different Fields, Similar Locusts: Adat Communities and the Village Law of 1979 in Indonesia', *Indonesia* 参照。

<sup>19</sup> 1870年に「砂糖条例」が施行され、ジャワでのサトウキビの強制栽培制度が廃止された。これまでの「強制栽培制度」の時代が終わり、私企業の自由な投資を認める「自由主義経済期」を経て「倫理政策」の時代へと移っていく。加納啓良「植民地ジャワの地租制度」『東南アジアの経済開発と土地制度』水野広祐・重富真一編、アジア経済研究所、1997年

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20 ミナンカバウにおけるコーヒーの強制裁培制度は、コーヒーを作るかどうかは農民の自己決定にゆだねられていたという点で、ジャワでのサトウキビの強制裁培制度とは決定的に異なる。また、コーヒーは稲作適地ではなく、未利用のラダン ladang（灌漑されていない畑）で栽培された。強制性は、作るかどうかにあるのではなく、収穫されたコーヒーの販売をオランダが一手に独占したことにある。農民は収穫したコーヒー豆を地域の倉庫まで自分の負担で搬入しなければならず、そこで搬入高に応じて、現金の支払いを受けた。しかし、その価格は市場価格に比べると数分の一であり、こうした手法でオランダは巨額の利益を得た。

21 Joel Kahn, *ibid.*

22 Kenneth R. Young, *Islamic Peasants and the State: The 1908 Anti-Tax Rebellion in West Sumatra*, Yale Univ Southeast Asia Studies, 1994 参照。

23 Joel Kahn, *ibid.*

24 水野広祐、「インドネシアにおける土地権転換問題——植民地期の近代法土地権の転換問題を中心に——」『東南アジアの経済開発と土地制度』水野・重富編、1997年

25 注7参照

26 大木、前掲書

27 アン・ローラ・ストーラー、『プランテーションの社会史——デリ、1870～1979』中島成久訳、法政大学出版局、2007年

28 白石 隆、「開発」国家の政治文化、インドネシア新秩序を考える、土屋健治編『ナショナリズムと国民国家』、東京大学出版会、1994年

29 スピヴァック、G.C 『サバルタンは語るができるか』みすず書房、1998年

## 第 6 章 アブラヤシ開発の現状

ノルマン・ジワン（サウイット・ウォッチ）

みなさんこんにちは。サウイット・ウォッチのノルマンです。本日はインドネシア語を使わせていただきます。必要であれば、今回のプレゼン資料を英語に翻訳したいと思います。

まず、インドネシアの現状から説明します。インドネシアは、陸地面積が 1 億 9,200 万ヘクタールで、17,000 の島々のうち大きな島が 5 つあります。2004 年の時点で人口は 2 億 2,300 万人です。3,000 万～6,000 万人の人々が森林地域に住んでいます。そして約 3,000 万人が先住民（*masyarakat adat*）といわれている人々です。現存する世界の熱帯林の 10% はインドネシアにあります。また、インドネシアの森林は生物多様性の宝庫でもあり、世界中の植物の 10%、哺乳類の 12%、爬虫類の 16%、そして鳥類の 17% がインドネシアに生息しています。

### アブラヤシ産業をめぐる基本的な問題

つぎに、アブラヤシ産業について簡単に説明します。アブラヤシはインドネシアの原産ではありません。1848 年に当時の植民地政庁であったオランダによって、西アフリカから持ち込まれたものです。1911 年に大規模栽培、すなわちプランテーションが初めて北スマトラで開始されました。

現在、アブラヤシ・プランテーションは 30 の大企業グループが牛耳っています。これらの企業は、19 の州に約 600 もの子会社を持っています。2007 年上半期の時点で、インドネシアのアブラヤシ・プランテーションの面積は 728 万ヘクタールに達しています。1999 年から 2004 年の 5 年間に毎年 401,200 ヘクタールずつ拡大しています。今後 5～10 年後には、市場の需要を受けて年間に 60 万ヘクタール拡大すると推測されています。

アブラヤシ・プランテーションは、オランダによる強制栽培制度として導入されました。オランダ植民地時代の 1848 年から 1911 年にかけて住民に強制的に土地を提供させ、プランテーションにされたのです。

アブラヤシ・プランテーションの特徴として 5 点指摘しておきます。①大規模栽培であること。商業的価値をもつには、広大でまとまった土地を必要とするのです。②モノカルチャー（単一栽培）であること。地元農民の栽培方法とはちがって、保護的な植生なしで栽培されます。③独占、つまり民間の大企業や国営企業によって支配されていること。④買手独占、すなわち、市場において売手は多くいるのに買手は 1 人しかいないということ。⑤資本集約的であること。これは、わずかな労働力しか必要としないことを意味しており、年間に 100 ヘクタールあたり、必要な労働者はたった 36 人です。

さらに、政策の問題を指摘しておきます。法的な側面については、アンディコさんがこの後、詳しく説明しますが、まず、プランテーション法が市場志向であることが問題です。さらに、権限の重複も重要な問題です。地方分権の推進によって県/市の権限が大きくな

りましたが、許認可権が中央と地方でオーバーラップしているところがあるのです。そして、地方分権化によって構造的な格差が生じています。また、開発至上主義というパラダイムが力を持ち、収入と投資がすべてであるかのような考えが蔓延してきています。さらに、国の役割が衰退しています。つまり、国が従来担ってきた役割が弱まっているというネガティブな側面を指摘できます。

最初にあげた制度上の問題がもたらした影響をいくつか考えておきたいと思います。その中で第一に指摘できることは、環境問題があげられます。環境問題で真っ先にあげられるのは、森林消失です。そして、森林や農地火災、土地の侵食と劣化、生物多様性の減少、害虫発生が増大、人間と動物の対立、洪水や土砂崩れなどの災害の発生、さらに水、土地、空気の汚染と続きます。

二番目に指摘しておきたいことは、政策による影響についてです。その中に、社会的な問題があります。例としては、土地をめぐる先住民・地域住民と企業との間で紛争が発生しています。先住民の文化や知識が失われ、住民は資源を利用することもできなくなりました。さらに、貧困の増加、農園労働者の権利の侵害、アブラヤシ生産農家と企業の不平等な契約関係があげられます。

三番目に、これらの問題の影響として、住民への発砲や暴力といった人権侵害の事実を指摘しておきます。例えば 2004 年にはリアウ州タンブサイで住民 3 名が殺害されました。2005 年には西カリマンタンのプリンビンで、また中カリマンタン州のルントゥでも事件が起きています。さらに、2006 年には、ジャンビ州のアナック・ダラム人が、住んでいる土地や森林から立ち退かされるという事件もありました。

### アブラヤシ開発と土地問題

私たちはこの土地収用の問題について、2006 年にランブン、西カリマンタン、西スマトラ州で調査を行ないました。その調査でわかったことについては“Promised Land”（『約束の土地』）という本にまとめました。<sup>2</sup>

その調査でわかったことを何点かに要約します。①プランテーション会社は住民の慣習土地権（Hak Ulayat）を認めておらず、政府の許可も得ずにプランテーション事業が行なわれていること。②地域住民には情報が与えられておらず、住民と企業との合意について交渉や議論が行なわれていないこと。③強制的な土地の売却に住民側の有力者が利用されていて、補償金の支払が行なわれていない、利益分配の約束が履行されていないこと。④農民に供与すると約束した農園用の土地が実際には引き渡されない、農民は不明瞭なクレジット（融資）を負担させられていること。⑤環境影響調査の実施が遅れていること。⑥決められた期間内に整地が行なわれないこと。⑦住民が抵抗する場合には暴力や軍・警察などが動員され抑圧する、人権侵害が深刻であるということ。

さらに、つぎのこともわかりました。地域住民には、良い面も悪い面も含めて、十分な情報が与えられていないということ、住民と企業との合意について交渉や議論が行なわれていないこと、住民側のリーダーが土地の売却を強制されていること、補償金の支払が行なわれていない、あったとしても不十分な額であること、利益分配の約束が履行されていない、農民に供与すると約束した農園用の土地が実際には引き渡されていない、あるいは

整地されていない、農民は不明瞭なクレジット（融資）を負担させられている、環境アセスメントの実施が遅れているか、まったく行なわれていない、決められた期間内に整地が行なわれない、住民が抵抗する場合には、暴力や軍・警察などが動員され抑圧する、人権侵害が深刻であるということです。

2006年までに全インドネシアで502件、353のコミュニティで紛争が起こっています。ある村のリーダーたちは、立退きを拒否し、会社のブルドーザーやチェーンソーを占拠したため、それが企業への恐喝とみなされ、警察に拘束されてしまいました。しかし、最終的にはブルドーザーを占拠したのは、自分たちの土地や森の破壊を食い止めるためであって恐喝ではなかったと認められ、釈放されました。

### アブラヤシ開発と環境問題

2006年のアブラヤシ・プランテーションと森林火災の関係を示したいと思います。気象衛星ノアの衛星写真を下に現地調査をした結果、ホット・スポットを示す地図が作られました。ホット・スポットは1,234ヶ所ありますが、この数字は妥当だと思います。この時期、リアウ州では森林火災がかなり深刻で、複数の会社が火元として警察に通報されています。しかし、会社にお咎めはありませんでした。法的な問題については、後ほどアンディコさんが説明します。

つぎに、アブラヤシ・プランテーションが泥炭地に造成されている問題を指摘しておきます。これを放置したままですと、CO<sub>2</sub>の排出、つまり温室効果ガスの排出という大きな問題を引き起こす原因となります。というのも、泥炭層では土地を乾燥させてからでないと植栽できないからです。

最近のアブラヤシ・プランテーションの拡大傾向についてですが、まず、カウンター・トレードという新しい取引形態があります。メガワティ大統領時代に、ロシアからジェット戦闘機スホーイを購入した際、代金をCPO(パーム原油)で支払いました。マレーシアとロシアの取引でもCPOが使われています。それがアブラヤシ拡大の要因のひとつになっています。

二つ目は、バイオ燃料フィーバーの問題です。今やどこでも代替燃料として植物燃料が話題になっています。そのうちのひとつは、バイオディーゼルの原料としてのパーム油です。それから、私がアル・ゴア・ファクターと呼んでいるものがあります。アル・ゴアがノーベル平和賞を受賞した時、気候変動の解決策のひとつとして、植物燃料は世界のエネルギー危機と気候変動の影響を軽減できると話しました。そのため、アル・ゴア・ファクターがインドネシアだけではなく、世界中を席卷している状況で、誰も彼もが植物燃料となる原料作物を植えるために、土地を開拓しようと考えているわけです。

また、2005年から06年にかけて、西カリマンタンと東カリマンタンの州境に沿って、180万ヘクタールのアブラヤシ・プランテーションを開発するという政府の計画がありました。政府はこの計画は中止したと表明していますが、正式な文書は全く出しておりません。我々の現地調査では、サンバス県やブンカヤン県などですでにプランテーションのための開墾は始まっています。政府は後に、プランテーションに適している土地は40万ヘクタールしかなかったと訂正していますが、その一部ではないかと思っています。

さらに政府は、国内の CPO 市場を維持するため、バイオディーゼル生産用に、新たに 300 万ヘクタールをアブラヤシ・プランテーションに割り当てるとしています。なぜなら、CPO をバイオディーゼル用にまわすとなると、既存の CPO 市場が影響を受けてしまうので、それを守るためには新たにアブラヤシの栽培面積を拡大するしかないのです。

また、パプアやアチェにおいて特別自治が推進されています。特に東部インドネシアにおいては貧困撲滅の美名のもと、アブラヤシ・プランテーション開発が進められています。

さらに、政府はプランテーション活性化事業の資金として、国家予算から 50 兆ルピア（約 6,500 億円）を計上しています。このプランテーション活性化事業は、アブラヤシ栽培農家向けのもので、これまでそうした農家（中核農園）には、1 戸当り 2 ヘクタールしか与えられていませんでしたが、この事業で 4 ヘクタールが与えられることになりました。問題はその土地はどこから持ってくるのかということです。

2006 年にマレーシアとインドネシアは、CPO の 40% をバイオディーゼルに充てるという二国間協定を結びました。この協定が実施されたことで、市場の食用油の価格がこれまでの 2 倍に跳ね上がるという深刻な結果をもたらしてしまいましたし、一方ではプランテーションの拡大に拍車をかけることになりました。

### アブラヤシ産業への投資

さて、今度はインドネシアのアブラヤシ・プランテーションに投資している、10 大外国金融機関をみてみましょう。特に日本の市場、日本の金融機関に注目すると、住友三井フィナンシャルが第 8 位になっています（表 1）。表 2 はインドネシアのアブラヤシ・プランテーションに投資している 12 の日本の金融機関名です。12 の銀行がインドネシアのアブラヤシに注ぎ込んだ資金、あるいは資金援助をした総額は、2 億 4,130 万米ドルにのびります。こうした日本の銀行のクライアント（顧客）になっている会社は整地の際に火入れを行い、それも天然林、泥炭林を伐り拓いています。ある会社は、東京三菱 UFJ 銀行のクライアントです。ここで会社の名前を言うことは、倫理的にどうかと思いますから申し上げることはしません。が、この会社が行なっている違法行為について、3 つの NGO が調査した結果を表にまとめてあります。

それは私たちの調査で得られた結論とほとんど同じものです。つまり、①整地の際に火をつけている、②原生林を開拓している、③保全価値の高い森林を開拓している、④住民の慣習地を適正な手続きを経ないまま取り上げている、⑤住民に事前に説明したうえで同意を得るという原則を守っていない、⑥住民同士の意見が割れてしまったという状況をみると、住民との話合いがうまくいっていない、⑦この会社はここだけではなく他の地域でもプランテーション開発を約束しておきながら、未だに取り掛かっている、⑧住民との紛争に際して圧力や暴力を用いている、⑨環境アセスメント実施書を有していない、⑩無許可で泥炭林を伐採している、ことです。

### 半永久的に続く事業利用権

実はインドネシアにおけるアブラヤシ・プランテーションの根本的な問題は、事業利用権（HGU）にあるのです。というのも、HGU の期限が切れても、その土地が元の所有者

や慣習地として返還されることはなく、国有地になってしまうからです。さらに多くの法改正が行なわれたため、今後状況はもっと違ってくるでしょう。

例えば、2007年の農業大臣令第26号の存在があります。これによると、これまでプランテーション事業の認可面積は、一企業一州あたり、10万ヘクタールに引き上げられることになりました。この大臣令は2002年の大臣令の改定版ですが、それまでは最大2万ヘクタールしか認めていませんでした。従って、もし私が2万ヘクタールを持っていたとしたら、あと8万ヘクタールの開発許可を申請できるようになったというわけです。

つぎに、2004年のプランテーションに関する法律第18号も問題です。これによりHGUの有効期限が95年間になりました。最初に35年間、そして25年間延長でき、さらに35年間の更新が可能になりました。

さらに2007年の投資に関する法律第25号では、HGUを155年間に亘って認可することになっています。最初の段階でのHGUが95年間、それに60年間がプラスされるのですが、このプラス期間を最初の申請の際にまとめてできるというものです。

ですから、地元の住民たちは自分たちの土地を将来3世代、あるいは4世代に亘って利用できないという状況に置かれることとなります。しかし、一般の人々はこういった法律の内容を理解していないので、私は非常に心配しています。今でさえ500件以上も紛争があるというのに。

以上が私の発表です。ご清聴、ありがとうございました。

#### 質疑応答

Q: 色々な問題が生じていることがわかりましたが、問題を解決するうえで日本の政府、国民、企業に対して要望、期待するのは何ですか。

ノルマン (以下 N): これは難しい質問です。実際のところ、最終的な選択権は消費者にあるのです。というのも、人権侵害など現地でいかに深刻な問題が起きていようと、消費量が減らなければ、生産はずっと拡大し続けるからです。需要が伸びれば拡大を防ぐことはできません。つぎに、今すぐにでも解決しなければならない500件以上もの紛争をどうするかです。それが解決できなければ、アブラヤシ・プランテーション産業の将来はありません。

そこで提案なのですが、もし可能であれば、日本の皆さんに市場の調査をして欲しいのです。バイヤーは誰か、小売業者は誰か、どの企業から購入しているのか等を調べてほしいのです。このことは生産国であるインドネシアと、市場や消費者を実際に関係づけるために重要なことです。それによって責任ある生産はなにかということに結びつけることができるのですし、市場を通して生産現場を変えていくことが、あるいは圧力を加えることができるのです。

したがって必要なのはネガティブ・キャンペーンだけではなく、消費者も責任を果たしている企業から生産されたものを消費する責任があるという、ポジティブ・キャンペーンも必要です。ちゃんとした企業に対しては正當に評価を与えるべきです。なぜなら、それが今のインドネシアの状況を改善する機会であるからです。そうしなければ状況は変わりません。



我々の手が届かないところについては、日本の国民が自分でコントロールする必要があります。日本のどの銀行がアブラヤシ・プランテーションに投資しているかを明らかにすること、また、日本の消費者向けに誰がインドネシア産のパーム油を買いつけ、売っているかも明らかにする必要があります。さらに、今後バイオ・エネルギーとして CPO を使おうとしている企業についても調べる必要があります。生産国と消費国が協調して調査する必要があると思います。

また、RSPO（持続可能なパームオイルのための円卓会議）が、持続可能なパーム油に対して認証を与えるという新たな仕組みができました。2008年には認証パーム油が市場に出回ることが期待されています。しかし問題は、この持続可能というのが量的なものなのか質的なものなのかという点です。

ヨーロッパや日本の消費者は、社会問題や環境に強い関心を持っています。しかし、環境問題や社会問題にまったく関心を持たない中国、インド、ロシアの市場に対してはどうでしょう。認証制度はこういった国々の消費者の意識に対しては、効果的な解決策にはなりません。なぜなら、インドのような政治的に開かれたところでさえ、インドネシアやマレーシアのような生産国に圧力をかけることができませんし、中国のように閉鎖的な政治制度の国が、インドネシアに圧力をかけることはまったく期待できません。

しかし、私もサウイット・ウォッチも、持続可能な生産やこの産業がもっと責任をもつようにするための方策はたくさんあると信じています。先ほど、私がいくつか例を挙げて説明したこともそうです。これは将来へ向けてのチャレンジですし、この産業が将来において責任を果たせるよう、新しいイニシアティブを創っていかなければなりません。少なくとも、新たな拡大をやめ、まず今の問題を解決することが先決です。

Q: 企業といっても一概に悪いわけではなく、良い企業もあると思われませんが、よい企業はないのでしょうか。あつたら例をあげてもらえないでしょうか。

N: 興味深い質問です。先ほどお話したように我々は単にネガティブなところだけを伝えるのではなく、良いところも伝えるべきです。もし良い企業があれば、それを伝えないという理由はありません。答えとしては、今の時点で住民との対立もない、良い企業はあります。

例えば、この“Promised Land”には、法的に深刻な問題がない、要するに裁判沙汰になるなどの問題がないという意味で、紛争がないと思われる事例が紹介されています。それは西カリマンタンにあるマレーシア企業の子会社の SIA 社です。弁護士のアンディコさんは、この本の執筆者の 1 人で、このケースについてよく知っています。実際、調査で訪れた時にもオープンに話してくれました。ただ、現場からクアラルンプールにいる上司と連絡をとらなければならなかったため、十分な情報はくれませんでした。良い事例はありますが、あえて変革しようとか、よい実践を行なおうといった企業は非常に少ない、決して多くはないと思います。そりゃあ、720 万ヘクタールもあるプランテーションの中には、よい企業は確かにありますし、私自身も実際にそういう企業を知っています。

アンディコ（以下 Ad）：この本の 127 ページに、SIA 社の事例を載せてありますから、読んでください。また、私たちが支持すべき良い企業が行なっている実践についても載せてあります。今、インドネシアは移行期にあるので、大きく変化してきています。

Q：最近のインドネシアについては、違法伐採の取締が強化されるなど、明るい情報が伝えられてきていますが、アブラヤシについては明るい情報はないのでしょうか。アブラヤシ栽培の開拓のために CO2 が排出されているという問題を解決するために、その分野でなんらかの取組みをしていますか。

N： たしかに政府はアブラヤシ・プランテーションの影響を軽減するための取組みをしています。たとえばチガヤしか生えていないような荒蕪地ですが、これを放置しておくことは生産的ではないし、環境にも悪いだけではなく、火災が起きやすく、地域の人々にとって経済的ではありません。そういった荒蕪地をアブラヤシ栽培地として指定しています。

しかし大きな問題は、地方自治が施行されてからというもの、地方レベルでのアブラヤシ・プランテーションの許認可権を県知事が持つようになったことです。で、県知事は荒蕪地ではなく森林にプランテーション開発許可をたくさん出しています。こういう状況では、プランテーション開発はカーボン吸収どころか、むしろ木を伐採して CO2 を排出してしまっているのです。

したがって、荒蕪地にアブラヤシを栽培するのであれば、たしかにカーボン吸収になるでしょうが、まず森林を切り拓かなければならないとしたら、CO2 排出というか、CO2 を吸収している木を伐採していることになるわけです。

このように国と地方自治体との考え方の違いが生じている背景には、保全林、保安林、国立公園を指定する国の権限と、そういった森林区分にさえ県知事がプランテーション許可を出しているという、権限の重複があるのです。プランテーション事業認可にかかわる指針に関する 2007 年農業大臣令第 26 号は、プランテーション開発認可権は県知事が有すると規定しています。もし、立地場所が 2 つ以上の県に跨る場合には州知事に、2 つ以上の州に跨る場合には大臣に許認可権があると定めています。

国と地方との思惑の違いもあって、国（政府）は林地を決して他の用途には転換しないと決めているのですが、今は地方首長が直接選挙で選出されるので、県政府には国とは違う利害があるのです。県知事たちは政治資金を捻出しなければならないのですから。しかし、国は 1999 年以降、林地をアブラヤシ・プランテーションに転換しない旨、大臣通達を出しています。大臣通達ですから、確かに効力は弱いですが、とにかく 1999 年以降、アブラヤシ・プランテーション用に林地を転換しなくなっているのは明らかです。

したがって、アブラヤシが本当に荒蕪地に栽培されるのであれば、確かに良いことでしょう。しかし、森林を切り拓いた上でというのであれば、アブラヤシが CO2 を吸収するようになるには、苗が育つまで 7 年間待たなければなりません。また、許可の出し方にも注意する必要があります。プランテーション予定地は空き地とみなされているのですが、実際には人々が生活を営んでいることが往々にしてあるのです。そういったことが無視されて許可がだされているのです。後でアンディコさんが法令の弱点を企業がどう利用しているかを話してくれると思います。

Q：政府が新たにバイオディーゼルのため 300 万ヘクタールをアブラヤシに充てるという話がありましたが、政府は今後、世界市場でバイオディーゼルの需要が増えるの見込んでいるのですか、ブラジルなどと競合する懸念はないのでしょうか。

N：政府が 300 万ヘクタールを開発する計画を立てているのは、既存の市場を守るためな

のです。パーム油をバイオディーゼルのまわすとなると、新たに市場が拡大することを意味するわけで、もし 300 万ヘクタールを新たに開発しなければ、今の市場が影響を受けてしまいます。従来の CPO 製品とバイオディーゼル用 CPO の競争、要するに、バイオディーゼル用の CPO の需要が増えたため、CPO の価格が値上がりしているからです。政府は国内の CPO のストックがなくならないようにするため、また CPO の値上がりや、市場で品薄にならないよう、300 万ヘクタールを開発するとしているのです。

政府は、2006 年に植物燃料の開発と活用に関する大統領令第 1 号に基づいて、国家チームを設置しています。政府の調査報告書のようなものが出ていないので、なぜ、バイオディーゼル生産に 300 万ヘクタールが必要という案がでていいのか、よくわからないのです。というのも、バイオディーゼルの生産するのに必要な面積は、最低 5 万ヘクタールという数字もあるからです。ですから、バイオディーゼル需要のために、先ほど話したように 2007 年の農業大臣令で従来の認可面積 2 万ヘクタールから 10 万ヘクタールに引き上げたのは、理解できなくはないのですが。

大統領令第 1 号に基づいて、植物燃料開発に関する調査が行なわれているのですが、これは経済担当大臣の調整のもと 12 省庁で構成されています。正式には、植物燃料国家チームと呼ばれていて、経済企画庁が主導しています。インドネシアでは CPO を原料とするバイオディーゼルの試験生産はすでに済んでいます。現在は CPO の価格がバイオディーゼルの倍ほど値上がりしているため、生産はストップしています。

ですから、どうしても今のところバイオディーゼル用に 300 万ヘクタールしか考えていないのかということになりますが、実は、インドネシアには 62 種類もの植物が、植物燃料の原料にできるといわれています。たとえばナンヨウアブラギリやキャッサバ、イモ類などです。ただし、政府は植物燃料開発計画のロードマップをまだ出していません。

Q: 先ほどのホット・スポットですが、その規模、大きさはどれくらいですか。特にスマトラで多いというのは何か理由があるのでしょうか。

N: たしかにスマトラには多くの泥炭層があります。それに 2001 年に林業省と EU が共同で行なった調査結果として、約 410 万ヘクタールの泥炭地がアブラヤシ栽培に適しているとして推奨されました。衛星画像自体は、現地調査による確認を反映してはいません。ここにあげた 2006 年のものは、衛星画像にサウイット・ウォッチのネットワークを使って現地調査をした結果を反映させています。2007 年 5 月から 7 月にかけての図も、ノアの衛星画像に現地でのモニタリングを反映させたものです。もちろん、これは毎日更新できます。サウイット・ウォッチには GIS (地理情報システム) に詳しい仲間がいるのですが、私自身はそれほどでもないため、実際に火災面積がどれだけなのかお答えできません。申し訳ないです。

Ad: ちょっと補則します。地図上では赤いスポットで埋め尽くされていますが、それはこの部分の全部で火災が発生したという意味ではなく、地表温度が 40 度以上の所を火災の可能性があると示したものです。

N: それにこれはサンプルに過ぎません。パプアやスラウェシなど他の所のサンプルは採っていません。しかし、たとえホット・スポットでも無視はできません。火災の早期発見に使われるからです。もしホット・スポットとして探知されれば、政府は対処しなければ

ならないのです。ホット・スポットは企業の整地作業や粗放農業を行なう住民の開墾と係わりがあります。本来なら、この図にプランテーションの場所を重ねた図をお見せすれば、みなさんもホット・スポットがアブラヤシ・プランテーションの場所で起こっていることが理解できたと思うのです。用意してなくて、すみません。私たちはカリマンタンとスマトラのアブラヤシ・プランテーションのデータベースを作っているのです、ホット・スポットが探知されると、誰のプランテーションで起こっているのか、すぐにわかるのです。

この図の縮尺がもっと大きければ、ホット・スポットの間隔も広がって、それほどひどくは見えないのですが、縮尺が小さいので、ひどい状態に見えますよね。ここには 1234ヶ所のホット・スポットがありますが、この時期、たしかにリアウとジャンビは煙に覆われ、森林火災が起こっていました。

Ad：リアウについてですが、先日、国とリアウ州政府の間に緊張が生じました。というのも、リアウでは焼畑は地元の文化ということで、一定規模での焼畑を合法化しようとしたのです。たしか、林野火災に関する州条例だったと思います。しかし、国はそれを認めませんでした。

表1 アブラヤシに投資している10大外国銀行

<b>Top-10 of foreign financial institutions</b>			
<b>Financial institution</b>	<b>Country</b>	<b>Amount invested (US\$ mln)</b>	<b>% of foreign total</b>
UBS	Switzerland	216.2	7.4%
Yayasan Pelaburan Bumiputra	Malaysia	201.2	6.8%
ING Bank	The Netherlands	166.4	5.7%
Rabobank	The Netherlands	125.5	4.3%
Commerce Asset-Holding	Malaysia	123.0	4.2%
ABN AMRO Bank	The Netherlands	104.0	3.5%
J.P. Morgan Chase & Co.	United States	100.5	3.4%
Sumitomo Mitsui Financial	Japan	96.9	3.3%
HypoVereinsbank	Germany	92.3	3.1%
Bank Islam	Malaysia	91.5	3.1%

表2 インドネシアに投資している主要な日本の銀行

Lembaga Finansial Jepang		
No.	Lembaga Finansial	US\$ (juta)
1	Aozora Bank	3.8
2	Hiroshima Bank	3.8
3	Mitsubishi Tokyo Financial	14.2
4	Mitsui Trust Financial	6.9
5	Mizuho Bank	59.9
6	Norinchukin Bank	9
7	Orix	6.9
8	Resona Bank	2.9
9	Shinsei Bank	6.9
10	Sumitomo Mitsui Financial	96.9
11	UFJ Bank	26.3
12	Yamaguchi Bank	3.8
		241.3

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<sup>1</sup>このワークショップは、2007年12月1日（法政大学）、12月3日（京都大学）の2回に分かれて行われた。発表はインドネシア語で行われ、東京での通訳を松野明久氏にお願いし、京都での通訳を鈴木隆史氏にお願いした。2回の発表は重複している部分もあったが、京都での発表は東京での発表で質問の出た部分に留意し、大幅に付け加えられた箇所もあった。2回の発表をテープに録音し、そのテープを岡本幸江氏に日本語に訳していただいた。その日本語原稿を下にして、中島が一つの原稿にまとめた。その後、松野氏と岡本氏によりチェックがあり、最終稿が完成した。本文中の小見出しは、編集者の側で追加した。

<sup>2</sup> Marcus Colchester, Norman Jiwan, Andiko, Martua Sirait, Asep Yunan Firdaus, A. Surambo, Herbert Pane, *Promised Land, Palm Oil and Land Acquisition in Indonesia: Implications for Local Communities and Indigenous Peoples*, Forest Peoples Programme, Perkumplan Sawit Watch, HUMA and World Agroforestry Center, 2006.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is crucial for ensuring transparency and accountability in the organization's operations.

2. The second part of the document outlines the various methods and tools used to collect and analyze data. It highlights the need for consistent and reliable data collection processes to support informed decision-making.

3. The third part of the document focuses on the role of technology in data management and analysis. It discusses how modern software solutions can streamline data collection, storage, and reporting, thereby improving efficiency and accuracy.

4. The fourth part of the document addresses the challenges associated with data management, such as data quality, security, and privacy. It provides strategies to mitigate these risks and ensure that data is used responsibly and ethically.

5. The fifth part of the document concludes by summarizing the key findings and recommendations. It stresses the importance of ongoing monitoring and evaluation to ensure that data management practices remain effective and aligned with the organization's goals.

## 第 III 部 「アブラヤシ・ブーム下インドネシアにおける民衆の権利」

### 第 7 章 開発政策と土地紛争

#### アンディコ（HUMA、エコロジーと慣習法に基づく法改革連合）

皆さん、こんにちは。先ほどノルマンさんがアブラヤシ・プランテーションについて話をしましたが、私はよりマクロ的なこと、鉱山、プランテーション、林業といった全分野に跨るインドネシアの天然資源の管理と法的な側面について話をします。

#### 開発事業権に覆われたインドネシア

最初に、インドネシアのほとんどすべての地域が、政府によって開発許可が与えられている事実を指摘しておきたいと思います。さらに、プランテーション事業権と鉱山開発事業権が重複していますし、プランテーション事業権が住民の集落と重なっている地域もあることも指摘しておきます。そして、インドネシア中が鉱山開発事業権など、事業権だけで覆われている事実注目していただきたいのです。

その結果、地域住民とプランテーション企業との土地紛争の状況が頻発するわけです。農民たちは、どうして、突然自分たちの土地がなくなってしまったのかと戸惑うことが多いのです。土地紛争は、慣習法と国の法律（制定法）が対立しているこということであり、これを理論的には、Legal Pluralism（法的多元主義）の問題ということができます。住民の利用している資源を支配するためには、まず、制定法でもって慣習法を無効にしてしまうことが必要になります。慣習法を認めないということです。

現在のインドネシアの天然資源管理に関する問題は、3つの層にして考えることができます。最初の問題は、住民が一番に直面している土地問題です。誰がその土地の所有権を持っているのかということです。2つ目の問題の層は、マネージメントの問題で、ノルマンさんが先ほど話したように、プランテーション企業と農民の間の土地の分配が不明瞭であることです。土地問題とマネージメントの問題は、プランテーションだけではなく鉱山、森林、海洋資源の分野でも、同様に起こっています。この2つの問題がまだ解決していないにもかかわらず、より抽象的な3つ目の問題、例えば気候変動といった問題が起こっています。

今日から（2007年12月1日）、インドネシア政府はバリ島でCO2排出権取引について、他国と交渉しているところですが、その協定の帰結として、住民は木を伐採してはならなくなります。しかし、人々はこのカーボン取引で得られた利益が誰の手に渡るのか知りません。この3つの問題は、いまだに解決しておらず、相互に関係しているため、先ほどノルマンさんが話したような様々な問題を生み出しているわけです。全体を見てみると、これが鍵となる問題のひとつといえます。

インドネシア政府は、木があろうとなかろうと1億2,000万ヘクタールを林地として設定しています。そのうち、地域住民の合意を得ているのは、ほんの10%に過ぎません。残りの90%に住む人々は、法的に誰が所有権を持っているのかわからないので、いつでも逮捕される可能性があるわけです。そこにノルマンさんが話した4000~6000万人の人々が住んでいます。その1億2,000万ヘクタールの林地にプランテーション、保安林、鉱山な



どがあるわけです。したがってインドネシアで最大の土地所有者は、林業省なのです。

この土地をめぐる慣習法と制定法の概念が対立しているのです。こういった法律のあり方が、住民の土地をプランテーション企業が取り上げることを可能にしてしまうのです。慣習法ではお金を受け取ったとしても、それはプランテーションをやりたい外部の者に土地を貸したにすぎないわけですが、制定法によると、住民は土地を売ったことになり、ノルマンさんが話したように、(事業権が失効すると) 国有地となるわけです。スマトラからパプアに至るまで、人々はいつになったら貸した慣習地が戻ってくるのだろうと待っているのです。しかし、政府はそうは考えていません。次の企業に貸そうと考えているのです。一方で、企業は悪法によって 30 年間に亘って保護されるのです。しかし、これは企業にとっても危険です。なぜなら、事業は持続できず、社会紛争や環境問題を抱えることになるわけですから。そのため、通常の必要経費以外の出費を余儀なくされます。

こういった状況の中で、現在、法改正が進められています。様々な法律のオーバーラップがありますが、それは個々の省庁が自分たちの権益を守るための政策をやっているため、かなり縦割りになってしまうからです。したがって、資源管理については省庁を一本化して、1 人の大臣のもとに調整を行なうことを目的にした天然資源管理法案が浮上しました。しかし、それに対して林業省とエネルギー・鉱物資源省が反対しています。

つぎに、ノルマンさんが話したように、政府は唐突に投資法を制定して、企業が投資をしやすくする環境を整えました。

3 つ目に、政府は住民の機嫌をとるために農地改革を計画しています。これは 800 万ヘクタールの土地を分配するというものです。林業省は住民による造林を推進しようとしているわけです。これまで産業造林は大規模でなければ許可されなかったのですが、これで地域の協同組合による小規模造林を可能にするというものです。しかし問題は、その土地は一体どこにあるのかということを知らないということ。先ほど地図で見たように、インドネシアではすべての土地に事業権が設定されているのですから。

しかし、2008 年にはこれらの法案の審議はストップするだろうと思われま。というのも、政府は次の総選挙で忙しくなるからです。2008 年から 2009 年にかけて、次の大統領が選出されるまで、誰も紛争や森林の問題を考えられなくなるでしょう。要するに、インドネシアでは政府が機能するのは、(大統領の 5 年間の任期のうち) 3 年間くらいしかないということです。

こういう状況で、我々のような政策提言を行っているグループは、次のように考えています。まず、改革をするためにもっとも基本的なこととしてやらなければならないのは、包括的な天然資源管理に関する政策を立案することと、日本が戦後行なったような農地改革を実施することです。成果を挙げている国は多くはありませんが、これは国の発展にとって不可欠です。

もう一点は、グローバリゼーションの結果、伝統的な国々はすべて力を失ってしまっています。今日、力を持っているのは市場です。企業家たちは法律や法令を変える力を持っています。その証拠として、インドネシアの投資法、プランテーション法、水資源法などが成立した背景には、経済界の働きかけがあるのです。

しかし、彼らがビジネスを続けたいと思うのであれば、法律の改正に責任を持つべきな

のです。企業が今のようないびつな法律に守られ、政府もいびつな法律を放置するのであれば、結局そのビジネスは社会紛争や環境問題を抱えることになり、けして長続きしません。

その他に力を持っているのは、市場です。日本のみなさんが紛争を引き起こしているCPOを使った石鹸を買わないとなれば、それは必ずインドネシアの政策を変えることにつながります。

興味深い例として、現在インドネシアでは木材認証が行なわれています。しかし、政府はどうもこれを法制化することに消極的です。我々は、それが法制化されるとすべてが正式なものとなり、法定外の費用を徴収できなくなるからではないかと疑っています。

ですから、先ほど話にでましたように、日本のみなさんができることは2つあると思います。すなわち、日本の企業に対して、ビジネスを続けていくためには、インドネシアの悪い法律をありがたがらず、むしろより良い法律へ変えていくように働きかけること。また、日本の市場が、人権侵害や紛争や環境破壊が生じていない製品しか求めないことです。これが一番効果的な方法なのです。というのも今や国境というのは無きに等しく、日本人でもインドネシアでも互いに影響を与えることができるからです。

## 森林の定義と開発権

インドネシアの森林について話をする時、2つの重要な用語があります。まず、「森林(hutan)」という用語ですが、このことばから我々はその間に木々や植物が生えていると想像するでしょう。しかし、2つ目の「林地(kawasan hutan)」というのは、そこに木があるとなかろうと、その管轄権は林業省にあるのです。実にインドネシアの陸地面積の70%が林業省の管理下にあり、残り30%を国土庁が管理しています。この30%について、土地所有証明書などが発行されるわけです。

昨年の林業省のデータによると、インドネシアの林地面積はおよそ1億2,600万ヘクタールです。先ほども言いましたが、この林地には木が生えているところもあれば、町となっているところもあるのです。例えばカリマンタンのバリクパパン市は、この林地にあります。

スハルト政権が崩壊した後、大臣が林地指定をしたところ、多くの州政府が抗議しました。これほどの土地を林地に区分されては、州政府は開発も何もできないのではないかというわけです。以前ならこんなことを言おうものなら逮捕されたのですが。そこで2002年に州政府と国の間で数字を確定させるための交渉が行なわれました。しかし、リアウ、群島リアウ、中カリマンタンは政府の提案を拒否しました。まだ交渉は続いています。簡単に言えば、国は現状がどうなっているか住民と話し合うことなく、一方的に指定してしまいます。本来なら地方政府が住民と話し合っただけで区分し直して、大臣に対してどこがこの地域の森林面積だと提案すべきなのです。

なぜこれが重要かという点、権利と義務を決めることになるからです。林地は生産林、保安林、保全林に区分されています。しかし、所有という区分で見れば、国有林と民有林に分けられます。そして、先ほどの1億2,600万ヘクタールは国有林なのです。しかしながら、問題はこの1億2,600万ヘクタールのうち、たった10%しか地域住民と境界線に関する交渉が行なわれていません。先ほどノルマンさんが話したように、4,000~6,000万人

の人々は境界線が不明確な林地域で生活を営み、そしてそのために逮捕される可能性もあるのです。

さてプランテーションですが、これは（別の用途への）転換可能な生産林にあります。これが今日まで続いている紛争の源です。林地をめぐる紛争は木材問題よりもずっと大きいのです。しかし、この問題は違法伐採という問題の影に隠されています。林地の本来の所有者は誰か、合法か違法かということを決めるのは非常に難しいのです。政府が1億2,600万ヘクタールは国有林と主張している以外には、だれも林地の所有者が誰なのかわからないのです。ジャワだけでもこの林地内に6,000の集落が存在しています。そして、ジャワの森林は、西ジャワから東ジャワまですべて「プルフタニ」（林業公社）だけに事業権が与えられています。この状態はオランダ植民地時代から続いています。

例えば、西カリマンタンのある県の具体的な状況をご説明します。そこに多くの企業があり、そのコンセッション（事業許可が設定されている土地）があります。そしてもちろん集落も存在しています。ここはプランテーション、森林伐採事業権（HPH）、産業造林権（HTI）、保安林などに区分けされていますが、住民の集落は無視されています。なぜなら、中央の人間が作り上げた法律は慣習法を無視しているからです。現行の森林基本法（1999年法律第41号）は、慣習林を認めていません。その結果、先ほどのようなことが数多く起こっています。先住民や林地で耕作をしている農民たちが違法伐採者として牢獄につながれています。

ボゴール市から20キロほどのところに国立公園がありますが、その公園内に約50の集落があります。人々はインドネシアが独立する前からそこに住んでいました。しかし、彼らが畑の草取りをしたり、薪にするため木を伐ったりすると、違法伐採といわれるわけです。政府によれば、そこは国有林であり保全林だからです。

### 無視される慣習法世界

こういう状況、すなわち制定法（国の法律）と慣習法との関係を説明する法理論がありますが、インドネシアの大部分の地域では、制定法が慣習法より優越しています。たとえばプランテーションについていえば、西スマトラのプランテーション開発許可が出ている土地のことをご説明します。そこはすべて慣習地なのです。そこで、何が起こったかという点、プランテーションに抗議した人々は暴力を振るわれました。このケースは2000年のことで、当時私は逮捕された住民たちの裁判で弁護人を務めました。

実際、制定法は住民の慣習法を巧妙に利用しています。慣習法の理解では、慣習地をプランテーション会社に貸したに過ぎないのですが、制定法ではそれらの土地は買ったことになるのです。しかし、1ヘクタールたった5万ルピア（約600円）なのですから、買ったということはありません。それに先住民の辞書に「慣習地を売る」という言葉はないのです。

そして、企業自身、少なくとも1967年からスハルトが退陣する1998年まで、このようなひどい状況を利用してきました。しかし、今では状況が変わりました。企業はもはや悪法を隠れ蓑にすることはできません。こういう状況では、社会的な安心や環境的にも持続可能ではなくなったからです。

さて、プランテーション分野ですが、これはアブラヤシ・プランテーションのコンセッションのひとつとして、ここに大規模な CPO 用の港湾を建設する計画がありますが、ここは全部、泥炭層なのです。アブラヤシは CO2 排出を軽減できますが、泥炭層を乾燥させる時に多くの CO2 を排出します。それが泥炭地でのアブラヤシ栽培のジレンマなのです。インドネシアはカナダに次ぐ世界第二位の広い泥炭地を持っています。

土地紛争がもっとも起こりやすいのは、事業許可の場所に関してなのです。企業はプランテーション立地許可がでると、その土地が自分たちのものであると考えます。たとえば、県知事が 2 万ヘクタールの立地許可を出した場合、それは事業ができる可能性がある面積に過ぎません。後はその土地所有者と交渉してくださいというわけです。要するに、交渉してもよいという許可にすぎません。したがって、それだけの面積の HGU が確保できるかはわかりません。所有者が拒否することもあるわけですから。しかし、企業はそうは考えません。どんな方法を用いても 2 万ヘクタールを手に入れなければ、となるわけです。そういうことが過去 30 年間ずっと続いているのです。

ランブンでの調査でわかったのですが、企業へ土地を明け渡すことを拒否した住民の農園が、夜中にブルドーザーで潰されたことがありました。こういうことは日常茶飯なので、そして住民たちは誰に訴えたらいいのかわからないのです。これがプランテーションで最もよく起こっている紛争です。

## 政策的提言

政策的にみて、これらの問題の本質は何でしょうか。インドネシアの問題を単純化すると、今日まで続いている問題は 3 つしかありません。まず、権利の問題です。私がこれまで話したように、何千万人という人々の土地に対する権利の問題です。そして、土地問題が解決しないうちに、マネジメントの問題が起こっています。環境や事業のマネジメントです。そして、現在、第三世界に属するインドネシアは、北の国々からさらに抽象的な問題を突きつけられており、インドネシアの国民はそれに従わなければなりません。それは気候変動やカーボン取引といった問題です。

しかし、権利の問題やマネジメントの問題が解決しない限り、現在（2007 年 12 月）、政府がバリ行われている「COP13」で懸案のカーボン取引から利益を得ることはできません。解決しなければならない、実に多くの問題を抱えているのです。その中でも一番たいへんな作業は、問題だらけの法律をいかに改正し、法執行の弱さをどう解決するかです。

たしか 2000 年頃だったと思いますが、インドネシアの国民協議会（MPR）は問題に気づいていました。国民協議会はこう言ったのです。これまでの天然資源管理によって環境は悪くなり、管轄・所有・利用において均衡が取れておらず、様々な対立を生み出した。さらに、資源管理に関連する法令の間に重複・矛盾がみられる。政府とすべて国民がこの状況を変えていかなければならないと。

そこで農地改革と天然資源管理の改正を行なおうとしたのです。これは 2001 年国民協議会決定に盛り込まれました。日本は戦後、農地改革を行なっていますね。そのためにやらなければならないのは、まずすべての法令を調べて、管轄・所有・利用権の見直しを行い、紛争を解決すべきということになりました。

そのひとつが天然資源管理法案の草案作りでした。法案では、天然資源の管理を行政や経済面で考えるのではなく、バイオリージョン（生命区域：生態的群集を構成する地域）から考えるというものです。そして関係機関が相互に連携・調整する必要があること、あるいは森林、プランテーション、鉱物資源などの管理を1人の大臣の下で統括することや、市民、企業、政府などの利害関係者で構成される天然資源管理協議会の設置も盛り込もうとしました。

しかし、状況は急速に変わってしまいました。今では国民協議会決定もこの法案も置き去りにされたままです。特にエネルギー・鉱物資源省と林業省がこの法案に反対しました。この2つの省は、インドネシアでもっとも金持ちなのです。林業省は1億ヘクタール以上の林地を有し、エネルギー・鉱物資源省は、すべての油田や鉱山を持っているのですから。2002年から現在まで発布された法律は、プランテーション法、水資源法、海洋法、土地空間計画法といった具合に、セクター毎に分かれたものになっています。そして今、鉱物・石炭法案、違法伐採法案が制定されようとしています。非常に興味深いのは、ノルマンさんが話した新投資法で、これは農地基本法と矛盾するのです。で、この法律は今、憲法裁判所で審理が行なわれています。

国民の歓心を買うために、政府はこまごまとしたプログラムを作っています。今後の農地改革もそうでしょうが、政府は住民に800万ヘクタールを分配する計画です。そして林地において、協同組合による小規模産業造林を認めようとしているのです。しかし、これほどプランテーションが拡大している中、どこにそんな土地が残っているのかという疑問は残ります。

さて、国会議員は何をしているのでしょうか。2008年に国会では50本の法案を審議しなければなりません。今年（2007年）からの繰越として48本の法案の審議も残っています。国民は悲観的です。というのも、2008年から2009年は、インドネシアは政治の季節だからです。2009年の総選挙と大統領選を控えて、政党はその準備に取り掛かりますから。そして、誰もが確信していることですが、政治家はそれが票につながらない限り、環境問題には触れないということです。また、ノルマンさんが話したように、地方分権化も今では歪が生じています。小規模とはいえ、県知事が今のように許可を乱発しているのを誰も抑えられないのです。カリマンタンでは多くの知事がプランテーション開発の許可を出していますが、国に報告しないので、プランテーション面積の正確な数字がわからない状態です。県の数は約500もあるのです。

しかし、政府は机上の計画を変えておらず、2008年には国と地方との関係改善、適正かつ透明性のある法の執行、汚職事案の告発・告訴を行なうことにしています。汚職に関しては改善がみられます。今では、政府の役人や県知事らが汚職で裁判にかけられているのを、この目で見る事が出来るようになりました。東カリマンタンの前の州知事が森林の事業認可を巡って不正を働き、裁判にかけられています。というわけで、汚職に関しては改善がみられます。

インドネシアは広大なので、調整することが多く、なかなか難しいのです。まして、来年は総選挙を控えて忙しくなります。それでも私は改善できると楽観しています。まず国民協議会決定に立ち返るべきだと思います。そして問題を解決するためには、企業が法改正

を働きかけるよう、彼らをエンパワーメントする必要があります。もし、彼らがビジネスを発展させたいのであれば、もはや悪法を隠れ蓑にすることはできません。法改正への働きかけも仕事うちだと思ふことです。この点に関しては、大学のグループが一番いいですね。企業も大学も国会へのロビイングで影響を及ぼすことができます。

消費国に対してですが、まず社会問題や環境問題を引き起こしている製品は良くないということから始めるべきです。ノルマンさんが指摘したように、アブラヤシ・プランテーションに投資している銀行に皆さんもお金を預けているはずですが、状況を変えていくために、我々にできることを考える時です。今日、我々は共に生きていて、国境は単に行政的な意味しかもっていません。気候変動をとってみても、アメリカ人が温室効果ガスを多く排出しているため、インドネシア人が洪水や干ばつに見舞われるという具合です。世界は今やグローバル化しているのです、互いに変革の為に影響を及ぼし合えると思います。

私の発表は以上です。ご静聴ありがとうございました。

### 質疑応答

**Q:** Legal Pluralism (法的多元主義) の結果、住民と企業が土地をめぐる対立する問題が話されましたが、住民の側には企業に反対する者、あるいは土地を売る者という風に住民同士の間でも利害が異なってきたことがあるように見受けられます。慣習法を維持しようとする住民はどういった人たちなのでしょう。

**アンディコ (以下 Ad):** よい質問だと思います。まず言いたいことは、Legal Pluralism とは、慣習法だけではなく、地域住民が定めた取決め (hukum masyarakat) も含みますが、それらと制定法との関係を分析するツールだということです。そして、Legal Pluralism はひとつの学問として、かつて批判されていたようなものではないということです。この学問は年々発展しており、今では多くの分派があります。実際に慣習法か制定法かに二分するものではありません。

それから皆さんに誤解して欲しくないのですが、先住民というのは、文明から隔絶された生活を送っている人たちではないのです。ただ異なる法を順守しているだけで、私たちがなんら変わりません。彼らはあるケースでは慣習法のメカニズムを用い、ある時には制定法を用います。すなわち、法を選択しているわけです。

例えば、このプランテーションのケースでは、住民たちは所有権の確認に関しては慣習法を使っていますが、企業や政府との交渉のためには制定法を用いています。そのために正式な合意文書を公証人の前で作成もしています。ただその文言には慣習法の用語が多く用いられているという感じなのです。

興味深いのは西カリマンタンで起こっていることで、そこでは多くの先住民が違反企業に慣習法を適用して罰金を科しているのです。そして、企業はそこで事業を続けるためには罰金を支払わなければならないと思います。それは制定法の枠外にあるのです。

先ほど先住民自体が分裂しているのではという発言に同感です。したがって、今日、誰が先住民かということを決めることが非常に難しくなっています。誰がある共同体に対して「先住民である」と決める権利を持つのか。インドネシアは今、先住民法案を準備しているところです。この点については、後でもっと議論できるでしょう。

**Q**：天然資源管理法案の審議がストップしているそうですが、今後どうなりそうですか。また、800万ヘクタールを住民造林として割り当てるとのことであるが、それがどこの場所になるのか誰もわからないというのは、理解しがたいのですが。

**Ad**：天然資源管理法案の行方については、私もわかりません。国家官房が関係省庁の調整を行なうのですが、それが止まっています。もうひとつは国会で審議する道もあるのですが、国会がそれをやるとは思えません。それで、この法案を起草した友人たちの一部は、その中に込められた考えを新たな政策に反映させようとしています。

そのひとつが、2007年政令第6号で、これは森林管理計画などに関する政令です。天然資源管理法案のコンセプトを試験的に盛り込んだもので、政令の中では森林管理地区（KPH）と呼んでいます。これまで、インドネシアの森林管理は国家が認可する形で配分されてきましたが、今では各地方に管理部署が設けられ、そこでどこが慣習林だとか、なんとか林というふうに管理することを可能にしたわけです。これは天然資源管理法案が暗礁に乗り上げた際、別の方策として作られたものです。

この法案は環境省の音頭で始まりました。（スハルト体制崩壊後）インドネシアが改革に取り組んだ時に、インドネシアの環境は破壊されたという認識があり、国民協議会が資源管理について新たな政策が必要との見解を国民協議会決定という形で発布しました。そこで環境省がその準備に取り掛かり、NGOが支援したわけです。しかし、それが林業省とエネルギー・鉱物資源省との交渉でストップしてしまっただけです。これらの省は天然資源管理の調整大臣は経済大臣にするべきだとの考えだからです。要するに、資源を収奪する方向なのです。一方、環境省は、調整大臣は国民福祉大臣との考えでした。

そんな状況の中で、2007年政令第6号は天然資源管理法案作りにかかわったNGOの友人たちが、暗礁に乗り上げている法案のコンセプトを少しでも盛り込もうと介入し、森林管理区域というのを盛り込むことになったわけです。これまでとの違いは、これまでは森林管理は行政的なアプローチでしたが、この政令により、バイオリージョン（生命区域：生態的群集を構成する地域）に基づいた管理をすることになった点です。ですから、保全度が高い林地は、保全森林管理区域と指定されるわけです。決定権は林業大臣にあります。その管理庁が独自に設立され、地方単位に置かれることとなります。

つぎに800万ヘクタールを住民造林にするという話との関連ですが、政令はまだありません。農地改革も法案の段階です。政府は土地投機が起こらないようにするために、詳細を明らかにしていません。ただ、計画ではこれらの土地の大部分に転換生産林（林地から他の用途に転換が可能な生産林）があてられるようです。問題は、林業省は住民造林の用地を住民に割り当てるのではなく、単に利用権のみを付与するという点です。そして、それに関してこれまで国土庁と林業省が話し合いをもったことはないのです。各自が表明しているだけなので、NGOは総選挙向けのアメではないかと勘ぐっています。

**Q**：企業がインドネシアで事業利用権（HGU）を取得する場合、色々と手続きがありますが、特に外資系である企業が村の人と会っても、村長や有力者だけで、村人全員の意思を代表していない場合も考えられます。事業を展開する段階になって、住民側との紛争を避けるために、どういったメカニズムがあればよいと思いますか。

**Ad**：多くの企業が誤解しているのは、HGUに記されている土地はあくまで利用可能な面

積に過ぎないのに、それが許可された面積であると思ってしまう点です。実際に利用するためには所有者との交渉が必要なのです。事前に、地元の住民に事業内容を明らかにして同意を得る必要があります。すなわち、社会的なプロセスが大切であって、法的なプロセスだけでは不十分なのです。ちなみに、720万ヘクタールのアブラヤシ・プランテーションのうち、事業利用権を得ているのは430万ヘクタールにすぎません。

**Q:** 慣習土地権 (Hak Ulayat) というのは、基本的には土地に対する所有権ではなく、共同体による利用権というふうに理解していますが、正しいでしょうか。もし利用権というだけであれば、潜在的な所有権は国家にあると思われませんが、オランダ時代はどうだったのでしょうか。

**Ad:** Bundle of right (権利の束) の観点から書かれた論文がたくさんあります。慣習地は共同資産であって、私的な資産ではありません。この共同体の権利の中に各世帯の管理権がありますが、あくまで家族単位で権利を持っているもので、個人には与えられません。特にミナンカバウでは近い親戚間で土地を売買してはならないことになっています。利用権しかありませんが、土地を貸すことはできます。

オランダ人というのは何につけ法的根拠を見出すことに熱心な民族で、インドネシアで土地を支配しようとした際、法的根拠を創りあげました。それが1870年制定された「領土宣言」で、要するに、所有権があることを証明できない土地はすべて国有とするというものです。しかし、この原則はミナンカバウではうまく行きませんでした。しかし、ジャワでは王が土地を支配していたので、王がオランダに服従すれば、オランダが土地を支配することは簡単でした。ミナンカバウでは王が存在しません。それぞれナガリと呼ばれる村単位で土地を管轄していました。

独立後、この考え方が農地法に盛り込まれました。植民地後に実に多くの研究が行なわれてきましたが、インドネシアでは別の言葉を使っています。すなわち国家による土地の支配権です。

ノルマン: 基本的に土地は国家のものなのです。ただ、国家は具体的な組織を持っていないので、それを人格化しているわけです。具体的なコントロールは国会が、運営は政府が行なうという考え方です。

**Ad:** おそらくインドネシアが独立した時に、当時の国の指導者たちは、この先住民の権利について悩んだと思います。先祖代々使ってきた慣習地を取り上げる勇気はなかったのでしょうか。しかし、後に国家が支配する権限を有すると単純化し、国家が行なう開発のために、住民は土地を引き渡さなければならないと決めたわけです。したがって、実際には国家が占有しているのと同じことになるわけです。そのために紛争が多発するのです。



