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**Palm Oil Plantations in Indonesia: Government Policy and Its Impact on  
Indigenous Peoples in West Kalimantan Province**

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Thesis Title                    PALM OIL PLANTATIONS IN INDONESIA:  
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INDIGENOUS PEOPLES IN WEST KALIMANTAN  
PROVINCE


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Thesis Advisor                    Assistant Professor Vira Somboon, Ph.D.

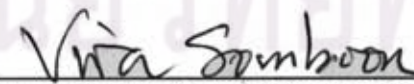
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การศึกษาค้นคว้าครั้งนี้ เป็นการศึกษาความท้าทายของชาวพื้นเมืองในโลกสมัยโลกาภิวัตน์ที่การทำ  
ทันสมัยและการพัฒนามันทำให้สังคมของชาวพื้นเมืองเป็นภาคส่วนที่ได้รับผลกระทบมากที่สุดของสังคม ที่ดิน  
ดินแดน และทรัพยากรที่ได้รับการยึดถือว่าศักดิ์สิทธิ์ เป็นส่วนหนึ่งของอัตลักษณ์และความดีงามทางวัฒนธรรมนั้น  
เป็นหลักสำคัญ ดังนั้นสิ่งเหล่านี้จึงต้องการหลักประกันว่าจะมีอยู่สืบไป

การวิจัยครั้งนี้เน้นไปที่กระบวนการได้มาของสวนน้ำมันปาล์มและผลกระทบต่อชีวิตของชาวพื้นเมือง  
ในกาลิมันตันใต้ ในประเทศอินโดนีเซีย งานชิ้นนี้พยายามจะศึกษากระบวนการกำหนดนโยบายของรัฐบาลในสวน  
น้ำมันปาล์มในกาลิมันตันใต้ และผลกระทบจากนโยบายในสวนน้ำมันปาล์มของรัฐบาลที่มีต่อชนพื้นเมืองในกาลิ  
มันตันใต้

มีการพบว่าการเห็นคุณค่าในทางเงื่อนไขของสิทธิของชาวพื้นเมืองภายในโครงสร้างทางกฎหมายของ  
อินโดนีเซียก่อให้เกิดปัญหาได้แก่ 1) ที่ดิน วัฒนธรรม และอัตลักษณ์ 2) ความปลอดภัยทางอาหารและวิถีชีวิต 3)  
ทรัพยากรน้ำ 4) อาชญากรรมของผู้นำชนพื้นเมืองและความยุติธรรมอันมีค่า 5) สถานที่อันศักดิ์สิทธิ์ และ 6) สตรี  
ชนเผ่า

การศึกษาค้นคว้าครั้งนี้เสนอให้มีการปฏิรูปกฎหมายของชาติและนโยบายให้สอดคล้องกับมาตรฐานสากล  
เพื่อเป็นการปกป้องชนพื้นเมืองและคุ้มครองจากการถูกขับออกจากสังคม หรือถูกแบ่งแยก

สาขาวิชา การพัฒนาระหว่างประเทศ  
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**RUKKA SOMBOLINGGI: PALM OIL PLANTATIONS IN INDONESIA:  
GOVERNMENT POLICY AND ITS IMPACT ON INDIGENOUS  
PEOPLES IN WEST KALIMANTAN PROVINCE. THESIS ADVISOR:  
VIRA SOMBOON, 108 pp.**

This study is about the challenges faced by indigenous peoples in globalization era where modernization and development are inevitable making indigenous peoples among the most vulnerable sections of society. Land, territory and resources that are considered sacred, part of their identity and cultural integrity are at stake. Therefore, they need protections to ensure continuity of their very existence.

This research focuses on land acquisition process for palm oil plantations and its impacts on the life of indigenous peoples in West Kalimantan, Indonesia. The study tries to find out how the government policymaking process carried out in West Kalimantan's palm oil plantation and what are the impacts of government policy on palm oil plantations to the indigenous peoples in West Kalimantan?

It is found that the conditional recognition on the rights of indigenous peoples within the Indonesia's legal framework has caused problems around 1) land, culture and identity; 2) food security and livelihood; 3) water resources; 4) criminalization of indigenous leaders and costly justice; 5) the loss of sacred sites and; 6) indigenous women.

The study recommends a reform in the national laws and policy to be consistent with international standard to ensure the protection of indigenous peoples and further prevent them from social exclusion and discrimination.

Field of study: International  
Development Studies  
Academic year 2008

Student's signature:.....

Advisor's signature:.....  
Vira Somboon

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## CONTENTS

	<b>Page</b>
ABSTRACT (THAI).....	iv
ABSTRACT (ENGLISH).....	v
ACKNOWLEDGEMENTS.....	vi
CONTENTS.....	vii
LIST OF FIGURES .....	ix
LIST OF PHOTOGRAPHS .....	x
LIST OF ABBREVIATIONS.....	xi
<b>CHAPTER I INTRODUCTION</b>	
1.1. Statement of Problem .....	1
1.2. Research Questions.....	4
1.3. Objectives of the Study .....	4
1.4. Hypothesis .....	4
1.5. Conceptual Framework .....	4
1.6. Significance.....	5
1.7. Scope and Limitations .....	6
1.8. Methodology.....	6
1.9. Research Location.....	8
1.10. Ethical Consideration .....	8
<b>CHAPTER II LITERATURE REVIEW</b>	
2.1. Indigenous Peoples and Indigenous Peoples in Indonesia.....	10
2.1.1. Who Are Indigenous Peoples?.....	10
2.1.2. Indigenous Peoples and Their Lands.....	12
2.1.3. Indigenous Peoples in Indonesia.....	14
2.2. State-led Developmentalism and its impacts to Indigenous Peoples.....	16
2.2.1. The Terms Used to Refer to Indigenous Peoples .....	16 17
2.2.2. Development Aggression .....	21
2.3. Relevant Government Policy on Indigenous Peoples.....	21
2.3.1. The Constitution.....	22
2.3.2. The Basic Agrarian Law.....	23
2.3.3. The 1999 Forestry Act .....	24
2.3.4. The 2004 Plantation Act.....	26
2.3.5. Regional Autonomy.....	27
2.4. Free, Prior and Informed Consent.....	27
<b>CHAPTER III MEET THE KANAYATN OF RABA AND THE IBAN OF SEMUNYING IN WEST KALIMANTAN PROVINCE</b>	
3.1. The Kanayatn of Raba.....	30
3.2. The Iban of Semunying.....	31
3.3. PT. Ledo Lestari.....	34
3.4. PT Surya Jaya Sari.....	34



3.5.	Government Institutions Relevant to Land Acquisition for Palm Oil Plantation.....	35
3.6.	Public Debate Concerning Biofuel and the Expansion of Indonesia's Palm Oil Plantations.....	38

#### CHAPTER IV CONFLICTING POLICIES AND GAPS IN THE IMPLEMENTATION OF FREE, PRIOR AND INFORMED CONSENT (FPIC)

4.1.	Three Standards on Land Acquisition Process.....	48
4.1.1.	International Human Rights Standard.....	49
4.1.2.	Government Legal Framework on Land Acquisition.....	53
4.1.3.	Market-Based Standard: Private Companies' Round Table on Sustainable Palm Oil (RSPO).....	54
4.2.	Land Acquisition for Palm Oil Plantations: Government Policy in Practice.....	58

#### CHAPTER V IMPACT OF PALM OIL PLANTATIONS ON INDIGENOUS PEOPLES: CASE STUDIES FROM THE IBAN OF SEMUNYING AND THE KANAYATN OF RABA IN WEST KALIMANTAN PROVINCE

5.1.	Conflict over Land between Indigenous Peoples and Palm Oil Companies.....	65
5.1.1.	Conflict of the Iban of Semunying versus PT. Ledo Lestari.....	65
5.1.2.	Conflict of the Kanayatn of Raba versus PT. Surya Jaya Sari.....	70
5.2.	The Impacts of Palm Oil Plantations on Indigenous Peoples.....	71
5.2.1.	Land, Culture and Identity .....	71
5.2.2.	Food Sovereignty and Livelihood.....	73
5.2.3.	Water Resources.....	74
5.2.4.	Criminalization of Indigenous Leaders and Costly Justice.....	75
5.2.5.	The Loss of Sacred Sites.....	76
5.2.6.	Indigenous Women.....	77

CHAPTER VI CONCLUSION.....	81
----------------------------	----

REFERENCES .....	84
------------------	----

APPENDIX.....	91
---------------	----

BIOGRAPHY.....	97
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## LIST OF FIGURES

	<b>Page</b>
1. Government Institutions Relevant to Land Acquisition for Palm Oil Plantation.....	35
2. Process for Plantation Business Permit (IUP) and Business Utilization Right (HGU) According to the Minister of Agriculture Decree No 26/2007.....	37
3. Government Measures Supporting Biofuels.....	41
4. Map of Indonesia.....	46
5. Map of West Kalimantan.....	47
6. Common Features and Difference between Human Rights Standard, Government Legal Framework and the Market-based Standards.....	48
7. Procedure of Environmental Impacts Assessment.....	59


  
 ศูนย์วิจัยทรัพยากร  
 จุฬาลงกรณ์มหาวิทยาลัย

## LIST OF PHOTOGRAPHS

	<b>Page</b>
1. Pak Jamaluddin, lays in front of him the freshly-cleared land by PT.Ledo Lestari. He claims the community has lost too much including its haunting ground, a clean river, gardens and paddy field.....	91
2. Cleared forest, in the backdrop is a villa of the plantation owner known by the community as Pak Surya.....	91
3. Raba Village's Mount Sapatutn, paddy fields and a small river to the right.....	92
4. Cleared Adat forest with the remaining of the forest in the backdrop.....	92
5. These women complain for less vegetables to be found and loss of water resource due to the loss of the <i>Adat</i> forest.....	93
6. This area was a lake where the community used to go for fishing....	93
7. The Sukumba River for transportation and fishing. The only water source left for washing clothes, bathing, drinking and other domestic purpose.....	94
8. Mr. Yordanus Iyur who in his 60s lives alone with his wife, now in his 60s has to walk farther to fetch clean water as the river near his house has been polluted by the palm oil nursery.....	94
9. Semunying Village Head Mr. Momonus (front) and Mr. Jamal behind the bars. They were put behind the bars from 30 January to 7 February 2006.....	95
10. Tumenggung (Chief) Baeng regrets the lost of Keramat sacred sited due to the forest cut. ....	95
11. Timanggong (Chief) H. Nazarious is concerned about the loss of their sacred sites if the PT.SJS finally comes in operation.....	96

## LIST OF ABBREVIATIONS

AMAN	: Aliansi Masyarakat Adat Nusantara (the Indigenous Peoples' Alliance of the Archipelago, Indonesia)
AMDAL	: Analisis dan Manajemen Dampak Alam dan Lingkungan (Environmental Impact Assessment/EIA)
CERD	: Convention on the Elimination of All Forms of Racial Discrimination/ Committee on the Elimination of All Forms of Racial Discrimination
EEC	: Economic Integration Organization
EIA	: Environmental Impact Assessment
FPIC	: Free Prior and Informed Consent
HGU	: Hak Guna Usaha (Business Utilization Right)
ICCPR	: International Covenant on Civil and Political Rights
ICESCR	: International Covenant on Economic, Social and Cultural Rights
ILO	: International Labour Organization
IUP	: Ijin Usaha Perkebunan (Plantation Business Permit)
JAPHAMA	: Jaringan Pembelaan Hak-hak Masyarakat Adat
NGO	: Non Government Organisation
UN	: United Nations
UNDRIP	: The United Nations Declaration on the Rights of Indigenous Peoples.
UNPFII	: The United Nations Permanent Forum on Indigenous Issues
RKL	: Rencana Kerja Lapangan (Field Work Plan)
RPL	: Rencana Pemantauan Lapangan ( Field Monitoring Plan)
RSPO	: Roundtable on Sustainable Palm Oil
PT. LL	: PT. Ledo Lestari
PT. SJS	: PT. Surya Jaya Sari



# CHAPTER I

## INTRODUCTION

### 1.1. Statement of the Problem

A major shift from using conventional fuel such as gas, petroleum and other fossil fuels to biofuels was triggered by energy crisis in late 1970 when OPEC member states cut their oil export resulted in oil shortage in Europe and the USA. Later, the global demand for biofuel has been increasing significantly since early 2000. The factor that contributed to the shifting aside from the energy crisis was the emerging global concern in the early 1990s on the increasing green house emission from fossil fuels and deforestation that cause the climate change.

A series of frameworks agreed upon in Rio de Janeiro in 1992 during the World Environment and Development Conference provided United Nations/UN Member States guidance in tackling and mitigating environment degradation and climate change by promoting sustainable development. Later in 1997, Kyoto Protocol was signed. It contains legally binding emissions targets for the signatories, specially industrialized countries. As of 14 January 2009, 183 countries and 1 regional economic integration organization have deposited instruments of ratification, accession, approval or acceptance. The United States signed the Protocol on 12 November 1998<sup>1</sup>, although the country seemed very reluctant in acknowledging the climate change, despite wide calls from academics and civil society. The European Union signed the Protocol on 29 April 1998 and ratified it in 31 May 2002, however it came in to force only on 16 February 2005; a position that have created strong critics from environment non government organisations (NGOs).

Over the years, EU has developed and adopted several policies to meet its emission target. The policies covers wide areas including the use of renewable energy (such as solar energy, biofuel, etc), energy efficiency and energy cooperation strategies.

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<sup>1</sup> Later on The US acknowledged the climate change after the Katrina storm hit New Orleans in 2006. Although the USA is listed in the Annex I (top emitters), as of August 2009, it has not yet ratified the Protocol.

Increasing demand on biofuels consequently increases demand in oil palm especially from developing country like Indonesia. The Government of Indonesia had officially announced the expansion of oil palm plantations to meet the global demand and to increase the economic livelihood of the locals by creating job opportunities.

In Indonesia, oil palm plantations grew slowly until the late seventies. A massive palm oil plantations need in Indonesia has resulted in land and forest conversion that had taken places since the early 1980s. From 120,000 Ha in 1968, plantations extended to over 250,000 ten years later and by 1978, however, oil palm plantations covered almost 3 million hectares by 2004. As of 2005, palm oil plantations covered 4.3 million hectares, of which 66% was forest converted, that divided into 3% primary forest, 63% secondary forest and the rest was from bushes forest.<sup>2</sup> The recent Government statistics estimated that between four and five million hectares of land were under oil palm concessions, of which some 16% was state-owned and the rest was privately owned (Jiwan, 2009).

Based on the total estimate of global demand for oil palm products, Indonesia is expected to increase its product from 22.5 million tons in 2002 to 43 million tons by 2020. At the present, palm oil production which is growing at around 3.78% per year appears to be increasing faster than soybean oil, at 2.01% per year (Wakker, 2006). Therefore, oil palm (*Elaeis guineensis*) plantations and palm oil industry have already become a main economic income for Indonesia<sup>3</sup>.

However, the presence of palm oil plantations in Indonesia over the years has resulted in widespread discontents especially among indigenous peoples, particularly in relation to the loss of indigenous land for plantations and human rights violations. Indonesia consists of more than 17, 000 islands and has a population of around 220

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<sup>2</sup> A unit of on-farm palm oil business should consist of a plantation and a mill that can support producing fruits and processing bunches to crude palm oil (CPO). However, in order to make palm oil business profitable a mill will require from 6,000 up to 10,000 ha in order guaranteeing sustainable harvest of fruits to feed the mill regularly.

<sup>3</sup> Actually, oil palm is non-native plant. It was imported from West Africa by the Dutch Colonial in 1848 and large scale and commercial plantation development started in 1911. The oil palm grows better in a wet tropical climate with temperatures between 24° and 32°C throughout the year. The oil palm tree reaches maturity in three to four years, when it is about 2 meters high. Thereafter it continues to grow by another 70 centimetres per year and can reach a height of more than 10 meters. Its economic life continues until it reaches the age of 20 to 25 years, with peak production between the sixth and tenth year. See: The World of Edible Oils, H.D. Glau demans, M.M.J. Timmermans and H. Rijkse, Rabobank Food and Agriculture Research Department, Utrecht, August 1998; Annual Report 2000, Sipef NV, Schoten, May 2001

million. Indonesia is an ethnically extremely diverse country. Over 700 different languages have been identified. Indonesia is still a unitary state with a strong central government, even though political and governmental structures have been decentralized after the resignation of President Soeharto in 1998 (Erni, 2009).

The support of palm oil plantation has made government on the side of businessman therefore often become the subject to the people resistance. According to Sawit Watch report in June 2009, the number of palm oil plantation related conflict has significantly increased in Indonesia post-Soeharto *Reformasi* 1998. In 2003, there are at least 140 conflict cases happened in 13 provinces of three main islands (Sumatera, Kalimantan and Sulawesi) in Indonesia. According to the West Kalimantan's Plantation Agency, as of December 2005 alone, the number of active palm oil plantations in the province numbered 229 plantations covering a total of 3,218,070 hectares of land. In 2008, there were 576 conflict cases reported in 16 provinces. In that year in South Sumatera alone, there were 123 plantation related conflicts occurred while in West Kalimantan by 2008 the number of the conflicts reached 90 cases from a total of 30 cases by 2003. However, with the number of conflicts increases, it never ceases the government of supporting the palm oil plantation.

In early 2005, Indonesian Government planned to expand the existing palm oil plantations in Kalimantan, Sulawesi, Sumatera, and West Papua and even more in to small islands of Moluccas province. The Government intended to develop three million hectares of new oil palm plantations by 2011 including a total of 1.8 million hectares new oil palm plantations along Indonesia-Malaysia border area in Kalimantan. The Indonesian State Plantation Corporation (PTPN) launched a business plan under a banner "*bringing prosperity, security and environmental protection to the Kalimantan border area*" containing a map showing that the project covers three national parks, cuts through slopes and mountains including ancestral territories of the Dayaks (WWF Indonesia, 2005).

The launching of the Project plan soon led into a public debate among government, policy makers and civil society. Opponents had come mostly from



environmentalists, NGOs and indigenous peoples. They criticized for the potential environmental impacts and that the project would further encroach ancestral lands and territories of the Dayaks. On the other side, Indonesian government moved on by taking some significant measures including making a number of policies to support the Projects and inviting more investors to join (The Jakarta Post, 2005, 2006, 2007). Later on, The Regional Representatives Council (DPD) joined the opponent groups. On March 2006, before a plenary session of the House of Representatives, they called the Project as "*a disaster project*"(The Jakarta Post, 2006).

### **1.2. Research Questions**

1. How is the government policymaking process carried out in West Kalimantan's palm oil plantation?
2. What are the impacts of government policy on palm oil plantation to the indigenous peoples in West Kalimantan?

### **1.3. Objectives of the Study**

1. To provide an overview on the conceptual framework on indigenous peoples and their rights
2. To provide an analytical review on the Government of Indonesia's policy related to palm oil plantations.
3. To expose the conflicts and impacts occurred around the palm oil plantation and its relation with the principle of Free Prior and Informed Consent (FPIC) of indigenous peoples.

### **1.4. Hypothesis**

The government policies and the absence of implementation of the FPIC resulted in conflicts with indigenous peoples.

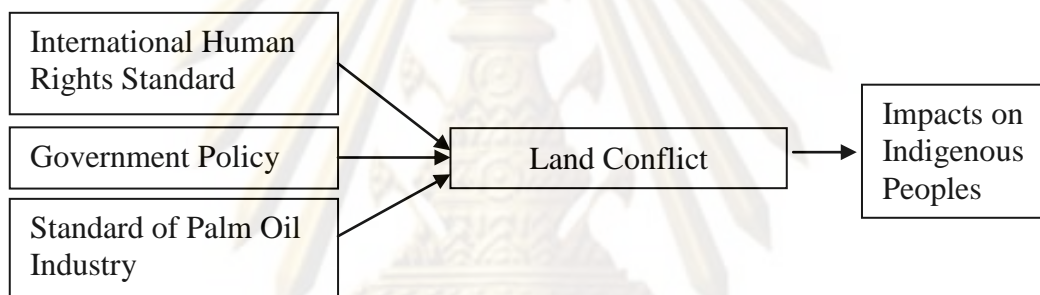
### **1.5. Conceptual Framework**

The conceptual framework below has taken account of the concept of indigenous peoples' land rights based on the International Labour Organization (ILO) Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. This

study further elaborates the government policies relevant to indigenous peoples' land rights and policies regarding the permit process for palm oil plantation.

Figure on the existing palm oil plantations and land conflicts around them will be presented to be further analyzed using the concept of the rights of indigenous peoples to free, prior and informed consent.

All this factors in this study cannot be exclusively said as the only determining factors of the status of indigenous peoples as this issue covers a broad area of political and social aspects. However, this study purposely limits variable on the relevant policies and specific process in order to provide a more focused analysis.



### 1.6. Significance

The existing literatures relevant to palm oil plantations cover a broad range of issues. Environmental organizations such as World Wide Fund and Greenpeace analyzed the impacts on deforestation, the loss of endangered species and pollution. Others provide reports around social impacts such as land loss, human rights violations, evictions, policies, wages, women, local community and on indigenous peoples.

The land acquisition takes place across the world and there are some similarities around it. Although this study focuses on Indonesia, yet this situation may also occur in other countries including Thailand.

This research does not focus solely on the impacts on indigenous peoples but it rather provide a deeper look at the policy process and the competing approaches i.e. human rights, government and market-based approaches.

### **1.7. Scope and Limitation**

This study considered the international and national instruments on land acquisition process for palm oil plantation. Two case studies are analyzed using the framework of the rights of indigenous peoples to free prior and informed consent. The case study took place in West Kalimantan Province as an illustration for analysis.

Some key issues and concepts to be elaborated in this paper include:

- Conceptual framework of indigenous peoples;
- International and National mechanism for land acquisition;
- The Concept of indigenous peoples' rights to free, prior and informed consent (FPIC).

The limitation of this study was really on the time available for conducting the field research. Hence, I have to put some limitation in my study on land acquisition process and its impacts to indigenous peoples. Despite its relevance to the land acquisition issues, some factors such as Indonesian political economy post-Suharto reformasi, especially the current development of regional autonomy and environment aspect will only be described in this study without deep elaboration. The description of those two matters is just to show the picture of the main issue's atmosphere.

Secondary data aside from government sources was mainly provided by NGOs reports due the time limitation in gathering all data needed directly from government offices. It was also difficult to get direct meeting with government officials due to busy schedule and procedural reasons.

### **1.8. Methodology**

This study is about the government policymaking process on palm oil plantation and its impacts on indigenous peoples in West Kalimantan, Indonesia. In order to understand the above question(s) I will start my work by explaining the nature of the state of Indonesia where indigenous peoples are living. How the state makes policy regarding to development and how she accommodates disputes or



conflicts, in this context is about land acquisition process, between groups in its territory? In this policymaking process the state approach is not the sole provider. Other parties such as company and international human rights standards have also came up with their own approach. Therefore, in the study I would like to show the contestation of those approaches in reality of land acquisition for palm oil plantation policymaking process. I deliberately use the concept free, prior and informed consent as tool to measure the state policymaking process for at least three reasons: FPIC is international human rights standards; Indonesia has ratified the major international human rights treaties; and also, this measure fit with both the state and indigenous peoples. The dynamics of policymaking process (including its impacts) will clearly be shown in my fieldwork findings. Finally, in this study I will show the impacts of policymaking process on indigenous peoples living in the area of my research location.

The nature of this study is qualitative research by conducting a fieldwork to get the primary data. During the fieldwork I use direct observation, in-depth interview and focus group discussion for data collection. I carried out direct observations of indigenous communities in research areas. Although the difficulties involved with access to plantations are recognized, direct observations were effective way to provide valuable insights in the circumstances of the actual situation of indigenous communities. In-depth interviews conducted with open-ended interview technique and standard list of questions with indigenous communities, Government officials, NGO-staff, and Indigenous Organizations. Focus group discussion is conducted with groups of 6-12 people, including groups of community leaders, man, women and

youth. Most of the focus group discussions were conducted in informal condition in order to avoid tension and nerves of the participants.

Secondary data was mostly collected through printed materials (such as books, journal, articles, research, etc) and audio-visual materials (such as film).

### **1.9. Research Location**

The field research took place in West Kalimantan Province of Indonesia, where the most of Indonesia's oil palm plantations locate, and the home of the many indigenous peoples. The case study here focuses on two indigenous communities in the Provinces; the Iban of Semunying Jaya and the Kanayatn of Raba.

### **1.10. Ethical Consideration**

The ethical consideration has been an important aspect in this study. All the facts, figures and documents of government, NGOs, IPOs, research institutions etc. analyzed in this study are not being interpreted wrongly and in no way findings of any document are negated. All source of information are cited accordingly and any quotation is not taken out of context. This study uses authentic and verifiable data in order to minimize bias.

## CHAPTER II

### LITERATURE REVIEW

In the early eighties, a very geographically remote and isolated village of the Seko - one of indigenous groups inhabiting the highlands of Indonesia's Sulawesi island-, had welcome alien visitors from city. The visitors came in the evening with their modern vehicles and the light blaze in the dusking sky. For the Seko, it was a first in lifetime experience to see such an amaze spectacle. They welcomed the visitors -- government officials and some foreigners that represent a logging company-- with a proper welcome ceremony according to their custom. They sacrificed a buffalo and fed the visitors a big feast. The visitors, with government official as its spoke person, explained their purpose of visiting the village that is to introduce the company's people, which will run their logging activity in their land. So the story goes. The company run their business and since then the Seko started losing everything they had, their land, their forest and their life<sup>1</sup>.

In general sense, this study is about the challenges that are faced by indigenous peoples in confronting globalization impacts. A world where there is some process that considered as an ineluctable and inevitable, such as modernization and development, that later pull or twist the tranquil life indigenous peoples out of shape. Once the government or a company decided to point their finger in particular spot of their map it can be a never-ending disaster to the people in that land.

In this section I would like to provide an overview on several concepts that linked with my research. This overview is important to help us to have common understanding of the terms or jargon that used along this paper and to expose some basic laws or regulations regarding indigenous peoples issues. I will utilize this section to frame the issues and the complexity of problems occurred that encompasses the issue, such as state-led developmentalism; state accommodation of land acquisition's disputes; and, to bring up an alternative approach, the principal of FPIC (free, prior and informed consent), of utilizing indigenous peoples' land.

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<sup>1</sup> Personal account of Mr. Mahir Takaka who belongs to the Seko himself on the impacts of timber extraction on the Seko People, 2002



## **2.1. Indigenous Peoples and Indigenous Peoples in Indonesia**

### **2.1.1. Who are Indigenous Peoples?**

It took about fifty years for indigenous peoples before they got the recognition from UN ever since Haudenosaunee Chief Deskaheh (1923) and Maori religious leader T.W. Ratana (1925)<sup>2</sup> made their epic travel to Geneva a mission to address the League of Nations and defended the right of his people to live under their own laws, on their own land and under their own faith. Today, there have been thousands of indigenous representatives attending various international events within the last three decades. Only within the last seven years alone, the United Nations Permanent Forum on Indigenous Peoples (UNPFII) had hosted at least one thousand indigenous representatives from around the world each year (The UN Permanent Forum on Indigenous Issues, 2003).

Over the years, the United Nations has provided various instruments; mechanisms and space within the organization to further promote and protect indigenous peoples' rights. The most relevant instrument for indigenous peoples are the ILO Convention 169 on the Indigenous and Tribal Peoples and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The Declaration encompasses all the existing human rights instruments and treaties in order to make human rights relevant for indigenous peoples.

But who the indigenous peoples are? What is the definition of indigenous peoples? In fact this has been a very delicate subject of debate and certainly will still be in the future. Despite numbers of attempts to define them, indigenous peoples constantly refuse to be defined as a strict definitional standard. The reason is a strict definition could undermine the diversity of indigenous peoples, thus a definition will certainly exclude some indigenous groups from the very protection they need. Governments, at the other side, argue that a definition is crucial for them to know what constitutes indigenous peoples and to avoid overlapping international standards concerning indigenous peoples. Some academics see the absence of definition would

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<sup>2</sup>Both Chief Deskaheh and T.W. Ratana were denied access and were not allowed to speak, yet their visions have encouraged many generations that followed.

lead to confusion, while some argue that establishing a working definition is possible (Corntastel, 2003).

The work of the Special Rapporteur for the Sub-Commission on Protection of Human Rights, UN Commission on Human Rights, José Martínez Cobo on Study of the Problem of Discrimination against Indigenous Populations (1986) provided a working definition that is commonly used and referred to:

*“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”*

The ILO Convention 169, also declares that Self-identification as indigenous is regarded as a fundamental element, in line with Cobo’s working definition:

*“On an individual basis, an indigenous person is one who belongs to these indigenous peoples through self-identification as indigenous and is recognized and accepted by the group as one of its members. This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference.”*

Some academics have also been working on how to identify indigenous peoples since the early 90s. Franke Wilmer (1993) adds on to what had been set out by the UN, however, her description of indigenous peoples is too general, therefore it is difficult to distinguish indigenous peoples from minority groups<sup>3</sup>. James Anaya

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<sup>3</sup> She described indigenous peoples based on 1) with tradition-based cultures; 2) Who were politically autonomous before colonialization and; 3) who, in the aftermath of colonialization and/or decolonization, continue to struggle for the preservation of their cultural integrity, economic, self-reliance, and political independence by resisting the assimilation policies of nation-states

(1996) tried to add in an extensive *kinship* network that distinguishes indigenous peoples from minority groups<sup>4</sup>.

The work of Jeff J. Corntassel (2003) argued that in conceptualizing and identifying indigenous peoples, one has to get away from a check list or linear approach by emphasizing self-identification as well as interrelationships between identity and key cultural perspectives.

### **2.1.2. Indigenous Peoples and Their Lands**

Many may confuse the distinction between persons belong to indigenous peoples and minorities. These two groups shared some common characteristics except that the minorities do not have relationship with land and territory. These two groups in addition are provided separate human rights instruments and mechanisms. The rights of minorities are limited to individual rights even if they in most cases can only be enjoyed in community with others, while indigenous peoples' rights emphasize on the 'collective rights' as peoples, thus indigenous peoples have the rights to self determination. Protecting persons belong to minority aims at ensuring a space for pluralism in togetherness, while protecting indigenous peoples is intended to allow for a high degree of autonomous development. Furthermore, considerable emphasis is on the effective participation in the larger society of which the minority is a part of while for indigenous peoples, it seeks to allocate authority to these peoples so that they can make their own decisions.

Cobo's work sets out an important framework in identifying indigenous peoples regarding to their land. A historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors: (1) occupation of ancestral lands, or at least of part of them; (2) common ancestry with the original occupants of these lands; (3) culture in general, or

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<sup>4</sup> He described indigenous peoples as ““The living descendants of pre-invasion inhabitants of land now dominated by others... They are indigenous because their ancestral roots are imbedded in the land in which they live, or would like to live, much more deeply than the roots of more powerful sectors of society living in the same land or in close proximity. Furthermore, they are peoples to the extend they comprise distinct communities with a continuity of existence and identity that links them to communities, tribes or nations of their ancestral past”



in specific manifestations, (4) language; (5) residence in certain parts of the country, or in certain regions of the world; (6) other relevant factors.

Still emphasizing the relation of IPs with their land or territorial bound, the ILO Convention 169 (1989) on Indigenous and Tribal Peoples in Independent Countries. The Convention describes indigenous peoples and their land concluded:

*“Peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions”*

Corntassel provides a broad scope in identifying the relation between indigenous peoples and their land in a broader cultural sense. He describes indigenous peoples as:

1. *Peoples who believed they are ancestrally related and identify themselves as descendant of the original inhabitants of their ancestral homelands*
2. *May, but not necessarily, have Informal and/or formal political, economic and social institutions, which tends to be community based and reflect their distinct ceremonial cycles, kinship networks and continuously evolving cultural traditions*
3. *Speak (or once speak) an indigenous language, different from dominant society’s language*
4. *Distinguish themselves from the dominant society and/or other cultural groups while maintaining a close relationship with their ancestral homeland/sacred sites, which may be threatened by ongoing military, economic or political encroachment or may be places where indigenous peoples have been previously expelled, while seeking to enhance their cultural, political and economic autonomy.*

### 2.1.3. Indigenous Peoples in Indonesia

Indigenous peoples in Indonesia share a common situation faced by other indigenous peoples in Asia and in the world. As reported by the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples Mr. Rodolfo Stavenhagen (2007), the main threat is directly related with rapid loss of indigenous lands and territories due to commercial logging (whether legal or illegal) and other mega projects. While protecting their land the IP's often has to fight against both the company and the state (military, and police departments of forestry, environment, mining, agriculture, local governments, etc) (Tauli-Corpuz,2007).

But whom do we consider as indigenous peoples in Indonesia? The number of ethnic groups in Indonesia is not known and estimates vary considerably. Leo Suryadinata in 2003 reported that there are 100 ethnic and sub-ethnic groups (including the Chinese descendants). The 2007 Joshua Project estimated that Indonesia has some 758 ethnic and sub-ethnic groups, while the Summer Institute of Linguistics Ethnologue reports that there are 737 living languages in Indonesia. According to a rough classification suggested by Noer Fauzi, 45% of the people in Indonesia are Javanese, 14% Sundanese, 8% Maduranese, 7% Malay, and the remaining 26% belong to numerous small ethnic groups.

The Ministry of Social Welfare officially recognizes 365 groups as *masyarakat adat*<sup>5</sup> *terpencil* (isolated indigenous communities) with a total population of 1.1 million. However, there are many more ethnic groups that consider themselves, or are considered by others, as indigenous peoples. The national organization of indigenous peoples, AMAN estimates that out of Indonesia's 210 million population, around 50-70 million are indigenous. (Forest Watch Indonesia, 2002; Chris Erni, 2009). This estimation is based on the working definition endorsed by the Congress of Indigenous Peoples of the Archipelago (KMAN - Kongres Masyarakat Adat Nusantara, March 1999) as "*A group of people who have lived on*

<sup>5</sup> Adat (Arabic عادة *ādah*) is a set of local and traditional laws and dispute resolution systems in many parts of Nusantara (Archipelago). In older Malay language, *adat* refers to the customary laws, the unwritten traditional code regulating social, political, and economic as well maritime laws. Source: <http://en.wikipedia.org/wiki/Adat>. In this study, I use *adat forest* as to refer to customary forest.

*their ancestral land for generations, have sovereignty over the land and natural wealth in their customary bounded territory, where adat law and institutions arrange the social life of the community, and carry out the social-political and economic lives of the community*". Indigenous peoples live mostly in the so-called "outer islands", i.e. the archipelago outside Java, and in the eastern part of Indonesia (Kartika & Gautama, 1999).

With the highly diversified ethnic groups and the fact that most of them are ethnic groups with small populations, the identification of indigenous peoples based on the ethno-linguistic approach alone appears to be difficult and problematic. It has therefore been suggested to use the community approach. Using this approach in practice means that among the Javanese, for example, who are the biggest ethno-linguistic group in Java, small communities like the *Orang Kanekes* (also known as Baduy people), the *Kasepuhan in Banten Kidul* and the *Orang Osing* in East Java can be identified as indigenous peoples since they identify themselves as such in distinction to the majority Javanese. This situation has created challenges in the effort to identify the numbers and the populations of indigenous peoples in Indonesia. A similar situation is also found in the Malayu territory which concentrated in west coast of Sumatera. In that area, we can find indigenous communities like the *Orang Rimba*, *Nias*, *Mentawai* and *Orang Talang Mamak* who maintain a distinct identity vis-a-vis the majority (Erni, 2009).

Since the early 1970-s, the Department of Social Affairs was put in charge of what came to be called *masyarakat terasing*. Its work was limited to relief projects for a few small and impoverished groups, which had little impact. The government's policy was to integrate these people, who were considered backward, into mainstream society. This was to be achieved by rather drastic means such as prohibiting traditional ways of life (e.g. living in communal houses) or forced resettlement. Indigenous peoples' right to land and resources were not recognized, they were considered illegal occupants of state forest land which the government wanted to open up for logging, mining, plantation and transmigration projects. The latter involved the settlement of hundreds of thousands of migrants on indigenous peoples' lands, mostly in West Papua, Kalimantan, Sulawesi and Sumatra islands (Erni, 2009).



The Government of Indonesia voted for the adoption of the UN Declaration on the Rights of Indigenous Peoples by the UN General Assembly on 13 September 2007. Although they denied the existence of indigenous peoples in Indonesia, this shows commitment by the government for the protection of Indonesia's indigenous peoples. The UNDRIP added on to international human rights instruments that Indonesian has, although in several cases with reservations, become party to<sup>6</sup> (Erni, 2009)

There are several Indonesia's laws and policies<sup>7</sup> that at least implicitly recognize or are in other way related to indigenous peoples' rights. In addition, there are many district-level or provincial legislations, policies and programs<sup>8</sup> relevant for indigenous peoples (Chandra & Gautama, 2000). Among others are: the West Sumatera Provincial Law concerning Indigenous Land and the Lebak District Law on the recognition of the Kanekes --the Baduy-- (Simarmata, 2007)

## **2.2. State-led Developmentalism and its impacts on Indigenous Peoples**

### **2.2.1. The Terms Used to Refer to Indigenous Peoples**

Terms used to refer to indigenous peoples in Indonesia change from time to time. During the General Soeharto regime (1967-1998), various terms were used to refer to indigenous peoples such as *masyarakat terasing* (alienated/isolated people), *suku-suku terasing* (isolated tribes), *masyarakat terkebelang* (backward people), *masyarakat terpencil* (remote community) and etc. These terms usually represent

<sup>6</sup> They are as following:

1. International Convention on the Elimination of All Forms of Racial Discrimination, Party since 25 June 1999 (Reservation)
2. International Covenant on Civil and Political Rights, Party since 23 February 2006 (accession)
3. International Covenant on Economic, Social and Cultural Rights, Party since 23 February 2006 (accession)
4. Convention on the Elimination of All Forms of Discrimination against Women, Party since 13 October 1984
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Signatory since 23 October 1985, Party since 28 October 1998
6. Convention on the Rights of the Child, Signatory since 26 January 1990, Party since 5 September 1990
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Signatory since 22 September 2004.

<sup>7</sup> The Act on Forestry 1999 recognizes *Customary Forest*, although according to the Forestry Act, customary forest belongs to the State.

<sup>8</sup> This includes a programme established by The Ministry of Social Welfare dealing with so-called isolated indigenous communities in 2000, in responding to strong critics by indigenous peoples' representatives at the first Congress of Indigenous Peoples of the Archipelago. By then The Minister of Social Welfare Mr. Hasan Basri Durin was forced to say sorry for calling indigenous peoples backward, uncivilized, alienated and etc.

derogatory meanings and were used to emphasize the backwardness of indigenous peoples, thus had led to discrimination, marginalization and exclusion of indigenous peoples. Some academics over the years had identified indigenous peoples as *swidden cultivators*, *primitive tribes*, *isolated communities*, *masyarakat adat (indigenous peoples)*, *masyarakat hukum adat (communities governed by customary law)*, *masyarakat tradisional* (traditional communities), backward people, frontiers, indigenous ethnic minorities (Max Gluckman, 1949; Danilo Geiger, 2008; Chris Erni, 2009; Christine Padoch, Emily Harwell, Adi Susanto, 1998). However, the term *Masyarakat Adat* which was initially introduced by JAPHAMA<sup>9</sup> in 1993 and later on endorsed by Indigenous Peoples Congress in 1999 (Kartika & Gautama, 1999). *Masyarakat Adat* is more accepted and has been consistently used by indigenous peoples as well as NGOs, CSOs, academics and some government agencies.

After the fall of Suharto, the Indonesian Government has been using several terms. *Masyarakat hukum adat* and *masyarakat tradisional* are used in Indonesian Constitution (second Amendment, 2000). *Masyarakat Adat* is also used consistently in the Act No 27/2007 on Coastal and Small Islands Management. The Department of Social Welfare of Republic Indonesia uses *komunitas adat terpencil* (remote indigenous community) to replace *masyarakat terasing* (isolated community) which was used prior to the implementation of Presidential Decree no.111/1999 on the Establishment of the Social Welfare of Isolated Indigenous Communities. The nationwide indigenous peoples' organization, Aliansi Masyarakat Adat Nusantara (AMAN), uses the term *masyarakat adat* to refer to indigenous peoples.

### 2.2.2. Development Aggression

Indigenous peoples are now accepted to be as self-identified category of peoples in the Arctic, Americas, Africa, Asia and the Pacific. International human rights law and jurisprudence recognizes that indigenous peoples, like other peoples, enjoy the rights to self determination and sovereignty over their land and natural resources. States also claim these rights and assert the rights to control such resources

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<sup>9</sup> Jaringan Pembelaan Hak-Hak Masyarakat Adat (Networks of Indigenous Peoples' Rights Defenders) was a network of lawyers and activists that initiated the indigenous peoples' movement in Indonesia picking on the International Year of Indigenous People 1993.

to develop them in the national interest. These competing rights are not easily reconciled. However, it is a norm of international law that the promotion of national development should not be carried out at the expense of human rights including human rights of indigenous peoples. Existing human rights laws recognize the rights of indigenous peoples to ownership and control of their lands, territories and natural resources and to free, prior and informed consent over development proposed on their lands (Colchester, 2004).

Indonesian Government at international fora persistently argues that the concept of indigenous peoples is not applicable in Indonesia, as almost all Indonesians (with the exception of the ethnic Chinese) are indigenous and thus entitled to the same rights. Consequently, the government rejected all calls for special treatment by groups identifying themselves as indigenous, which prevented indigenous peoples from maintaining their distinct identity and control over their territories, land and resources (IWGIA, 2007; Bamba, 2009).

The *conditional recognition* of indigenous peoples in Indonesia resulted in some serious issues in terms of actualization of the genuine *recognition*. Some of the problems identified are: who can define indigenous peoples; whose development and civilization; and recognition at what level? The Indonesian state explicitly reserves for itself the right to decide on behalf of indigenous peoples what is good for them and what not, what can be considered *in accordance with time* and what not. Thus, what is actually meant here is that the state decides what is considered *developed, modern or civilized?* or in a way the Indonesian state joins the past and present colonialist powers that have used the obligation of fulfilling a *civilizing mission* to legitimize exploitation and oppression of peoples with different cultures and histories than their own. So the government's duty to *civilize* means: to Westernize – peoples whom they considered as *backward*. Many post-colonial governments, and among them Indonesia, continued with such an ethnocentric and oftentimes outright racist policies by which they legitimize dispossession, oppression and forced assimilation of indigenous peoples. The difference is merely that native ruling elite replaces white colonizers, and that the *civilization* promoted by the state is usually a hybrid culture of the politically dominant group, modernist and *developmentalism*



ideologies (Bamba, 2008). In addition, the absence of a national integrated legal framework with regards to indigenous peoples rights has resulted in confusion among government officials, thus it is not clear to what level the legal recognition will take place, whether at national level, provincial level or at the district level.

The fall of President Soekarno in 1965 followed by New Order regime led by President Soeharto for 32 years begun the “Developmentalism era” in Indonesia that focused on economic growth at the expense of natural resources exploitations. In the name of development and national interest, Indonesian Government has used the Article 33 of the 1945 Constitution on natural resources to claim all lands and natural resources in Indonesia including indigenous peoples’ lands and resources as State properties. The adoption of Law on Foreign Investment (1967) and the first arrival of the World Bank/WB and International Monetary Fund/IMF in late 60s marked the development regime in Indonesia. To foster the economic development in Indonesia, a series of Indonesian laws and acts were enacted; most of them are in denial of indigenous peoples’ rights including their ownership and control over land and natural resources. Among others are Law No. 11/1967 on Mining<sup>10</sup>; Law No. 14/1970 on Basic Power of Judiciary<sup>11</sup>; Law No. 5/1979 on Village Government<sup>12</sup> and many others (Bamba, 2009).

By using laws and policies mentioned above, the Government granted lands including indigenous peoples’ lands to private companies for natural resources exploitations such as extractions activities like mining, oil exploitation, logging, and plantations without the free, prior and informed consent (FPIC) of the affected indigenous peoples. Gomez (2008) noted that most of the clashes between indigenous peoples, governments and international financial institutions have arisen due to contradictory and inconsistent interpretations of the term “*development*”. For indigenous peoples, the key issues include not only the right to protect and preserve

<sup>10</sup> Article 26: “Whenever a mining authorization license is obtained over a certain area or territory based on the prevailing law, those who have the rights over the land are obliged to permit the works of the mining license holder on the said land.”

<sup>11</sup> The law makes no mentioning about customary laws or customary courts and thus rejects the authority and power of customary laws in dispute settlement.

<sup>12</sup> This law homogenizes village government systems all over Indonesia and thus destroys diverse local and indigenous systems and institutions.

their ancestral lands, but also often their very survival as “peoples”. Therefore, many indigenous peoples see *development* as an *aggression* to their existence.

The concept development aggression according to Metagora<sup>13</sup> is defined as “..*Misguided development that harms the very people it is intended to help. The opposite of bottom-up development, development aggression sets aside the people who are the target of the development effort and excludes them, willfully or otherwise, from development planning. Development aggression occurs when a community becomes a mere resource for profit-oriented development, not the centre of development*” (Metagora, 2002). While The Chairperson of the UN Permanent Forum on Indigenous Issues Ms. Victoria Tauli- Corpuz defines development aggression as “*When for in the name of development, government and/or private companies grab indigenous peoples’ land without their free, prior and informed consent*”

Former President Abdul Rahman Wahid at the opening of the National Conference on Natural Resource Management in 23 May 2000 acknowledged that indigenous peoples have been marginalized and the victim of state-controlled management system over resources in Indonesia. He further emphasized that 40% of state’s assets shall be returned to the owner of the lands, the peoples<sup>14</sup> (Kompas & Republika, 2000). One of the impacts of the palm oil plantation in Indonesia is the land loss of indigenous peoples for such plantation. The land acquisition – especially during the Soeharto’s New order Regime - often involved forced relocation and military operation as well as often resulted in a division of indigenous leadership. (Colchester, M., Jiwan, N., Andiko, Sirait, M., Firdaus, A.Y. et al, 2006).

Transmigration settlements are planned according to Indonesian government priorities, which intend them to help build an imagined community, a unified nation (Brian A. Hoey; 2003). The influx of state-sponsored trans-migration in to the Dayaks territories had led to a serious land loss among them. This had contributed –among

<sup>13</sup> Metagora is a PARIS21 pilot project focusing on methods, tools and frameworks for measuring democracy, human rights and governance. PARIS21: Partnership in Statistics for Development in the 21st Century was founded in 1999 by the Organisation for Economic Co-operation and Development/OECD, the World Bank, the European Commission, the International Monetary Fund and the United Nations.

<sup>14</sup> The Statement was broadcasted widely by national newspaper such as Kompas and Republika, as well as TV stations such as SCTV and RCTI.

other causes- to the violence against the Maduranese settlers in 1999 (Linder, \_\_\_\_\_; Djuweng, S., 1997; Bamba, 2004; Davidson & Kammen, 2002; Danilo Geiger, 2008). While Mita Noveria et al. (2004) noted seven conflicts in Central Kalimantan related to natural resources. In Indonesia, since the time of colonial government, the main source for the determination of land rights has been local, indigenous law. Nonetheless, the state has always attempted to influence the way land is managed (Renske Biezeveld, 2004)

### **2.3. Relevant Government Policy on Indigenous Peoples**

The legal framework of indigenous peoples in Indonesia is rooted in the Constitution both the Original 1945 and the third amendment versions as well as in several laws and policies that implicitly recognize or in a way relevant to indigenous peoples' rights. Basic Regulations on Agrarian Principles 1960 (or Basic Agrarian Law); the Forestry Act 1999; the Plantation Act 2004; and the Local Government Act (Autonomy Act) 1999.

#### **2.3.1. The Constitution**

Article 18 of Indonesia's 1945 Constitution recognized the existence of indigenous peoples by stating that there were 250 autonomous areas in Indonesia governed by customary administration systems (zelfbesturende, volksgemeenschappen – self-administering communities). These systems included *Desa* (or Village) in Java and Bali, *Nagari* in Minangkabau and *Dusun* and *Marga* in Palembang. (Rikardo, 2006).

During the third Amendment of the Constitution in 2001, the Article 18 was amended to include a new Article 18B-2 that “*The State recognizes and respects indigenous communities along with their customary rights as long as they are still exist, in accordance to the societal/cultural development, time and civilization within the Unitary State of Indonesia, and they are recognized legally by law*”. Article 28I Para 3 (regarding Human Rights) respects the cultural identity of indigenous peoples. These two articles use two terms to refer indigenous peoples, namely *masyarakat hukum adat* (Article 18 Para 2) and *masyarakat tradisional* (Article 28I Para 3). In



addition, these two articles emphasize the recognition of indigenous peoples “*shall apply as long as they still exist, in accordance to the societal/cultural development, time and civilization within the Unitary State of Indonesia, and they are recognized legally by law*”.

Then the Constitution grants a *conditional recognition* to indigenous peoples by using the term “traditional communities” and their traditional, customary rights provided that they have not been assimilated (“they still exist;” a decision made by the State) and provided that the exercise of these rights is consistent with the development priorities of the unitary state of Indonesia (a decision also made by the State) The criteria on which a community is judged to 'still exist' include recognition as such by local government, further undermining the principle of self-identification, and the final determination is made by the State( Colchester, M., Jiwan, N., Andiko, Sirait, M., Firdaus, A.Y. et al, 2006). The State, by law, thus determines which peoples benefit from the protection of Article 18B, and then lead to further questions on what constitutes “*traditional*”, “*exist*” and “*whose civilization*”? (Nurjana, 2004 & Bamba in Erni, 2009).

In addition, the Article 35 of the Constitution gives the State an exclusive ownership and control over land, water and natural resources. Although the Article 35 also emphasizes that the utilization of these resources shall be for the maximum welfare of the Indonesian people, however, in reality this Article then overrules the Article 28I-3 that specifically protects the rights of indigenous peoples. Article 35 does not specify what those rights are and is also subject to the power of the State to simply not recognize the existence of indigenous peoples pursuant to Article 18B-2 and Article 28I-3 (AMAN, Sawit Watch, ELSAM, WALHI et.al., 2007).

### **2.3.2. The Basic Agrarian Law**

The Basic Agrarian Law (BAL) of 1960 seeks to reconcile rights to natural resources under customary law, commonly referred to as *ulayat* rights, with inherited colonial legal concepts related to land. Article 3 of the BAL thus states: “... *ulayat rights and other similar rights of customary law communities should be recognized,*

*as long as these communities really exist, and [the exercise of these rights] is consistent with national and State interests, based on the principle of national unity, and is not in contradiction with this law and higher regulations.” Likewise, Article 5 of the BAL states that: “Customary law applies to the earth, water and air as long as it does not contradict national and State interests, based on national unity and Indonesian socialism, and also other related provisions of this law, in accordance with religious principles.”*

Although the Basic Agrarian Law provides the State with an unusual degree of control over all land tenures, much greater security of tenure is afforded to (nonindigenous) citizens granted individual property and use rights (hak milik and hak pakai respectively) or to corporations granted long-term, renewable leaseholds for establishing plantations or constructing plants (hak guna usaha and hak guna bangunan respectively). Whereas regulations, procedures and institutions exist to issue and regulate such tenures, none such exist for the recognition, registration or protection of indigenous peoples’ collective tenures based on customary law or *hak ulayat* (Wallace, Parlindungan, Hutagalung, and Arie, 2004).

This situation remains despite the adoption of National Assembly Decree (TAP/MPR) No. IX/2001 on Agrarian Reform and Natural Resource Management in 2001, which called for a reform of the laws relating to forests, lands and natural resources in order to deal with the persistent land conflicts throughout the archipelago (Burlington, 2004). Article 4 of this decree includes among its goals: *“implementing social, conservation and ecological functions in line with the local socio-cultural conditions” and “recognizing, respecting and protecting the rights of indigenous peoples and the diverse national cultures over agrarian/natural resources.”* Although implementation of this decree remains part of the current parliament’s legal reform programme, it has not yet been given legal effects (ICRAF, 2005).

### **2.3.3. The 1999 Forestry Act**

Law No. 41 of 1999 on Forestry grants almost absolute authority to the State to govern and regulate all matters related to forests and their products irrespective of

whether the forest lands in question are the traditional territories of indigenous peoples. The Law does contain some recognition of limited rights vested in indigenous peoples to manage forests, but only if such forests are designated as 'state forest'. Such a designation in turn authorizes the State to convert the forests to other uses, for example, to issue them to concessionaires on grounds that they are part of "the state forest" and that such conversion is for "the sake of the nation" (AMAN, Sawit Watch, ELSAM, WALHI et.al., 2007)

That the State may take indigenous lands and issue them to concessionaires by invoking the national interest is explicitly provided for in Article 4(3), which states "... *the State still cares for the rights of indigenous peoples, as long as such rights do exist and are recognized and are in line with the national interests.*" The term 'recognized' requires that the State has explicitly and positively granted legal recognition to the rights in question, normally through the issuance of some form of title deed. In most cases, indigenous peoples' rights are not recognized precisely because the State has not issued title deeds (AMAN, Sawit Watch, ELSAM, WALHI et.al., 2007)

#### **2.3.4. The 2004 Plantation Act**

The government of Indonesia considers that the 2004 Plantation Act, which provides a legal basis for developing plantation crops such as oil palm, is fully consistent with and implements Article 35(3) of the Constitution, which stipulates that "*land, water and all the resources found therein are controlled by the state and shall be exploited for the maximum benefit of the people.*" This law fails to provide meaningful protections for indigenous peoples. The promulgation of the Act was met with great concern from indigenous peoples and civil society in Indonesia, as it was viewed as perpetuating deficient treatment of indigenous peoples' rights and indeed compounding these deficiencies (Gatraonline, Jakarta, 12 July 2004). In particular, the Act requires only that indigenous peoples' 'interests' need be considered, rather than respected, the requirement that rights be already formally 'recognized' is still present, and the overriding national interest exception continues to negate indigenous peoples' rights. Moreover, paragraph 7 of the law's general explanatory note states:



*Use permits for estate crops shall take the interests of indigenous peoples (or ulayat rights) into consideration, as long as such rights do exist and are recognized and are not in direct contradiction to higher-level laws and regulations and the national interests. To ensure fair ownership, control, tenure and utilization, regulations shall be established on the maximum and minimum size of land for plantations.*

SawitWatch has documented over one hundred separate conflicts between local communities and palm oil companies throughout Indonesia. The main causes of disputes are land conflicts, allocations of small-holdings, repressive police actions, low pay and pricing (AMAN, Sawit Watch, ELSAM, WALHI et.al., 2007). In 2004, prior to the introduction of the Act, 143 cases of conflict were recorded in that year. By 2006 this number had swollen to over 500 active cases of conflict over land appropriated for plantations. The implementation of the Act has seen harassment and intimidation increase, with the use of Articles 20 and 47, among others, to intimidate indigenous peoples' communities. Article 20 provides for the use of private and state security forces in the 'protection' of plantation areas once lease hold has been granted: *plantation business actors shall perform plantation business safety that is coordinated with the security people and can ask assistance from the surrounding community.*

Article 47 details the punishments for 'use of plantation land without permission', and in combination with Article 20 has created an atmosphere of intimidation and fear.

Article 9(2) of the Plantation Act states *“the applicant of the rights shall carry out consultation with the customary land right-holder and person of right-holder to the land, in order to obtain an agreement on the transfer of the land, and its compensation.”* This provision could be read proactively as requiring agreement or consent from indigenous peoples to the use of their lands. However, in practice, this Article is interpreted to require only agreement as to the level of compensation, not consent to the transfer of the land, and if such agreement cannot be reached then the land may still be appropriated 'for the sake of the nation'. Such concerns have led to a

request for judicial review<sup>15</sup> of the Plantation Act in March 2005 that was approved by the Constitutional Court in 2007.

### 2.3.5. Regional Autonomy

The Regional Autonomy Law of 1999 (*Undang-Undang Otonomi Daerah*), adopted in January 2001, brought a new Indonesia's governance structure from the highly centralistic government of the New Order, which kept close control over the use of resources in the various regions in Indonesia, as well as political and economic developments of various kinds, especially outside Java, to a new governing set up where the local governments especially at the district level are given more authority in decision making, control over resources and increased benefit sharing between the central and local governments. Reclaim of cultural identity and competition over economic and political power characterizes the new decentralization era. (Erb and Sulistianto, 2005).

Reclaiming of cultural identity had become an emerging issue in last couple of years, particularly since 1999. Indigenous peoples feel the importance of maintaining their distinct identity in the midst of massive assimilation attempts by the Government (Kartika and Gautama, 1999; Bamba, 2004; Erni, 2009; Persoon, 2004; Schiller, 2007). Wirayuda in Bamba (2009), however, the Government perceived the demand of indigenous peoples for a distinct political identity would provoke separation and "*erode the nation-state conception*".

A number of indigenous groups have been trying to restore and reclaim their indigenous governance systems through lobby for legal recognition. Over the years after the adoption of Regional Autonomy Law in 1999, a number of local policies have been adopted with regards to indigenous peoples. Among others are: the West Sumatera Provincial Law concerning Indigenous Land, Lebak District Law on the recognition of the Kanekes (or the Baduy) and District Law (Simarmata, 2007). These

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<sup>15</sup> Request for Judicial Review of Law No. 18 Year 2004 on the Government's Stipulation to Replace Law No. 1 Year 2004 on Changes in Law No. 41 Year 1999 on Forestry was filed by the NGOs Coalition on 1 March 2005

laws have been able to provide a space for self-governing of indigenous peoples in these respective province/districts.

On the other hand, competition for control over natural resources and revenue between central and local government (provincial and district levels) has contributed to the political development in Indonesia. The adoption of the Law on Benefit Sharing between Central and Local Government number 25/1999 provided a new space for central and local governments to re-negotiate the unequal benefit sharing of revenue from natural resource exploitation (mining, logging, plantation etc). The Law also provided space for local government to find their own source of revenue including the expansion of natural resources in indigenous territory (Duncan, 2007; Simarmata, 2007).

#### **2.4. Free, Prior and Informed Consent (FPIC)**

The FPIC encompasses the rights associated with indigenous peoples' rights to self-determination and indigenous peoples' rights to lands, territories, and natural resources. It is a procedural right in terms of advancing the implementation of the rights to self-determination, treaties and other human rights (UN General Assembly, 2007). FPIC is particularly relevant for the prevention of conflict and for peace building.

The FPIC has four components; **Free**. Free consent denotes without coercion or free from sponsored ideas to get consent. No manipulation or external influence that hinders self-determination in the process to getting the consent. The process should be compatible with the indigenous customary laws and consent cannot be valid if it is taken from the authority that is not recognized by the indigenous communities or not accountable to the indigenous communities

Second is the **Prior**: An informed consent must be sought sufficiently in advance of any final authorization by the State or third parties or commencement of activities by a company that affects indigenous peoples and their lands, territories and resources. Prior consent requires comprehensive procedure to ensure that indigenous peoples have sufficient time to understand and analyze the information they receive.



Time bound requirement for information dissemination should be compatible to the situation of indigenous peoples although the national legislation may contain provisions for a notice or information but this is not sufficient to provide substantial information. Respect is shown for time requirements of indigenous consultation/consensus processes.

Third is **Informed**. The procedure in obtaining must involve consultation and participation by affected indigenous peoples and must include the full and legally accurate disclosure of information concerning proposed developments in a form that is both accessible and understandable to indigenous peoples. International Workshop on methodologies regarding Free, Prior and Informed Consent and indigenous peoples concluded to imply that “informed” should imply that information is provided that covers (at least) the following aspects:

- a) *The nature, size, pace, reversibility and scope of any proposed project or activity;*
- b) *The reason(s) for or purpose(s) of the project and/or activity;*
- c) *The duration of the above;*
- d) *The locality of areas that will be affected;*
- e) *A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit-sharing in a context that respects the precautionary principle;*
- f) *Personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees and others);*
- g) *Procedures that the project may entail.*

(UN ECOSOC, 2005)

And finally the fourth is the **Consent** itself. *Consent* is a significant element of a decision-making process obtained through genuine consultation and participation. Consultation and full participation of indigenous peoples are crucial components of a consent process. This includes that participation by indigenous peoples and customary or other institutions through their own freely chosen representatives. All parties

should establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect in good faith, and full and equitable participation. Inclusion of a gender perspective and participation of indigenous women are essential, as well as participation of children and youth as appropriate.



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

**CHAPTER III**  
**SITUATION OF THE KANAYATN OF RABA AND THE IBAN OF**  
**SEMUNYING IN WEST KALIMANTAN PROVINCE**

*“Adil Ka’ Talino, Bacuramin Ka’ Saruga, Basengat Ka’ Jubata”*

*(Do justice unto others, take care of the earth, praise the creator)*

A Kanayatn proverb

*Dayak* is a term used as to refer to the native inhabitants of Kalimantan Island that spread across three countries i.e. Brunei Darussalam, Malaysia and Indonesia. A report by Institute Dayakologi (2009) noticed that the first literature to use the term was one by Rademaker in 1790 and since then the *Dayak* remains in use as of today. The report further shows that only in Indonesia’s West Kalimantan alone there are 151 Dayak groups, 100 subgroups and 168 languages. Initially these groups knew nothing about or used the term *Dayak* and they had their own terms such as The Angan , The Bakati’, The Iban, The Kanayatn, The Kayan, The Pompakng etc. Until recently in late 1980s, in Indonesian part of Kalimantan, the term *Dayak* often used by outsiders to represent a derogatory meaning associated with tribalism, barbaric, dirty, backward, uneducated, inlanders, exotic and etc. Along that line, in this study I take the liberty not to use the term Dayak in front of both “the Kanayatn” and “the Iban”.

On the contrary, a number of indigenous intellectuals in West Kalimantan have proudly used the term ‘Dayak’ to show their distinct culture and identity; to marginalization, exclusion unjust treatments against indigenous peoples and further use the term to advocate for the rights of indigenous peoples. On the realization that the marginalized fate of the Dayak was due to a negative impact of development, in 1981, they established a foundation called Yayasan Karya Sosial Pancur Kasih (Pancur Kasih). All the founders were teachers, hence the first service by this foundation was in formal education, which respects the Dayak culture and caters for the Dayak perspective. As well as developing its size, the movement expanded to other fields, such as social, economic, human rights and culture. The Pancur Kasih



movement resulted in the establishment of the first ever indigenous peoples' organization in Indonesia in 1998, the Indigenous Peoples' Alliance of West Kalimantan (Aliansi Masyarakat Adat Kalimantan Barat - AMA Kalbar). AMA Kalbar together with other indigenous peoples' rights defenders initiated and organized the first Congress of Indigenous Peoples of the Indonesian Archipelago (Kongres Masyarakat Adat Nusantara - KMAN) in March 1999. The Congress was held in Jakarta, attended by hundreds of indigenous leaders and representatives from all over Indonesia and resulted in the establishment of the Indigenous Peoples' Alliance of the Archipelago or Aliansi Masyarakat Adat Nusantara-AMAN (Dayakology, 2008; Kartika & Gautama, 1999).

### 3.1. The Kanayatn of Raba

Raba is the home of the Kanayatn, the community is located in the Menjalin Sub-district, Landak District, West Kalimantan. From the capital of the province Pontianak, Raba can be reached by three hours by car or two hours by motorbike.

The centre of Raba community is a mountain called Mount Sapatutn. Aside from being the place of their *Keramat*<sup>1</sup> sacred sites, the mountain serves as the water catchment area for the community as it hosts their remaining customary forest. The use of wood from Mount Sapatutn is firmly limited to domestic purpose and is prohibited for selling purpose. As they consider the Mount Sapatutn as conservation area they had further agreed upon a prohibition to open any paddy field within the sloping area of the mountain. A group of men sometimes go for hunting wild boar (*babotn*) while traditional healers collect herbal medicine on the Mount Sapatutn.

A number of Raba's villagers specially the younger generation have the opportunity to enjoy higher education in cities. Therefore it is quite common to find a family that has some members live outside and work for government offices, private companies and charity organizations such as World Vision International. Nonetheless, most of the populations are rice and rubber farmers. Since 1990s they started to plant cacao in small scale. They also breed pigs, chickens and some cows. The animal husbandry is mostly in small scale for daily domestic consumption and

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<sup>1</sup> The local term for sacred site

ceremonial purposes. These animals can also serve as investment for selling in the market in case of any emergency need for cash.

Rubber plantation was first developed during the 19<sup>th</sup> century during the Dutch colonialization, when they planted the local variety. In late 1970s, the government of Indonesia encouraged the planting of superior quality rubber, known by the community as the ARP Rubber. Later in 1980, a serious fire took place in the rubber plantations and destroyed the super rubber while the local variety, however, survived the fire. Another Government's programme promoting the ARP rubber started in 1998/1989, this time most of the community participated. They later found that another weakness of the ARP rubber was that it was very delicate and could not resist to plant diseases and pests. Also, the ARP rubber was very easy to topple. Since then, the community still firmly relies on cultivating the local rubber of which they believe as the superior variety to what government had been promoting.

A very small number of the villagers still practice the traditional dry rice farm. This is a response to the limited space due to the population growth, where the traditional system requires a big piece of land to be used rotationally from one year to another. The majority have opened the irrigated wet paddy field. They thus have to the incorporated the modern irrigation and planting system including the use of superior quality rice varieties that grow faster than the local one so they can have harvest trice a year. This however was not considered providing a significant improvement for their rice production.

### **3.2. The Iban of Semunying Jaya**

Semunying Jaya is a village located in the Jagoi Babang Sub-district of Bengkayang District within the West Kalimantan Province. This village is an Iban territory bordering Malaysia, with Kuching as the nearest Malaysian town which can be reached via river boat. There is no official information on the Semunying, however according to PT Ledo Lestari's EIA ToR, the community has 68 families. On the other hand, the villagers claimed to have 90 families with total population 478, living on approximately 1,500 hectares land. From Pontianak the capital of West Kalimantan Province, this community can be reached in six hours by car to Seluas,

the capital of Bengkayang District, followed by two hours by a small boat along the Sukumba River.

The Iban of Semunying shares common characteristic of the Kanayatn of Raba in terms of the importance of land and natural resources. They are mostly rice and rubber farmers, hunter and gatherers of forest product. They breed pigs and chickens but their main source of protein intake comes from fishing (in group or individual) on the rivers and lakes as well as from hunting forest's wild animals such as wild boar, deer and etc. It is a common practice for them to go hunting in a big group of men. The hunting is very close to their culture especially since they practice a tradition of welcoming guest with meat they get from hunting. They also usually go for a group fishing called *menuba* using the sap they extract from root *Tuba* bush. The women also have activities that depend on the forest. They collect rattan to make mats called *bidai* and collect vegetables.

Most of the community members engage in trading more often with Malaysia's city Khucing compared to cities in the Indonesian side since it is closer and easier to travel to the Malaysian side. They usually sell agricultural produces, *bidai* mats, smoked fish and rubber. In return they can buy salt, soap, clothes and etc; as a result it is normal to find more Malaysian products in this particular community.

This is in comparison to the Kanayatn of Raba who are more focused in adopting modern agricultural methods in rice farming, the Iban of Semunying still practice the rotational farming system that requires a wide piece of land to enable the land to fallow (*tempasan*). They also hunt and fish more compared to the indigenous peoples in Raba. However, due to their geographical isolation they have less opportunity for higher education together with sanitation and lack of health facilities. Therefore, they depend fully on their farms, the river, lake and forest for their very survival.



### 3.3. The PT Ledo Lestari

PT. Ledo Lestari is owned by the Duta Palma group based in Riau, one of Indonesia's ten largest palm oil refiners and a member of the Roundtable on Sustainable Palm Oil (RSPO). The Duta Palma group has significantly expanded its plantation concession area, notably in Indragiri Hulu District in Riau Province and in West Kalimantan Province. According to the group's website, only in Riau Province, the group controls 60,000 hectares of land.

PT Ledo Lestari was granted a Plantation Business Permit<sup>2</sup> on 17 December 2004 and then a Location Permit<sup>3</sup> of 20,000 hectares land on 20 December 2004, both by the Head of Bengkayang District. The Company later on submitted the proposal for the EIA compliance; following with the establishment of the EIA Committee by the District Head<sup>4</sup>. According to the EIA Term of Reference (EIA ToR), the 20,000 hectares of land covering three Villages i.e. Kumba<sup>5</sup>, Pareh and Sentimok within the Jagoi Babang Sub-district. In addition, it mentioned that a consultation and coordination with relevant government offices/agencies and indigenous communities has been conducted accordingly.

The EIA ToR in addition detailed that the concession covers secondary forest consisting of high value wood like the Borneo Iron Wood (*Ulin/Belian*) as well as some protected endangered species such as Orang Utan, Bear, Tree Tiger, Soft-Shell Turtle, Enggang Bird, Arwana Fish and etc.

### 3.4. PT Surya Jaya Sari

In the case of PT. Surya Jaya Sari (PT. SJS), unfortunately there is no enough background information I could collect about this company. Even more, the villagers are not aware of the complete name of this company and they refer to the company as

<sup>2</sup> This according to the Head of Bengkayang District Letter No.525/1270/HB/2004, 17 December 2004

<sup>3</sup> This according to the Head of Bengkayang District Decree No.13/IL-BPN/BKY/2004, 20 December 2004

<sup>4</sup> This according to the Head of Bengkayang District Decree No 113/2005

<sup>5</sup> The Kumba village later on in 2005 was divided in to three Villages i.e. Kumba, Sinar Baru dan Semunying

PT. SJS. The complete name was provided by Mr. Iskandar S.E. of Landak District's Environmental Agency<sup>6</sup>.

There was also no clarity as to which one of the Environmental Agencies taking care of the ongoing EIA Compliance process. The officer at the Provincial office mentioned that each district in the Province (except for Pontianak and Ketapang Districts) has its own Environmental Agency and these offices are responsible for the EIA processes in their respective District. While the officer in Landak District insisted that the office was not responsible for the PT Surya Jaya Sari's EIA process.

### 3.5. Government Institutions Relevant to Land Acquisition for Palm Oil

#### Plantation

Land acquisition for palm oil plantations involves government institutions and actors from national to local levels. These include, the President, Department of Forestry, Department of Agriculture, National Land Agency, Ministry of Environment, Provincial Government, District Government and other local institutions. And although permits relevant to palm oil plantation mostly come from central level, the land acquisition process is very much determined by local institutions and actors. The Figure 1 below shows the complexity around the roles of these institutions/actors.

**Figure 1. Government Institutions Relevant to Land Acquisition for Palm Oil Plantation**

Permit	Legal Framework	Institution(s)/Actor(s)
Environmental Visibility Compliance	Minister of Agriculture Decree No 26/2007	Minister of Environment (The plantation locates in more than one provinces)
		Governor (The plantation locates in more than one Districts)

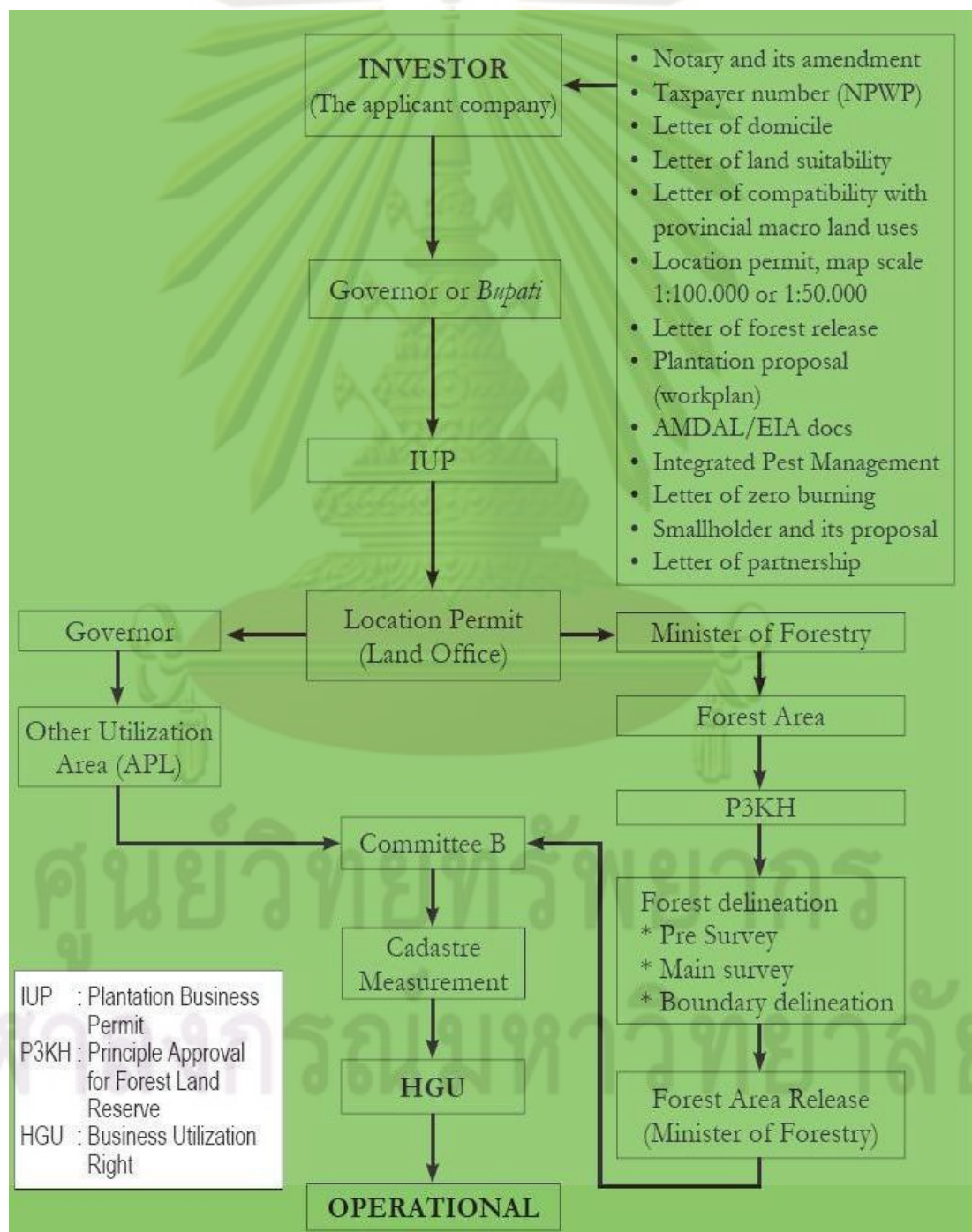
<sup>6</sup> Interview, 29 June 2009

Permit	Legal Framework	Institution(s)/Actor(s)
		District Head (The plantation locates in only one District)
Plantation Business Permit (IUP)	Minister of Agriculture Decree No 26/2007	Governor (The plantation locates in more than one Districts)
		District Head (The plantation locates in only one District)
Location Permit	Basic Agrarian Law	National Land Agency (The plantation locates in more than one provinces or the plantation area covers more than 20,000 hectares)
		Provincial Land Office (The plantation locates in more than one Districts and the plantation area covers not more than 20,000 hectares)
		District Land Office (The plantation locates in only one District and the plantation area covers not more than 20,000 hectares)
Principle Approval for Forest Land Reserve	Forestry Act 1999	Minister of Forestry (The plantation locates within forest area)
Land Release	Basic Agrarian Law	Governor (The plantation locates outside forest area)
Business Utilization Right (HGU)	Minister of Agriculture Decree No 26/2007 and Basic Agrarian Act	National Land Agency



For palm oil plantation development, the two main permits are the Plantation Business Permit (IUP) and the Business Utilization Right (HGU). The Figure 2 below shows the process of obtaining these two permits.

**Figure 2. Process for Plantation Business Permit (IUP) and Business Utilization Right (HGU) According to the Minister of Agriculture Decree No 26/2007. (Source: Sirait, 2009 p.35)**



### **3.6. Public Debate Concerning Biofuel and the Expansion of Indonesia's Palm Oil Plantations**

The existence of PT. Ledo Lestari and PT. Surya Jaya Sari is part of the existing government's target to expand palm oil plantations in Indonesia and PT. Ledo Lestari's plantation in particular in within the Mega Project along the Malaysia-Indonesia border (see Figure 5). The Mega Project was launched in early 2005 with a clear target to develop 1.8 hectare new plantation. Although the project came with a promise to "*bring prosperity, security and environmental protection to the Kalimantan border area*", it has been a public contestation among policy makers, environmentalists, NGOs and indigenous peoples.

Opponents come mostly from environmentalists, NGOs and indigenous peoples. They criticized for the potential environmental impacts and that the project would further encroach ancestral lands and territories of the Dayaks. A business plan developed by the Indonesian State Plantation Corporation (PTPN) contains a map showing the Mega Project areas that include primary rainforests of three National Parks - namely Kayan Mentarang, Betung Kerimun and Danau Sentarum-, the home of more than 100 endangered species, cut through slopes and mountains unsuitable for oil palm cultivation and cut across territories of the indigenous peoples (WWF Indonesia, 2005).

Meanwhile the Indonesia- Malaysia border area is also the watershed of 14 main rivers in Kalimantan Island. Those rivers provide water for the whole Kalimantan, including Malaysia (Sabah and Sarawak) and Brunei Darussalam. In fact, palm oil companies have already moved into the border area in many places, and the plan will be expanded deeper in to Kalimantan border area. In the expansion planning, Indonesian government did not conduct consultation with indigenous peoples. In fact, there was no accessible information with regards to the plan, especially for targeted indigenous communities. In earlier stage, very few of indigenous communities were aware of the Mega Project (Wakker, 2007).

AMAN, a nationwide indigenous peoples' organization in Indonesia issued a letter opposing the Mega Project and brought the issue to international community. In May 2006, the organization submitted a report to the Fifth Session of the UN

Permanent Forum on Indigenous Issues (UNPFII), calling palm oil plantation “tremendous disaster” and further asking the UNPFII to conduct a comprehensive report on this particular issue. In May 2007, in response to AMAN’s request, UNPFII published a report on “Oil Palm and other Commercial Tree Plantations, Monocropping: Impacts on Indigenous Peoples’ Land Tenure and Resource Management Systems and Livelihoods”. The report highlights:

*“Social conflicts associated with large-scale industrial logging (both legal and illegal) and monocropping plantations are basically conflicts about who has the right to own, use and manage the forests. The main protagonists are indigenous peoples versus the state and its machineries (military and police forces, departments of forestry, environment, mining, agriculture, local governments, etc.), the logging, plantation or carbon trading companies and sometimes even NGOs. Land rights remains one of the most contested and violated rights of indigenous peoples. .... the failures on the part of the states to recognize indigenous peoples’ land rights; the persistence of discriminatory laws and policies; the failure to enforce or implement laws; the expropriation of lands in the name of development; the allotment of sacred and cultural sites to individuals and/or failure to recognize and respect indigenous peoples’ control of their territories (Paragraph 6).*

The report further states:

*“The social and environmental impacts of logging and plantations on indigenous peoples’ lands and territories, particularly in the developing countries... show the following: the denial of rights to lands, territories and resources, land alienation, forced evictions, the prevention of access and rights which have led to a decline in the population of indigenous peoples, especially in isolated and remote territories’ and the destruction of resource management systems.....There has been an increase in social conflicts between indigenous peoples and the state and private corporations (divisions are fostered by governments and corporations). There has been food insecurity, severe health problems, including increasing malnutrition and increased mortality; changes in disease ecology resulting in high incidences of*



*diseases; increase of rates of sexually-transmitted diseases due to increasing prostitution in plantation or logging estates...”(Paragraph 33)*

In August 2007, AMAN and NGOs from Indonesia during the 71<sup>st</sup> Session of the United Nations Committee on the Elimination of Racial Discrimination(CERD) requested for a Urgent Action and Early Warning Procedure (Sawit Watch, AMAN, AMA Kalbar, ELSAM et al, 2007). They raised concerns on the potential negative impacts of the Kalimantan-Malaysia oil palm project on indigenous peoples. The Committee’s General Comment states:

1. *The State Party is encouraged to take into consideration the definitions of indigenous and tribal peoples as set out in ILO Convention 169 of 1989 on Indigenous and Tribal Peoples, and to envisage ratification of this instrument (Para 15).*
2. *The State party should recognize and respect indigenous culture, history, language and way of life as an enrichment of the State's cultural identity and provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics (Para 16).*
3. *The State party should review its laws, in particular Law No. 18 of 2004 on Plantations, as well as the way they are interpreted and implemented in practice, to ensure that they respect the rights of indigenous peoples to possess, develop, control and use their communal lands(Para 17).*

Although the third recommendation requires to be followed up within a year, there has been no follow-up or response by the government. A letter sent by the Indonesian Ministry of Foreign Affairs to AMAN mentioned that the government is developing a report in response to the CERD recommendation (Nababan, Sombolinggi & Setra, 2008 pp. 287-297). Later on, The Regional Representatives Council (DPD) joined the opponent groups. On March 2006, before a plenary session of the House of Representatives, they called the Project as *"a disaster project"*(The Jakarta Post, 2006).

On the other side, Indonesian government moved on by taking some significant measures including making a number of policies to support the Projects and inviting more investors to join. Indonesian Minister of Agriculture revealed details plan to develop the world's largest integrated oil palm plantation, including processing facilities, which would run along the 850 kilometer-long along Kalimantan – Malaysia border. To finance the US\$ 567 million plantation project, the Indonesian President and Chamber of Commerce and Industry (KADIN) had already met up with the Chinese government and private sector several times, resulting in several Memorandum of Understanding between - among Others - the Artha Graha and Sinar Mas groups from Indonesia and the Chinese CITIC group and Chinese Development Bank/CDB (The Jakarta Post, 2005).

Within the years of 2006 to 2007, several policies and measures taken by the Government in supporting to biofuels productions as shown in the Figure 3 below.

**Figure 3. Government Measures Supporting Biofuels**

Year	Number	Type	Regulates
2006	5	Presidential Regulation	National Energy Policy
2006	1	Presidential Instruction	Provision and Use of Agrofuel (Biofuel) as an Alternative Fuel
2006	3	Presidential Instruction	Investment Climate Policy Package
2006	32	Agriculture Minister's Regulation	Guidance/Directive on Managing Funds for Developing Sugar Cane Sourced from the 'Strengthening Group Businesses' Capital (PMUK) Fund - State Budget.

Year	Number	Type	Regulates
2006	33	Agriculture Minister's Regulation	Development of Plantations through the Plantation Revitalisation Programme
2006	117	Finance Minister's Regulation	Credit for Developing Agro-Energy and Plantation Revitalisation
2006	51	Energy and Mineral Resources Minister's Regulation	Criteria and Guidance for Traders in Agrofuel (Biofuel) as an Alternative Fuel.
2007	25	Law	Investment
2007	26	Agriculture Minister's Regulation	Guidance on Licensing Plantations
2007	3	Plantations Directorate-General Decree	Maximum Unit Costs for Development of Plantations Participating in the Plantations Revitalisation Programme in 2007.
2008	13A83	Oil and Gas Directorate-General Decree	Standards and Specifications for agrofuel (biofuel) of the biodiesel type as an alternative fuel, for the domestic market.



By the end of 2006, despite an acknowledgement by President Susilo Bambang Yudhoyono over the conservation concerns, yet, there is no official statement from the President that concerning the Mega Project cancellation. The President remains a supporter of the overall border development program.

Regardless of continued critics and opposition to the expansion plan, within 2007, some major palm oil companies planned to spend huge amount of money for expansion of oil palm plantations. For example PT Bakrie Sumatera Plantations (BSP) set a plan to expand 83,000 hectares by acquiring more land for new plantations, and purchasing existing plantations (The Jakarta Post, 2007), while, PT Sampoerna Agro to issue 461.35 million new shares for expansion. In the same year, Mandiri Bank – one of the biggest banks in Indonesia- provided loan to PT Union Sampoerna Triputra Persada (USTP) to help the oil palm plantation firm finance its acquisition of 63,000 hectares of plantation land from Malaysian palm oil company Kulim Berhad (The Jakarta Post, 2007). Foreign countries<sup>7</sup> came in to the picture by offering cooperation and assistance in developing biofuel in Indonesia(The Jakarta Post, 2007).

In the end of 2007, UN FCCC in Bali marked one of the very important global policy making forum on climate change. The Conference discussed issues related to climate change and agreed on adaptation and mitigation mechanism should be taken by all states member to the Convention on Climate Change and Kyoto Protocol. Biofuel was identified as one of the solutions and plantations was in addition was identified as one way to keep the carbon emission low. Indonesian government took the chance to advance its plan for palm oil expansion.

The fall of crude palm oil price since mid 2007 had help in escalating and shaping up the tug war between PROs – CONs sides on the palm oil expansion. Greenpeace, Friends of the Earth, World Wild Fund and Rainforest Movement are among the leading NGOs in opposition, they continued the battle (The Jakarta Post,

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<sup>7</sup> This includes: American Diplomat in Medan Mr. Sean B. Stein said that the American Government will soon help Indonesia build a biodiesel plant from palm oil in Sumatra, followed by the governor of Nangroe Aceh Darussalam Mr. Irwandi Yusuf confirmed to George Soros's investment commitment in palm oil sector in the province.

2006, 2007, 2008). They have been conducting wide international campaigns calling for boycott for Indonesia's oil palm until the Government and Companies settle the environmental and social problems. They also have been actively lobbying big oil palm consumers including Unilever as well as policy makers including the EU. In May 2008, Unilever, a big buyer of oil palm from Indonesia, agreed to buy oil palm from sustainable resource. Immediately, palm oil companies in Indonesia were left without option but to make a promise to stop expanding in to forest and committed to sustainable oil palm. EU had further updated its policy on biofuel and renewal energy that restricts the use of unsustainable oil palm. One month before the voting on the EU policy at the European Parliament, in September, Indonesian Minister of Agriculture went to lobby the Parliament hoping that the body would not adopt the new Policy (The Jakarta Post, 2008).

In July 2007, various Indonesian civil society organizations requested a judicial review of several points in the Investment Law No 25/2007, in particular on the Article 22 concerning control, ownership, benefit and the use of land of private company. The Constitutional Court's decision on 25 March 2008 ruled that "*awarding rights over land with advance extension did indeed go against the 1945 Constitution*". As a result, this point on land use rights was declared unconstitutional, and must be cancelled. The ruling applauded by the civil society groups (Down to Earth, 2008)

Overshadowed by endless oppositions and the fall of oil palm price at global market in 2008, Indonesia and Malaysia as the biggest supplier, agreed upon cutting their CPO production (The Jakarta Post, 2008). In 2007, a group of 19 environmental groups, plantation smallholders and indigenous organizations representing indigenous peoples filed a complaint to the Ombudsman of the International Finance Corporation (IFC), the private arm of the World Bank, over Wilmar International concerning one of the world's top producer's practices in Kalimantan and Sumatera. The complaint resulted in the IFC's decision, made by the World Bank President Mr. Robert Zoellick on Wednesday, 9 September 2009, to suspend funding in the palm oil sector (Jakarta Post, 2009). There is no clarity as to what extent the World Bank's decision will advance the situations of indigenous peoples on the ground particularly to the

Kanayatn of Raba and the Iban of Semunying , nevertheless, the decision was applauded by NGOs and indigenou peoples in Indonesia.



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย



Figure 4. Map of Indonesia

Source: WorldAtlas.com



ศูนย์วิจัยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

**Figure 5. West Kalimantan Province**  
Source: Adapted from Wakker, 2006 p.9



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

**CHAPTER IV**

**CONFLICTING POLICIES AND GAPS IN THE IMPLEMENTATION OF**

**FREE, PRIOR AND INFORMED CONSENT (FPIC)**

Land acquisition process indeed is a contestation that involves three parties, including indigenous peoples who occupy the land; the company who needs the land for oil plantation; and, the government who plans and provide regulation and mechanism of land acquisition. However, as mentioned before, this process has put indigenous peoples in a very vulnerable situation. Therefore, at the international level some mechanism has been set in order to protect the very basic human rights of the peoples who occupied the potential acquisition land. The first part of this Chapter shows the contestation between standards by the three parties on land acquisition process. While the second part of this Chapter shows the government policies in practice, in particular the land acquisition for palm oil plantations in the West Kalimantan Province.

**4.1. Three Standards on Land Acquisition Process**

The Figure 6 below shows the common features and difference between three standards i.e. human rights based, government legal framework and the market based.

***Figure 6. Common Features and Difference between Human Rights Standard, Government Legal Framework and the Market-based Standards.***

Main Features	Human Rights Standard	Government Legal Framework on Land Acquisition	Market-Based Standard
Basis of the Legal Framework	International Human Rights Instruments/Treaties	<ul style="list-style-type: none"> <li>▪ International Human Rights Instruments,</li> <li>▪ National Laws and Policies</li> </ul>	<ul style="list-style-type: none"> <li>▪ Applicable International Human Rights Instrument</li> <li>▪ National Law</li> </ul>
Perception on Indigenous Peoples	Rights Holder	<ul style="list-style-type: none"> <li>▪ Uncivilized, backward , isolated, primitive etc ( to be civilized →</li> </ul>	<ul style="list-style-type: none"> <li>▪ Affected Community,</li> <li>▪ Partner</li> </ul>



Main Features	Human Rights Standard	Government Legal Framework on Land Acquisition	Market-Based Standard
		development) <ul style="list-style-type: none"> <li>Affected Community</li> <li><i>Conditional</i> recognition</li> </ul>	
Rights Holder of Land, territory and Resources	Indigenous Peoples	State	<ul style="list-style-type: none"> <li>State</li> <li>Indigenous Peoples (to some extend)</li> </ul>
Implementation/ Perception on FPIC	<ul style="list-style-type: none"> <li>Free, Prior, Informed &amp; Consent</li> <li>Full Involvement of Indigenous Peoples</li> <li>Consent of Indigenous Peoples</li> </ul>	<ul style="list-style-type: none"> <li>Consultation,</li> <li><i>Conditional</i> Recognition</li> </ul>	<ul style="list-style-type: none"> <li>Conflict Prevention,</li> <li>Facilitate a good relationship with community</li> </ul>
Main Challenges	<ul style="list-style-type: none"> <li>Long Process,</li> <li>Contestation between IPs and State on Definition and Identification</li> </ul>	<ul style="list-style-type: none"> <li>State-led Development (National Interest)</li> <li>Inconsistent with international HR standard (ambiguity)</li> </ul>	<ul style="list-style-type: none"> <li>Respect to national Law</li> <li>Lack of implementation of the RSPO's P&amp;C</li> <li>Vulnerable from manipulation</li> </ul>

#### 4.1.1. International Human Rights Standard

Development affecting indigenous peoples and their territories often do not benefit the peoples living on those territories and may in fact have more of a negative impact on the people and their environment. Mega-infrastructure projects often are pursued without the consent of indigenous peoples and such aggressive development programmes undermine the way of life and development priorities of the indigenous

communities living in those areas. Therefore, standard setting and implementation of the principle of Free, Prior, and Informed Consent as indigenous peoples' right become a challenging issue in international arena.

The basic common understanding of the meaning of the principle of FPIC is that, as the right holders, indigenous peoples have a right to say “NO” or “YES” to proposed development projects at any point during negotiations with government, researchers and corporations. FPIC is also linked with the right of self-determination that is guaranteed in the common Article 1 of International Covenant on Civil and Political Rights (ICCPR) the International Covenant on Economic Social and Cultural Rights (ICESCR):

*“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”*

as well as *Article 3* the Declaration on the Rights of Indigenous Peoples (UNDRIP):

*“Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”*

Over the years indigenous peoples' rights of free, prior and informed consent has been widely accepted. It has been one of the main principals to be fulfilled in any development project that impacts indigenous peoples. In the case of palm oil plantation, a plantation company has to employ the FPIC from the early stage of the plantation's operation. However in this case there seem to be a different understanding on the FPIC itself among indigenous peoples, government and the palm oil company. Indigenous peoples see the FPIC as a principal that has to be followed from the early stage of the plantation in accordance with the international standard. For indigenous peoples, the implementation of the FPIC is justified by their claim over the land ownership that is being targeted by the plantation.

The United Nations Declaration on the Rights of Indigenous Peoples explicitly recognizes the principle of free, prior and informed consent (UN General Assembly, 2007). The FPIC underlines the rights of indigenous peoples to determine and

develop their priorities and strategies for the development or use of their lands or territories and other resources (Article 32 para 1). The UNDRIP further reaffirms the process, mechanism and representation of indigenous peoples during a process of obtaining the FPIC by the State and or by the private company. It highlights the importance of a process based on a good faith of the State and the important role of indigenous institution (Article 32 Para 2 and Article 34). Full participation of indigenous peoples from the perspective inclusive participation (Article 18) and this article considers participation of indigenous peoples' representative throughout the process as an important criterion of the FPIC process.

The importance of protecting indigenous peoples in maintaining their political, economic or social systems in relation to their territorial integrity and resources in obtaining FPIC is affirmed in the Article 20, and that indigenous peoples have the rights to maintain their own means of subsistence and development, and to engage freely in all their traditional and other economic activities (*Para 1*).

In the process of FPIC, special measures should be taken to ensure that identification of indigenous peoples' land, territories and resources should not merely based upon legal papers but should take into account the historical occupation and movement of the concerned indigenous peoples. Lands, territories and resources which indigenous peoples have "*traditionally owned, occupied or otherwise used or acquired*" (Article 26 Para 1) are all classified under this category. Furthermore, the State is urged to provide "*appropriate recognition and protection*" of such lands, territories and resources with "*due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned*" (Article 26 Para 1).

A workshop by the International Indigenous Forum on Biodiversity (IIFB) for the Convention on Biological Diversity's, Ad-hoc Inter-sessional Working Group on Article 8j and related provisions includes the following list of information that must be disclosed as part of an FPIC process:

- a) *The, nature, size and scope of the proposed development or activity;*
- b) *The duration of the development (including the construction phase) or the activity;*



- c) *The locality areas that will be affected,*
- d) *A preliminary assessment of the likely impact of the development;*
- e) *The reasons /purpose for the development;*
- f) *Personnel likely to be involved in both construction and operational phases (including third parties and beneficiaries) of the development process;*
- g) *Specific procedures the development or activity would entail;*
- h) *Potential risks involved (e.g. entry into sacred areas, environmental pollution, partial destruction of a significant situation, disturbance of a breeding ground).*
- i) *The full implications that can realistically be foreseen (e.g., commercial, economic environmental, cultural);*
- j) *Condition for third party involvement.*

In relation to indigenous peoples' land and the free prior informed consent the UNDRIP affirms that no removal shall take place without FPIC and after *consent* has been awarded, indigenous peoples have the rights to “*restitution and redress and with the option to return*” (Article 10). The Declaration further emphasizes the effective mechanisms for just and fair redress for any activities, and appropriate measures to mitigate adverse environmental, economic, social, cultural or spiritual impact (Article 32 Para 3 and Article 20 Paragraph 2).

The FPIC is also a tool to resolve land conflicts between indigenous peoples over disputed lands, territories and resources that have been “*confiscated, taken, occupied, used or damaged without their free prior and informed consent*” (Article 28 Para 1). In the end, the compensation can take form of “*lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress*” (Article 28 Para 2).

Several United Nations committees have made reference to the principle of free, prior and informed consent in their jurisprudence, including in The Committee on the Elimination of Racial Discrimination, The Committee on Economic, Social and Cultural Rights and The Commentary on the Norms on the Responsibilities of

Transnational Corporations and Other Business Enterprises with Regard to Human Rights.

#### 4.1.2. Government Legal Framework on Land Acquisition

FPIC can be considered the basis for all relations between the State and indigenous peoples. The International Court of Justice in its advisory opinion in the Western Sahara case noted this as early as 1975. In that case, the Court stated that entry into the territory of indigenous peoples required the freely informed consent of that people as evidenced by an agreement.

Government of Indonesia's policy and regulation related to palm oil plantation acknowledge the rights of indigenous peoples thus implicitly affirm the principal of FPIC. The Plantation Law No 18/2004 although does not explicitly mention indigenous peoples' rights, however it uses a general term '*masyarakat*' or community to refer to indigenous peoples (*Article 6c*). It also affirms that the plantation planning "*shall be tangible, feasible, realistic and valuable as well as conducted through participatory, integrated, open and accountable process (Article 8)*, the said plantation planning is exclusively developed by Government by "*taking into consideration the interest of affected community*" (*Article 6*).

With regards to the land acquisition for plantations, the Plantation Law further recognizes the indigenous peoples' customary lands "*as long as they still exist, the plantation proponent shall negotiate with indigenous peoples as the owner of the land in order to obtain the land acquisition agreement including the compensation*" (*Article 9-2*). This article in fact provides a conditional recognition over indigenous peoples' land as to what the Constitution and other laws do by stating, "*as long as they still exist*" that allows misinterpretation of the existence of such peoples. Furthermore, the condition of acquisition of indigenous peoples' land has been predefined towards indigenous peoples giving up their land without any option to say "NO". This vague recognition then further materialized in the implementing regulations; the Minister of Environment Decree No 11/2006 regarding Environmental Impact Assessment compliance and the Minister of Agriculture

Decree No 26/2007 regarding Plantation Business Permit (IUP) and Business Utilization Rights (HGU).

The Minister of Environment Decree No 11/2006 regarding Environmental Impact Assessment compliance accords that a plantation shall conduct consultation with affected community in the process of obtaining the EIA Compliance. Upon receiving the EIA Compliance, a company then can apply the plantation permit.

#### **4.1.3. Market-Based Standard: Private Companies' Round Table on Sustainable Palm Oil (RSPO)**

The rising of international concern regarding the production of palm oil at the expense of indigenous peoples, has been on international limelight since the late 1990-s. This had led to the establishment of the Round Table on Sustainable Palm Oil (RSPO) in 2004 as an initiative of some of major palm oil industries and conservation organizations.<sup>1</sup> Some extensive research<sup>2</sup> and meetings since during 2001-2003 preceded the birth of RSPO.<sup>3</sup> The seat of the association is in Zurich, Switzerland, while the secretariat is currently based in Kuala Lumpur with a satellite office in Jakarta. The RSPO aims to establish clear standards for the production and use of palm oil, and encourage trade with the exclusion of palm oil produced in damaging ways by promoting the growth and use of sustainable oil palm products through credible global standards and engagement of stakeholders as its objective.

RSPO's membership comprises representatives from seven sectors of the palm oil industry - Oil palm growers (4 seats, one representative each from Malaysia, Indonesia), palm oil processors (2 seats), consumer goods manufacturers (2 seats), retailers (2 seats), banks/investors (2 seats), environmental NGOs (2 seats), social NGOs (2 seats). The multi-stakeholder representation is mirrored in the governance

<sup>1</sup> The inaugural meeting of the Roundtable took place in Kuala Lumpur, Malaysia on 21 - 22 August 2003 and was attended by 200 participants from 16 countries. The key output from this meeting was the adoption of the Statement of Intent (SOI) which is a non-legally binding expression of support for the Roundtable process. As of 31 August 2004, forty seven organizations have signed the SOI.

<sup>2</sup> In 2001, WWF gave an assignment to Reinier de Man, a Dutch consultant, to explore the possibilities for a Roundtable on Sustainable Palm Oil.

<sup>3</sup> A preparatory meeting was held in London on 20 September 2002 and this was followed by a meeting in Gland on 17 December 2002. These organizations constituted themselves as an Organizing Committee to organize the first Roundtable meeting and to prepare the foundation for the organizational and governance structure for the formation of the RSPO. Reinier de Man was the Organising Committee's facilitator until April 2004.



structure of RSPO such that seats in the Executive Board and project level Working Groups are fairly allocated to each sector. Such multi-stakeholder representation is mirrored in the governance structure of RSPO such that seats in the Executive Board and project level Working Groups are allocated to each sector.

The highest authority in the RSPO is the annual general assembly of members. The assembly will decide the members of the Executive Board, vote on resolutions pertaining to the RSPO and receive the audited accounts. An Executive Board comprises 16 members who are elected by the General Assembly manages RSPO.

The RSPO's Principles & Criteria (P&C) guides the way companies deal with local communities including indigenous peoples, provide information, carry out impact assessments, acquire land, agreement on payments and benefits, settle differences and resolve conflicts and pay compensation. These P&C are in accordance with international laws and makes requirements of companies that go beyond the minimum standards required by national statutory law and ratified international treaties thus the principle FPIC is central to the RSPO's P&C (FPP, 2008). There are several key RSPO's P&C that are relevant to be mentioned here in relation to the rights of indigenous peoples to FPIC (RSPO, 2005).

When acquiring land for palm oil plantation any of the companies shall not use the land where it *“is not legitimately contested by local communities with demonstrable rights”* (Criterion 2.2). This criterion indicated that the company must show *legal ownership or lease, history of land tenure and the actual legal use of the land* (Indicator 1), *evidence that legal boundaries are clearly demarcated and visibly maintained* (Indicator 2). In Addition, the Indicator 3 of this criterion affirms that the company shall *“show where there are, or have been, disputes, additional proof of legal acquisition of title and that fair compensation has been made to previous owners and occupants; and that these have been accepted with free, prior and informed consent”*. A clear guidance further provided that in case of any conflict or dispute over the land, *“the extent of the disputed area should be mapped out in a participatory way”* and they shall show evidence that *“necessary action has been taken to resolve the conflict with relevant parties”* (Guidance to the Criterion 2.2.)

The Criterion 2.3 forbids the use of the land for oil palm does not diminish the legal rights, or customary rights, of other users, without their free, prior and informed consent. This criterion further emphasizes the importance of FPIC and calling for the company to provide maps of an appropriate scale showing extent of recognized customary rights (Indicator 1) and copies of negotiated agreements detailing process of consent (Indicator 2). Guidance for implementation of this criterion is fairly detail and it relates the Criterion 2.3 with other Criteria such as Criterion 6.4, 7.5 and 7.6:

*Where lands are encumbered by legal or customary rights, the grower must demonstrate that these rights are understood and are not being threatened or reduced. This criterion should be considered in conjunction with criteria 6.4, 7.5 and 7.6. Where customary rights areas are unclear these are best established through participatory mapping exercises involving affected and neighbouring communities. This criterion allows for sales and negotiated agreements to compensate other users for lost benefits and/or relinquished rights. Negotiated agreements should be non-coercive and entered into voluntarily, carried out prior to new investments or operations and based on and open sharing of all relevant information in appropriate forms and languages, including assessments of impacts, proposed benefit sharing and legal arrangements. Communities must be permitted to seek legal counsel if they so choose. Communities must be represented through institutions or representatives of their own choosing, operating transparently and in open communication with other community members. Adequate time must be given for customary decision-making and interactive negotiations allowed for, where requested. Negotiated agreements should be binding on all parties and enforceable in the courts. Establishing certainty in land negotiations is of long-term benefit for all parties (Guidance of the Criteria 2.3).*

The RSPO's P&C in particular tackles the issues with regards to new and/or expansion of palm oil plantation on indigenous peoples land without their FPIC. The criteria 7.5 mentions that “no new plantings are established on local peoples' land without their free, prior and informed consent, dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to

*express their views through their own representative institutions*". The Guidance of Criterion 7.5 emphasizes that in further development of consented palm oil plantations, the company in its management plans and operations should maintain sacred sites.

With regards to compensation of indigenous peoples' land, the Criterion 7.6 says "*Local people are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements*". This Criterion shares a common Guideline with Criterion 7.5. above but it provides a list of compliance to indicate the fulfillment of this particular Criterion, including *documented identification and assessment of legal and customary rights* (Indicator 1); *establishment of a system for identifying people entitled to compensation* (Indicator 2); *establishment of a system for calculating and distributing fair compensation (monetary or otherwise)* (Indicator 3); *communities that have lost access and rights to land for plantation expansion are given opportunities to benefit from plantation development* (Indicator 4); and *the process and outcome of any compensation claims should be documented and made publicly available* (Indicator 5).

In line with international human rights law, the RSPO's P&C sets out the FPIC in a central place thus it can be seen as a good faith to put these principles into effort in the palm oil development. For Company such as the PT Daya Landak Plantation (PT.DLP) the implementation of FPIC is aimed at having a good and better relationship with community. Also, the implementation of FPIC is believed to *minimize* conflict with indigenous peoples for it is impossible to have a plantation estate clean from such issues. The FPIC is considered as a conflict management tool.<sup>4</sup> During my field visit to PT DLP's plantation in Landak District, Mr. Moss took me around to show some houses within the premise of the Company of some families that are willing to maintain their land and not to sell them out for plantations. Within DLP's plantations there are peaks of steep hills remain intact for conservation purpose, according to Mr. Moss, this includes a *Keramat* sacred site.

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<sup>4</sup> Interview with Mr. Edrin Moss of Daya Landak Plantation, 18 June 2009.



#### 4.2. Land Acquisition for Palm Oil Plantations: Government Policy in Practice

Indonesia policy framework for obtaining a permit for palm oil plantation requires a series of fairly long complicated process. It involves a set of regulations ruled by relevant government offices. This section discusses the policy processes relevant to palm oil plantations in West Kalimantan.

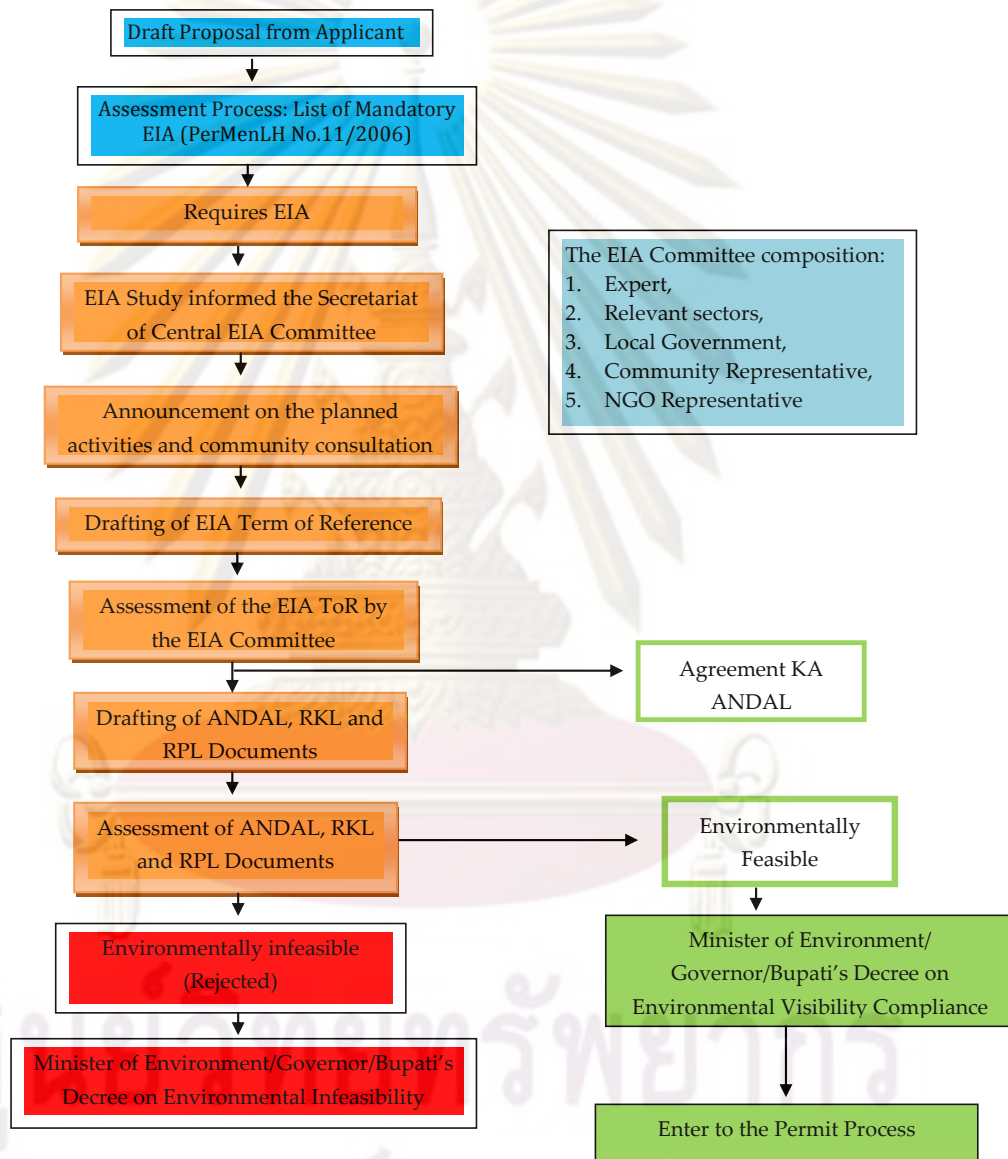
The District's Development Planning Body submits the District's Land Use Plan (RTRW-Rencana Tata Ruang dan Wilayah) to the District Parliament. The RTRWP details the land allocation including of the rural areas allocations for settlement, protected areas and natural resource utilization such as logging, mining, fishery, plantations etc. This RTRW also defines which one among the government offices has the responsibility on each of these categories. After the approval of the RTRW, the District Government then will invite private company to invest on the areas allocated for natural resources utilization.

With regards to the palm oil plantations, there is a long process to be followed by a plantation company before opening a plantation i.e. the Plantation Business Permit, the Location Permit, the Environmental Feasibility Certificate and the Business Utilization Right. In the case of forest conversion for the plantation, the company has to obtain additional permits i.e. the Principal Approval for Forest Land Reserve, The Forest Area Release and the Timber Use Permit respectively before getting the Business Utilization Permit.

In relation to indigenous peoples, it is important to highlight the Environmental Impact Assessment process which in a way place indigenous peoples within its complexity according to the Minister of Environment Decree No 11/2006. It accords that a plantation shall conduct consultation with affected community in the process of obtaining the EIA Compliance. Figure 7 shows complete procedure that includes a consultation with affected indigenous community. However, the involvement of indigenous peoples within the framework of this regulation is limited to consultation. The regulation requires "*consultation*" with indigenous peoples instead of "*consent*" from indigenous peoples, thus there is a fundamental gap in the

perception of the government with regards to the rights of the indigenous peoples to the FPIC.

**Figure 7. Procedure of Environmental Impacts Assessment**



The company should show a letter signed by the community to indicate that the consultation has been conducted and the community has given their *Consent* to give up their land at any cost.

In accordance to the Minister of Agriculture Decree No 26/2007 on Plantation Business Permit (IUP) and Business Utilization Rights (HGU) as shown in the Annex 1, it requires a long and complicated process for a palm oil plantation to obtain a final permit for operation. The process requires a close coordination of government entities such as minister of forestry and its agencies; governor; district head and other relevant bodies such as Land Agency and the Office of District Development Planning. This final process to obtain the legal permit for the beginning of the plantation development clearly does not require involvement of indigenous peoples at any stage. Under this process, the Consent of indigenous peoples has been considered granted in the EIA Documents. Meaning that, the government policy framework for land acquisition for palm oil plantation does not respect and protect fully the rights of affected indigenous community. This is inconsistent with the general recommendation XXIII on the rights of indigenous peoples of the Committee on the Elimination of Racial Discrimination “*calls upon States to ensure that members of indigenous peoples have rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent*” (paragraph 4d). The Committee makes repeated reference to the right to consent and general recommendation XXIII in its concluding observations.

In the actual process of obtaining a Certificate of the EIA Compliance, PT. Ledo Lestari in fact did not fully fulfill the requirement as far as indigenous peoples’ consent is concerned. The Company was granted a Plantation Business Permit<sup>5</sup> in 17 December 2004 and then a Location Permit<sup>6</sup> of 20,000 hectares land in 20 December 2004, both by the Head of Bangkayang District. The Company later on submitted the proposal for the EIA compliance; following with the establishment of the EIA Committee by the District Head<sup>7</sup>.

Along with the lack of protection of indigenous peoples’ rights, yet, there is a space for manipulation of the EIA process. According to the regulation, PT Ledo Lestari shall announce and consult the concerned Community and shall provide a

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<sup>5</sup> This is according to the Head of Bengkayang District Letter No.525/1270/HB/2004, 17 December 2004

<sup>6</sup> This is according to the Head of Bengkayang District Decree No.13/IL-BPN/BKY/2004, 20 December 2004

<sup>7</sup> This is according to the Head of Bengkayang District Decree No 113/2005



letter signed by the community to indicate their *consent*. However, the community testified that they only had an encounter with PT. Ledo Lestari when they deployed in to the village some heavy equipment such as six units of excavators, six units of bulldozers, 1 Johndeere and a number of dump trucks. The community was left to believe that those equipments were going to be used for building a road to Rasau Town in Malaysia and not for opening a plantation. . Furthermore, PT Ledo Lestari should not start the land clearing before obtaining the EIA Certificate. The reality was the community had to witness their *Adat* forest was cut down, paddy fields, fallow land (*danum*), rubber gardens, pepper farms, *Petai* and *Cempedak* gardens were destroyed<sup>8</sup>.

As in the case of PT. SJS in Raba Community, the community denied the consultation. They said that there was indeed a meeting facilitated by the Village Head but they said that it was not a consultation as the village head by then only informed the community about the intention of PT. SJS and there was no agreement taken by then<sup>9</sup>.

PT Ledo Lestari belongs to the Duta Palma Group which is in fact a member to RSPO. This shows a contrary to what the RSPO has set out. This also shows the weakness of the RSPO's P&C when it comes to implementation on the ground by its member. There are some problematic issues that may cause this misconduct. First, the provision of "*in compliance with applicable local, national and ratified international laws and regulations*" is rather problematic given the absence of legal recognition of indigenous peoples' rights within the context of Indonesia's law. Concerning land and resources, endless calls by indigenous peoples that have been given positive response by local governments through several District and Provincial Decrees are simply overruled by the State's exclusive ownership granted by the Constitution Article 33.

With regards to ratified international laws and regulation, in fact the Government of Indonesia has not ratified the ILO 169, which is among the few international legal frameworks relevant to indigenous peoples. The concluding

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<sup>8</sup> Interview with Mr. Jamaluddin, 21-24 June 2009

<sup>9</sup> Interview with Raba Community among others were Timanggong H. Nazarius, Mr. Yordanus Iyur, 18 – 19 June 2009 and 28-29 June 2009

observation ruled by the CERD in 2007 -- to a request by Indonesian civil society concerning the human right violations of indigenous peoples from the mega project palm oil plantation along the Malaysia-Indonesia's border -- in fact has not been responded by Government. The Government of Indonesia at several UN meetings has consistently denied the existence of its indigenous peoples by stating "*all Indonesian are indigenous and they are entitled to the same right*"<sup>10</sup> which can be interpreted as 'there are no indigenous peoples in Indonesia, thus the rights of indigenous peoples become essentially meaningless. In the context of the massive development of oil palm plantations, for example, the State can simply convert indigenous peoples' lands to plantation lands without respect to the rights of affected indigenous peoples (Wright, 2004).

In the context of the corporation responsibility, it is equally important to highlight the Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights also recognizes the principle of FPIC in the context of indigenous peoples by stating:

*"Transnational corporations and other business enterprises shall respect the rights of local communities affected by their activities and the rights of indigenous peoples and communities consistent with international human rights standards such as the Indigenous and Tribal Peoples Convention 169. They shall particularly respect the rights of indigenous peoples and similar communities to own, occupy, develop, control, protect and use their lands, other natural resources, and cultural and intellectual property. They shall also respect the principle of free, prior and informed consent of the indigenous peoples and communities to be affected by their development projects"* (Paragraph 10c).

This is consistent with the views of the former UN Centre for Transnational Corporations within 1991 and 1994 expressed in a series of reports that examine the investments and activities of multinational corporations in indigenous territories. The

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<sup>10</sup> Concluding remark by Indonesia at the UN General Assembly, 13 September 2007, during the adoption of the UN Declaration on the Rights of Indigenous Peoples, despite its voting in favor of the adoption of the Declaration

fourth and final report concluded that multinational companies' "*performance was chiefly determined by the quantity and quality of indigenous peoples' participation in decision making*" and "*the extent to which the laws of the host country gave indigenous peoples the right to withhold consent to development...*" (Paragraph 20).

Second, when it comes to implementation then the real challenges remain. The notorious systematic corruption in Indonesia is simply standing in the way of the promising legal compliance granted by the RSPO P&C provisions. In the context of land acquisition, amid the failure of the policy framework to protect the rights of indigenous peoples, many have been aware of the misconducts - bribery of community leaders and government officials, providing misleading information, misused of villagers' signatures etc. - by private companies' consultants in obtaining legal permits and in conducting consultation with communities (Marcus Colchester and Jiwan, 2006). A government official at the Provincial Environmental Agency confessed that they usually suggested the company to hire *a public relation man* among the targeted community. The *public relation man* would play a role as company representative within the community; provide only positive information about the benefits brought by company<sup>11</sup>.

Most of the so called *agreements* or *consent by communities* were in fact the result from manipulated process. The cases of Semunying and Raba communities certainly show the absence of genuine consultations<sup>12</sup>. Marcus Colchester and Jiwan (2006) reported that in some places, companies compensate indigenous peoples, others do not; this compensation is usually only paid for the loss of fruit trees rather than for the ancestral lands, resources and livelihoods that are lost when the land is taken, and consent to land appropriation is not obtained.

Indonesia's laws and practice are inconsistent with its obligations pursuant to the International Convention on the Elimination of All Forms of Racial Discrimination and indigenous peoples' rights are neither adequately guaranteed by law nor are they adequately protected in practice. This situation was acknowledged by

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<sup>11</sup> Interview with an officer at the West Kalimantan Provincial Environmental Agency, 17 June 2009

<sup>12</sup> Result of discussions with the Iban of Semunying and the Kanayatn of Raba.



President in 9 August 2006 during the commemoration of the International Day of the World's Indigenous Peoples. The President stated that indigenous peoples “*had often been sacrificed for the sake of development, as powerful business interests seek to exploit natural resources,*” and that one of the reasons that this had occurred was because indigenous peoples’ rights were not recognized and protected by a specific law. At that same time, the President also stated that he would propose a law to protect the rights of indigenous peoples (Jakarta Post, 10 August 2006).



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## CHAPTER V

### IMPACT OF PALM OIL PLANTATIONS ON INDIGENOUS PEOPLES: CASE STUDIES FROM THE IBAN OF SEMUNYING AND THE KANAYATN OF RABA IN WEST KALIMANTAN PROVINCE

*“..Our neighboring villages have given up their land to the company. Now they are only thinking about money money and money. They have nothing left for 60 million Indonesian Rupiah (approximately US\$ 6,500). If the money has all spent, where will they go? What they will be?..*

*An Iban Woman of Semunying<sup>1</sup>*

As I mention earlier about the importance of land to indigenous peoples, in this Chapter, I detail the impacts of the government policies relevant to indigenous peoples, lands and natural resources in particular. The first part of this Chapter provides the conflict as a result of land acquisition without free, prior and informed consent of affected indigenous peoples in Semunying and Raba.

The second part of this Chapter shows my observation and the result of my discussions with the Iban of Semunying and the Kanayatn of Raba. I will focus the impacts on: 1) land, culture and identity; 2). food security and livelihood; 3) water resources; 4) criminalization of indigenous leaders and costly justice; 5) the loss of sacred sites and; 6) indigenous women

#### **5.1. Conflict Over Land between Indigenous Peoples and Palm Oil Companies**

##### **5.1.1. Conflict of the Iban of Semunying versus PT. Ledo Lestari**

The problems of the Iban of Semunying started in 2002 when the government granted a plantation permit to PT Agung Multi Perkasa (PT AMP) that included their ancestral lands in the concession area. The resistance of the community was silenced by the help of safeguard force composed of military force and police officers. In the following two years the company had not planted a single palm oil tree; instead it had

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<sup>1</sup> Interview during my field visit, 21 June 2009

cut down timbers in the *Adat* forest resulted in Government's decision to terminate the permit. The conflict escalated with the arrival of PT. Ledo Lestari, a palm oil plantation owned by Duta Palma Group based in Riau, in the same year after the government handed over the plantation permit to this new company. The resistance of the Semunying community escalated within the year of 2005 and came to the limelight during the detention of two Semunying leaders Mr. Momonus (Head of Village) and Mr. Jamaluddin from 30 January to 7 February 2006. The following is the detailed chronology of the conflict taking place from March 2005 to February 2006<sup>2</sup>.

In March 2005, PT. Ledo Lestari deployed in the village some heavy equipment such as six units of excavators, six units of bulldozers, 1 John Deere and a number of dump trucks. The community was informed that those equipments were going to be used for building a road to Rasau Town in Malaysia and not for opening a plantation.

In April 2005, the Company set up a camp in Sekoyak of Sinar Baru, a village next to Semunying. A company representative Mr. Sucipto paid a visit to Semunying and informed the community on their presence in the neighboring village. Again, the Semunying community was made to believe that the Company did not intend to develop a plantation within their ancestral territory

Within July 2005, a road construction took place and used up part of the Semunying's territory including farms and rubber gardens. The community fined the company for Rp. 1,000,000 (one million Indonesian Rupiah or about US\$ 100), which the company did not pay. As a result, the community protested by holding a motorbike of the Company as well as filed a complaint to the nearby police office at Jagoi Babang Sub District

Within August 2005, the Company began to open the plantation with land clearing activity. This activity further took up the Semunying's territory including

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<sup>2</sup> This is according to a Letter sent by The Iban of Semunying to the Indonesian National Commission on Human Rights (KOMNAS HAM), verified during the field visit



paddy fields, fallow land (*danum*), rubber gardens, pepper farms, Petai and Cempedak gardens, and *Adat* forest.

Within September 2005, The Village Head Mr. Momonus and Tumenggung (Chief) Mr. Baeng together with some other community representatives<sup>3</sup> met the Company requesting the company to stop the land clearing on their ancestral land. They were received by two officers Mr. Kristianto and Mr. Bambang. The demand was denied and the company continued the clearing.

On 14 October 2005, The Community's representatives met the District's Head of Finance Mr. Baja. The meeting resulted in Mr. Baja suggesting the Community to send a complaint to the Government of Bengkayang District with a copy to the Head of Jagoi Babang Sub District. In the following day, the Community's representatives met with the Vice Head of District Mr. Suryaman Gidot to inform the District Government on the land occupation by the Company. The officer suggested that the Semunying territory to be an enclave, out of the PT. Ledo Lesrati's concession. He further suggested them to draw a clear boundary. However, until November 2005, despite the continued appeals by the community, the Company continued the land clearing. All of the community's repeated requests were ignored by the company.

On 2 December 2005, a community delegate met the Company at its Sekoyak Camp to again appeal the company to stop its further expansion in to the Semunying's territory. The delegate was received by the Company's officers including the Field Technical Manager Mr. Muslimin, a District Police officer Mr. Bripda Diky. The request to not clearing approximately four thousand hectare of enclave forest met no response from the company.

On 8 Desember 2005, two Company's representatives the Field Technical Manager Mr. Muslimin and Public Relation Officer Mr. Geri together with Head of District Police Mr. Diky visited the community. Through that meeting, the company had asked reasons behind Semunying's resistance against the plantation. The

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<sup>3</sup> Mr. Julius , Mr. Abdul Tamin, Mr. Jeliboh, Mr. Janang (member of Adat Council), Iman and Simbolon

company later on offered a partnership scheme (*pola kemitraan*) with the community. The offer was turned down. In 11 December 2005, the Community found that the Company had cleared approximately three hectares of the -already agreed upon-enclave. Out of anger, in the following day the Community seized one unit of excavator and six units of chainsaws.

This action resulted in the company's Field Technical Manager Mr. Muslimin together with three Bengkayang's police officers and two officers of Singkawang Mobile Brigade coming to the community asking for the equipment to be released. The villagers refused for a reason that the company had yet to settle the land conflict. Through that meeting, the community invited the company to come by 19 December 2005. The request was followed by an official invitation sent in 17 December 2005. However, The Company did not show up.

On 22 December 2005, The Community sent an official letter to the Company. The main points of the letter were:

1. The Community condemned the cutting of their *Adat* forest by the Company,
2. The Community refused the palm oil plantation,
3. The Community urged the Company to leave the ancestral territory of Semunying Jaya immediately,
4. The Community urged the Company to recover the *Adat* forest and rehabilitate the other environmental damage, and
5. The Community fined the Company for damaging their land and *adat* forest according to the Iban customary law.

On the same day, The Village Head Mr. Momonus received a letter from Bengkayang District Police Resort with allegations of committing threat and asking for bribery. According to the letter, Mr. Momonus had to report to the Police Resort by 20 December 2009 at 09.00 AM. Mr. Momonus went to the Police Resort on the following day together with Mr. Jamaluddin.

On 28 December 2005, the Community went to see Friends of The Earth - West Kalimantan (FoEWK), the Dayak Union to inform on their situation. This followed by a letter to the FoEWK and Indigenous Peoples' Alliance of the Archipelago - West Kalimantan Branch for legal assistance and advocacy. On 3 January 2006, Mr. Momonus and Mr. Jamaluddin assigned a lawyer Mr. Sulistiono SH. to represent their case.

On 4 January 2006, Mr. Momonus, Mr. Jamaludin and some other community representatives went to see the Head of the West Kalimantan Development Planning Agency Mr. Pak Tri Budiarto. They were informed that the Company in fact had not obtained the IPK (logging Permit). According to Mr. Budiarto, the case could be considered as illegal logging. The case however was never been brought to the court.

On 6 January 2006, Government of Bengkayang District organized a meeting with community representatives. The meeting was aimed at hearing the community's demands against the Company. The meeting was chaired by Mr. Ir. Yonathan Peno and resulted in:

1. The community refused the Company, even with a partnership scheme,
2. The ancestral territory of the Seumying that had been cleared by the Company shall be rehabilitated by the Company immediately,
3. The Company must pay the penalty according to the Iban customary law,
4. The equipments that were held by the community would be returned upon satisfactory remedies over the community's demands.

On 13 January 2006, Government's representatives together with the Company's representatives met the community to find out the reasons behind the community's rejection. The Community remained on their position as of 6 January 2006.

On 17 January 2006, Mr. Jamaludin, Mr. Nuh Rusmanto, Mr. Laken, Mr. Andi, and Mr. Abulifah were summoned by the Bengkayang District Police Resort as



witnesses concerning the holding of the Company's equipment. They claimed to be intimidated during the meeting by a police officer (anonymous). It was said that there were threatened to be kidnapped for they had resisted to provide a letter of acceptance for the Company.

On 21 January 2006, Mr. Momonus and Mr. Jamaludin received a letter from Bengkayang District Police Resort<sup>4</sup> as the suspects of committing threatening, grabbing and asking for bribery. The letter also ordered the two men to see the Police Investigator by 23 January 2006. On the same day, their Lawyer Mr. Sulistiono, SH, sent a letter asking for suspension of investigation of Mr. Momonus and Mr. Jamaludin to the West Kalimantan Province's Police Commander. The request was granted on the following day and it was valid until 30 January 2006.

On the same day on 22 January 2006, Mr. Momonus sent a letter<sup>5</sup> to the Provincial Police Commander concerning the conflict between the community and the Company. The letter was followed with a meeting between the Community and the Police Commander on 28 January 2006.

However, on 30 January 2006, Mr. Momonus together with Pak Jamal went to report at the Jagoi Babang Police Resort. There were put in custody on their arrival. They were released on 7 February 2006 after exhausted calls of the Lawyer and a nationwide public support calling for their release.

### **5.1.2. Conflict of the Kanayatn of Raba versus PT. Surya Jaya Sari**

The case of PT. Surya Jaya Sari (PT. SJS), unfortunately there is no enough background information I could collect about this company. Even more, as the villagers are not aware of the complete name of this company and they refer to the company as PT. SJS. The complete name was provided by Mr. Iskandar S.E. of Landak District's Environmental Agency<sup>6</sup>.

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<sup>4</sup> Letter No.Pol:Sp.gl/18/I/2006/Reskrim, 19 January 2006

<sup>5</sup> Letter No. 10/SJ-05/I/2006, 22 January 2006

<sup>6</sup> Interview, 29 June 2009

Within the last two years the Kanayatn of Raba has been facing conflict with PT. SJS. Their first encounter with the company took place in 2006 when the Head of Village called for a community meeting. The meeting was held in the Office of the Village Head where he introduced a man as a representative of PT. SJS and further explained the company's intention to develop a palm oil plantation in Raba. The meeting failed to reach an agreement among the community members on either they were going to permit the company or not. A follow up meeting was conducted a few days later, attended by community leaders in the house of Timanggong Hadrianus Nazarius, one of the Raba leaders. The majority of attendants opposed the company but somehow they again could not reach an agreement. As of today, there is no clarity if PT. SJS has obtained the relevant permits, yet the company has opened a nursery in the village.

## **5.2. The Impacts of Palm Oil Plantations on Indigenous Peoples**

### **5.2.1. Land, Culture and Identity**

*...I said to the man from the Company: we are living in an independent country and we are all protected by law. Cannot you see that this is our adat forest? That this is our territory?....*

***Mr. Momonus, the Head of Semunying Village***<sup>7</sup>

Conflict between indigenous peoples with palm oil companies is mainly rooted in land. Both of these communities are mainly rice and rubber farmers as well as gatherers of forest products and other natural resources. Most importantly, their economic, social, cultural and spiritual systems are very much depending on land and natural resources and they consider this special relation with land characterizes their distinct identity as peoples. The presence of PT LL in Semunying had resulted in the loss of land for plantations without their free and prior informed consent, while the Raba community is under a process to face the same situation as to the Semunying community.

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<sup>7</sup> Interview during my field visit, 22 June 2009

The Semunying had lost approximately ten thousand hectares of their land as a consequence of the PT. LL's operation. This includes forest, fallow land (*danum*), gardens, paddy fields, lake and a river (Photo 1 and 2). This area was used to serve as means of subsistence for the Semunying, therefore the loss of the land had resulted in a compelling decline in their livelihood.

While in the case of Raba Village, there is no clarity as to how big the land that is going to be converted in to palm oil plantation. Some said 5,000 hectares and some said less, both options will certainly include the rice fields as well as rubber and fruits gardens of the Community. It was also said that the plantation will obviously cover the Mount Sapatutn and the main river runs across the village (Photo 3). The slope of the Mount Sapatutn hosts sacred sites, gardens and forest providing herbals medicines and woods.

Customary traditions and laws (*adat*) still play a vital role in the organization of indigenous peoples, including among the Iban of Semunying and the Kanayatn of Raba. The customary law determines land ownership and utilization, including, in defining the appropriate time for the community to start planting. In addition, a common practice among indigenous community is the labor sharing for planting and harvest. Traditional knowledge is central of land resource utilization among indigenous peoples such as to define the appropriate time and techniques for planting, seeds preservation, use of traditional herbals medicines etc. This knowledge and inter-generations transfer continues in practice as long as the land and resources remain intact. With the loss of land for plantations will then certainly devastate their culture and further harm their effort in maintaining their very existence as distinct peoples.

Furthermore, the existing national legal framework concerning land does not guarantee the return of the land to indigenous peoples after the utilization by a private company. The Business Utilization Permit is valid up to 30 years and the existing law says that the company shall return the land to the State. In this regard, the plantation permit is indeed a way to take away indigenous peoples' ownership and control over their lands.



### 5.2.2. Food Security and Livelihood

The Iban has been famous for their hunting tradition and for their traditional life that is so much depending on the natural resources. In Semunying, as their *Adat* forest has been cut down the hunting ground has automatically disappeared (Photo 4). The villagers complain about the difficulty in finding animals these days. Mr. Jamaluddin told me he regretted that he could not welcome me with an appropriate welcoming feast that usually includes meat from hunting. Not that he did not want to but just a day before my arrival in the village a group of men went for hunting the whole day without a success.

The women (Photo 5) expressed their concerns about the hunting failures since the company arrived. They also raised concern about the much lesser vegetables to be found as the forest where they used to go to collect vegetable has gone. There is no question about how the loss of their paddy fields has contributed to their decline in annual yields. A similar case occurs due to the loss of a lake (Photo 6) where they usually went for fishing. The only fishing ground left is the Sukumba River which they share with their neighboring communities. In addition, the women complain of a declined catch due to increasing overfishing of and increased activities along the Sukumba River.

Villagers in Raba raised more or less similar concerns to the people in Semunying particularly regarding the threats of losing fruits and rubber gardens in the slope of Mount Sapatutn if PT SJS is finally operating. The paddy fields in the valley right down the Mount Sapatutn are also at a threat of water scarcity, particularly during the dry season.

The common practice in the palm oil development is a promise that the palm oil plantation will bring prosperity to the local people including indigenous peoples as they can work as plantation workers or as small holders under a partnership scheme. However the past experiences in other places throughout the country represent a rather different story. In most cases, as the local lack in opportunity for higher

education, they usually only be employed for low paid positions such as seeder, harvester, driver and etc, while the high paid jobs would be for outsiders.

The same situation occurred around the so-called a partnership scheme. A partnership scheme put the community in a disadvantaged position. The partnership composition varies from 20:80 to 15:85. A 20:80 scheme means that if a family gives up one hectare of their land, in return they will manage a 0.2 hectare plantation. However, the 0.2 hectares plantation is not a free gift at all. In fact, after giving up their land, a small holder family should pay for the plantation development, chemicals for fertilizer and pesticide and etc. In addition, they must sell their produce to the company. Mr. Sutan Muhammad<sup>8</sup> of the Talang Mamak in Riau, Sumatera for example testified that they had give up and moved from their land when the plantation company came as they believed that the plantation would bring them a better life as small holders. However, years later, they were still poor and they were still indebted. They had to sell their produce to the Company at a price set out by the company and they were paid once a month for their produce. Since they could not survive with the payment, they would set aside some of their produce to be sold to illegal market with a rather higher price. Mr. Sutan Muhammad called it “we are stealing from our own pocket”.

### **5.2.3. Water Resources**

Indigenous communities generally use water from natural source such as river, well or spring. The loss of water source has been a main concern of both Semunying and Raba communities. In the case of Semunying, the loss of forest serving as water reservoir has been tremendously problematic since the PT.LL came in operation. As this village is located in a remote area along the border with Malaysia, the development programme such as water pipe is absent in this village. Before PT. LL. came to Semunying, this community used to fetch water for drinking from a small river called Semunying River courses across the village. And the river was the only clean water source as they did not have the culture of digging a well. While the other

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<sup>8</sup> Personal communication, 2005

river called Sukumba River is mainly used for transportation to both Malaysian side and to other destinations within Indonesian territory.

Since the PT.LL came to operation, the Semuying River has been badly polluted. The river is muddy making it impossible to drink the water. Today, during the rainy season, the community depends on the water they collect from the rain which certainly limited to the extent of to how much their water containers can accommodate. From the discussion with the community, the women explained that they could not afford to have as many water containers as they need as those are very expensive ones, approximately 750,000 Indonesian Rupiah or about US\$ 80 for a one cubic fiber container. After the raining season, rain water can only lasted for a week or two. During the dry season they have to fetch muddy water from Sukumba River (Photo 7), the water should be kept in containers for a night to allow the sediments to go down. This will produce the water they can consume in the following morning. In addition to provide a water source in the dry season, the Sukumba River also serves for transportation, bathing, clothes washing as well as toilet.

As in the case of Raba, the villagers have concerns of a threat will be arisen as result of the inclusion of the Mount Sapatutn in to the plantation area of PT. SJS. As the Mount Sapatutn serves as water catchment area feeding the wells and river that serves their domestic needs as well as for their paddy fields. Mr. Yordanus Iyur<sup>9</sup> (Photo 8) admits the difficulties he has been dealing with since the PT.SJS came to Raba. His house is located at the nearest part of the village to where the nursery of the PT. SJS is operating. A river where he used for domestic needs has been badly polluted thus the man in his 60s who lives with his wife has to walk further to fetch clean water.

#### **5.2.4. Criminalization of Indigenous Leaders and Costly Justice**

Having a long time unresolved conflict with the PT. LL, the Semuying community has gone through a series of hardships. Detention of the Village Head Pak Momonus and Pak Jamal from 30 January to 7 February 2006 was a result of the

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<sup>9</sup> Interview, 28 June 2009



community's resistance against the presence of the palm oil plantation (Photo 9). Since the beginning of the conflict there has been a constant presence of insecurity feeling resulted from the presence of plantation's security guards as well as regular visits from police officers.

In the case of the detention of the Semunying leaders, the financial cost has been extremely expensive for the community to bear. The village is about two hours by boat to Jagoi Babang the nearby police station where these two leaders were put behind bars. Before and after the detention of these two leaders, they had to travel to Jagoi Babang in responding to the several calls by the Jagoi Babang Police Resort, when they were considered both as witnesses and suspects. One way trip to Jagoi Babang costs around 500,000 Indonesian Rupiah or about US\$ 55, an expensive amount for the community to put up with as the police did not provide any financial support during the legal case was taking place. Despite the free legal assistance provided by NGOs, yet, these NGOs have to seek for the financial support to enable them performing the support effectively and the community needs some fund to maintain the communication with these supporting NGOs.

The community is still very much depending on the customary law and any dispute in the village is usually settled by the customary court. This indigenous judiciary system does not cost a lot and the settlement process is normally in a way that is familiar with them. Therefore, having the conflict with PT.LL, in particular during the leaders detention, the community has been forced to understand and follow a system which is absolutely alien to them.

#### **5.2.5. The Loss of Sacred Sites**

Indigenous peoples have a close connection with their land particularly since their traditional beliefs and spiritual life are very much related to nature. The traditions and rituals remind a central part of the spiritual life of the Iban and Kanayatn. The forest host sacred sites for the community to hold rituals. Tumenggung (Chief) Baeng of Semunying (Photo 10) believes that several hardships had happened in the community since the arrival of PT. LL and since a big part of their *Adat* forest

has been cut down. There are sacred sites or *Keramat* sacred in the forest and the community believe that the forest is the home for not only trees and animal but it also the home of spirits. He explained that since the home of the spirits has been destroyed, that had made them upset and wandering in the village causing disturbances such as harvest failure, sudden death, illness and accidents<sup>10</sup>.

As in the case of Raba, Mount Sapatutn is the centre of spiritual life of the community. The mountain hosts of community's *Keramat* sacred sites. They conduct ritual at the *Keramat* before and after rice planting. A seven-yearly annual ritual also takes place on the Mount Sapatutn. Tumenggung (Chief) H. Nazarius of Raba (Photo 11) was concerned that the presence of PT. SJS - which he was told will occupy half of the Mount Sapatutn- will not only destroy the community's water reservoir but will as well destroy the irreplaceable *Keramat* thus will further erode their culture<sup>11</sup>.

#### 5.2.6. Indigenous Women

*..The company is getting nearer from day to day, it is around our corner now. I think it is only 200 hectares of our adat forest remains. There is no more place to collect rattan so we can make the Bidai mat no more. Men still go for hunting but they never bring any animal. The hunting gives us meat no more. Our Semunying River have been polluted....*

*An Iban Women of Semunying<sup>12</sup>*

Despite their enormous assets and contribution to society, indigenous women still suffer from multiple discrimination on the basis of both being women and as indigenous. They are often marginalized from decision-making processes both within and outside their communities. They are subjected to extreme poverty, trafficking, illiteracy, lack of access to ancestral lands, non-existent or poor health care and to violence in the private and the public sphere. This violence is exacerbated when indigenous communities find themselves in the midst of conflict and women become the target of violence with political motives, when going about their daily work,

<sup>10</sup> Interview, 21 – 24 June 2009

<sup>11</sup> Interview, 29 June 2009

<sup>12</sup> Interview during my field visit, 22 June 2009

fetching wood or water for the family. Their domestic role often makes them the most vulnerable section within their indigenous community when lands and resources are taken away or destroyed. A report shows that indigenous women in East Kalimantan have to walk further to fetch water for domestic needs as their river has been polluted by PT. Kelian Equatorial Mining (PT.KEM), a mining company own by Rio Tinto (Reed, 1995; Sombolinggi, Setra & Jiwan, 2006).

Since PT Ledo Lestari arrived the landscape of the Semuying has completely changed. Forest has been cut down, wild animals disappeared, river has been badly polluted and their farms and gardens have been destroyed. These situations have further placed women of Semunying in to a deeper trouble.

Since the forest has been cut down, hunting has always failed them. As the lake has gone the men can fish less. This situation directly impacts the women. They have to provide less meat and fish for their family. Once they made *bidai* mats for selling in nearby town at quite good price. Today, these women cannot find rattan to make *bidai* mats anymore, hence their financial contribution to their families have declined.

Their domestic roles make the women the most vulnerable section of the community. The loss of their forest, farms and gardens have also made it difficult to find the once abundant vegetables. Once the Semunying River served them clean water but as the river has been polluted hence there is no more clean water. Today, during the rainy season they have to collect rain drops. While in the dry season they have to walk further to collect water from the Sukumba River. They have to keep the muddy water from Sukumba River for one night for sediments.

Despite the heavy burdens confronting them, yet these Semunying women show only courage and strength. They bravely join the man in fighting the PT. Ledo Lestari. Amid the conflict, a group of women even managed to reclaim a total of 50 hectares of land from the company and turned them in to rice fields. Early in 2009, these women organized themselves in to a self-help group and took over some of the land which has been cleared by the company.



In addition to the current situation of indigenous women in Semunying and Raba, there is also possibility of their future exposure to harmful chemicals used by the plantation. Pesticides, including herbicides, are commonly used in oil palm plantations, despite their adverse impacts on human beings and the environment. Around 25 different pesticides are used in oil palm plantations, but monitoring is difficult due to lack of control and documentation (Friends of the Earth, 2005). Under Indonesia's regulation, only people who have been trained and certified are allowed to use paraquat. However, in reality, training is often lacking and protective clothing - where provided - is unusable. It is also difficult to prove that untrained and uncertified workers are not using chemicals. In his keynote speech to the Roundtable on Sustainable Palm Oil, October 2004, Former Indonesian agriculture minister, Mr. Bungaran Saragih, admitted the dangers of herbicides use in oil palm plantations (RSPO, 2005).

The use of chemical in oil palm plantation mostly affects indigenous women who are traditionally responsible of domestic works such as fetching water and washing, moreover, water pollution can cause reproduction problems. Women workers in plantations are exposed to a greater risk from the negative impacts of chemicals. Some agricultural workers using *glyphosate* have had pregnancy problems. In March 2002, Pesticide Action Network Asia Pacific and Tenaganita, launched their report highlighted the suffering of women plantation workers, who work daily as pesticide sprayers.

The acute paraquat poisoning symptoms include nosebleeds, eye irritation, contact dermatitis, skin irritation and sores, nail discoloration, nail loss and abdominal ulceration. This is of particular concern since farmers may become more dependent on Roundup. Later in 2003, CropChoice News reported scientists' over Monsanto's Roundup. Another concern was raised by Dr. Mae-Wan Ho and Prof. Joe Cummins, leading scientists at the London-based Institute of Science in Society. They called for an urgent regulatory review on glyphosate. They pointed to effects of exposure to glyphosate including an increased risk of late spontaneous abortions (ISIS, 2005). Monsanto rejected these findings (Down to Earth, 2005). Over the years many scientists had also raised concerns over the use of dangerous chemicals promoted by

Monsanto including Roundup (Moslemi, Sipahutar, Benachour, & Seralini, 2005; Richard, Cox & Sorgan, 2006; GM-free Ireland Network, 2007).

Paraquat has been banned in Austria, Denmark, Finland, Sweden, Hungary and Slovenia. Paraquat dichloride, known simply as ‘paraquat’, has become one of the most widely used herbicides the world for more than 40 years. In Indonesia, it is often sold as Gramoxone. This highly toxic weed-killer is commonly used in oil palm plantations in South East Asia. It may be fatal if inhaled, ingested or absorbed through the skin. No antidote for paraquat poisoning yet. The main concern about paraquat is its risks to plantation workers. Indonesia, in addition to North Korea and Togo have applied severe restrictions upon its use (Down to Earth, 2005).

The use of *Glyphosate* is reported to be taking *Paraquat* place as the ‘queen of herbicides’. Monsanto, one manufacturer of Roundup - a glyphosate-based herbicide used worldwide, including on genetically modified plants - claims it “can be used as part of an environmentally responsible weed control program and fit with the vision of sustainable agriculture and environmental protection” (Monsanto, 2004). Later, anti-pesticide campaigners revealed the evidence of toxic effects on human, environment, and resistance in some target weed species. It said that *glyphosate* applications require surfactants that are highly toxic (Pesticide Action Network Asia Pacific and Tenaganita, 2002)

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## CHAPTER VI

### CONCLUSIONS

As shown in the previous Chapters IV and V, the presence of palm oil plantations have resulted in difficulties confronting daily life of indigenous peoples in Semunying (the Iban) and Raba (the Kanayatn). The conflict and the presence of the plantations have resulted in problem pertaining to: 1) land, culture and identity; 2) food security and livelihood; 3) water resources; 4) criminalization of indigenous leaders and costly justice; 5) the loss of sacred sites and; 6) indigenous women. These conflicts however are manifestations resulted from various factors such as the conflicting standards i.e. human rights, government policy and the market-based standards. In addition to that, the absence of recognition over indigenous peoples rights and the imposition of development projects --in this case, the palm oil plantation-- impacting indigenous peoples at some points making it difficult to them to fully enjoy the development, hence the development is seen as an *aggression* to their existence.

The rights of indigenous peoples including the FPIC are recognized by a number of intergovernmental organizations, international bodies, conventions and international human rights law in varying degrees such as in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Racial Discrimination (CERD) and Convention on the Biological Diversity (CBD).

It is supportive of and complementary to the growing number of bodies and processes elaborating on this FPIC principle. The reality that FPIC is being discussed and elaborated on at numerous international and national political arenas over the years underscores the evolution and crystallization of this right as a standard to be applied in relation to indigenous peoples in pursuing of social and environmental justice, and human rights for all.



The FPIC encompasses the rights associated with indigenous peoples' rights to self-determination and indigenous peoples' rights to lands, territories, and natural resources. It is a procedural right in terms of advancing the implementation of the rights to self-determination, treaties and other human rights and particularly relevant for the prevention of conflict and for peace building. FPIC can be considered the basis for all relations between the state and indigenous peoples.

And yet, as far as the state it concern, land seems to be mainly for acquisition and utilization for development purposes and other state expenditure. The existing Government of Indonesia's policy and regulation relevant to palm oil plantations the rights, interest and full participation of indigenous peoples in palm oil plantation development have been acknowledged. However, in the implementing regulation such as the regulations for EIA compliance, Plantation Business Permit and Business Utilization Right, the rights of indigenous peoples has been a minor consideration, therefore a meaningful FPIC is absence. This practice shows the inconsistency with international human rights standard where the Indonesian government is a part of.

Majority of the palm oil business have been aware of the rights of indigenous peoples and through RSPO have adopted the RSPO Principles and Criteria that reaffirms the rights of indigenous peoples and further put the FPIC as a fundamental compliance in their plantations development particularly when dealing with indigenous peoples' land. Nonetheless, this Principles and Criteria have become meaningless and remain rhetoric without a genuine implementation on the ground as shown in the case of PT. Ledo Lestari a company of the Duta Palma Group which is a member of RSPO, against the Dayak Iban in Semunying and PT. Surya Jaya Lestari against the Dayak Kanayatn in Raba.

Government should take special measures to safeguard access to land of indigenous peoples in order to guarantee their social, cultural and economic development. Mechanisms such as land funds and a claim settlement process where they exist are encouraged. The recognition of rights of indigenous peoples to specific lands which they occupy cannot be separated from the recognition of other rights and must be in accordance to the international human rights standard.

The existence of a fair constitutional and legal system, including a fair judicial system, able to guarantee due process of law is an important framework for the success and implementation of FPIC. In some countries experience has shown that the establishment of fair judicial processes for the implementation of treaties, agreements and other constructive arrangements with indigenous peoples has been a useful means towards the respect of such agreements and the education of the indigenous and non-indigenous communities.

The absence of genuine recognition of the rights of indigenous peoples in Indonesia has resulted in costly conflict for all parties, the government, private company and indigenous peoples at the most. Reform in the national laws and policy to be consistent with international standard should be made to ensure the protection of indigenous peoples and further prevent them from social exclusion and discrimination. Such reform shall take in to account full participation of indigenous peoples. A preliminary assessment and review of existing policy framework can be an initial step to provide a comprehensive roadmap toward the reformed policy. The reform process shall indeed require a long process and involvement of multi parties, therefore sufficient resources shall be available to enable a participatory reform.



ศูนย์วิจัยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

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ศูนย์วิทยทรัพยากร

จุฬาลงกรณ์มหาวิทยาลัย



**APPENDIX A.**  
**PHOTOGRAPHS**



Photograph 1. Pak Jamaluddin, lays in front of him the freshly-cleared land by PT.Ledo Lestari. He claims the community has lost too much including its haunting ground, a clean river, gardens and paddy field.

*Photo by Rukka Sombolinggi*



Photograph 2. Cleared forest, in the backdrop is a villa of the plantation owner known by the community as Pak Surya. *Photo by Rukka Sombolinggi*



Photograph 3. Raba Village's Mount Sapatutn, paddy fields and a small river to the right. *Photo by Rukka Sombolinggi*



Photograph 4. Cleared Adat forest with the remaining of the forest in the backdrop. *Photo by Rukka Sombolinggi*





Photograph 5. These women complain for less vegetables to be found and loss of water resource due to the loss of the *Adat* forest. *Photo by Rukka Sombolnggi*



Photograph 6. This area was a lake where the community used to go for fishing. *Photo by Rukka Sombolnggi*





Photograph 7. The Sukumba River for transportation and fishing. The only water source left for washing clothes, bathing, drinking and other domestic purpose. *Photo by Rukka Sombolinggi*



Photograph 8. Mr. Yordanus Iyur who in his 60s lives alone with his wife, now in his 60s has to walk farther to fetch clean water as the river near his house has been polluted by the palm oil nursery. *Photo by Rukka Sombolinggi*



Photograph 9. Semunying Village Head Mr. Momonus (front) and Mr. Jamal behind the bars. They were put behind the bars from 30 January to 7 February 2006. *Photo Doc.: WALHI Kalbar*



Photograph 10. Tumenggung (Chief) Baeng regrets the lost of Keramat sacred sited due to the forest cut. *Photo by Rukka Sombolnggi*



Photograph 11. Timanggong (Chief) H. Nazarious concerns about the loss of their sacred sites if the PT.SJS finally comes in operation.

*Photo by Rukka Sombolnggi*

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย



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**Rukka Sombolinggi** is a Toraya and is the fifth of eight children of Mr. Puang Laso' Sombolinggi' and Ms. Den Upa' Rombelayuk.

Ms. Sombolinggi previously worked with AMAN, the Indigenous Peoples' Alliance of the Archipelago Indonesia. She currently works as a consultant on indigenous peoples' issues and serves as Member of the Executive Council of Asia Indigenous Peoples Pact (AIPP).

In 2006, she co-authored AMAN's report to the Sixth Session of the UN Permanent Forum on Indigenous Issues (UNPFII) on "*Millions of Hectares of Oil palm Plantations in Indonesia: A Tremendous Disaster for Indigenous Peoples*". The report resulted in an UN study report on *Oil Palm and Other Commercial Tree Plantations, Monocropping: Impacts on Indigenous Peoples' Land Tenure and Resource Management Systems and Livelihoods*" published in 2007.

Since 2007, Ms. Sombolinggi' has contributed to the "*Indigenous World*", an annual report published by the International Work Group in Indigenous Affairs (IWGIA), an NGO based in Copenhagen, Denmark supporting indigenous peoples' movements across the world including Asia. She also contributed to "*Indigenous Concept in Asia*" a book was published by IWGIA in early 2009.

ศูนย์วิทยทรัพยากร

จุฬาลงกรณ์มหาวิทยาลัย