

Bachelor Thesis

The effect of legal pluralism and unequal power relations on the expropriation of customary communities in Indonesia

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Abstract

In recent years, a lot of research has been done on the relation between the increase of land right related conflicts and the expansion of palm oil production in Indonesia. Many scholars put forth, that palm oil companies acquire customary land, without the communities' consent. The conflicts, which emerged from this, form the basis for this essay. Indonesia is a country of legal pluralism. Examining conflicts on land rights in a country of multiple legal orders requires an approach of anthropology of law. Emanating from this, this thesis aims at uncovering the factors, which are underlying the conflicts between *adat* (customary) communities and palm oil companies. The factors which are examined here include; first the different perceptions of property under customary and under state law. Second, the existing of multiple legal orders under which different claims for property are legitimate. And third, the different levels of power and access between customary communities and palm oil companies. I argue, that different perceptions of property lead to disagreements about how land is supposed to be acquired. I continue that the existence of different legal orders results in contradicting claims for legitimacy. Hereon, I argue that different levels of access to these legal orders determine the extent of power and thus determine the land expropriation. I conclude that all three factors are underlying the land expropriation of customary communities in Indonesia.

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1. Introduction:

This thesis aims to uncover the underlying causes of palm oil related conflicts in Indonesia, by examining cases of the region Kalimantan, located on the Borneo island of Indonesia and from the region of West Sumatra.

Palm oil production in Indonesia has significantly increased during the last ten years. Palm oil is used for a wide range of products, from soap over food to bio fuel. Indonesia's government has made significant revenues from palm oil production and its export. The government makes money of taxes, which are flowing through increasing private investment. The district authorities are often corrupted and make money through working for the companies, see chapter 4. Over the last years, the palm oil industry's contribution to Indonesia's Gross Domestic Product (GDP) has risen to 4.5 percent and palm oil export added for 3.5 million US dollars to government revenue (istockanalyst, 2009). This makes the palm oil industry a significant factor contributing to the country's economic growth.

The expansion of palm oil plantations in Indonesia brings with it severe consequences for indigenous communities. In recent years there were numerous cases of conflicts between *adat* (customary) communities and palm oil companies based on contradicting claims on land. The recorded conflicts indicate, that palm oil companies cleared customary land, without the communities' consent or acknowledging their rights. The province of West Kalimantan intends an expansion of palm oil plantations by five million hectares, which is more than the other provinces of Indonesia planned. At the same time West Kalimantan shows the second highest rate of oil palm related conflict in Indonesia. (Sirait,2009)

And yet (for the reasons mentioned above) its is in the interest of the government and the local authorities to keep increasing palm oil production (Colchester et al, 2006). To do that, more and more land needs to be cleared so that palm oil plantations can be build up. However, large areas of land in Indonesia are cultivated by customary communities since generations. Since customary communities like to keep on living on their ancestral land, the government had to consider how to provide the land for the establishment of palm oil plantations (Sirait, 2009). The government intervened in the self-governance of customary communities. First, the government made amendments to already existing laws on *adat* communities. Since the independence from the Dutch colonial rule in 1945, those laws indicated the recognition of customary local communities and their self-governance by customary laws and regulations. In 2002 however, the government added 'as long as it does not contradict with the national interest' (Sirait, 2009). Since the national interest is not further specified, the government made sure to be able to determine this interest according to the situation it faces. This has implications for customary communities in far as it might be interpreted as opposing state interest, if they oppose the establishment of a palm oil company. Second, customary communities are often left with no alternative than to engage with palm oil companies, once they settled. This engagement works via partnership schemes, see 3.3, which are claimed to be beneficial to customary communities. However, many recorded conflicts indicate the opposite. These schemes render customary communities completely dependent on the companies, because they have to purchase all farming input from the company. This puts the companies in a monopolistic position and decreases the possibility of self sufficiency and self determination of customary communities. Third, the government requires customary communities to move along the line of state procedures and grammar when it comes to the engagement with palm oil companies. Like this, communities have to formulate complaints and requests according to business standards as set by the government and the oil companies. Although *adat* is interpreted differently among customary communities in Indonesia, we can say that *adat* law in general differs from contemporary Indonesian state law, see chapter 3. So-called task forces were set up, which claim to represent every stakeholder concerned with the palm oil plantation and to be responsible for mediating between the two different forms of governance. However, again there is evidence of conflicts regarding the way these task forces are

operating.

The conflicts in Kalimantan and in West Sumatra, see chapter 4, illustrate the three mentioned forms of intervening by the government and the implications they had on the self-governance of local customary communities.

1.1 Research objective

A lot of research has been done, to show that the establishment of palm oil plantations is the source of many conflicts related to land rights in Indonesia. Many scholars have acknowledged, that palm oil plantations are often established on customary land without the communities' consent or acknowledging their rights. Knowing this, I want to examine the processes by which new land for plantations is acquired and why these seem to be breeding grounds for conflict.

Indonesia is a land of legal pluralism, where having legitimacy to use a land means something different under state law than under customary law. Yet I think, that the source of the many land right related conflicts goes beyond the difference in laws. The exercise of power often plays a role in these conflicts. That means we have to consider the social and political context of the conflicting parties. Only considering the legal context would not be enough. Therefore, I argue from an anthropological perspective on law. Throughout this thesis, I argue that the government, the district authorities and the palm oil companies are using several sources of power to fundamentally constrain the self-governance of customary communities. So while I will stress the historical background of the conflicts and the differences between state and customary law concerning land acquisition, I will focus on the difference between customary communities and palm oil companies in accessing power to examine whether this impacts the outcome of the conflict. Interesting for the reader is, that there are other factors contributing to the ignorance of complaints and requests of customary communities next to following customary procedures instead of state procedures.

To support my findings, I revert to a comprehensive theoretical framework. I use concepts by von Benda-Beckmann (2006), to conceptualize the differences in perceiving property relations between customary law and state law. This will help the reader to understand that there exist different legal orders in Indonesia. I will outline Semi-Autonomous Social fields (Falk Moore, 1972), to show that these different legal orders can be understood as separate fields in which different claims for land rights are legitimate. In other words, it provides a concept for explaining why *adat* claims for land are legitimate among *adat* communities since generations, but not under state law. This shows the reader that there are different arenas to make claims legitimate, which leads to conflict. However, we will soon notice, that these legal orders are not as equal in power. Therefore I introduce theories, which dwell on the role of power and access in conflicts (Ribot, 2002, Sikor and Lund, 2009, Sjaastad and Cousins, 2008, Ribot and Peluso, 2003, Cheyns, 2012). Like this, I can give the reader an understanding of how power and authority are exercised in Indonesia to acquire land and to detain customary communities in the attempt to complain about it. The cases of Kalimantan and West Sumatra exemplify these assumptions. The mentioned theories will provide the reader with a conceptual framework, which will facilitate the reconstruction of my findings.

Based on this I attempt to dismantle why customary communities can be expropriated by palm oil companies in Indonesia. To do that, I formulated the following research question:

What are the factors underlying the land expropriation of customary communities by palm oil companies in Indonesia?

Hereby, I focus on three factors and examine the impact they have on the land expropriation. First, I examine the impact, which different land tenure systems have on the expropriation of customary land. Second I focus on the different legal arenas in Indonesia to have a claim for land legitimized and the impact they have on the land expropriation. Third I focus on the impact, which the distribution of power and access has on the expropriation of customary land.

The analysis of these factors will provide the reader with information on how land is ac-

quainted, controlled and managed under customary as well as under state law. Moreover, the analysis will illustrate why each of the conflicting parties feels legitimate in its claim for land. Finally it will dismantle if having access to the legal field of the state means to have power over the land expropriation.

1.2 Research methodology

To gather as many and as diverse information on the topic as possible, I read a broad selection of academic articles and looked into already existing (field) research on the topic. To get insight into the current legal concept of Indonesia, I first read in the history of the country. Although the pre-colonial history of Indonesia is important, I will not go into detailed events. I rather touch the topic to explain the resulting legal system which is crucial to the existing legal pluralism in Indonesia. I am aware that there is no common *adat* and that there are many different interpretations of it existing in Indonesia. Because of its vagueness, the concept of *adat* somehow created a platform for political opportunism throughout the last century. I will however not stress the subject in this thesis, because it would exceed its scope. This includes that I will not dwell on conflicts within customary communities. In short I will focus on three cases of conflicts reported between local customary communities and palm oil companies and district authorities in West and Central Kalimantan as well as in West Sumatra. Another limitation of this thesis is that it is merely a literature study. This means I did not carry out field research and gathered my information from other on-site work or secondary literature. I tried to include articles from both authors from outside and inside Indonesia in order to gain a view as accurate as possible. Extensive case studies as carried out by Sirait (2009) or by Colchester et al. (2006) are very helpful to get a better insight into the reality of people directly affected by the expansion of palm oil production. Obviously the limitations here are my incapacity to understand the Indonesian language and that I rely on the experiences of other researchers.

1.3 Research area

As indicated in the map below, the region of Kalimantan is located on the Borneo island of Indonesia. The first case described in chapter 4 is located in West Kalimantan. There are approximately four million people living in West Kalimantan (Sirait, 2009). The most common forms of agriculture in the region are mixed rubber gardens and palm oil. As mentioned above, the region of West Kalimantan is supposed to expand its palm oil plantations by five million hectares. At present time, West Kalimantan accounts for six percent of Indonesia's palm oil production, with 0.35 million hectares used for oil palms (USDA, 2009; Potter and Badock, 2004; Colchester et al., 2006 in Rietberg, 2010). The second case described is located in Central Kalimantan. Central Kalimantan accounts for one million hectares planted with oil palms and a further 3.4 million hectares allotted to oil palm plantations. The third case described is located the village Pondok Damar and is not related to the establishment of a palm oil plantation. The village of Pondok Damar is located in West Sumatra.

Figure 1. Geographical map of Indonesia



(<http://www.indonesiamatters.com/86/indonesian-provinces-map>, accessed 24 Februari 2013)

1.4 Structure of the thesis

After introducing possible reasons for conflicts around land rights considering palm oil production in this chapter, I will provide the theoretical framework in chapter 2. The theoretical framework includes concepts, learned in previous courses. I will dwell on concepts of legal pluralism and ideas on categorizing property as well as on theories of power and access.

Subsequently in chapter 3, I will provide the reader with detailed information on legal requirements considering land acquisition under state and customary law. Chapter 3 also deals with state policies, with regard to customary self-governance. In chapter 4, I will display three cases in which conflicts on land expropriation have been reported. The case studies entail describing the process of establishing palm oil plantations. In chapter 5, I analyze my findings based on the conceptual framework. I connect the concepts of property, legitimacy, power and access to the information of the case studies. Like this I can draw comprehensive conclusions at the end of chapter 5.

2. Theoretical framework

2.1 Introduction

Throughout this chapter I will introduce the theoretical framework, which builds the conceptual foundation for analyzing the conflicts between customary communities and palm oil companies, which are illustrated in this thesis. Throughout this thesis I argue, that customary communities and the government of Indonesia have fundamentally different understandings of property. I will approach how these differences can be explained by reverting to concepts of property by von Benda-Beckmann et al (2006) in 2.2. Subsequently in 2.3 I will elaborate the concept of Semi-Autonomous Social Fields (Falk Moore, 1972) to illustrate that there are different arenas to claim legitimacy for land rights. This enables me to reconstruct two things in later analysis. Primary, different understandings of property relations are a part of reality in Indonesia. Secondly, there are different arenas in Indonesia where legitimacy can be claimed. However, it is crucial to identify that levels of access to those arenas shape the outcome of the conflicts between customary communities and palm oil companies in Indonesia. I will revert to concepts of power and access in 2.4. Those concepts provide an analytical tool to dismantle the establishment of power relations and the impact they have on accessing different Semi-Autonomous Social Fields and ultimately the outcome of the conflicts displayed in this thesis. 2.5 displays a brief summary of this chapter.

2.2 property

The concept of property is complex and understood very differently among cultures. In order to provide an analytical tool to examine property relations, von Benda-Beckmann et al (2006) developed a concept differentiating between three categories of how to perceive the notion of property. They explain differing definitions of it, by going from categorical rules of property over concrete relations between property and its holders, to differing ideological identifications with property and its meanings. By bringing these concepts forth we can capture different understandings of the term property. In this paper I argue, that property is understood differently under *adat* and state law.

2.2.1 three layers

The legal-institutional layer describes property relations as categorical. It provides an analytical framework for general categories of property relations, which are constructed by property-holders and objects and rights as well as obligations attached to these. Rules and procedures within this structure are created by legal institutions. The legal institutional layer differs between societies. Whereas it is treated as an individual legal sub-field in very institutionalized societies, it is inherent to the way of living in less institutionalized societies. Family relations and inheritance for example play a crucial role in the structure of *adat* communities and are also incorporated in the way property is handed on. Under state law, property is handled as one of many different legal sub-fields. Nonetheless, it is suggested by the authors to use this layer as a tool to compare different categorical property relations. It is indicated that property is essentially linked to other mechanisms such as the market and the infrastructure. So with this layer we can illuminate the difference between customary and state law when it comes to the categorical understanding of property.

The authors develop the concept 'bundle of rights', which can be used to analyze different

aspects within specific categories of property rights. ‘Sticks’ are a metaphor for benefits, responsibilities and conditions of property rights. In this case, it is interesting to focus on respective politics for transferring land rights, inheritance on the one and signing documents over on the other hand.

Arguing that the relationships between property-holders has to be taken into account, the authors develop the layer of ‘concretized social relationships’. Within this layer, property is not defined by category but rather by its characteristics, such as who is the holder, the manager, which is the object, how old it is and so on. Focusing on this thesis, the concept of this layer is a useful tool to unfold rights, which have established themselves or changed over time in respect to different actors. A state forest for example, which has been managed by a neighboring community and transferred into sacred land over decades, can hold the interests of several actors at some point. An *adat* community claims the area of land because it has cultivated it since decades, while the palm oil company claims the area because it has obtained a permit to use the land from the National Land Agency. The National Land Agency claims the land because the government has deemed the area as state domain.

According to von Benda-Beckmann et al (2006), it is important to understand the respective ideology when analyzing property rights. The ideological layer is useful to explore the perspectives on property rights and relations of indigenous communities and their environment- physical as well as social. To incorporate ideology is essential when trying to understand how legal institutions and property rights are represented and employed in different societies. Moreover, it is useful for the examination of the influence ideologies had over time on perceptions of property. For this thesis it is important to include the ideological layer, because we can observe that the state law was influenced by the colonial rule and is directed towards private property rights and formal contracts to make agreements. Customary communities did not incorporate the Dutch legal system into their own and thus follow a different ideology directed towards tradition and oral agreements.

2.3 Semi-autonomous social fields

However these different understandings are not the source of the conflicts related to land rights in Indonesia, but rather the different arenas in which property can be claimed and in how far one has access to these arenas. Therefore I introduce the concept of Semi-Autonomous Social fields (Falk Moore, 1972) here. This concept elaborates that there are different laws, rules and procedures which are legitimate in one Semi-Autonomous Social Field but do not have to be in another. Throughout this thesis it will help to understand why customary communities and palm oil companies each claim legitimacy for their claims related to land rights.

One difficulty throughout the analysis of this paper will be to explain the different understandings of legitimacy in a context of legal pluralism. The following part will elaborate a concept, which gives a space to several parties analyzed as different but equal social units.

Sally Falk Moore (1972) established a concept, suited for the study of law in complex societies regarding the social context and its change over time. This concept, Semi-Autonomous Social fields (SAFs), analyzes the semi autonomy of social spheres. That means, it describes a specific social field, say a corporate group, with its internally established rules, norms and symbols within a broader social context, which also consists of its rules, laws, norms and symbols. The central argument of this discipline of analysis is that a semi-autonomous social field can be studied as a social unit, able to induce and enforce own rules and laws while it is simultaneously exposed to more general rules and laws and their adaptations over time. To explain this abstract concept, the author gives an example of a corporate group within itself as a semi-autonomous social field and within the context of a network of corporate groups as another, more broader semi-autonomous social field. However, the SAF is not determined by the extent of its organization, like a corporate group, but rather by its range of autonomy. In other words, the field’s limits are determined by how far its internal rules are accepted or can be enforced.

For this thesis, it is interesting how the author approaches how the SAF, as a field with inter-

nally legitimate rules, acts on policies and laws legislated by government agencies and institutions which may have changed over time. This confrontation of different sets of laws, which are internally seen as equally legitimate, brings forth consequences for both fields as will be elaborated in the following chapters. For example, it is accepted by the customary community that a family owns a plot of land because it has been inherited in that family for a long time. However, if the family tries to make its claim for the land legitimate under state law, this argument will not suffice because the rules determining land ownership are different under state law. Therefore, to have an analytical tool like SAF, will facilitate the analysis of different understandings of legitimacy in a context of legal pluralism.

2.4 Access

Different scholars have acknowledged, when studying different societies, that there is often a gap between legislating policies and the implementation of them. Ribot (2002) recognized that there is an important gap between official property titles and access to resources. This acknowledgement is important for this paper, because it can facilitate the analysis of different reasons behind claims for the same resource. In this part, I will draw on findings of Ribot(2002), Sikor and Lund (2009), Sjaastad and Cousins (2008) and Ribot and Peluso (2003), who all differentiate in their own way between formal granting to rights and access to use. These access theories have in common, that they go further than observing only the official rights to benefit from a resource. They enable the analysis of different claims to land with respect to who is actually benefiting from the resource. For this thesis that is essential, because it tries to capture claims to land in an environment of legal pluralism, because customary as well as state institutions claim legitimization. At the end of this section I refer to Cheyns (2012) to display that there is a dominant form of rules and procedures for articulating claims to land rights.

In his article “Theorizing access: forest profits along Senegal’s charcoal commodity chains”, Jesse C. Ribot (2002) emphasises the distinction between policy prescriptions and actual practices. Referring to policies about property rights, he stresses that the access to resources has to be analysed by encompassing more aspects than legalistic concepts of ownership. Those are aspects like structures within a group, relations, status and mechanisms like coercion or rent. These aspects are, next to legal ownership, also contributing to whether someone has access to resources or not. It is emphasised, that the access to resources is determined by formal and informal rules directed by both, state and non-state actors. For example, the land tenure system of *adat* communities relies on inheritance, status in the community and cultivation. This has to be taken into account when we want to understand how communities manage property and why they disagree with the plans of palm oil companies to manage it.

A major point of the text is, that benefits are not necessarily depending on ownership, but on status in a given society. He illustrates this on an example of a village, which owns property but lacks sufficient access to technology, the market and essentially to the state. The one, who does have access to those resources however is also able to benefit from the land. So it is important to pay attention to underlying power relations. This point is crucial for this thesis. The government wants to increase the output of oil palms. Customary communities cultivate areas since generations, thus have access to the resource- the land. However, they lack access to capital and markets. Palm oil companies have access to capital, the market and get permits to use the land from the government. Ribot and Peluso (2003) also support, that access to important resources, like markets, tools and knowledge determine people’s ability to benefit from natural resources without having the property titles.

Further on, Ribot and Peluso (2003) differentiate between access, as ‘the ability to benefit from things’ and property as ‘legitimate social relationships’. (p.153) This is important when we want to analyze why claims for property by customary communities are not seen as legitimate by the state although they are accessing the land.

Sjaastad and Cousins (2008) pick up on the concept of formalization of land rights and also point to the danger to think that formalization can be used as a universal tool to guarantee access and to remedy insecurity of tenure. This aspect comes forth in chapter 4, where we will see that contracts between customary communities and palm oil companies are breached and farmers are left with less land than agreed upon.

Ribot's (2002) 'access mapping' aims at encompassing all relevant factors to 'who benefits how much and from what'. The approach contains identifying every actor along the commodity chain and evaluating the income and profit at each level along the commodity chain. Moreover it entails evaluating the distribution of benefits and income within the group, so that the maintenance and the control over these benefits can be unfolded and mapped. In short the analysis considers both, the distribution of profit and the underlying structures of maintenance and control of that distribution. This concept entertains an important aspect of the conflicts between customary communities and palm oil companies. Many members of *adat* communities report, that the palm oil companies take a great share of the profit while they do not have enough to support their families. Throughout the case studies in chapter 4 communities report that they feel that only a handful of people profits from the palm oil plantation. This often refers to the leaders of the various stakeholders of the palm oil production- customary leaders, government officials, district authorities and company managers.

Sikor and Lund (2009) provide an insightful elaboration on access in terms of power and authority, which will also be useful in the analysis later. They argue, that access and property are closely interrelated with the extend of power and authority, concerning natural resources. Their central argument is, that people want to get their claims of access to particular resources legitimized in times of economical change for example when they are required to defend them. This strive for legitimization is simultaneously creating or maintaining a politico-legal institution, which is executing it. In other words, access only becomes property after being recognized by a politico-legal institution, and this institution in turn is only legitimized if people in question are listening to it (Lund, 2002 in Sikor and Lund, 2009). Throughout the following chapters it will become apparent that property rights are more often established through the execution of power than through having access to the resources in question. So this concept is useful to dismantle power relations underlying the conflicts and in how far they are influencing their outcome.

The authors identify the political dynamic of property rights as the struggle between several parties to gain authority over the other(s). Thereby or therefore, they are establishing, confirming to or erasing authority, expecting to be able to benefit from it. This is especially applicable in post-colonial contexts, because there are several institutions trying to (re)gain their legitimacy authorized. This point will come forth when we examine post-colonial Indonesia. Different regimes struggled over authority after the independence from communist over authoritarian to decentralized governance. The concept will help to illuminate the implications those struggles had on customary law. Sikor and Lund (2009) engross the importance of legitimizing practices and indicate that governments can change legal practices through policies and statements without actually changing legislation. Important for local struggles over land rights is therefore the notion of public, private, common ownership, which can be changed inadequately and add to a misinterpretation of existing land rights.

As already indicated above, another crucial condition for legitimacy is that a wider range of people accept the authority of an institution, or that the institution is able to enforce its authority through other means of power. Other means of power, like the army or police, can act as a tool to grant property rights. Many communities report that they have been threatened by the police and the task force when they articulated their complaints about the palm oil company. Throughout the following chapters will become apparent that intimidation is used in order to keep communities from opposing the palm oil companies. Power and authority than interact like property rights and access. They are not separable from each other and have to be analysed considering how they are actually employed and how they are manifested.

Throughout the next chapters we will see that during the struggle to get their claims legiti-

mized, customary communities have to articulate their requests and complaints according to procedural standards used by the government. Emmanuelle Cheyns (2012) picks up a concept, which focuses on the gap between customary communities and international stakeholders created by forms of knowledge and language norms. She explains that requests or complaints by customary communities are often ignored because powerful stakeholders claim that community members lack a liberal and professional form of articulation. Non Governmental Organizations explain that even if the content of a complaint is appropriate, it is still not recognized because communities convey the message wrong. Emotions like anger and frustration are discredited through making it seem misplaced in a discussion related to land rights. In chapter 4 we will see that customary communities wrote letters of complaints, which were ignored. Moreover, they were discouraged from pursuing their requests because they did not have written proof of ownership and could therefore not defend their claim in front of the government. Other communities were told that they should not continue to fight disagreements they had with the palm oil company after engaging in a contract, because they lack the ability to understand the technicalities of the contracts. Cheyns (2012) illustrates that customary communities are often exposed to a forum, which is dominated by international stakeholders and a professional or technocratic form of language. The following chapters will outline that customary often have to adjust to those forums in order to articulate their complaints and requests.

2.5 Conclusion

It is difficult to summarize this chapter, because all of the concepts mentioned are important for understanding the conflicts between *adat* communities and palm oil companies and will recur in the analysis. However, I will name here the most important aspects of the theories. In order to display that there are differences in understanding property between customary and state institutions, I revert to the institutional, the concretized and the ideological layer of property relations (von Benda-Beckmann et al, 2006). To explain that there are different legal fields in which legitimacy can be claimed, I use the concept of Semi-Autonomous Social Fields (Falk Moore, 1972). To analyze in how far having access to these fields influences who dominates in the conflict, I revert to access theories developed by Ribot (2002), Sikor and Lund (2009), Sjaastad and Cousins (2008) and Ribot and Peluso (2003). Those theories help to identify how having access influences having power and authority and vice versa. Moreover I revert to Cheyns (2012) to show that there is a dominant form of rules and procedures related to land rights and customary communities have to conform to that form in order to voice their requests.

3. Legal and historical context of Indonesia

3.1 Introduction

The following chapter contains the legal and the historical context. This part is of importance as it explains the context of conflicts regarding ownership and land rights in Indonesia. I will do this to illuminate the implications, which historical events and legal requirements can bear for conflicts around land rights.

The chapter consists of five passages. Let me give a brief overview on the issues I want to underline in the various parts of this chapter;

In the following part 3.2, I will stress the historical background to land tenure in Indonesia, as the historical context is fundamental for the understanding of the actual conflict concerning land rights in Indonesia.

In the subsequent part 3.3, I will discuss the legal requirements, as implemented by the government of Indonesia, regarding the establishment of palm oil plantations. This part includes the formal procedures and laws, which have to be followed by applicants for land, e.g. a palm oil company. This part aims at giving an overview on legal procedures and at providing a base for subsequent analyzing of how people deal with those requirements in chapter 5.

In the next part 3.4, I will go deeper into the legal requirements considering land tenure within the *adat* culture. This includes elaborating on meanings, adaptations and applications of customary law regarding land tenure. I will explain how the land tenure system under *adat* is executed in the three case studies, which will be the subject of the following chapter. An investigation of the specifics of the land tenure system under *adat* law is crucial, because in later analysis I will examine in how far it supports or contradicts requirements under state law.

In the last section 3.5, I add a summary of the main laws concerning the interaction with communities, living by customary law. Thus, give the reader an idea of how the state of Indonesia regards and deals with the existence of customary law. Like this we learn how the Indonesian government supports customary self-governance.

3.2 Historical background considering conflicts around land rights in Indonesia

When Indonesia was still under Dutch colonial rule, land management was either performed under western law or under Indonesian law (Biezeveld 2004). Under the agrarian act of 1870, non-Indonesians were prohibited from using land, which was cultivated by Indonesians. The act, however permitted those non-Indonesians to lease land, which was termed 'waste land'. 'Waste land' was classified under the agrarian act as "all land which is not proven to be held with the right of ownership (*eigendom*) shall be deemed the domain of the state."(von Benda-Beckmann, 1979:211 in Biezeveld, 2004)

In other words, land of non proven ownership by the government was declared as 'waste land' and was held as state domain. The purpose of the agrarian act of 1870 had two main reasons: First to facilitate the entry for private investment. Second it should make it easier to lease land from the indigenous population. Paragraph 4 of the agrarian act, permitted the governor general to transfer 'waste land' to private entrepreneurs for a time period up to 75 years (Biezeveld, 2004). This leasehold was called *erfpacht* under the Dutch colonial government and was almost seen as full ownership except that it had to be reversed after 75 years.

According to colonial legal theory, only the owner of land could authorize the leasing contract. The Land which indigenous communities claimed to be theirs was not recognized or only under conditional acceptance. Mostly however, the land which *adat* communities claimed was determined as 'waste land' or 'land of other uses'. That means the governor general was in power to transfer land, which customary communities claimed to be theirs, to other investors because the colonial government had amended paragraph 4 of the agrarian act. Like this the colonial government established western civil rights on ownership of land in Indonesia.

In 1945, after Indonesia's independence, all lease hold land (*erfpacht*) was automatically converted into state land.

After the civil war raged approximately until 1960, the communist party PKI became dominant in Indonesia. A few years later, the New Order regime came to power, led by president Soeharto in the period between 1966-1998. An authoritarian state was established and all communist related activities and activists were frowned upon. The state took over all local initiatives, farmer cooperatives for example because the regime feared the farmers would assemble and voice accusations of injustice. Farmer cooperatives are only one example of many initiatives, which the regime took over. This affected "all ethnic groups, social economic classes as well as religious groups". (Sirait, 2009) The Soeharto regime feared any form of social civil initiatives so that although land conflicts were prevalent during this period, but were put down or not resolved. Claims of or discussions about injustice were not acknowledged because the regime did not want to lose its authoritarian sta-

tus by entertaining any claims by local communities (Sirait, 2009).

In 1997 Indonesia suffered from an economic crisis, which was followed by the fall of the New Order regime and president Soeharto. A period of democratization called Reformasi followed this fall (Biezeveld 2004). Sirait (2009) admitted, that this period did not bring immediate change in structures, which was established by the New Order regime. Local initiatives, which were concerned with solving conflicts on land, were still either ignored or only sporadically heard by government officials, because structures established under Soeharto prevailed and hindered the interaction between the state and local communities in conflict situations. This was because many government officials from the New Order regime stayed in the government and were now in parties, which competed for power. This seemed more important than to handle property claims by the local population. This led to a distrust in the government and its representatives by a part of the local population (Sirait 2009, Colchester et al. 2006, Biezeveld 2004).

3.3 Legal requirements for plantation establishment

This section displays the statutory rules of how to establish a palm oil plantation in nowadays Indonesia.

After registering at the board of investment, the company has to hand in a business plan to the local district authority. This business plan should outline the area, which is intended for plantation purposes. If this area overlaps with an area of state forest, the company needs to address the Forestry Department for a land conversion. This would be a conversion from forest status to non-forest status. Such a conversion is necessary, because Indonesian state law says that healthy forest is not foreseen as cultivable area for mono crops like the oil palm whereas secondary forest is. This secondary forest is often occupied by indigenous people, for reasons as explained in 3.2, who then enter the process. Schemes, which describe the specifics of the engagement of company and customary community are described more specifically at the end of this section.

However, the matter of the plantation area shifts then from the Forestry Department to the National Land Agency. If the place of location is determined, the applying company has to face the conditions and evaluations of the Environmental Impact Assessment (EIA) in order to get an IUP (Plantation Business Permit) and an HGU (Business Use right). Conditions under the EIA are supposed to make sure, that companies work in accordance with regulations concerning the physical and the social environment. The EIA holds guidelines, which are designed to regulate damage to soil, water and people affected by oil palm plantation development (Suryadi, 2011). For example, companies should follow the zero-burning policy in Indonesia and work together with farmer cooperatives.

An IUP is a permit in written form, issued by the local authority and obligatory to every company intending to cultivate an area of land. The HGU entails a written permit over the right to use the land acquired through an IUP (Chemsain, 2000).

If these conditions are met, the IUP is certificated which means that the company has to display the following within two years: “carry out due acquisition of rights over the lands; realize plantation development and/or a processing unit, based on the feasibility study, the technical standard, and applicable provisions; install its facilities, infrastructure and systems for carrying out land clearing without burning; open land without burning and manage natural resources sustainably, establish facilities, infrastructure and systems to protect crops from fires and invasive organisms (OPT); conduct an Environmental Impact Assessment or Environmental Management and Environmental Monitoring based on applicable regulations; empower and develop the local community’s cooperative; and regularly report progress to the governor or Bupati (head of district).” (Sirait, 2009: 35)

To sum up, prerequisites for a company, which intends to establish/expand its plantation, are a letter from the Forest Department that confirms non-forest status, an approval from the local authorities through an EIA and most importantly Business Utilization Rights from the National Land Agency.

In reality, many companies fail to meet these preconditions in the first place. (Colchester et al., 2006) However, I will draw on this when getting into detailed case description.

So, having met the preconditions the company would now be able to lease the land for a maximum of 25 years from the state, with a possible extension up to 35 years.

In West Kalimantan, if a palm oil company obtained an area of land from the state, it can engage through various schemes with local communities. One of these schemes is called the *plasma-inti*, or the 7.5 ha scheme. Within this scheme, the land will be divided into plots of 7.5 ha. The scheme stipulates, that the company owns five hectares of those plots, uses 0.5 hectare for varying infrastructural purposes and allocates the remaining two hectares to local farmers (Sirait, 2009).

The contracted farmers then rely completely on the company. They have to buy seeds, fertilizers and all necessary farm input from the company. The palm oil company establishes a monopoly, being the one determining prices and ways of palm oil planting and production.

After a period of approximately 25 years, the trees are too old and too tall to be harvested manually. That means, the land is usually cleared and planted with new palms, which requires certain capital. A usual consequence is, that households sell the two hectare plot to the company due to a lack of capital (Sirait, 2009).

3.4 Legal requirements for land tenure under *adat*

In this section, I will dwell on what it means to live by *adat* rules and the implications this carries for land tenure. The identification and definition of customary ways of measuring, transferring and farming land is crucial to this thesis. It allows in later analysis to show how indigenous ways of managing land may support or contradict the way the state wants the land to be managed.

Adat has a wider meaning. It describes a system of values, on which ethical and legal judgment is based. It symbolizes ideal practices of behavior, thus can be described as being the basis for social expectations (Biezeveld 2004). Here is to note, that these social expectations vary in between *adat* communities. In other words, there is no common interpretation of *adat*. Not all customary communities in Indonesia live by the same set of values (Sirait et al, 1994, Biezeveld, 2004). However, the authors, which I draw my information from for this chapter observed a similar pattern of interpretation of *adat* during their research. That means, I can rely on their observations and describe one of several ways to live under *adat* law. The following part displays those observations.

The legal system of *adat* communities is traditional and transmitted. The institutions are headed by a Chief, who is responsible for several sub districts. The different villages of the district also have Chiefs, who are responsible for their village. The district chief is elected by those village chiefs, who descended from the people who established the villages in the first place. The chiefs are responsible for all legal matters in the villages, like conflicts on land ownerships. In this political order administering, legislating and executing do not exclude each other, meaning that the chiefs are formulating, continuing and implementing *adat* laws (Sirait, 2009).

Their land tenure system differs from contemporary western tenure systems. Land plots can be owned and cultivated, but they cannot be sold. Colchester et al (2006) describe it as ownership that is to be 'proven'. (p.95) Through continuous cultivating and managing, plots are inherited through generations. That means, that members of *adat* communities benefit through accessing resources of their land but not from holding the land title or by selling it. Furthermore, demarcations of plots are not fenced with steel and gates but rather with tree rows, rivers and rocks. Sirait (2009) denotes the land classification of the indigenous Dayak Bidayuh, who are the ethnic roots of the communities in one of the case studies below. The 'commons' are lands, which can be utilized by the whole community. The 'descendant land' is land, which is utilized by descendants of the people who built the village and can be sacred lands but also gardens with mixed goods. These lands cannot be transferred to members, who are not descendants and can only be converted to a private plot of a descendant if the other members of the community give their permission. The last category is the 'individual lands', which are utilized by individual households. Those plots cannot be sold or

given to people outside the village.

3.5 Legal context in Indonesia regarding customary law

In Indonesia, most of the palm oil plantations are in the hands of private companies. The reasons for the increasing development of palm oil plantations are multiple in nature. However, two important reasons become apparent throughout the literature contributing to this thesis. First, it is in the interest of the state to continue and to increase the production and the export of palm oil, because the palm oil production is the sector, which makes a significant contribution to Indonesia's GDP (Colchester et al. 2006). An increasing Gross Domestic Product is one indicator for (economic) development (Held et al. 1999). Second, it seems to be obvious that in the region of Kalimantan the increase of plantations is related to corruption. In chapter 4 I will indicate, that bribes on local levels related to the approvals for plantation, are ongoing. That is why laws in Indonesia are issued to circumvent acknowledging rights under customary law, because palm oil production should continue to increase.

This section discusses these different state laws, which are purposed to manage the interaction with customary law. So, the government issues the rights of- and actually facilitates in many cases- the process of land acquisition for private investors. These rights however, are often over lands which are being utilized by the indigenous community of Indonesia (Clerc 2010, Biezeveld 2004).

The conflicts between the company and the indigenous communities, which can emerge from this are complex but I will focus on two important ones here.

The first one, see 3.3, is about the government issuing use rights to lands over plots, which it classified as national or conversion land although indigenous communities claimed it as their customary land. Second, conflicts can arise after involved communities entered into a contract with the company and are not compensated as agreed upon.

In this part I will focus on how law is used and constructed to serve a specific interest. I will discuss state laws, which delegitimize rights of indigenous communities in Indonesia. Further I will touch on the subject of plantation contracts and their specific settings.

In 1998, when the Soeharto era ended, the government decided to decentralize the administration. As a result several ministries are sharing the power in the country (Bakker, Moniaga 2010). The most important ones, considering land rights, are the National Land Agency (NLA) and the Forestry Department. The Basic Agrarian Law (BAL) is the starting point for all rights and claims concerning land in Indonesia, whereas the forest law is concerned with all forest areas in the country (Bakker and Moniaga 2010). The BAL still regulates land rights and declares that the agrarian law throughout Indonesia is *adat* law (Biezeveld 2004). Yet, *adat* cannot completely be translated as functioning as law for the whole country, because article 5 and more dictate that *adat* law cannot contradict the basic agrarian law itself (Biezeveld 2004). *Adat* and official state law thus replace *adat* as a uniform system (Supomo, 1953 in Bakker, Moniaga 2010).

The NLA recognizes *adat* land rights in so far that they are only registered after a conversion into private rights. The result is, that they are then certified as 'private land rights'. The forest department works in a similar way. First of all, all forests in the country are claimed to be in State hand, represented in the Forestry Department. Then there are two different kinds of forests; state forest and private forest. The label of state forest entails that there can be no private rights established (Sirait 2009).

Adat claims for forest land are labeled as state forest and are only recognized if they are in accordance with the national's interest. This is recorded in the second amendment of article 18 of the Indonesian constitution: "The state recognizes and respects customary local communities with their traditional rights, as long as they still exist and accord with development of the society and the principles of the Unitarian state of Republic of Indonesia, as regulated by law." (Sirait, 2009: 22) The government favors private or state rights over customary and common rights and therefor

(re)formulates laws according to this tendency. To quote Article 3 of the Basic Agrarian Law:

“...*ulayat* rights and other similar rights of customary law community (*masyarakat hukum adat*) should be recognized, as long as these communities really exist, and it is consistent with national and state interest, based on the principle of national unity, and it is not in contradiction with this law and higher regulations. Article 5. “ Customary law applies to the earth, water and air and as long as it does not contradict national and state interests, based on national unity and Indonesian socialism, and also other related provision of this law, in accordance with religious principles.” (Sirait, 2009 : 23)

These laws indicate the difficulties for indigenous residents of a plantation area to fight a HGU of a company, because that would be opposing the ‘national interest’, as the government wants to expand palm oil production.

After the *adat* communities rebelled against the non recognition, regulation 5 of the *adat* Land Registration Policy was introduced in 1999. According to this policy, *adat* communities have the right to command the land, which has always been the base for their living (Sirait, 2009).

A community has to fulfill certain requirements before being officially recognized as *adat* community by district regulation. Regarding Adat traditions these requirements are; that a community lives by Adat laws and uses ancestral lands. So, Sirait (2009) concludes that this policy aimed at using customary land, controlled by indigenous communities, for the production of palm oil.

All of these regulations and laws indicate that the central and several local governments create legal loopholes. Like *adat* rights are legitimate, until the community fulfills the requirements and until they do not collide with national interest, which is not specified but held open for all intended purposes. That brings us to a connected problem, a problem indigenous communities in Indonesia face when confronted with the Plantation Estate Law (PEL).

During the Soeharto era, sectoral laws like the Forest Law (FL) and the Mining Law, which were in favor with the industry were established. The PEL was issued under the Forest Law and commands that an applicant for land (e.g. a palm oil company) has to enter the discussion with the customary community, if they are managing the land in question (Sirait, 2009).

However, and here comes the key point, the applicant only has to do so, if the *adat* community has been recognized as such by district regulation. If that is not the case, and/or the community is found to be doing something against the national interest, it can be hold accountable for destroying a plantation if they keep on using their land. This is exemplified in 4.2.

To close this section I will briefly summarize the meanings of the HGU (business utilization right) and the IUP (Plantation business permit), because they play an important role in chapter 4. The IUP is usually granted after a business plan has been proposed to the local government and after the Environmental Impact Assessment has been made. If the area in question is then declared as conflict-free state land an HGU can be issued by the National Land Agency and the company can start clearing up land .

3.6 Conclusion

In this section I will summarize the most important aspects, which will recur in later analysis.

During the colonial era, ownership of customary communities was not recognized. Land without proven ownership was declared as 'waste land' or land of other uses, meaning that land cultivated by customary communities was labeled waste land or land of other uses and deemed domain of the state. Paragraph 4 of the agrarian act enabled the governor general to lease those lands to private investors, meaning that it established western civil code rights in Indonesia. After independence from the Dutch in 1945, all those lands were automatically converted to state land. Local initiatives, attempting to fight injustice of the distribution of land rights were put down during the authoritarian regime under Soeharto. After the fall of Soeharto, the decentralization of authority was introduced but local claims were still ignored and not recognized. The National Land Agency issued IUPs over land, which was cultivated by customary communities, who claimed it to be their land.

Under state law, the land has to be used according to state interest. The state interest is not specified in the policy. The national government benefits from an increasing amount of taxes generated from investment in the palm oil sector, while district governments benefit from companies buying favors. Many conflicts related to land rights are fought by the government arguing that cultivation by customary communities do not contribute enough to the country's development. Fighting a palm oil company might be interpreted as fighting state interest just by complaining against the project. It might even be handled as a crime case.

Under state law, the legal requirements for a setting up a palm oil plantation are a letter of confirmation from the forest department, an IUP, a HGU and to follow guidelines of the EIA. Those guidelines concern the physical as well as the social environment. Among other things, the company has to prove that the area of interest is 'conflict-free'. To prove that, many companies have to carry out schemes and to promise compensation for family plots. The companies then claim that the area in question is acquired under consensus. However companies only have to do so, if communities are in fact declared as *adat* communities. The state government reserved its right to decide whether a community is labeled as an *adat* community or not.

Under *adat* law land is distributed according to who inherits it as well as to who cultivates it. Plots are not demarcated by fences, but by natural occurrences like tree rows. Within the *adat* system, the administering, the legislative and the executive of *adat* law do not exclude each other.

4. Palm oil related conflicts

4.1 Introduction

The first part of this section, describes the conflict between two indigenous communities and a palm oil company in West Kalimantan. The dispute was about land expropriation and the breach of the contract, which guaranteed certain conditions. What follows is a summary of further cases, which continue to illustrate the process of land expropriation.

There is sufficient land in West Kalimantan. Unfortunately the weather is not predictable. Alternative agriculture is, according to the oil palm industry, very difficult to manage. The oil palm, however, promises high productivity and is, most importantly for the industry, not affected by the seasons.

During the economic and financial crisis in 1998 a big part of the palm oil business was close to bankruptcy. The government encouraged palm oil companies to attract foreign companies for further investments. As a result, Malaysian companies invested in palm oil plantations in West Kalimantan in 1998. The Sanggau district has the majority of palm oil plantations in West Kalimantan and therefore attracts a lot of investment. The district authorities prioritize an agro-industry oriented development for the region. They facilitated the establishing and/or expanding of oil palm plantations. Facilitating means, as explained in chapter 3, that the government converts the land from 'waste land' to state land. Like this, the company can acquire the land to build up a plantation. The government hands out a plantation business permits (IUPs) with the argument that this is in the interest of the state (Colchester et al, 2006).

4.2 Conflict in West Kalimantan/Sanggau District

In the first case, I will start with explaining how the land for the oil palm plantation was transferred from the National Land Agency to the company. Subsequently I will describe how the company proposed to engage with two customary communities, which are cultivating land in the area. Further on, I will elaborate the conflicts which arose after the company started to establish the palm oil

plantation.

The case is about the Malaysian company PT MAS. In 1998 the company received the promised area in the Sanggau district. Soon the company got into a conflict with the Hibun and the Sami community in the area. The Hibun and the Sami are neighboring communities. They respect *adat* laws and traditions. There are about 14.000 Hibuns and 640 Samis (Sirait, 2009). The land was already acquired by its Indonesian partner company PT PMS in 1995. The National Land Agency issued an IUP over 30.000 ha for PT PMS in the Sanggau district. As explained in chapter 3, the land to be acquired was labeled as an 'area of other uses' according to the interpretation of a decree of the West Kalimantan governor, which facilitated the process of converting the land and issuing permits as explained above (Colchester et al. 2006).

After the merger in 1998, the Malaysian investor PT MAS received an IUP over 30.000 ha. PT MAS intended to develop 20.000 ha for palm oil plantations and to use the remaining 10.000 ha for the so-called 'socialisation' program. As explained in chapter 3, the conditions of EIA require that the proposed land is 'conflict-free'. Local governments and the palm oil companies claimed that the socialisation program would propitiate communities and therefor prevent conflicts. The socialisation program claims to compensate communities for giving up family land. The compensation plan included a housing project for the communities and a clinic, clean water facilities as well as school buildings and employment opportunities (Colchester et al 2006). The socialisation program further required a clear communication order. The company had to share with members of the local government and the traditional leaders information on the planting process and all further developing plans and to communicate those plans to the communities living in the area. This was specified as another requirement for a conflict-free area.

In 1996 the Indonesian PT PMS implemented this program and informed the neighboring communities about the planned plantation and about the compensations they would provide. According to the communities, promises of compensation have yet to be fulfilled.

PT PMS explained that it intended to acquire the land according to the 7.5 scheme, where community members could enter a contract with the company where they would share 7.5 ha of their land. The company proposed, they would return 2 ha to the community members including the oil palm trees, whereas the remaining 5.5 would stay in company hands (Colchester et al, 2006).

The company further proposed the following:

*“The farming people should together surrender their lands, including existing village sites, so that the plantation could become an uninterrupted planted landscape;
Those farming people living in scattered settlements should accept being regrouped in the resettlement area based on the company’s and the Sanggau district spatial plans;
The farming people should accept being relocated to a suitable area where the company wants to set up the new settlement with all the planned facilities and infrastructures.”* (Colchester et al, 2006: 97)

In other words, the company wanted to make sure that the plantation could be set up in one piece. To do that the company required that the family lands would be rearranged to build one big piece of land and that the community members would be resettled in a separated area.

The Sami community rejected this offer. A spokesperson of the Sami community explained, that they had no intention to give their land to the palm oil company. Because the land was given to them from their ancestors and is subject of a long historical and social process. He further believed that the community should continue to manage their ancestral land should continue to work with their indigenous institutions. The traditional system guaranteed for everybody equal access to resources (Sirait, 2009).

The Hibun community accepted the offer. Members of the community, which agreed to engage with the company, report that the plans seemed advantageous to them. The two hectare plot of planted oil palms promised economic revenue to the families. The outlook on new roads with better access to markets and the social impact of better schools and health care implied a better living

standard for their families. Besides that, they expected more company jobs on the plantations. (Colchester et al, 2006, Sirait, 2009)

So, PT MAS started on the Hibun territory with the preparations. As mentioned above, leaders from the different stakeholders, the company, the community and the government were supposed to communicate the process of the plantation establishment to the community. Those leaders formed a so-called task force.

A task force exists on three levels; the district, the sub-district and the village level. Police, military and local governments are working together with a company to promote palm oil plantations on the district level. The sub-district head, community leaders and representatives of police and palm oil company promote palm oil plantation development on the sub-district level. On the village level, community leaders as well as sub-leaders are working together to promote palm plantations and to convince each family to release their land to the companies (Sirait, 2009). The task force also claims to be responsible for mediating between parties if conflicts should arise (White, 2011). Those task forces are paid by the company.

In order to start clearing the land, the company first handed out documents for 'agreements of land acquisition' to subsequently measure the allocated plots in question. Those documents were handed out to the villagers without prior consultation (Sirait, 2009).

Subsequently, the company started with the measuring of land. This procedure was accompanied by the task force, the owner of the land and the owner(s) of the neighboring lands. The first step was to measure the acquired plot and in the second step the planner determined the size they need for oil palm planting (Rietberg, 2010).

The demarcation and the measurements were mainly done with GPS system than with a compass and measuring tape. This was done by company workers and not by members of the community due to minor technical knowledge. As explained in chapter 3, within *adat* land tenure system the land borders are not marked by strict fences or walls, but for example by tree rows. For the first time the size of a particular plot was measured in hectares. This was new to the landowner. Since generations the size of a plot was measured under the *adat* system. As mentioned in 3.5, *adat* culture does not provide figures, but borders according to the traditional understanding of cultivation. That means, that borders are also determined by who cultivates which plot since decades or centuries. The size of plots is usually not determined in hectares. After the measuring process, family plots which did not provide the standard size of 7.5 ha were combined with land of other families.

When the company began to clear the land in order to replant it with oil palms, the first problems arose. The company had started to clear ancestral land belonging to the Sami community, which rejected all offers and contracts of PT MAS. After the incident happened, the community demanded an explanation from the company for clearing swidden land and graveyards. For three years they tried to get answers, by writing letters and complaining about the company bulldozing over their land (Sirait, 2009). As a result of ignoring all their complaints, the Samis banned the companies nursery and office from their territory. The community confiscated the company's vehicles and took all the documents from the company office. As a result, officials from PT MAS turned to the leaders of the Hibun community and reported a violation of *adat* law by the Sami (Sirait et al, 2009). Hereon the Hibun threatened the Sami community to burn down their villages, if they do not return the confiscated items and pay an additional fine for violating *adat*. The Sami community gave in, because they felt outnumbered and were afraid to be alienated from the neighboring villages. At this point, the company stopped clearing land from the Sami community. The community however lost approximately 100 ha. Nobody of the community received any compensation for the damage the oil palm company left behind.

Problems between the Hibun and PT MAS escalated approximately eight years later, in 2006. Observers report that problems started when the company was supposed to redistribute the family plots containing palm oil trees. This took place between 1998 and the year 2000 (Colchester et al, 2006). These problems concerned the promise of 2 ha of palm oil plantation to the families. Several families did not receive a planted plot, some other families received just 1.2 ha, which is

about half of the announced size (Colchester et al, 2006). Some Hibun farmers got arrested by the police after poaching fruits from the company's estate. The poachers claimed not guilty, because they had not enough land to provide their families with food. In a statement, one poacher mentioned that instead working on their own land they had to join the labor force of the palm oil company. One Hibun leader states that the palm oil company made former farmers and landowners poor labors (Colchester et al, 2006:101). That means, community members not only received less land than agreed upon but were also arrested in the attempt to collect enough harvest to provide for their family. Other members stated, what concerned them the most was that the company applied state law to this case immediately while using the land of people who are still practicing customary law (Colchester et al 2006: 100).

Other concerns about undeclared profits were raised already in the first years. Gossips made the round that the investor profits most compared to the villagers. The community also missed transparency considering the status of the leased land.

However, reaction from the Hibun community is recorded from 2006 on. The community had lost most of its land to the company, which had still not met the promises it made in the beginning. Some families were still waiting for their 2 ha and others complained that the junction of their land with neighboring ones resulted in unfair distribution. The segregation or union of land plots under the 7.5 ha standard was not representing accurately what some farmers once owned. Family members, who already had a family of their own and had inherited an area of land were not listed as individual landowners. They were listed together with the rest of the family, which displeased the persons concerned. They complained to the task force, which claimed to be responsible for mediating in case of conflict, but they were ignored.

A teacher from the Hibun community, who was still waiting for her 2 ha in 2007, was transferred to a district far away from her home because she intended to cooperate with others in order to demand their share collectively. She states, that her and her family as well as other neighbors were ignored by their *adat* leaders. They became members of the task force and therefore 'guardians of the company' rather than being their leaders (Sirait, 2009:44).

This was not a single incident. Communities of the Sanggau district report, that their civil servants, teachers for example, were put under pressure by the police not to oppose plantation development. Interviewees state that their domestic civil servants, like teachers were feared by the district government for their reputation and ability to communicate to a number of people (Sirait, 2009).

The Hibun community, together with other communities, started to organize demonstrations in Sanggau district where they demanded a special task force to mediate in the conflict. The community joined the palm peasant union (SPKS), which also demonstrated in front of the provincial government office in Pontianak. Other members from different districts joined the demonstration.

After the communities' demands were not met, they wrote a letter to PT MAS requesting an immediate solving of the ongoing land conflicts (Sirait, 2009). This letter was ignored and after a few weeks, the local communities joined together and hindered the company from working on part of the plantation. The protestors blocked the main road and stopped the oil harvest. During the blockade, the communities used a traditional *adat* symbol, which cannot be used without holding a traditional ritual accompanying it. This brought consequences for the protestors, which are discussed here below. After requesting more transparency and their 2 ha share of the plantation, a few people broke into the company's office and harassed a member of the task force, who was also an *adat* leader.

Negotiations concerning their demands started. With the beginning of the negotiations, the blockade was lifted with the help of the task force, among them some *adat* leaders. The communities expressed their discomfort that their leaders sided with the company, while the communities were protesting against the way the company was operating. During the negotiations, the police arrested five of the SPKS leaders and imprisoned them. According to the villagers attending the demonstration, the company pushed the harassed *adat* leader to accuse them on the base of *adat* law. They were then facing the charges of using an *adat* symbol, without performing the traditional ritual

before. However, the land conflict underlying the road blockade was not dealt with in court.

Shortly after these demonstrations, the district government forced teachers in Sanggau not to engage with the SPKS and instead they should promote oil palm expansion in their district. Those teachers reported that they received threats and faced intimidation by members of the task force after sending a letter to the Human Rights Commission in Jakarta demanding their right to collaborate and to express their views (Sirait, 2009).

The problem remains. The requests of the communities to get their shares of the 2 ha as signed in the contract with PT MAS were not met. The company, now under the name of PT MAS II refused to recognize the contracts made earlier by PT MAS (Sirait, 2009:48).

Instead the farmers were left with the (only) alternative; to join a different scheme of engagement, called *saham*. Within this scheme, the company manages the plantation fully on its own and participants and land owners get a certain amount of money every three months without working on any land. The production costs are already subtracted from this amount of money. Farmers and landowners are again angry about the lack of transparency over both, the productivity of the respective plot and the amount of the production cost the company is taking out.

4.3 Conflict in West Sumatra

The next case illustrates the problematic of administration within land acquisition processes. As mentioned in the previous case, family lands are united or segregated depending on if the plot is larger or smaller than the 7.5 ha. The challenge of listing landowners correctly has led to conflicts. This case also displays an administrative challenge, which led to a conflict, but here it is based on the difficulties to declare landownership after a long period of time.

The conflict in West Sumatra arose during the colonial period in Indonesia around 1916 but was put on hold for many decades. However it re-emerged around 1995. I will start by giving an insight to the history of the conflict and will continue by elaborating on the community's efforts during the whole time to get the undecided land recognized as theirs. This case is displayed in such a chronological order, to show the attempts of the community to claim the land with different stakeholders involved in the conflict over time.

This conflict occurred between an indigenous community and state officials in West Sumatra in the village of Sungai Kamuyang. The village is home to the Minangkabau community, which lives from agriculture such as growing rice and ginger. However, many young people from the community migrated to urban areas and work in non-agricultural fields.

Most Minangkabau live by the rules of *adat*. They do not adapt them from experienced experts. Minangkabau learn them through "diagnostic events', moments that reveal ongoing contests and conflicts and competition and the efforts to prevent, suppress or repress these." (Krier, 1994 in Biezeveld, 2004)

The roots of the conflict introduced here can be traced back to 1916, when Indonesia was still under Dutch colonial rule. A horse breeding station, set up by the colonial government, expanded its territory because it needed more land. The land which they took was a plot belonging to the village's communal land. According to the villagers, the breeding station leased the land from the community and was agreed on the spoken word-contract (Biezeveld, 2004).

Struggles over the status of the land started in the post-independence period, when it was undecided if the plot belonged to the state or should be redistributed among the Sungai Kamuyang village. The community claimed, that the land was cultivated for a long time before the horse breeding station settled. The government requested a form of proof that the community had in fact leased its own land to the breeding station then. However, the community could not provide a contract in written form. The leaders of the community underlined, that it was always clear, that the land plot was cultivated by the community long ago and thus belonged to them. The government claimed that the plot was to be seen as waste land and therefor intended to declare the plot of land as state land (Biezeveld, 2004).

Although the community did not agree with that, the right to use the land was given to a military officer, who had good relations with the 'New Order' government. The district head based his decision on the officer being of Minangkabau descent and threatened the village elders that any way of protest would be put to a hold by declaring Sungai Kamuyang a communist village. As explained in 3.2 all communist related activities were frowned upon during the New Order regime.

The conflict was never resolved, but the community complied with the new owner. According to the *adat* leaders, the land was cultivated again and the owner provided work for some of the farmers in the village. After the death of the officer, the ownership changed. Until today the daughter claims to be the owner, whereas the villagers refer to be the owner of the land.

Since the '*erfpacht*' (lease) expired after 35 years in 1995, the villagers sent a letter to the land registration office to retrieve the plot. The land registration office however maintained that the land was given up for cultivation by state and was therefor not foreseen as village property. To claim the land back, the villagers would have to prove the registration office wrong. Again the villagers had to introduce an accurate statement over the size of the allocated land, in terms of hectares.

After the land had been lying fallow for a while and the villagers had started to cultivate it again, officials from the land registration office came to the village to measure the plot. The farmers were suspicious and requested witnesses and exact agreements over what would be measured, the whole land or the expansion plot or something else.

The results of this measurement were never send to the elders of the Sungai Kamuyang village, but the land registration office announced that a document had been found which would prove that the land plot was leased by the state during colonial times. Therefor it can be declared 'state land', starting with the day of independence in 1945. The document however disappeared quickly after that announcement and Biezeveld (2004) concludes that it seems that no one besides the land registration office has seen it.

Within the conflict, different parties had different interests. The daughter intended to keep the plot of land, even pretended to cultivate it to do so. She tried to involve the farmers in the village in a partnership scheme, where she would provide the capital and create job opportunities for them.

One part of the villager wanted to agree to this offer, so that the land would not lie fallow anymore and because they did not want to risk a fight, which they expected to lose anyway. They report, that the daughter was supported by the local government anyway and that they would have only a small chance to receive the right of the plot, because they were lacking proof in written form (Biezeveld, 2004). The second part of the village would not agree to that. Under no circumstances could they agree on giving up their right to the land. For them it was a matter of principle. It was always clear to them, because of its cultivation, that the land belonged to the community.

Land registration officials favored the daughter in the decision over who should be granted the right over the land. They argued that the daughter's interest and resources would be more in the interest of development and the state, while the interest of the villagers would be hindering development (Biezeveld 2004). Moreover, the land registration office had an interest in prolonging the process and in benefiting from the conflicting parties buying favors.

The outcome of the conflict is not discussed in Biezeveld's (2004) article.

For following analysis it is important to understand the roles of power in the land struggle. The last two cases exemplified that. They illustrated that claims for land by customary communities were often not recognized by the government and subsequently ignored by the palm oil company. The next case will elaborate the dynamics of power relations and the implication they hold on the decisions within land right distribution even further.

4.4 Conflict in Central Kalimantan

In this section I will describe the development of a conflict around claims for land rights, based on

statements given by community members who were affected by the conflict.

The following case is about a conflict between a customary community of the village Pondok Damar in Central Kalimantan and the palm oil company PT Mustika Sembuluh. Since 2005, the company is member of the Round table on sustainable palm oil (RSPO) and got awarded RSPO certification in 2010 (Chao et al 2012). However due to ongoing land conflicts reported by local communities, this concession was reassessed. Most communities in the area own their rubber and/or oil smallholdings. Some of those communities engaged with PT Mustika Sembuluh under the 7.5 ha plasma inti scheme. Many of the communities reported that there have been conflicts with the company concerning the redistribution of land and with transparency around establishing and managing the plantation. Many of those problems were voiced during a protest held against the company in 2012, which approximately 200 of the villagers attended.

The community complained that participation and consultation of and with the community had not been incorporated by the company. Community members were irritated that they did not have the chance to reject the company's project (Chao et al, 2012:19). The lack of transparency was one of the main concerns. The community had repeatedly asked for maps and information concerning the HGU's but were denied in their request, without explanations (Chao et al, 2012:19).

Early problems concerned the company starting to clear customary land without informing the customary landowners about what they were doing. One community member for example explains, that the company cleared five hectares of his land although he had only agreed to three hectares being cleared. He further states, that they were forced to accept the compensation on the terms of the company because they would have to face the security units of the company if they resisted. The company worked through village leaders, who told their communities to give up the land because the company was holding the permits and because the community land was state land anyway (Chao et al, 2012: 13). The community was concerned, that their leaders were working with the company. Statements of community members indicated that it was not clear to them why, how or when but their leaders had become advocates for the company in their eyes.

Other community members report, that they are confused about demarcations of land and the content of the contracts given to them. Additionally they indicate, that the company had used already obtained permits to intimidate them and to push them towards giving up their land (Chao et al, 2012). Involved community members indicated, that they were intimidated by the company's arguments because they were afraid they lack legal documents, which would prove their rights to the land. Some of them report, that they had been pressured by local officials to give up their land and had been intimidated with imprisonment in case they refuse the offer. Members, who refused say that their land had still been cleared, often at night. Many community members reported that they are afraid of the presence of the mobile security brigade and the army personnel.

Others, who signed a contract, admitted that they are not able to identify anymore the deals agreed upon. One community member explained that he understood the terms when they were discussed but is now confused about the money he receives. He is not sure if he receives compensation or payment for his plot (Chao et al, 2012:15).

More confusion was felt by the community is concerning information on clear demarcations of land. There are statements of community members, that the borders of plots, located between different districts, stay unclear. The government or company officials often reject farmers' complaints because they are addressing the wrong district authority.

Other problems, which community members reported concerned the so-called socialization program. After clearing the land, the company promised to compensate those communities or smallholders, whose land was cleared with making investments in their infrastructure, like improving roads and health as well as school facilities. The companies promised on top to return hectares of plots planted with oil palms to those who provided their customary land. The community members however report that this has yet to happen or that the plots were smaller than signed in the contract (Chao et al, 2012).

Some interviewees indicated that they were not given jobs by the company although unemployment is a pressing issue. Others described their irritation that they have to comply to the terms

of the company. Several reported that joining the plasma inti scheme promised to bring more money than to labor on the plantation. Like this they felt forced to agree. However, the company's terms include that the payment for the planted crops comes only every six months. The interviewees state that they would not have agreed to this, had they been aware of that before (Chao et al, 2012:15).

Since 2008, the company has not met the community's requests for gradual employment of the Pondok Damar people, clearing the sacred graveyards from oil palms, developing a secondary school inside the plantation area and many more (Chao et al, 2012:20).

4.5 Conclusion

In this section I will summarize the most important aspects of the case studies, because they will play a crucial part in later analysis. I will outline the most important aspects case by case in the same order as displayed in this chapter. The information derived from the case studies will be analyzed in the next chapter, in consideration of the theoretical framework developed in chapter 2.

The first case describes a conflict between two customary communities, Hibun and Sami and a palm oil company PT MAS. The Sami community rejected in the first place the offers of the company. Regardless, the company cleared part of the ancestral land. The much bigger Hibun community signed contracts with the palm oil company after the company offered 2 ha land for each 7.5 ha customary land and in addition the company introduced several development projects like schools, housing and hospitals. The 7.5 ha scheme was implemented but the company ignored the agreements made with the Hibun community. Their family lands were joined or segregated inaccurately concerning their family relations and plot sizes. Their letters of complaint were not acknowledged and they were threatened with possible imprisonment if they protested or worked against the palm oil company. Many community members reported that their leaders had become advocates for the palm oil plantation and that most of the profit would go into the pocket of the company and the task force.

The second case describes a conflict between the Minangkabau community and the district authorities. After the community had leased part of the land to a horse breeding station during colonial times, this land was converted automatically to state property after independence in 1945. The district authorities required written proof from the community, that this part of land belonged to their ancestral land. The community however had once made an oral agreement and could not provide official document. The government leased the land to an ex-military officer. The community was threatened to be declared a communist village if they oppose the district authority's decision. When he died, the community continued to claim the land as their customary land and wrote letters to the district authorities. Those letters were ignored and the land was granted to his daughter. Because, the authorities believed that the promised investment of the daughter would be a good opportunity for better development. Community members report that they were afraid to claim the land because they did not have any contract which proves it to be their land. The community felt that they were not ready to deal with the authorities. They lack representation and technicalities concerning contracts and land measurement.

The third case deals with a conflict between the Pondok Damar village and the palm oil company PT MS. The community engaged with the company under the 7.5 ha scheme and experienced several problems after that. The company partly cleared land, which the community did not give up for plantation purposes. It withheld information on how many hectares it would clear and cleared in some cases late at night. It did not respond to requests for more transparency from the community. Instead, many community members reported that they were threatened by the task force and could not turn to their leaders because they in fact represented the interests of the company. Many community members also admitted that they had difficulties understanding the contracts and the demarcations of plots determined by the company. Consequently they felt incapacitated to fight disagreements. Those disagreements refer to that the community members received less than 2 ha of planted plots, that the company failed to provide employment opportunities as well as to establish

the promised facilities, like a secondary school and a community center. The community voiced its concern in letters and demonstrations but reports that nothing has changed so far.

5. Analysis and findings

In chapter 2 several specific concepts on possible ways to understand and to analyze the constructing of legitimacy, power and authority, were displayed. In the following chapter the context of Indonesia was examined, considering its laws and policies and their implications for indigenous communities in West Kalimantan. Subsequently, chapter 4 displayed how people in West and Central Kalimantan as well as in Sumatra are affected by those laws and policies. Throughout the three case studies, I illustrated that the self-governance of customary communities of Indonesia is constrained by the state government, local governments and palm oil companies. Within this chapter I will connect the concepts of property, Semi-Autonomous Social fields, access and power to the information from the case studies. This way I will examine the factors which are underlying the land expropriation of customary communities, see 1.2. Like this, I will be able to answer my research question; *What are the factors underlying the land expropriation of customary communities by palm oil companies in Indonesia?*

This chapter is divided into three parts, to examine each factor. It will begin by giving a definition of property and by illustrating the difference between *adat* and state law in constituting property. To do that, I revert to the three layers of property developed by von Benda-Beckmann et al (2006). The following part will turn to the concept of Semi-Autonomous Social fields (Falk Moore 1972) to analyse why each actor in the conflict feels legitimate in its claims for property. In other words, why the government accepts claims for property of the palm oil company but not of the customary community and why the customary community accepts claims of property by its members but not of the palm oil company. Finally I will examine the part , that power, authority and access take in whether a claim for property is accepted or not. Those concepts provide the theoretical framework for explaining how much impact each factor has on the expropriation of customary communities.

Because conflicts around legitimization claims are in this case related to the (non) recognition of land rights by the state, this part will start off with the notion of property. Property here is constituted as 'legitimate social relationship'. That means property is constituted if somebody's claim for an area of land is accepted by another one (Ribot and Peluso, 2003). First of all mechanisms which make someone's claim for property legitimate differ between customary law and state law in Indonesia. They differ in perceiving property relations (von Benda-Beckmann et al 2006). To reconstruct; the legal-institutional layer describes general categories in which property relations are perceived, the concretized layer describes concrete relationships between object and holder. The ideological layer describes how different ideologies change perceptions of property. The customary and the state tenure system are differ on all three layers. That means, they differ in rules and procedures which dictate the appropriation and transfer of land rights. Von Benda-Beckmann et al (2006) developed the concept of 'the bundle of rights', which is composed by so-called sticks. Those sticks represent rules, relations and obligations attached to property. By reverting to the bundle of rights, we can contrast the rules, conditions and obligations considering land acquisition under customary law with those under state law. For example, customary law prescribes inheritance and the utilization of land as condition to own it and land is not sold usually to outsiders of the community and inherited within the community, see chapter 3. Land plots are not separated by fences or walls, but rather by natural occurrences like tree rows. The community also separates them by knowing which family is cultivating which plot since long lines of inheritance. Here, 'to own' describes having the right to use and/or to cultivate the land.

Under state law the conditions to have claims for property legitimised look different. In this

case to acquire land for palm oil plantation development is tied to other conditions. The palm oil company can only obtain land, which is classified as non- or secondary forest. The company has to formulate a business plan, which has to be approved by the district authority and undergo further assessment to realize the plantation development. Before the company can start expanding its plantation it has to split the land in a way, which is standardized. The land plots are measured with a GPS system and divided into parcels of 7.5 ha. So while it is clear that there are differences in the ways of organizing land rights between state and customary law, the question remains why are the indigenous community and the palm oil company clashing in their claims for the land in question to be their own.

In both, state and customary law, those sticks form the structure behind property. They differ in nature but are accepted in their respective legal field. The company sees the land in question as legally theirs if it met all the conditions above, while the indigenous community claims the land to be their own because they are managing it since many years. One of the major differences lies in this understanding of property rights. That is, as illustrated in chapter 4, palm oil companies argued that they had the right to use the land because they were holding a plantation permit, issued by the government. Under customary law however persons need to prove that they are cultivating a plot of land in order to hold the property right for it.

Differing perceptions on how a claim for property becomes legitimate can also be traced back to differing ideologies. The way the state government is operating is influenced by western structures since colonial times as well as by its interaction with the global market. The export of palm oil brings with it private property rights and a capitalistic oriented ideology. *Adat* communities share a more traditional oriented ideology with values like common ownership and verbal agreements. Yet, there is evidence that *adat* leaders became advocates of a more capitalistic ideology during the Suharto era, so that a gap was established between their ideology and the one of their community. So there are different arenas, or fields, in which property can be claimed. This led to conflicts about the legitimization of land rights between palm oil companies and customary communities.

However, in order to understand why the outcomes of the conflicts are as described as in chapter 4 we have to analyze why one party always seems to draw on the short end of the stick. In other words, how come that customary rights to land are delegitimized by the state and then overrun by the oil palm company. In order to do that we need to examine the role, which power, access and authority has in the question of who gets the upper hand.

But first, let us illuminate why each of the conflicting parties feels legitimate in its claims on the base of Semi-Autonomous Social Fields (SAF) (Falk Moore 1972). The indigenous community in itself is a semi-autonomous social field, inducing, enforcing and living by customary law. Its autonomy reaches as far as customary law is accepted, in other words as far as people living by *adat* customs. That means, claims for its ancestral land seem legitimate to the indigenous community because they are defended based on its internal rules, such as having been inherited, cultivated and accessed since many years. The case of Pondok Damar for example showed, that community members do not want to use certifications for land rights to prove their ownership among themselves. They know they would not have to within theirs and neighboring communities, because it is widely accepted that people who cultivate land, own the right to it.

However, *adat* communities and their customary laws are embedded in the wider context of state laws of Indonesia. Embedded rather means determined by the wider context of state laws here, because through the PEL the state government has the right to declare that a customary community cannot define itself as *adat* community. This means, that claims within the customary SAF are not legitimate within the state SAF. Their land tenure system is not accepted when it comes to defending their land rights before a palm oil company, because the palm oil companies move within the field of the state government. Customary communities however also overlap with the field of the state. Otherwise, there would be no conflict to discuss here, if they were that easily expropriated from their land. The task force claims to move in both fields, because it includes members of the state government, the palm oil company and the customary community. It is however paid and con-

trolled by the palm oil company. The state of Indonesia also displays a semi-autonomous social field, enforcing its own rules. As mentioned above, it asks for specific requirements to be met before it hands out property rights. Following Moore (1972), we could assume that its autonomy reaches as far as people are accepting and living by state laws. However, as shown throughout the last chapters, *adat* communities do not accept that the state gives away their ancestral land for palm oil plantation development. And yet is their land used to expand palm oil plantations. That means, although both display Semi-Autonomous Social fields the state can constrain the customary community. Customary communities can also refuse to accept state laws, but the events in the case studies showed that their land was cleared nonetheless. Thus, the question remains why.

So, the concept of Semi-Autonomous Social Fields is not comprehensive enough to uncover the uneven power relations, which are subject to this conflict. How people are accessing those fields is crucial to that. This is where we need to examine the importance of access and authority when it comes to executing power.

This is where we draw on theories of property rights and access by Ribot (1998) as well as of power and authority by Sikor and Lund (2009), in order to explain why indigenous communities are not able to keep companies from taking the land, they claim to be theirs, based on customary law.

First of all let us deconstruct how the interaction of power, access and authority constitutes who gets to dominate in the conflicts as described in chapter 4. This part starts with how the state government gets to execute its power over customary law. That means examining laws, which were legislated to control the self-governance of customary communities. That is followed by how local governments and palm oil companies make use of these laws, while acquiring land the communities claim to be theirs. This section then closes by displaying the consequences for the communities resulting from the interaction with the palm oil company.

Power and authority are established by the state through legislating laws and policies and through exercising police and army force. The state of Indonesia ensured to have the power in the first place by deciding how customary communities manage themselves under *adat* law by altering already existing laws. First, article 3 of the Basic agrarian law states that customary law communities shall be recognized as such but also dictates *adat* communities to be in the line of state interest. This takes away the autonomy of indigenous communities to keep on living and working as they did, because state interest is not further specified.

This is an exemplification of delegitimizing a community in its right to rule itself. That means, although *adat* communities are recognized as self governing communities in the constitution, it takes one amendment to have the say over whether that self governing is permitted or not.

State officials and companies are claiming to move along the line of development and often justify actions, like expropriation, with that argument. This is displayed in the case of West Sumatra, where the argument against customary people cultivating the land is that it would hinder development. That means, if developing a palm oil plantation is in state interest, indigenous communities who are cultivating the land have to give way.

Second, and this constrains *adat* communities' autonomy even further, took the state care of being the one deciding on whether a community is an indigenous community or not. This is crucial when it comes to the Plantation Estate Law, which dictates the applicant for land to enter the discussion with the local customary communities but only if they are recognized as such. That means, the state has the last word when it comes to whether ancestral land can be used for palm oil plantations or not. This is because the state itself evaluates the criteria, if it is in its own interest and/or if the community counts as indigenous community. Thus, if it can pursue claiming land under customary law.

Third, the state establishes its power and its authority over *adat* communities by using police and army force. In all three cases, communities were threatened and intimidated by the police, the army or security forces. They often have to conform to state interest, here plantation development, because they are left with no or worse alternatives. They were threatened with imprisonment or actually put into prison, when they tried to take on action against operations of the palm oil company

in both forms-organizing demonstrations and complaining letters.

In the case of West Sumatra, the community was threatened to be declared as a communist community opposing the current regime. The Sami community for example, was left alienated from its neighbouring community, because it did not engage with the company. Those threats led to a shut down of most counter action.

Those previous three points made clear that the state has the legislative and executive power to constrain *adat* communities.

The following part will illustrate how having access to this power determines the outcome of the conflict. Those three points implicate, that customary communities have it difficult to make use of state laws to defend their claims. Palm oil companies however can. They move along the line of how the state operates. That means they use the same, or adjust to the same business grammar and procedures the government requires to acquire land. Like this, they share the same language norms to follow procedures of land acquisition. In other words, palm oil companies are accessing state laws and procedures to build up plantations. For example, palm oil companies claim to work with HGUs and ownership certificates, which the local and the state government accept as proof for having the right to a piece of land. Customary communities are forced to move along the same line of argumentation, if they want to defend their claim to a piece of land. They are requested to present a written form of proof that the land belongs to them. For example, when the Hibun community as well as the Pondok Damar people, wanted to defend their case in court they were requested to present a standardized form of *adat* as base for their arguments. Also when those communities decided to engage with the companies under the 7.5 scheme, they had to use common standards. These included exact measuring and defining of the physical area with a GPS system. In all cases was the community required to perform measurements in hectares with a GPS or some sort, to be able to even have a discussion about the land plots. Moreover it was dictated to separate or combine several plots in order to fit into the 7.5 scheme. These requirements display the standardized procedure for land acquisition.

So, what are the consequences for *adat* communities, which are trying to defend their land. First of all, one consequence is that the palm oil company took over land plots, which had no written proof of ownership. However those plots were claimed customary land. Community members had not given them up for plantation purposes. The Sami community had lost over 100 ha while members of the Pondok Damar village reported that the company had taken more hectare than it was agreed upon. Customary communities are often denied access to the requested way of communicating their ownership to the palm oil company, because they either lack official documents which constitute their landowner-ship in the first place or the expertise to understand the contracts after they engaged with the company. Customary leaders of Pondok Damar explained to the community that their land was state land and that the company would take the land anyway. In the case of Sumatra, community members were afraid to lose in their fight for their land because they did not have legal documents and were intimidated by the technical language local officials used. In Central Kalimantan people reported that they did not understand the fine-print in the contracts after they made oral agreements with the company.

After the Hibun and the Pondok Damar community engaged with the palm oil companies, they had to face several other consequences. The so-called socialization program was implemented poorly. Community members often received fewer hectares of planted plots than it was agreed upon or they are still waiting to receive any at all. Additionally they were now depended on the company considering all of their farming input, like fertilizer or seeds. The company had created a monopoly, in which the community depended on palm oil plantation output for its income. That severely decreased the possibility for self-sufficiency. Additionally, the company was the sole provider for farming inputs, like seeds and fertilizer which made the community more dependent.

PT MAS and PT MS had secured the access to power over the community because it had included customary leaders as well as the district government and joined in the task force. Interviewees of the Hibun and the Pondok Damar were concerned with the task force being paid by the company and with their leaders becoming advocates for it. Thereby the companies had also secured ac-

cess to information about the communities' land. Members of both communities however indicated that this did not work both ways. On the contrary. Although the task force claimed to be also representing the communities, they felt ignored and left alone when confronted with administrative challenges. Their protests were dissolved through mediations by their leaders, in order to be imprisoned afterwards. Every community of the three cases reported that letters of complains or requests for clarification, area mapping or transparency had been ignored by the palm oil company and/or the land registration office.

All those consequences considered, the communities felt that the palm oil companies made profit from their customary land without including them. They felt powerless against the palm oil company, often backed by local governments and customary leaders.

Based on the information constituting this thesis I can derive the following conclusions. First, the state favours investment of palm oil companies over cultivation of land by customary communities, because it contributes a significant share to its GDP. District governments favour investment of palm oil companies because they are benefiting from illegal payment or personal favors. So, the state government uses legislative and executive power to constrain the self-governance of *adat* communities, by having them conform to the state interest. Using legislative power means that the government changed existing laws to overpower customary self-governance. State interest concerns here to clear more land for the establishment of palm oil plantations. That means acting against the establishment of a palm oil company is equivalent to acting against state interest, which can then be classified a crime. Using executive power means, that district authorities monitor over the implementation of these policies and revert to punishment if they are not followed. So, having access to that power, enabled the palm oil companies to take over land which customary communities claimed to be theirs. Not having access to that power meant for the communities, that their complains and requests for transparency were ignored. What becomes evident throughout this chapter is that power plays the most crucial part constituting access to land. Although customary communities have been cultivating their land according to *adat* law since several generations, they are forced to express their claims in terms of state law if they want to have claims for their land legitimized and thus be able to defend it before the palm oil company. The palm oil companies however did not succeed in getting all customary communities of the three cases to accept its legal requirements under state law for land acquisition as legitimate, so it resorted to physical power through district governments. Communities are actively threatened by police forces and are left in the feeling of being in the minority by ignoring their complains and requests for transparency. The palm oil companies took advantage of the fact that most of customary land is declared state land and that the communities were not equipped with written forms of ownership. This put the communities under pressure, because they were facing worse alternatives. The Sami community for example stopped fighting the company, because the alternative, that they would be alienated from their neighboring communities, seemed worse. The leaders of the Pondok Damar village stated, that their land was state land anyway. So the people Pondok Damar people thought that the alternative to giving up part of the family land would be loosing all family land. The Hibun community engaged in the saham scheme, because they feared otherwise to get no money at all.

However, even after engaging with the palm oil company under its legal requirements, the Hibun and the Pondok Damar community were denied the benefits promised to them. The farmers felt, that they were treated like labourers rather than landowners. The palm oil companies had taken advantage of the fact, that farmers lacked the technical know how to interpret the fine print of the contracts or the outcomes of the GPS measurements. The palm oil companies also knew that they were backed by district governments, so that most of the communities were in an inferior position considering physical power. They knew they were also backed by state legislation, because of the amendments which constrain communities in their ability for self-governance.

For those case studies, we can therefore conclude that their claims for land rights were delegitimized – not because they claimed it under *adat* law because they fulfilled requirements under state law. But because they had less access to power.

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