

# PALM OIL LAND DISPUTES IN WEST-KALIMANTAN: THE POLITICS OF SCALE IN PROCESSES OF DISPUTE RESOLUTION

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An empirical research on dispute resolution strategies in Sambas district





# Palm Oil Land Disputes in West-Kalimantan: the Politics of Scale in Processes of Dispute Resolution

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An empirical research on dispute resolution strategies in Sambas district

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# Abstract

The ever-growing demand for palm oil has initiated drastic changes in rural areas of Indonesia. In West-Kalimantan, the large-scale expansion of oil palm plantations has intensified competition over land and natural resources. This has triggered (violent) disputes between local communities and palm oil companies. In response to concerns about the environmental and social impacts of oil palm expansion, stakeholders of the sector and actors from civil society initiated international sustainability standards. These standards may provide new opportunities for dispute resolution, but at the same time their vigour is restricted by the local contexts in which land disputes are embedded. Using politics of scale theory, this thesis explores dispute resolution strategies of an NGO in West-Kalimantan. It is examined how scale frames and counter-scale frames are strategically constructed to link palm oil-related grievances with scales at which they can be addressed. A case study on two palm oil-related land disputes in Sambas district shows that these disputes are deeply embedded in local politics and power relations. To some extent international sustainability standards can be used to facilitate negotiations between communities and companies and monitor compliance with agreements. However, structural solutions for palm oil disputes are to be found at district level.

**Keywords:** palm oil; international sustainability standards; dispute resolution; politics of scale; West-Kalimantan

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## List of abbreviations

AMAN	- Aliansi Masyarakat Adat Nusantara (Alliance of Indonesian Adat Communities)
BAL	- Basic Agrarian Law
BPS	- Badan Pusat Statistik (Centre for Statistics)
CAO	- Compliance Advisory / Ombudsman
CIFOR	- Centre for International Forestry Research
CPO	- Crude Palm Oil
DPRD	- Dewan Perwakilan Rakyat Daerah (District Council)
DSF	- Dispute Settlement Facility
FOE	- Friends of the Earth
FPIC	- Free, Prior and Informed Consent
GAPKI	- Gabungan Pengusaha Kelapa Sawit Indonesia (Indonesian Association for Palm Oil Companies)
HuMa	- Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis (Community and Ecological Based Society for Law Reform)
ID	- Institut Dayakologi (Institute for Dayakology)
IDR	- International code for Indonesian Rupiah
IFC	- International Finance Cooperation
IMF	- International Monetary Fund
INGO	- International Non-Governmental Organisation
ISPO	- Indonesian Sustainable Palm Oil
KKPA	- Kredit Kepada Koperasi Primer (Primary Cooperative Credit for Members)
LG	- Lembaga Gemawan (Gemawan Institute)
MIGA	- Multilateral Investment Guarantee Agency
NGO	- Non-Governmental Organisation
OR	- Organisasi Rakyat (Community Organisation)
PIR-BUN	- Perusahaan Inti-Rakyat Perkebunan (Nucleus Estate Scheme Plantations)
PIR-TRANS	- Perkebunan Inti-Rakyat - Transmigrasi (Nucleus Estate Schemes for Transmigration)
PT	- Perseroan Terbatas (Incorporated Company)
RSPO	- Round table on Sustainable Palm Oil
RTRW	- Rencana Tata Ruang Wilayah- Spatial Planning
STSD	- Serikat Tani Serumpun Damai (Farmers Union for Peace)
UN	- United Nations
WALHI	- Wahana Lingkungan Hidup Indonesia (Indonesian Forum for the Environment)
WWF	- World Wide Fund



# 1. Introduction

## 1.1 Introduction

During the past decades the ever-growing demand for palm oil has initiated drastic changes in rural areas of developing countries. Especially in Indonesia, together with Malaysia the heart of global palm oil production, the expansion of oil palm plantations has had astounding consequences. The Indonesian government has welcomed palm oil as being a key to development, economic growth, job generation and energy security<sup>1</sup>. In the face of incessant demands for vegetable oil and biofuel, the expansion of oil palm plantations is set to continue there (Colchester, Jiwan and Chao, 2013). Palm oil, however, is also a topic of controversy. Research institutes and NGO's have expressed concerns about the consequences for the environment. Deforestation, peat-land destruction; loss of biodiversity and habitat for endangered species; pollution and erosion-induced floods, are but a few of the problems that are associated with palm oil production (e.g. Laurance, 2009; Koh and Wilcove, 2008; Carlson et al, 2012; Friends of the Earth, 2008). This summer, palm oil again made the headlines regarding the smog levels in Singapore and Malaysia, caused by land burning practices in Indonesia (bbc.co.uk, 2013). Palm oil stakeholders defend their position by pointing out the potential of palm oil with respect to development and poverty alleviation in rural communities (GAPKI, 2013). Indeed, some experts (e.g. Feintrenie, Chong and Levang, 2010) believe that under fair partnerships between smallholders and companies, oil palm could become a smallholder friendly crop. However, researchers and NGO's increasingly link palm oil with socio-economic problems such as the decline of livelihood opportunities, inequality, child labour, and violations of human and indigenous rights. Another issue compromising the social sustainability of palm oil is the rise in (violent) land disputes. The actual number of land disputes is unknown, but Sawit Watch has so far recorded 660 disputes between communities and companies (Sawit Watch, 2013). Lembaga Gemawan reports 104 disputes since 2004 in West-Kalimantan, and 70 persons detained after resisting oil palm expansion (Lembaga Gemawan, 2012).

In response to these concerns, the palm oil sector has developed international sustainability standards to safeguard the environmental and social sustainability of palm oil production. For example, stakeholders in this sector, in co-operation with actors from civil society such as the WWF, have initiated the Round Table on Sustainable Palm Oil in order to enhance sustainability and equity in the palm oil sector (rspo.org, 2013). Also, financial donors of the palm oil sector have set up codes of conduct and standards to which their beneficiaries have to comply.

Consequently, the governance network of the palm oil sector has become increasingly globalised (McCarthy, 2012). This means that the links between the scales at which social grievances are experienced and scales at which they can be legally or politically addressed become more complex and diverse. This may bring new opportunities for dispute resolution and new challenges at the same. According to McCarthy, Gillespie and Zen (2012), attempts to improve the governance of global palm oil production chains, have met with considerable obstacles; the most significant

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<sup>1</sup> Keynote speech of Minister of Agriculture to the Roundtable on Sustainable Palm Oil (Jakarta, 2004).

of these are located at the “upstream-end” of palm oil production: in other words, in districts (*kabupaten*) where there is little pressure to meet international social and environmental standards. They urge for new research into the realities of these upstream locations (McCarthy, Gillespie and Zen, 2012). Efforts to make the palm oil sector more sustainable and equitable should be evaluated in the context of the political dynamics of palm oil districts in Indonesia.

## 1.2 Problem Statement

West-Kalimantan is one of the main palm oil-producing regions of Indonesia. The expansion of plantations is expected to continue there, as district governments are looking for ways to enhance economic development in their areas (McCarthy, Gillespie and Zen, 2012; Potter, 2009). This will lead to intensification of the competition over access to land and natural resources. The palm oil sector competes with other types of land use such as rubber cultivation, agriculture, agroforestry and conservation forests. Violent land disputes are increasingly common (Khainur and Hermawansyah, 2012), which is an alarming development in a region where, barely a decade ago, ethnic wars raged (Davidson and Kammen, 2002).

The civil society of West-Kalimantan plays an important role in palm oil related disputes (Potter, 2008). Several local NGO's and local departments of national NGO's<sup>2</sup> are involved in campaigns against problems in this sector. This thesis will focus on Lembaga Gemawan, a Pontianak and Sambas-based NGO, which is concerned with human rights, livelihood protection, and the environment and palm oil issues. A core activity of Lembaga Gemawan is dispute resolution regarding palm oil-related disputes in particular in Malay communities in the coastal districts of West-Kalimantan. The globalisation of the governance network on palm oil provides new dispute resolution opportunities. NGO's such as Lembaga Gemawan may be able to use new legal mechanisms strategically to pursue their aims at more favourable scales (Pesqueira and Glasbergen, 2013). However, international sustainability standards are shaped by interests, values and discourses of different actors. A mismatch between the aims of international sustainability standards on the one hand and local needs on the other may lead to new disputes. Moreover, it is yet unclear to what extent international sustainability standards are relevant to the daily lives of communities in isolated districts. It may be that other kinds of dispute resolution mechanisms are more relevant.

In order to understand how international sustainability standards shape the outcomes of dispute resolution processes at local levels and the extent to which the standards contribute to social sustainable and equitable palm oil, new empirical research is needed into the dispute resolution strategies of NGO's. In-depth documentation and analysis of dispute resolution strategies of Lembaga Gemawan can reveal the consequences of using different scale frames in processes of dispute resolution.

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<sup>2</sup> NGO's such as AMAN, Pancur Kasih, Institut Dayakologi, WALHI, Sawit Watch, Kontak Rakyat Borneo and Lembaga Gemawan.

### 1.3 Justification

The topic “palm oil” has been researched extensively. It is clear that this sector can have serious impacts on the environment and that there are major challenges in making palm oil a source of development for local communities in an equitable and sustainable manner. Rist, Feintrenie and Levang (2009) conclude that as future expansion of oil palm is inevitable, it is not a question of “oil palm or not”, but a question of how to deal with it. The mere existence of social and environmental sustainability standards is not enough to secure tangible positive outcomes for the local communities in West-Kalimantan. Research is needed on how these standards are used in local contexts to examine their impact on local disputes. According to McCarthy, Gillespie and Zen (2012), local agency and local variations are often overlooked in analyses of what happens when global processes interact with local dynamics (McCarthy, Gillespie and Zen, 2012). Using an actor-oriented approach this research aims to address this knowledge gap. Moreover, by focussing on dispute resolution strategies, this research will look beyond issues that are related to oil palm plantations. Palm oil disputes often occur before a single oil palm is planted, and yet these disputes are embedded in palm oil discourses.

### 1.4 Research objectives and research questions

The first objective of this research is to examine the role of Lembaga Gemawan in processes of dispute resolution with respect to palm oil-related disputes. The discourses and actions of this NGO will be analysed to find out to what extent, how and why different dispute resolution strategies have been used and what role international sustainability standards have played in these strategies. The outcomes can be used as input for discussions about dispute resolution strategies with communities and NGO's: both in West-Kalimantan and in other palm oil producing countries.

Second, this research aims to contribute to the theoretical understanding of the role of politics of scale in dispute resolution processes regarding land and natural resources. In-depth empirical knowledge of the construction of scale frames and counter-scale frames in context of political and socio-economic processes in Indonesia can provide a better understanding of how scale constructions can serve as a strategy and how they can constrain actions. Analysing the politics of scale helps to evaluate the interactions between various scales in governance networks of the palm oil sector.

To this end, a case study will be made of Lembaga Gemawan. This case study can be compared to similar case studies, which makes it possible to draw generalised conclusions on the impact of globalised governance networks on dispute resolution processes at local levels.

The aforementioned description of the problem leads to the following research questions:

#### Main research question:

To what extent and how did politics of scale play a role in strategies of Lembaga Gemawan to address palm oil-related disputes and what are the consequences for processes of dispute resolution?

#### Sub-questions:

1. What normative frameworks and discourses characterise palm oil land disputes?
2. Which dispute resolution strategies has Lembaga Gemawan used to address palm oil-related disputes?
3. What counter-scale frames has Lembaga Gemawan constructed to challenge other scale frames?
4. What factors can explain Lembaga Gemawan's choices for different (counter-) scale frames?
5. What consequences can be observed from the use of international sustainability standards as part of dispute resolution strategies?

### **1.5 Methodology**

The research problem will be approached from a socio-legal perspective. Normative systems shape the behaviour of actors and at the same time, normative systems themselves are social constructions. Following Vel and Bedner (2012), the "socio" is used as a point of departure and related to the "legal". The socio refers to actors involved in the palm oil sector. The 'legal' is considered as the selection that these actors make from the legal repertoire relevant to the palm oil governance network. It is assumed that actors select from a global repertoire of legislation, conventions, codes of conduct and contracts that provide the best opportunities for pursuing their interest (Vel and Bedner, 2012).

Two theoretical concepts provide the analytical framework for the case study. First, the concept dispute resolution process is used to understand the different (overlapping) phases of addressing disputes. This concept defines dispute resolution as an ongoing process that induces changes, but not necessarily ends disputes. The second concept is politics of scale. The methodological implication of this concept is that in analysing dispute resolution strategies, specific attention is paid to the discursive processes that give meaning to grievances and to the way scales are invoked in these discourses. (Kurtz, 2003; Benford and Snow, 1998).

The theoretical framework is used to analyse a case study of the role of Lembaga Gemawan in processes of dispute resolution regarding palm oil-related disputes. Data collection for this case study was based on literature study and empirical study. First, relevant normative systems and the historical and political context in which they are constructed are explored. This is based on a review of academic literature and legal documents. Then, an empirical study of two cases of dispute resolution follows, in which Lembaga Gemawan acted as a representative for local communities in dispute with palm oil companies. The cases are situated in the district Sambas (sub-districts Teluk Keramat and Sejangkung). This research site was selected, because Sambas is the prime area where Lembaga Gemawan is active and because the region is prioritised by the Indonesian government to become a palm oil area. Moreover, Sambas is relatively under-represented in studies on West-Kalimantan.

## 1.6 Methods

Different research strategies have been used to collect data for the case study on Lembaga Gemawan. During a fieldwork period of three months in Pontianak and Sambas in West-Kalimantan, I joined the activities of Lembaga Gemawan. This gave me the opportunity for participatory observation to document actions, discourses, discussions and interactions between Lembaga Gemawan and other actors. I joined internal meetings, meetings with other NGO's, meetings with communities and meetings with local authorities in order to map out what Lembaga Gemawan does, and to examine the factors that explain their choices and the consequences of their actions. In these meetings their position on what the problems are, how and by whom they are caused, and to what consequences they lead became apparent. Joining Lembaga Gemawan, moreover, gave me the opportunity to attend village meetings at which problems were discussed that are related to palm oil as well as strategies aiming to address these problems. I attended seven village meetings during which Lembaga Gemawan and their Farmers Union (STSD) met with communities to discuss the situation regarding palm oil. I also attended a meeting of the STSD, and four meetings with local village heads.

Besides participatory observation, I gathered data through semi-formal interviews with nine Lembaga Gemawan staff members and multiple informal interviews with sixteen Lembaga Gemawan staff members. Moreover, I conducted semi-formal and informal interviews with staff of the Pontianak based NGO's: WALHI, Kontak Rakyat Borneo, the Dayakology Institute and Pancur Kasih; two NGO's in Bogor (who are active in West-Kalimantan): Forest Peoples Programme and Sawit Watch; and the international NGO Friends of the Earth. Further, I had two meetings (in Jakarta and in Pontianak) with representatives of a domestic palm oil company operative in Landak (West-Kalimantan). These interviews helped me to develop a broader perspective on palm oil related disputes and the different scales at which such dispute can be addressed. All semi-formal interviews are recorded on audio and are transcribed. All interviews with Indonesians were conducted in Bahasa Indonesia. The translations of the interviews used in this paper are made by the author of this thesis. With respect to confidentiality of the respondents and due to the sensitivity of the topic, all the names of the respondents and the names of the villages have been codified.

Conducting semi-formal interviews turned out to be a challenge at times, because the question-answer style of interviews, common in the Netherlands, is uncommon in Indonesian context. Interviews took the form of storytelling, which made it difficult to stick to the pre-determined structure of the interview. I solved this issue by having many informal interviews in informal settings like in the car, over dinner, drinking coffee and playing Ping-Pong, to fill in the gaps. A disadvantage of this method is that many interviews are not recorded on audio. However, the multitude of informal interviews has helped to overcome pitfalls of wrong interpretations or incomplete data. Besides interviewing, I collected year reports, minutes of meetings, newspaper items and a home video of Lembaga Gemawan to collect data on the strategies and discourses of Lembaga Gemawan and other NGO's.

In addition to empirical research methods, a literature study was made of studies on palm oil in Indonesia, decentralisation and the role of civil society; as well as the globalisation of the palm oil sector, to place the case study in perspective of global, national and regional political dynamics.

## 1.7 Organisation of the thesis

Chapter 2 begins with a discussion of a theoretical framework on dispute resolution processes and the politics of scale. This framework serves as a guide to analyse the case study. Three forms of politics of scale are identified which serve to evaluate the discourses and actions of Lembaga Gemawan.

Chapter 3 introduces the palm oil sector in Indonesia. It explores how and why the oil palm was introduced to Indonesia and how policies have developed and changed according to political paradigms. Then, this chapter continues with a discussion of the global governance network of palm oil. The Roundtable on Sustainable Palm Oil and the Compliance Advisory / Ombudsman of the International Finance Corporation are highlighted as examples of globalising governance.

Chapter 4 zooms into the oil palm expansion in West-Kalimantan. It maps out the political and socio-economic context in which the expansion in this region is taking place. Decentralisation and increased power for district governments in combination with their interest to attract agribusiness investors are identified as enabling factors of oil palm expansion. Then, the chapter discusses the rise of civil society resistance against oil palm expansion. The chapter concludes with a description of Lembaga Gemawan.

Chapter 5 presents two cases of palm oil-related disputes. Both cases are situated in Sambas district. The first case is about a dispute between communities and companies over planned oil palm plantations. The second is about a dispute situation wherein a plantation already was established. The stakeholders of this case include actors situated at global level. The chapter narrates the events and explains the role of Lembaga Gemawan.

Hereafter, chapter 6 provides an analysis of the cases based on the theoretical framework introduced in chapter 2. The conclusion will describe how Lembaga Gemawan engaged in scale framing and counter-scale framing to address palm oil-related grievances of communities in Sambas. Last the results and limitations of this research are discussed.



## 2. Theoretical framework

Indonesia's abundance of natural resources has drawn people from all corners of the world to the archipelago. However, especially in the last century, this abundance experienced a sharp decrease as natural resources were over-exploited to feed the demands of global economic growth. Up to now, Indonesia is greatly dependent on the exploitation of natural resources. Palm oil is a promising crop in terms of returns to land and labour (McCarthy, 2010). However, this mono-cultural crop competes with other types of land use. The competition over land is causing a rise in environmental disputes, with people struggling over access to land, resources and livelihoods. Due to globalisation, these disputes are embedded in increasingly complex networks of governance arrangements. What at first glance seem to be local disputes are of concern to actors and institutions at various "scales". This chapter provides a theoretical framework to analyse environmental dispute resolution processes as politics of scale, wherein actors invoke and construct geographical scale according to social identities and political motivations.

### 2.1 Dispute resolution processes

Literature on disputes conceptualises disputes as a phase in a conflict wherein grievances are voiced and claims are made about responsibility for injustices, and remedies are demanded. Disputes continue as long as claims are denied. (Upreti, 2001; Nicholson, 2005). While "dispute" has a negative connotation, a dispute is also a moment of change. Latent problems become outspoken and consequently can be addressed. This thesis theorises dispute resolution as a political process.

The concept "dispute resolution strategies" refers to practices, actions and discourses that are used to address disputes. Upreti (2001) is critical on the term "resolution" in conflict or dispute resolution. He argues that often conflicts and disputes are not resolved in total and therefore he prefers to use the term "management". Also Nicholson (2005) agrees that dispute resolution in the narrow sense could mean determination of a dispute by a court, which does not always solve the disputes: feelings of grievances do not disappear. The critique needs to be taken into account when defining dispute resolution. However, dispute resolution can also be seen as a process instead of an end stage. In this thesis, dispute resolution is not seen as the final solution which ends the conflict. Rather, dispute resolution is regarded as a political process, wherein problem, causes, responsibilities and solutions are subject to negotiation and contestation. This process can be originated without ever reaching a final solution. Nonetheless, the process itself will alter the dynamics of the dispute, because perceptions on problems, causes and solutions change. I prefer to use the term "resolution" over "management", because I focus on strategies of NGO's to find a solution for disputes. This interpretation of dispute resolution as a process is inspired by the work of Felstiner, Abel and Sarat (1981) and Bedner and Vel (2010).

Felstiner, Abel and Sarat (1981) distinguish three phases in a dispute: naming, blaming and claiming. Naming refers to recognizing a problem as an injustice. Subsequently, the injustice is formulated in terms of causes and responsibilities and it is determined which norms have been violated. This is the blaming phase. In the next phase, a claim is presented about how, where and by whom the problem should be addressed and redressed. This framework on the process of

disputes can be complemented by the analytical framework on access to justice of Bedner and Vel (2010). Inspired by Felstiner, Abel and Sarat (1981), they developed a framework on the process of access to justice. The first phase in the framework is: “from real life problem to injustice to grievance”, which resembles the naming phase of the previous framework. The next phase: “exploring available legal repertoire”, is divided in exploring normative framework (what norms exist that may have been violated) and implementation of norms (assessing whether laws are implemented or not). This phase involves formulating causes and responsibilities and is thus related to the blaming phase. The last phase: “getting access to justice”, is divided in access to appropriate forum (are forums available?), handling of grievance (appropriate treatment in eyes of subject) and redress of the injustice (is a satisfactory remedy obtained?). While this phase corresponds to the claiming phase of Felstiner, Abel and Sarat (1981), Bedner and Vel (2010) address specifically disputes resolution.

Bedner and Vel (2010) emphasise that the justice seeker, or people with real life problems, should be the entry point for analysing access to justice. However, they recognise that intermediaries such as NGO's can play an important role throughout all phases of the process. Intermediary actors can raise awareness about problems, shape and change the meaning of problems, assess normative frameworks and make choices regarding where and how to formulate claims.

Dispute resolution strategies are not restricted to addressing disputes in court. Moreover, normative frameworks that are relevant to disputes do not only encompass formal national laws and policies, but also customary laws, district regulations and international agreements, standards, contracts and conventions. Nicholson (2005) distinguishes different dispute resolution strategies. He makes a difference between strategies that aim for the punishment of the responsible, strategies that seek compensation for the victims and strategies that opt for conciliation between the disputing parties. The first two strategies involve litigation: commencing legal proceedings in a court. Litigation can be pursued in different kinds of courts: customary courts or state courts (administrative, civil, or criminal). Litigation is often not an option for private governance institutions like the RSPO. With respect to conciliation, mediation is a more appropriate strategy. This option is more likely to be favoured in case the disputing parties have close relations and are dependent on each other in the future (Nicholson, 2005). Moreover, global private governance institutions often have no jurisdiction to do anything other than mediation. In addition, advocacy and campaigning is a dispute resolution strategy. Through social pressure, actors can be forced to change behaviour or compensate their “victims”.

The next paragraph examines the role of politics of scale in dispute resolution strategies.

## 2.2 Politics of scale

The concept “politics of scale” provides a sharper understanding of environmental disputes that at first glance might be taken as “local” or “global”, but are in fact complex imbrications of multiple actors, places and things. This concept helps to map out the broader network of actors and discourses around and through which actors engaged in dispute resolution must manoeuvre (Sneddon and Fox, 2008).

Literature on politics of scale approaches scales as social constructions, rather than ontologically given geographical sites (Jones, 1998; Kurtz, 2003). Tsing (2005) conceptualises scales as the spatial dimensionalities necessary to make sense of the world. "Scales are not neutral frames; they must be brought into being: proposed, practised, and evaded, as well as taken for granted. Scales are claimed and contested in cultural and political projects" (Tsing, 2005: 58). Scales like local, regional, national and global become meaningful when actors invoke them through discourses, actions, and strategies.

Recognizing that scale is socially constructed allows for a political approach, examining both how actors produce scales through activities and how scales in turn constrain and guide these activities by providing (or taking away) resources (Lebel, Garden and Imamura, 2005; Kurtz, 2003). The politics of scale refers to the notion that actors can play with scales in a strategic manner. Actors imagine locality, nationality or globality in ways that fit that their social identity as well as political motivation (Sneddon and Fox, 2008). Politics of scale occur when actors attempt to shift levels of discussion, assessment and decision-making to a scale in which they can exercise power and gain access to resources more effectively. Accordingly, actors make use of discourses, policies, practices and historical events to affect decisions, institutions, power relations, access to resources and the physical environment (Lebel, Garden and Imamura, 2005; Pesqueira and Glasbergen, 2013). Indeed, Leitner (2003, as cited in Kurtz, 2003) states that central to the politics of scale is the manipulation of power and authority by actors and institutions operating and situating themselves at different spatial scales. According to Swyngedouw and Heynen (2003), the constant reorganisation of spatial scale is an integral part of social strategies to combat and to defend control over limited resources and/ or struggles for empowerment. Socio-spatial processes change the importance and role of certain geographical scales, reassert the importance of others and, on occasion, create entirely new scales. These scale redefinitions, in turn, alter the geometry of social power by strengthening the power and the control of some while disempowering the power and control of others (Swyngedouw and Heynen, 2003).

So scales are socially constructed and they are shaping and being shaped by actors according to political motives and interests. To understand how actors construct scales and how social constructions of scale in turn shape their actions, it is helpful to appreciate scaling as a discursive process. Literature on scale theory has highlighted the role of political discourse in the politics of scale, suggesting that scale is not pre-given but a way of framing conceptions of political-spatiality (Jones, 1998; Delaney & Leitner, 1997, as cited in Kurtz, 2003). The concept framing is crucial to connect dispute resolution processes to the politics of scale and scaling processes. Snow and Benford (1988) use framing to explain why actors engage in social movements. Actors that are engaged in dispute resolution processes are a form of social movement. "Social movements are not merely carriers of existent ideas and meanings that grow automatically out of structural arrangements, unanticipated events or existing ideologies. Rather, movement actors are viewed as signifying agents actively engaged in the production and maintenance of meaning: framing" (Benford and Snow, 2000: 613). Social movements make use of a "collective action frame": sets of beliefs that justify or legitimate social movement activities and campaigns. This collective action frame serves three integrated purposes, which correspond to the phases naming, blaming

and claiming in the processes of dispute and dispute resolution of Felstiner, Abel and Sarat (1981). The first phase is to construct a social grievance by defining an existing condition as unjust (naming). The second is to attribute blame for the grievance, identifying a target of collective response (blaming). The last phase is to suggest responses or solutions to the grievance (claiming). So collective action frame offers an explanation on why actors engage in dispute resolution processes. Now to connect this framing process to scaling, it needs to be explicated that scaling is a form of framing (Kurtz, 2003). Kurtz (2003) argues that scale frames are a type of collective action frames, which can explain social movements, such as “dispute resolution movements”. Scale frames rely for their meaning and effectiveness on linking social relations organised at particular scales. Scale frames are the discursive practices that construct meaningful (and actionable) linkages between the scale at which a social problem is experienced and the scale(s) at which it could be politically addressed or resolved (Kurtz, 2003: 894).

Smith (1992, as cited in Pesqueira and Glasbergen, 2013) advocated the possibility for social movements to resist or circumvent specific scalar constructions (jumping scales) in order to pursue their aims at a more favourable scale. According to Pesqueira and Glasbergen (2013), international NGO's in particular are well-suited to engage with a politics of scale in context of private governance arrangements (such as the RSPO). They distinguish three ways in which NGO's can deploy politics of scale. The first is to create a space of engagement in a sense that actors involved in a governance arrangement recognise a relationship between the different dimensions of the problem that each of them is concerned with. The second is the creation of connecting spaces which creates opportunities for less privileged groups to participate in the network structure of the arrangement. Third is the creation of a space of formal interdependence, which entails that new network relationships become a foundational part of governance arrangements. While these three forms of politics of scale are helpful to understand how actors can deploy scaling to pursue their interest, what lacks are the processes of inclusion and exclusion inherent to politics of scale according to Kurtz (2003). Scaling is not an exclusive tool for social movements to achieve their goals. All actors in dispute resolution processes are engaged in scale making. Scale frames are contested and challenged by counter-scale frames: discursive strategies directed at undermining one or more elements of established scale frames (Kurtz, 2003).

### 2.3 Three ways to analyse the case study

To analyse the dispute resolution strategies of Lembaga Gemawan and the extent to which these made use of and were challenged by scale frames and counter-scale frames, I distinguish three forms of politics of scale. These are inspired by the literature on politics of scale and scale framing (Lebel, Garden and Immamura, 2005; Kurtz, 2003; Sneddon and Fox, 2008; Pesqueira and Glasbergen, 2013). However, the three forms are specifically arranged to analyse both how scale framing can be part of dispute resolution strategies and at the same time how scale politics can constrain dispute resolution processes. The three forms distinguished here are not necessarily exclusive; other forms of politics of scale may be distinguished.

First, scale frames and counter-scales frames can be deployed to build linkages of redress. Environmental disputes often seem to be situated at specific locations, for instance the location

of that what the parties are in contestation about, such as a piece of land, a river, village boundaries or an oil palm plantation. This is the scale at which a grievance is experienced and given meaning. However, this is not necessarily the scale at which the grievance can be legally and politically addressed. Environmental justice activists or any kind of social movement can reject localisation of grievances and construct politically resonant social grievances in which, for example, local pollution becomes a social problem by virtue of being part of a broader spatial pattern (Kurtz, 2003). This way, scales of meaning are connected to scales of redress through discursive processes. The collective action frame on a grievance (naming, blaming and claiming) is used to make the connection between scale of meaning and scale of redress. This is a political process which involves inclusion and exclusion of different scale frames. Social movements may need to develop counter-scale frames to contest undesirable conventional linkages of redress.

Second, scale frames and counter-scales frames can construct new networks of interdependence. Scaling processes can construct new relationships of responsibilities between actors who demand redress and actors who are expected to provide this redress. By framing an isolated grievance as part of a broader spatial pattern for which certain actors or institutions should be responsible, new norms and principles can be constructed. Networks of interdependence can institutionalise into governance arrangements. Hereby accountability for local grievances can be sought at new scales. However, this can also lead to “shirking responsibilities”. Actors can construct networks of interdependence to make other actors responsible, while excluding themselves from accountability. Moreover, the new governance arrangements may not necessarily match the needs of people who experience a social grievance. Counter-scale frames may again be constructed to contest networks of interdependence.

Third, scale frames and counter-scales frames can serve to link opportunities. By building networks of association, actors at various scales can connect different dimensions of social grievances. This connection can give actors access to resources, knowledge, legitimacy and room for decision-making located at other scales. Pesqueira and Glasbergen (2013) approach this as the creation of connecting scales, in which less privileged groups can access decision-making power. Lebel, Gardner and Imamura (2005) point out that improving the scaling abilities of less powerful groups can be an effective form of empowerment. However, I approach linkages of opportunities as available to all actors. Moreover, opportunities include finances, information, human capital, legal capital, political power etcetera, and not only decision-making power.

In order to identify these three forms of scale framing, I analyse the way Lembaga Gemawan (and the other stakeholders in the disputes of the case study) construct collective action frames through a process of naming, blaming and claiming.



### 3. Oil palm expansion in Indonesia: an analysis of relevant normative frameworks

Indonesia and Malaysia are the centre of the global production of palm oil; the world's most traded vegetable oil (World Bank Group, 2010). Palm oil makes up 40 per cent of the market for edible oils. It is used in all kinds of food and cosmetics like chocolate, bread, cookies, shampoo and lipstick. Increasingly, it is also used as a biofuel. According to the Dutch environmental NGO Milieudefensie, the use of palm oil in Europe has doubled over the past six years. Therefore, the expansion of oil palm plantations in Indonesia can be expected to prolong in the future. Oil palm plantations in this country covered approximately 7.8 million hectares in 2011 and by 2020; Indonesia has planned to further expand 4 million hectares of plantations (cifor.org, 2013). This chapter describes the historical development of the palm oil sector in Indonesia and the national and international normative frameworks and discourses that have shaped and stimulated this development.

#### 3.1 Introducing the oil palm to Indonesia

The oil palm was introduced to Indonesia by the Dutch in 1848. After the independence of 1945, the colonial plantations were nationalised and somewhat neglected (Caroko et al, 2011). This changed when President Suharto came to power in 1965. He claimed to have established a "New Order", whereby he distinguished himself from the "Old Order" of President Sukarno. Whereas Sukarno had focused on developing nationalism, Suharto made a top priority of economic development. He re-established foreign relations and reconnected Indonesia to the International Monetary Fund and the World Bank. The New Order regime regarded investments in agriculture as key to the development of Indonesia. This focus on agriculture was embedded in the global paradigms of the Green Revolution. The first investment programs concentrated on rice production to make Indonesia self-sufficient in her primer staple crop (Wie, 2002).

Around the mid-1970's, the World Bank discovered the potential of tree cropping, such as rubber and oil palm, to accomplish development and economic growth in the rural areas of developing countries (World Bank, 1990). The World Bank advanced the "nucleus-plasma scheme": an agricultural business model wherein small-scale farmers (smallholders) are connected through contracts to larger private or state owned estates. The smallholders sell the yields of their "plasma plots" to the nucleus estate, where processing and marketing facilities are available. This system was adopted by the Indonesian government and introduced to Indonesia's reviving palm oil sector. Old plantations were given new life and new plantations were created with support of the World Bank (Caroko et al, 2011). Palm oil was favoured by the Indonesian government and the World Bank, because of its comparative advantage in terms of labour and land. The production costs of palm oil are low compared to other oil yielding crops (Gillespie, 2011; McCarthy, 2010). According to a World Bank report, the investments in Indonesia's palm oil sector aimed to revitalise "unproductive land"; create productive employment and raise the incomes of participating smallholders; and to increase the production of palm oil, to supply a rapidly expanding domestic demand for edible oils, thus playing a part in import substitution (World Bank, 1990). The policies for oil palm expansion coincided with transmigration

programmes, which aimed to move landless farmers from poor and overpopulated areas to frontiers of Indonesia where land and resources were still “abundant” (McCarthy, 2010).

Sumatra was the first region to experience an expansion of oil palm plantations. The first plantations were owned by the state (*perkebunan negara*), but soon after, the state made way for domestic agribusinesses (*perkebunan swasta*), which were subsidised by the state (McCarthy, Gillespie and Zen, 2012). The state furthermore provided infrastructure and access to forest and village lands (McCarthy, 2010). The plantation companies were obliged to adopt the nucleus-plasma system, in Indonesia known as *inti-plasma*, with a ratio of 20:80 between nucleus (20) and plasma (80). The first scheme models were the *Perusahaan Inti - Rakyat Perkebunan* (PIR-BUN) for locals and the equivalent for transmigrants: *Perkebunan Inti-Rakyat - Transmigrasi* (PIR-TRANS). The ratio of transmigrant participants versus local participants had to be set by the ministry of transmigration. According to McCarthy (2010), the number of transmigrants usually outweighed the number of local participants. Gillespie (2011) further notes that local populations did not receive the same assistance as their transmigrant counterparts.

In the early 1990’s, this state-led estate model became subject to increasing criticism from international donors such as the World Bank. A World Bank report advocated that the state abrogate its direct subsidising role and leave oil palm development to the market (McCarthy, 2010). This argument corresponded to the neoliberal development paradigm of that time. Criticism was also directed at the exclusion of local populations from smallholder schemes. As the economic situation of Indonesia weakened, the state withdrew its direct support to the palm oil sector. In the next generation of schemes, known as the “Primary Cooperative Credit for Members” (KKPA), the government took a more facilitating role. The KKPA schemes covered the period 1995-1998 (McCarthy, 2010). This scheme model was based on a partnership between companies and community cooperatives. The role of the state was to provide loans at concession rates to the companies, who arranged credit schemes for their smallholders. McCarthy and Cramb (2009) state that this model implied offering incentives to villagers to make them join the schemes, in exchange for giving up large areas of land.

Access to land for agribusinesses was not hampered by land rights for the communities living in these areas. According to the Basic Agrarian Law of 1960<sup>3</sup> unregistered land belongs to the state. The law acknowledges the existence of customary law (*hak ulayat*) as long as the exercise of these rights is consistent with national and state interests (BAL 1960, art. 3). Customary law communities cannot invoke *ulayat* rights to oppose business utilisation rights, since such concessions are granted to serve the wider interest (Colchester et al, 2006). As communal customary land claims are unregistered, formally these lands belong to the state and the state can acquire this land if it is in the “interest of the public”, for example to develop oil palm plantations (Gillespie, 2011).

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3 Undang-Undang Pokok Agraria No. 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria



To justify land acquisition for oil palm plantations, the state pointed out that oil palm would serve in the interest of farmers (*petani*)<sup>4</sup>. Oil palm was supposed to make modern farmers out of “traditional” subsistence or shifting cultivation farmers (Potter, 2009). However, according to research (e.g. Li, 2011; McCarthy and Cramb, 2009), the KKPA schemes often did not turn out to be so positive for local communities. Cooperatives were lacking transparency and smallholder plots were captured by local elites, who took over the plots that their poorer neighbours could no longer manage<sup>5</sup>. Furthermore, plasma plots were often placed under the care of the nucleus estates, who hired labourers to work on them. From a palm oil companies’ point of view this is understandable as oil palms under control of the nucleus plantation produce more crude palm oil (CPO) (Gillespie, 2011). McCarthy and Cramb (2009) remark that at the end of the KKPA period, violent disputes surrounded practically every oil palm plantation.

When in 1998 the Indonesian economy collapsed following the Asian crisis, Suharto was forced to step down. This would usher a new period of political and economic reformation and decentralisation. The central state largely withdrew from direct involvement in the palm oil sector and came to play a more facilitating role. The palm oil sector was liberalised to attract investments and foreign transnational corporations. Producer companies gained significantly more power over the production chain. Land ratio’s which previously had been in favour of the plasma smallholders, were reversed. Nucleus estates came to make up 80 per cent, whereas the plasma areas were reduced to 20 per cent (Gillespie, 2011). The new scheme model was based on the principle of partnerships between communities and companies (*pola kemitraan*). In fact, this entailed that all responsibility for the plasma plantations was transferred to the producer companies. In 2004 a new plantation law was designed<sup>6</sup>. Gillespie (2011) states that this law further limited the options for customary communities to gain recognition for their land claims, while “it provided a variety of generous plantation land licence options for companies”(Gillespie, 2011: 25). Further, the responsibility over negotiations about land with local communities is surrendered to companies. The article concerning this matter is strongly biased towards surrendering land (*menyerahkan lahan*) to companies. Gillespie (2011) also criticises the plantation law for being unclear about which government department is responsible for which plantation issues. (Gillespie, 2011). Using the broad and ambiguous concept of “*kemitraan*”, palm oil company scouts set out to look for areas for further expansion, negotiating directly with local land owners (McCarthy and Cramb, 2009). Last, Gillespie (2011) criticises the plantation law for being strict on actions that form a threat to plantations. This makes it easy to criminalise palm oil opponents.

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4 Keputusan bersama menteri pertanian dan menteri koperasi dan pembinaan pengusaha kecil, no. 73/kps/OT.210/2/98, 01/SKB/M/II/1998.

5 The selling of smallholder plots out of economic necessity is still common. Poor smallholders sell their plots to local elites or government officials. A staff member of Lembaga Gemawan commented on this matter:

“It happened in Sajingan Besar. The people had just received their plasma plots and we came to measure the plots. When we were finished, we had a chat with some women in the *warung*. They were from Sanggau. They said: ‘just collect 5 million brother’, ‘wait for a year’. ‘There will surely be people who want to sale, because they are not able to make it. It happened so often in my village. People know that, surely they know that’” (LG 1, personal communication, 23-3-13).

6 Undang-Undang 18 Tahun 2004 tentang Perkebunan

### 3.2 Transnational palm oil activism and international sustainability standards

The first wave of oil palm expansion in Indonesia was driven by domestic companies and took place in North Sumatra: a province dominated by a (rubber) plantation economy since the colonial era (Pye, 2012). With the second and third wave (starting around the Reformation) however, the Indonesian palm oil sector increasingly globalised, with transnational companies behind the wheel. They were responding to the global demand for vegetable oil and biofuel. The third wave of biofuel related palm oil primarily took place in frontier regions where new plantations were established on logged or “degraded” forest areas and agricultural lands, such as in West-Kalimantan (Pye, 2012). Along with the globalisation of the palm oil production chain, “transnational activism” around palm oil grew. Local struggles over land, resources, rights and justice connected to global concerns over climate and the negative consequences of neoliberal globalisation. According to Pye (2012), several larger international NGO’s such as the WWF, began to mobilise around palm oil issues after the forest fires of 1997. Their basic issues were the destruction of the rainforest and biodiversity, centring high-profile mammals such as the orang-utan. Campaigns in Europe that targeted consumer awareness compromised the image of producer and processing companies and the palm oil sector in general.

#### 3.2.1 Round Table on Sustainable Palm Oil

McCarthy, Gillespie and Zen (2012) state that in advanced retail markets, such as Europe, the major suppliers of products with significant palm oil content are facing risks to their reputations. This also goes for banks and financial institutions, including the World Bank, who hold large investments in the palm oil sector. In response to this, stakeholders of the palm oil sector, together with members from the civil society (WWF) established a Round Table on Sustainable Palm Oil (RSPO) in 2004. The RSPO is a private arrangement set up by seven different stakeholder groups: growers, processors and traders; consumer goods manufacturers; retailers; banks and investors; and NGO’s (Pesqueira and Glasbergen, 2013). Its aim is to transform markets to make sustainable palm oil the norm (rspo.org, 2013). The RSPO designed the RSPO Principles and Criteria for Sustainable Palm Oil Production, to which members should comply in order to obtain certification for their products. Compliance is voluntarily, however, and non-compliant members are encouraged to retain their membership (rspo.org, 2013). The RSPO principles include (1) commitment to transparency, (2) compliance with applicable laws and regulations, (3) commitment to long-term economic and financial viability, (4) use of appropriate best practices by growers and millers, (5) environmental responsibility and conservation of natural resources and biodiversity, (6) responsible consideration of employees, and of individuals and communities affected by growers and mills, (7) responsible development of new plantings and (8) continuous improvement in key areas of activity. An important criterion regarding land rights and land disputes is criterion 2.2 of the principle on compliance with applicable laws and regulations. This criterion determines that: the right to use the land is demonstrated, and is not legitimately contested by local people who can demonstrate that they have legal, customary or user rights (RSPO Principles and Criteria for the Production of Sustainable Palm Oil, 2013: art. 2.2). To this end RSPO members should comply with the “Free, Prior and Informed Consent” (FPIC) principle. Companies are required to prove in case of disputes that they acquired land according to this principle. The FPIC principle has emerged as a key principle in international law and jurisprudence, for example in the UN

Declaration on the Rights of Indigenous Peoples (Pesqueira and Glasbergen, 2013). Also regarding new plantations, companies should respect this principle to acquire land. Colchester, Jiwan and Chao (2013) however maintain that companies often fail to really comply with this principle and see the FPIC principle as synonymous with consultation.

The RSPO established a Complaint System where RSPO members and non-members, including affected communities and individuals can file a complaint against the RSPO and its members. The RSPO recognises that:

“While addressing sustainability challenges, not all situations follow standardised approaches and reach undisputed outcomes. This may lead to conflicting perceptions by different stakeholders, resulting in complaints which are addressed to the RSPO for resolution. RSPO is focusing on dialogue as the means to address and resolve grievances.”

“The RSPO Complaints System aims to address the effectiveness criteria for non-judicial grievance mechanisms provided by Prof. Ruggie in his “Guiding Principles on Business and Human Rights: Implementing the United Nation’s Protect, Respect and Remedy Framework.” (rspo.org, 2013).

The RSPO itself admits that palm oil land related disputes mostly result from lack of FPIC, recognition of the community voice, and respect for customary rights. To address grievances related to this principle, the RSPO established a Dispute Settlement Facility.

“The requirement 4.2.4 in the RSPO Certification Systems document states that certification is not possible when there are on-going disputes. To more expeditiously settle disputes of these kinds between RSPO members and their respective stakeholders, RSPO has thus created an additional Dispute Settlement Facility (DSF).” (rspo.org, 2013).

So far, 19 complaint cases have been published on the RSPO’s website, of which 12 come from Indonesia. Of these 12, 9 are from Kalimantan (RSPO, 2013). It is important to note that the Indonesian palm oil producers association (GAPKI) has withdrawn its membership from the RSPO. Indonesia established a national sustainability standard, the ISPO, which is obligatory for Indonesian palm oil producers. While GAPKI members can remain RSPO members, they have to become ISPO members. However, the quality of the ISPO is questioned by Lembaga Gemawan and WALHI. Further, a palm oil company in Landak, West-Kalimantan was unaware of what complying with the ISPO would mean for their estates (palm oil company Landak, personal communication, 16-05-2013)

### 3.2.2 Compliance Advisory / Ombudsman – International Finance Centre

In addition to the RSPO, global financial institutions are increasingly concerned with the negative consequences of the expansion of agribusinesses in developing countries. For example, the International Finance Corporation, an important financial donor of the palm oil sector, established a framework on sustainability standards. This framework is part of the global governance framework which regulates the palm oil production chain. Palm oil producer companies are dependent on financial donors, because oil palm takes three years before it is productive and around seven years to come to full production. It is estimated that plantation companies need to borrow 77% of the total establishment costs (Potter and Lee, 1998). Therefore, especially producer companies can be expected to adhere to the standards of their financial donors.

One of the performance standards of IFC's Sustainability Framework regards land acquisition and involuntary resettlement. This standard acknowledges that project-related land acquisition and restriction on land use can have adverse impacts on communities and individuals that use this land. Clients of the IFC are encouraged to use negotiation settlements meeting the requirements of the performance standards, even if they have the legal means to acquire land without the seller's consent (IFC Performance Standards on Environmental and Social Sustainability: theme 5). If affected communities or individuals have a complaint regarding this matter, they can turn to the CAO-Ombudsman of the IFC.

In 1999, the Compliance Advisor Ombudsman (CAO) was established as an independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The CAO responds to complaints from project-affected communities with the goal of enhancing social and environmental outcomes on the ground (Cao-Ombudsman.org, 2013). The CAO has three roles: a) the CAO Ombudsman which responds to complaints by people affected by the social and environmental impact of IFC/MIGA projects. The Ombudsman is focused on alternative dispute resolution, with expertise in conflict assessment and management, mediation, and facilitation; b) the CAO Compliance to oversee audits of IFC and MIGA's social and environmental performance, particularly in relation to sensitive projects to ensure compliance with relevant policies, guidelines, procedures, and systems; and c) the CAO Advisory which provides independent advice to the President of the World Bank Group and management of IFC and MIGA.

Like the RSPO principles, the IFC standards are based on resolving and avoiding disputes through negotiation with the stakeholders rather than arbitration / litigation. As will show from the case study on Lembaga Gemawan, this brings opportunities to resolve disputes without depending on national law, but it also bears great risks if unequal power relations between the stakeholders prevail, as often is the case with communities and companies.

The next chapter will elaborate the consequences of reformation and decentralisation on oil palm expansion in West-Kalimantan. While the globalisation of the palm oil production network increases, political dynamics at the upstream end of the chain are crucial to understand the context in which international sustainability standards can play a role in dispute resolution processes.

## 4. Dynamics in upstream locations: oil palm expansion in West-Kalimantan

West-Kalimantan is one of the five provinces of Kalimantan, and with a population of nearly 4.5 million people, the second largest province of Indonesia<sup>7</sup>. The population is made up of Dayak, Malay and Chinese, as well as Javanese, Buginese and Madurese. Dayak, an umbrella term for diverse tribes, are mostly living of cultivating rice on swiddens, hunting, and gathering forest products. Some grow cash crops like rubber and pepper (Potter, 2009). The Malay depend on wet rice cultivation, tree cropping (rubber, coconut and fruit) and growing vegetables, and they are well represented in the bureaucracy. Dayak and Malay peoples are considered to be “indigenous” to West-Kalimantan (Sirait, 2009). Chinese are mostly traders and retailers, whereas many Javanese and Madurese came to West-Kalimantan through transmigration programmes to work as oil palm smallholders.

While “Kalimantan” evokes associations with ancient rainforests, exotic flora and fauna and especially the orang-utan apes, nowadays it also forms the heart of large-scale oil palm cultivation. The fall of the Suharto regime enabled further oil palm expansion under encouragement of newly empowered district governments in search of their own revenues. West-Kalimantan increasingly became an area of interest to transnational palm oil companies, because of the promise of abundant land and favourable policies. At the same time, the end of the New Order triggered a rise in social and environmental activism contesting the oil palm expansion. This chapter describes the political dynamics of oil palm expansion and anti-palm oil movements in West-Kalimantan, which have shaped the strategies of Lembaga Gemawan. The chapter concludes with a description of Lembaga Gemawan.

### 4.1 Mega oil palm corridor in the borderlands

The first big expansion of oil palm cultivation in Kalimantan occurred in the early 1990’s, in particular in West-Kalimantan. Private companies were encouraged to join the government estates that had been established in the 1980’s, mostly in Sanggau district (Potter, 2009). After the New Order, oil palm expansion took a real flight. During the rule of President Megawati Sukarnoputri (2001-2004) plans were made for the development of the border zone in Kalimantan. The border zone between Kalimantan and eastern Malaysia had been a security concern since colonial times. It was stage to violence during the “Confrontation” conflict between Indonesia and Malaysia in 1962-1966<sup>8</sup>. During the New Order, the central government allocated timber concessions to army officials, emphasising the security function of this area (Potter, 2009). According to Potter (2009), Megawati’s government aimed to turn the area from a “peripheral backwater” into the “front veranda” of the nation. The border zone<sup>9</sup> was described as a backward, remote area, lacking in

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7 Badan Pusat Statistik 2010. (bps.co.id, 2013).

8 The Confrontation was an attempt by the government of Sukarno to protest the establishment of the Malaysian states of Sabah and Sarawak (Schwartz, 2000).

9 The border zone covers 8 districts: Sambas, Bengkayang, Sanggau, Sintang and Kapuas Hulu in West-Kalimantan, Kutai Barat in East-Kalimantan and Malinau and Nunukan in North-Kalimantan.

transportation and access to information. The government furthermore was concerned with illegal migration to Malaysia, human trafficking, illegal logging and smuggle (Potter, 2009). Palm oil was seen as a possible solution to these problems. A plan was born to develop oil palm plantations throughout the border zone. Palm oil would bring development to “poor” communities and access to isolated areas. The district government of Sanggau responded positively to these plans. According to Potter (2009), the district government was anxious to build a border development centre.

The government of the current president, Susilo Bambang Yudhoyono, picked up the border plan and developed it further. The Minister of Agriculture envisioned a corridor of the world’s largest integrated oil palm plantation. The plan covered the whole border between Indonesia and Malaysia and did not consider the physical characteristics of the terrains. Large areas planned for plantation expansion, where not suitable to convert to oil palm. This raised the question to NGO’s and researchers, whether the plan was about palm oil at all, or more about access to isolated, resource abundant areas and logging opportunities (Potter, 2009).

The oil palm corridor plans immediately triggered protests from social and environmental NGO’s, communities, academics and certain government departments. The head of the Estate Crops Office in Pontianak declared that West-Kalimantan would not convert any more forests in favour of oil palm (Potter, 2009). The opponents raised the alarms about large scale deforestation: 1 million hectares of forest would be converted to oil palm if the plan would go ahead (Potter, 2008). Furthermore, NGO’s argued that the plan would harm the livelihoods of the “borderland peoples” and that transmigration would potentially revive ethnic conflict (Potter, 2009). This is no overreaction, as West-Kalimantan experienced a violent conflict between Dayak, Malay and transmigrant Madurese during the Reformation (Davidson and Kammen, 2002).

Around the same time as president Yudhoyono launched the corridor plan, international and national NGO’s launched a plan to protect the forests in the heart of Borneo. The “Heart of Borneo” initiative came under threat of the corridor plans. Finally the government backed down and retrained from planting oil palm in the heart of Borneo. The Minister of agriculture promised to look for conversion areas outside the heart of Borneo. However, as the price of palm oil rose in 2007-2008, palm oil companies were drawn to the border zone nonetheless. (Potter, 2009). Districts like Sambas are not part of the Heartland of Borneo initiative. The director of Lembaga Gemawan, comments: “We used to think that oil palm would not enter Sambas. Before, there was a mega project, called border land oil palm. We thought it would start in Kapuas Hulu. But apparently it started in Sambas” (LG 10, personal communication, 6-5-2013). In 2011, the bupati of Sambas declared the government would put a hold on issuing permits for new oil palm plantations because there is no more land left to plant oil palm in<sup>10</sup>. This indicates how much land had been allocated up to that point. According to Tribunnews, one third of Sambas had become palm oil area. However, not all palm oil areas are in fact planted with oil palm due to resistance of the communities in these areas (tribunnews.com, 2013a).

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10 See the appendix for a map of land use in West-Kalimantan. The map shows large-scale oil palm expansion in Sambas, covering most of the region.

## 4.2 Decentralisation: increased power for district governments

After the centralised authoritarian rule of President Suharto, the Post-New Order government was pressured to decentralise responsibilities, decision-making and power to the regions. Decentralisation was promoted by international donors and development organisations, to increase accountability, transparency, public participation in policy making and democratisation (McCarthy, 2004). Decentralisation should empower marginalised groups in the islands outside of Java and make sure that regions could benefit from the resources generated in their area. District governments and legislatures gained far greater powers to control lands and resources, and to administer regional budgets (Sirait, 2009). District governments in West-Kalimantan were anxious to attract agribusinesses to invest in their region. Policy documents of Sanggau district for example suggested that oil palm was the key to developing rural communities, extending the capacity of the state across remote corners of the district, developing infrastructure and improving community welfare (McCarthy, Gillespie and Zen, 2012).

However, McCarthy (2004) argues that decentralisation processes unfolded under the shadow of the New Order heritage. A member of WALHI West-Kalimantan comments: “the Reformation has New Order faces” (WALHI 2, personal communication, 29-04-13). Local and regional actors prevailed their networks to access power and resources, often through corruption and nepotism. The fragmentation of the state worked in the advantage of entrenched regional elites (McCarthy, 2004:3). Oil palm expansion increasingly came to depend on local relationships.

McCarthy, Gillespie and Zen (2012) point out that despite decentralisation, district authorities did not depend on tax revenues from their region. Districts remained dependent on fiscal transfers from the centre, whereas palm oil tax revenues flowed to the central government. Therefore, district authorities were given little incentive to ensure legitimacy and accountability. Patronage networks continued to exist and state-based elites used these to look for alternatives to access resources (McCarthy, Gillespie and Zen, 2012). In West-Kalimantan, the palm oil sector was such an alternative to access resources. The central government had decentralised key aspects of plantation licensing to the districts, which gave enormous discretionary power to district government officials (McCarthy, Gillespie and Zen, 2012). District heads (*bupati*) were allowed to issue permits for up to 1000 hectares<sup>11</sup>.

It is not surprising that district governments took an interest in agribusinesses that are in search for land. West-Kalimantan districts did not have a lot to offer to investors, except for land. Gillespie (2011) quotes a senior district advisor from Sanggau who says that:

“We don’t have anything to offer to bargain with investors except land. We can’t argue for infrastructure, an educated workforce, a steady supply of electricity, quick access to overseas markets, because we have none of these things. So the only thing we have to offer investors currently is land, and it is the only thing they are interested in.” (Gillespie, 2011: 14).

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11 Ministry of Forestry Decree No. 603/2000

Moreover, to compete with other districts, each district had to provide the most favourable policies for investments. This entailed giving palm oil companies the most favourable landholding arrangements possible under the new “partnership model” for plantations and ensure easy access to licenses (McCarthy, Gillespie and Zen, 2012).

McCarthy, Gillespie and Zen (2012) maintain that it is well known that state based actors in districts personally receive shares or land in agribusiness projects within their district or otherwise provide benefits to actors within supporting socio-economic coalitions. Also Colchester et al (2006) emphasises that district governments support oil palm plantations in exchange for financial support. An investigation of Indonesia Corruption Watch of the “plantation mafia” found that West-Kalimantan has the most corrupt plantation sector of Indonesia (walhi.or.id, 2013). This is a story I often encountered during fieldwork. Bupati’s need a lot of money for their elections campaigns. During these campaigns, palm oil companies offer them financial support, in return for licenses and access to land. A statistical data-analyst of Lembaga Gemawan says that land is auctioned to the highest bidder:

“During election time, land is auctioned (*dilelong*). The candidate bupati is bribed to get licenses. And when the bupati served out his terms and cannot be re-elected, suddenly a lot of licenses are issued. They receive money in a private bank account if they do that. This is illegal, but it is difficult to prove.” (LG 2, personal communication, 02-04-13).

The director of the WALHI department in Pontianak adds that since the Reformation the actions of bupati’s are no longer controlled by the central government. According to him, they are not held accountable for the licenses they have issued, so that the companies can do whatever they want. (WALHI 1, personal communication, 5-4-2013). If companies break the law, the district government is not in a position to do something about it, because they have been paid off by the companies (Kontak Rakyat Borneo, personal communication, 30-04-13).

Not only district officials are important in the expansion of oil palm. Oil palm networks also include sub-district and village authorities, local elites, customary leaders and security forces. A former village head in Sambas district comments:

“They [village heads] receive large contributions; they receive a car, and a motorcycle. They once came to my house to ask my support. Once we were sent rice, sugar and cooking oil. The supplies were dropped off at the shore of our river. I found it a waste to throw these foods away. I organised a youth sports day and we ate it all. Later I was beaten up because they knew I was the brain of the anti-palm oil movement in my village” (LG 3, personal communication, 01-05-2013).

During fieldwork in the sub-districts Teluk Keramat and Sejangkung various local people told me that their village heads, religious and customary leaders are often offered money to convince their neighbours to accept palm oil. A palm oil company even admitted that they work with “village teams”, local people hired by the company to scout for available land and broker



between the company and the villagers (palm oil company Landak, personal communication, 16-05-2013).

However, beneficial relations with governments or village authorities do not necessarily take the form of bribe or nepotism. Palm oil companies also provide financial support to public facilities like schools, roads, health centres and religious buildings. An employee of a company operating in Landak tells me that they provide the services that the government cannot provide (palm oil company Landak, personal communication, 16-05-2013). The company emphasised that before they came to the village, people had no toilets and “the pigs were running around freely”. Now, they have toilets, neat cages for the pigs, as well as roads and religious buildings. A quick look at websites of other palm oil companies active in West-Kalimantan provides a similar story. Palm oil companies claim to improve the lives of communities by providing them with services (e.g. wilmar -international.com, 2013; musimmas.com, 2013; sinarmas.com, 2013). This way, palm oil companies legitimate their activities.

### **4.3 Suppressed discontent and the rise of West-Kalimantan's civil society**

By no means had the oil palm expansion in West-Kalimantan continued without contestation. However, during the Suharto regime, political organisation was risky. Social movements around land issues could be accused of communism. Palm oil resistance therefore mainly involved small-scale local actions initiated by directly affected communities (Potter, 2008). On the other hand, as palm oil land issues are interconnected with environmental issues, resistance against palm oil could be organised taking the environment as key point (Peluso et al, 2008). In 1980, environmental activists founded the environmental forum Wahana Lingkungan Hidup Indonesia (WALHI). WALHI functioned as a forum that connected of hundreds of NGO's and individuals concerned with the environment in Indonesia (Pye, 2012). Their department in Pontianak became particularly concerned with the impact of oil palm on the environment and indigenous communities. Environmentalist NGO's connected themselves to indigenous rights movements, because indigenous peoples were seen as particular victims of the neo-liberal expansion of agribusinesses and mining. Moreover, traditional indigenous practices regarding natural resource management were seen as an example for sustainable resource management. (Pye, 2012). In 1981, the Pancur Kasih foundation was established by four Dayak teachers. They were concerned with the problems that Dayak communities encountered and organised programmes to promote and support Dayak culture and they established a credit union. As palm oil was identified as a specific threat to Dayak livelihoods and culture, this foundation worked to support palm oil resistance and to find alternatives to oil palm. In 1990, Pancur Kasih established the Institute for Dayakology (ID). (ID and Pancur Kasih, personal communication, 16-04-2013).

From the Reformation period on, resistance against oil palm expansion became more overt. The political regime change provided an opportunity for people to express their resentment. (Potter, 2008). In the Reformation period, several new NGO's were set up in Pontianak. In 1998, the Aliansi Masyarakat Adat (Alliance of Indigenous People) was founded to campaign against the conversion of community land to oil palm, industrial tree plantations and transmigrant settlements (Potter, 2008), and to promote and protect Dayak culture. The rise of Dayak oriented

NGO's coincided with the revival of "*adat* movements<sup>12</sup>". Under the regime of Suharto, ethnic identities had been suppressed. Now the times were changing, *adat* identity became a way of political organisation (Pye, 2012). In 1999, Lembaga Gemawan joined the consortium of NGO's concerned with social and environmental issues. Their programmes focused on the Malay in West-Kalimantan's "*Pesisir*" (coastal) areas, because they found that the Dayak in the inlands had enough representation (LG 10, personal communication, 6-5-2013).

The different NGO's in Pontianak often come together for discussions during workshops and meetings. Sometimes they support each other in specific campaigns. The Pontianak based NGO's are connected to National NGO's in Jakarta and Bogor, like palm oil watchdog Sawit Watch, HuMa, AidEnvironment and the national WALHI department. Through these national NGO's in turn, the West-Kalimantan NGO's are connected to international NGO's. WALHI for example is related to the international Friends of the Earth and its Dutch department Milieudefensie. Further, Forest Peoples Programme is related to AMAN, Lembaga Gemawan, HuMA, ID and Sawit Watch. Campaigns against oil palm expansion or specific palm oil companies are often joint initiatives, for example with the campaign against the oil palm corridor plan, which brought together among others WALHI, Sawit Watch and the WWF.

The cooperation between regional and national NGO's and international NGO's is not without obstacles. According to Pye (2012) an obstacle is that whereas in Indonesia oil palm expansion triggered social movements concerned with environmental, social and political issues; in Europe, those reacting to biofuels were mainly environmental movements (Pye, 2012). The director of WALHI West-Kalimantan explains:

"With respect to campaigning, we wish that what happens at local level can be advocated at the international level. And that our allies at national level can voice what happens to the international network. But we feel that synergy is lacking in the campaigns. The last years we have cried out over palm oil. The people are bleeding to fight for their lands. We help them as much as we can. Our allies at national level are busy with other issues, like regulation. Our international allies are concerned with the orangutan. I feel we are not connected. We want that our international allies support what we do at the regional level. Not only in financial terms, but to make sure that what happens at the grassroots level becomes an issue at the international level". (WALHI 1, personal communication, 5-4-2013).

While cooperation may be a challenge, joint initiatives of local, national and international NGO's have contributed to public debate about the social and environmental sustainability of palm oil. These initiatives did contribute to the establishment of regulatory frameworks on environmental and social sustainability (McCarthy, Gillespie and Zen, 2012; Pye, 2012; Pesqueira and Glasbergen, 2013).

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12 Adat refers to customary (customary law, customary traditions).

#### 4.4 Lembaga Gemawan

The spirit of change, reformation and democratisation that was propagated by many students in Indonesia at the end of the New Order, also reached Pontianak. Students of the Tanjung Pura University gathered for political discussions about the problems in West-Kalimantan. Around 1997-1998, four students decided to set up the Gemawan Institute, "Lembaga Gemawan". The aim of Lembaga Gemawan was to address problems in the coastal areas of West-Kalimantan. The founders of the institute originated from the *pesisir* of the province, largely inhabited by Malay farmers. The first programmes were therefore directed at farmers in Sambas and Singkawang. Later Lembaga Gemawan extended its work field to other districts.

Throughout villages in Sambas and Singkawang, Lembaga Gemawan set up grassroots organisations for farmers (*organisasi akar rumput*). These so called *Organisasi Rakyat* (OR), or "community organisations" function as platforms where people can discuss the topics of concern to their communities, in particular agriculture-related issues. Lembaga Gemawan provides trainings to the OR's about agriculture, political organisation and advocacy strategies. For example, Lembaga Gemawan runs a programme about rubber, with extension trainings and discussions about prices, access to markets and cultivation techniques. Over time, Lembaga Gemawan increasingly became engaged in palm oil-related disputes. The institute provided legal support, legal training and political organisation trainings to palm oil resisting communities. In 2008, the Farmers Union *Serikat Tani Serumpun Damai* (STSD)<sup>13</sup> was established under the flag of Lembaga Gemawan. The STSD functioned as an umbrella organisation to connect the OR's in the different villages. The STSD aimed to improve the economic and political position of farmers, support non-palm oil livelihood strategies and organise resistance against oil palm expansion. A core activity is to collect and spread information about palm oil companies, expansion plans and the status of licences through the villages. Hereby, Lembaga Gemawan created a district-wide network of non-oil palm farmers.

In 2005, Lembaga Gemawan's agenda gained an international dimension. Sawit Watch had invited Lembaga Gemawan to share their experiences with palm oil at the RSPO. This enabled Lembaga Gemawan to link up with national and international NGO's concerned with palm oil. For the first time, the institute was working full time on palm oil issues.

However, Lembaga Gemawan continued to recognise the importance of political dynamics at district level to palm oil-related problems.

"The problem is that the government does not protect the land that is under community management. Even land that is already under management is appropriated. We feel that land has to be protected from conversion. That is why we now work on the topic spatial planning." (LG 10, personal communication, 6-5-2013).

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13 This means as much as "Farmers Union for Peace".

To alter the district government's paradigm on palm oil, Lembaga Gemawan organises hearings and workshops to convince the district governments that there are alternatives to oil palm and that the districts governments should support these alternatives. Lembaga Gemawan promotes a spatial planning policy (RTRW<sup>14</sup>) in which there is space for other types of agriculture and forestry except for palm oil. For example, Lembaga Gemawan cooperates with district governments and the Ministry of Forestry to establish village forests (*hutan desa*). This is a programme under the Ministry of Forestry to classify forests as "managed by a community". Lembaga Gemawan pushes the Ministry not to release such forests to the palm oil sector. The institutes' director states that since the palm oil sector is expanding further and further, the people have no choice but to "counter-expand". She states that non-palm oil farmers should plant as much land as possible to protect it from conversion to oil palm. At the district government level, Lembaga Gemawan aims to classify as much land as possible as "non-palm oil area". There are ten government schemes which can be an alternative to palm oil, including various forms of social forestry<sup>15</sup>, sustainable agriculture, customary land (*tembawang* for Dayak in West-Kalimantan) and indigenous crop areas, like durian gardens (LG 10, personal communication, 6-5-2013). Lembaga Gemawan regards good governance and eradication of corruption as key to the solution for problems in the palm oil sector.

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14 Rencana Tata Ruang Wilayah

15 Social forestry has four variants: (1) Farm forestry; (2) Community forestry; (3) Agro-forestry and (4) Extension forestry. Social forestry is a forest management system in which a local community participates in the management of the forest. The differences between the variants are mainly about ownership of the land (state land versus private or customary land).

## 5. Palm oil land disputes in Sambas district

### 5.1 Introduction to Sambas

At the far western corner of West-Kalimantan, between Malaysia and the South China Sea, lies the former sultanate of Sambas. While the Sultan's palace still gives Sambas city its charm, Sambas is now a district and part of the Indonesian administrative system. Sambas is largely inhabited by the Muslim Malay, who practice permanent agriculture and agroforestry. The main crops of Sambas are rice, rubber, coconut and oranges. In addition, people cultivate corn, pepper, soy and other kinds of fruits and vegetables. The remaining forests in this district are mostly production forests, used to harvest wood and forest crops<sup>16</sup>.

Unlike the Dayak, the Malay do not refer to themselves as a *masyarakat adat*, however, they do base their claims over land and natural resources on ancestral inheritance and they are regarded as indigenous peoples (Sirait, 2009). They regard their way of life as a continuation of the tradition of their ancestors, or as they say: "*hidup secara turun-temurun*", which started "*sebelum merdeka*" (since before the independence: in other words, before there was "Indonesia" and an "Indonesian government"). Like in other parts of Indonesia, Sambas experienced a rough transition from the New Order to the Reformation. In 1999, violence broke out between the Malay and Dayak peoples and the Madurese transmigrants. This led to the expelling of the Madurese from the region; around 50.000 Madurese had to flee the district and they never returned (Potter, 2009).

Sambas is ranking the poorest district of all districts of West-Kalimantan (Hermawansyah, 2011). The district government is therefore keen to attract investors like rubber, logging, mining and palm oil companies. Sambas was part of the Kalimantan Border Oil Palm Mega-project. After this plan was abandoned around 2005, Sambas stayed a priority area to develop oil palm plantations. Approximately 12.558 hectares are already planted with oil palm, while 117.518 hectares are planned to be converted (Friends of the Earth, 2005). The larger palm oil companies in the region are the Wilmar Group, the Ganda group (which belongs to the brother of the owner of the Wilmar group) and Sinarmas. In addition, there are several smaller palm oil grower companies active that sell their CPO to the larger companies and the local market. In the last decade, oil palm expansion in Sambas has led to disputes between communities and companies, and within communities.

In this chapter, two cases of disputes between communities and companies will be presented in which Lembaga Gemawan acted as a representative on behalf of the communities. The core issue in both cases is access to land and natural resources. While the causes of the disputes are similar, different dispute resolution strategies have been deployed, leading to opposite outcomes. In the next chapter the cases will be evaluated according to the theoretical framework.

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<sup>16</sup> See the map of land use in the appendix. Most forest in Sambas is production forest, or forest suitable for conversion.

## 5.2 Case I: Teluk Keramat

### 5.2.1 PT. SAM

The sub-district Teluk Keramat is a two hour motor cycle-drive away from Sambas city. Access to this area is difficult: the roads are in bad conditions and there is no bridge to cross the river separating Teluk Keramat from Sambas city. To cross the river, motorcycles can be transported with wooden boats and canoes, while cars and trucks depend on one ferry. Access to most villages is restricted for cars, as the narrow roads only allow motorcycles and bicycles. Most people in Teluk Keramat are farmers; they produce rice, fruits (such as orange, watermelon, salak) and vegetables (such as green beans, soybeans, corn, sweet potato) for own consumption and the local market. In addition, many people cultivate rubber trees as a cash crop. Villages that have no suitable land for rice cultivation, depend fully on rubber and rubber plant nurseries.

Teluk Keramat is targeted by the district government as site of oil palm production. In April 2006, the bupati of Sambas issued a location permit for the company PT. Sentosa Asih Makmur (SAM)<sup>17</sup>. The location permit encompassed parts of the sub-districts Teluk Keramat, Tangaran, Sejangkung and Galing and totals 16.300 hectares.

In 2007, Lembaga Gemawan first received word that certain communities were concerned about the presence of PT. SAM. This plantation company's mapping activities created unrest, because land marking poles were placed in areas that were also claimed by communities. A community member of Village D for example states:

“They were taking coordinates around my house. When I asked them what they were doing, they replied that they were planning to build a road. However, they were taking coordinates behind my house, where it is not possible to build a road. I did not believe them and I asked the village head. He also said they were building a road. I do not believe them; they are obviously planning to make an oil palm plantation.” (Village meeting Village D, 15-03-2013).

At that time, Lembaga Gemawan was active in the region to set up a Credit Union and build a network of small farmers organisations (OR's). The institute felt that it had to take action against the expansion of oil palm, because the members of the Credit Union were “victimised by palm oil companies, which took over the land and forest people needed for their livelihoods”. Therefore, Lembaga Gemawan initiated a campaign against palm oil through their network of OR's in Teluk Keramat (Lembaga Gemawan, 2007)<sup>18</sup>. Lembaga Gemawan and several OR's organised a small and peaceful demonstration in front of the district council's office (DPRD)<sup>19</sup>. The DPRD agreed with the protesters and issued a recommendation to the bupati to withdraw the permit for PT. SAM.

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17 PT. Sentosa Asih Makmur is founded in 1994 and primarily operates in Sambas. PT. SAM is a member of the RSPO and falls under the Ganda Group, which is related to the Wilmar Group by family ties of the owners.

18 The Indonesian text: Karena banyak anggota CUSI yang juga menjadi korban oleh ekspansi sawit yang ada. Dalam konteks sawit ini tim inti juga turun tangan untuk kampanye dan advokasi desa mereka untuk menolak sawit. (Lembaga Gemawan, 2007).

19 Dewan Perwakilan Rakyat Daerah (District Council)

The bupati did not follow this recommendation. Therefore, the protest against PT.SAM was further organised. Lembaga Gemawan encouraged the farmers in different sub-districts of Sambas to set up a farmer's union to gain more political power to address their challenges. The *Serikat Tani Serumpun Damai (STSD)* was founded in 2008. The first leader of this organisation was a village head in Sambas. He was strongly opposed to the expansion of oil palm in Sambas, which he felt was at the expense of the people. He received threats from the bupati, who called him in person to demand that he would stop his opposition, for "he was only a village head and had no right to stand up against the district government". The village head replied that he believed that he could, because he was not chosen by the bupati but by the people of his village. One night after a meeting with other village heads, he was attacked by what he calls "*preman perusahaan*" (company criminals). He was unconscious for three days (LG 3, personal communication, 10-04-2013). This attack triggered a mass demonstration against PT. SAM and PT. Bumi Mekar Hijau<sup>20</sup> at the office of the bupati of Sambas on June 24, 2008. The demonstrators demanded that the bupati would withdraw the permits for both companies. The STSD and Lembaga Gemawan facilitated this demonstration and they functioned as the representatives of the demonstrators. In the year report of 2008, Lembaga Gemawan states that a demonstration is a strategy to speed up the process of demanding the withdrawal of palm oil permits. It is stated that this is needed because hearings are too slow. The participants carried banners with texts like: "If palm oil comes, our lands are lost", "land is for farmers, not for companies", "If the bupati is just, we support him, if he sells our land, we fight him", "Land is for farmers, it is our life and death, don't rob us" and "Brother Dhe, withdraw the permit for PT. SAM". The core issue of the dispute is land. The demonstrators feared they would lose the land on which they depended for their livelihoods to companies.

A film of the demonstration shows how the bupati steps out of his office, waving and smiling at the demonstrators. He climbs the truck that serves as a stage for the speakers. He says: "I cannot withdraw the permit for Bumi Mekar Hijau, because that falls under the responsibility of the Ministry of Forestry. But I am going to call the boss of PT. SAM right now." After making the call he goes back into his office. When he comes out he brings a letter and he states: "Here is a letter wherein I withdraw the permit for PT. SAM. It has been witnessed by two members of Lembaga Gemawan and it is lawful (*sah*)."

The demonstration was regarded a success and it seemed like the demonstrators successfully expelled the palm oil company. Lembaga Gemawan reported on the website that after their action, the bupati had no choice but to withdraw the permit for PT. SAM (gemawan.org, 2013). However, the victory turned out to be less successful than it initially appeared to be. PT. SAM sued the government demanding that their permit would not be withdrawn. The company won this lawsuit and the permit was not withdrawn after all. According to the leader of WALHI West-Kalimantan, this is no surprise as communities never win such court cases (WALHI 1, personal communication, 5-4-2013). A member of Lembaga Gemawan once interviewed the bupati on the promise he made to the people during the demonstration. The bupati answered: "I knew that the letter

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20 Bumi Mekar Hijau is a logging company owned by Sinarmas

I wrote wherein I withdrew the permit had no legal power. I knew that, but I felt sorry for the people at the time” (LG 9, personal communication, 11-04-2013).

Now, PT. SAM still holds the location permit for the oil palm plantations. However, the STSD and Lembaga Gemawan regard the demonstration as a moderate success. The company ceased its activities for the moment. A current STSD leader says:

“It is a fact that they will keep on trying to enter our area. And if we are not united, they will use that to create conflict between the people of these villages. They make sweet promises (*janji-janji manis*) to the people, but they are all lies. At least now they are afraid of us. (STSD 1, personal communication, 11-04-2013).

According to the Lembaga Gemawan year report 2009:

“The activities of the past time have led to a situation wherein enough has changed and the society is increasingly critical towards the problems they face. They force the government to be more careful in issuing policies on land and natural resources. This is proven by the fact that until now, PT. SAM cannot operate; despite they won their permit back from the court in Pontianak.”(Lembaga Gemawan, 2009).

### 5.2.2 PT. Patiware

In 2010, a second palm oil company obtained a location permit for Teluk Keramat. Like PT. SAM, PT. Patiware is a member of the Ganda group too. PT. Patiware is also member of the RSPO and states on the website of the RSPO that its mission is “to create a solid agribusiness sector, especially in palm oil industry while bringing social and economic values to locals” (RSPO, 2013). In 2010, Lembaga Gemawan received a request from people from a village in Teluk Keramat to investigate the activities of PT. Patiware. The company had rented land from this village, allegedly to use for seed nurseries and developments (*pembangunan*). It was found however, that the company also planted oil palms on those lands. Moreover, their heavy vehicles damaged rubber plantations and rice fields. The matter was discussed with the village head, the police and the sub-district head (*camat*) and several visits were made to the office of the bupati of Sambas. In May 2010, the bupati of Sambas issued a letter to PT. Patiware<sup>21</sup>, asking the company to stop their activities for the time being (*sementara*). According to the Lembaga Gemawan year report of 2010, the company did not observe the letter and continued to open up land within the village boundaries.<sup>22</sup> A member of KONTAK Rakyat Borneo who was involved in this case, comments on this: “The companies will not listen to letters of the government telling them to stop activities. After all, they have paid that same government a lot of money” (Kontak Rakyat Borneo, personal communication, 30-04-2013). Consequentially, the people felt fed up (*kekeselan*) and members of two villages in Teluk Keramat affected by this company organised a demonstration at the

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21 SK no 582/016/BPMPPT-4/210

22 Indonesian text in Year Report: “perusahaan tidak mengindahkan Sk tersebut dan terus membuka lahan masyarakat” (Lembaga Gemawan, 2010).



office of the bupati of Sambas (LG 9, personal communication, 11-04-2013). Some 2500 people from different villages held a long march from the office of the DPRD to the office of the bupati. They demanded that the bupati withdrew the permit for PT. Patiware and PT. Agrowirotame. The Tribunnews reported that as the request to meet the bupati was not honoured, the demonstrators got angry and the demonstration resulted in violence. The office of the bupati was pelted with stones until all windows shattered (tribunnews.com, 2013b). Two demonstrators were arrested by the police. Lembaga Gemawan provided legal assistance to them, and many people from their village attended their court cases. The two men were sentenced to jail for six and eighteen months. They returned to their village as heroes (participatory observation, Teluk Keramat, 15-03-13). Until now, members of this village are in conflict with the company. In November 2010, three people (from both the STSD and Lembaga Gemawan) were attacked after investigating activities of PT. Patiware. While they were severely injured and had to be treated in the hospital, the local police did not investigate the matter. Lembaga Gemawan states that this proved that there is a security problem in Teluk Keramat. Palm oil companies can pressure and threaten people who try to hold on to their lands (pontianakpost.com: 20-04-13).

### 5.2.3 Campaigns at the grassroots level

In April 2013, it was expected that palm oil companies would return to their concession areas soon. In preparation of this, Lembaga Gemawan organised meetings in a dozen villages to motivate the farmers to keep resisting the companies, to point them to their rights and to discuss the situation of the rubber sector. Here follows a report of five meetings that I attended.

#### Village A

The meeting in Village A is situated in the house of a “palm oil opponent” and is attended by some 50 people. An STSD leader introduces the participants of the meeting to me as “very motivated opponents of palm oil”. Most of the attendees were also present at the demonstration in 2010, both the men and the women. The two men who had been imprisoned are at the meeting as well. One of them wears a T-shirt with the slogan: “*Jangan rampas tanah kame*” (don’t rob us from our lands), which was made by Lembaga Gemawan for the demonstration. The text on the back states:

“Dearest government of Sambas, please care for us. Our land, which we inherited, is for the future of our grandchildren and not for companies. At this land we cultivate rice and grow our rubber gardens. It is the place where we produce crops. Here we live and here we die. Here we are happy and here we grieve.”<sup>23</sup>

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23 Tanah kami warisan pejuang depan untuk anak cucu, bukan untuk pengusaha. Di tanah ito 'kame' bertanam padi, berkebun karet. Tampak kame' menghasilkan palawija. Disini kami hidup disini kami mati. Disini kami bahagia, disini kami berduka. Sambas tercinta kasih sayangilah kami.

The people in this village formulate the palm oil problem as follows:

“We don’t know where to go if palm oil comes in. This is our land, of which we are proud. Our rubber trees come from our ancestors<sup>24</sup>. We will not be labourers on our own lands. We don’t believe the nucleus-plasma system will come, they will only build a nucleus plantation.” (Teluk Keramat Village A, participatory observation, 15-03-13).

During lunch, some women talk to me about their relation with the village head, who they describe as “evil” (*jahat sekali*). This village head is in favour of palm oil. The women say that now it is difficult for them to obtain official documents. The village head is never in office, he is often going to Malaysia, “transporting illegal labourers”. When he is present, he is forestalling his promises repeatedly. “We feel like we are his stepchildren (*anak tiri*), because we do not get the same attention as the advocates of oil palm in the village do”, a woman says to me. The same situation is occurring in village B (LG 5, personal communication, 02-04-14). After lunch we take a walk through the village. The woman points at a new mosque.

“That is the mosque of our struggle. We needed a new mosque, because we do not belong to the old mosque anymore due to our struggle against palm oil”. Then they pointed at a row of houses. “They are the palm oil people. They surrendered their land to the company to become a plasma farmer. However, after the demonstration, the company ceased their activities so the plasma schemes were never brought to operation. Now, some people still produce palm oil on individual basis, while others have gone back to cultivating rubber.” (Teluk Keramat Village A, participatory observation, 15-03-13).

### Village B

Village B is the home of one of the STSD leaders. During the day, this man spreads word that a gathering will be held in his house later in the evening. The members of a farmers group (*kelompok tani*) all come to the house after finishing their work in the fields. The STSD leader breaks the news to the farmers that their lands are still included in the palm oil permit, because the withdrawal of PT. SAM’s permit was cancelled in court. He asks them to sketch the problem of palm oil for me as an outsider. A woman tells me that she and her husband came from Sintang, another district in West-Kalimantan, where oil palm plantations are already in production. According to her, the experiences of the people there regarding palm oil are mostly negative. She tells me that her brother once stole palm oil fruits, because he had not received his salary for four months. The theft was punished under customary law and until now he is a labourer at the same plantation, because he has no other choice. Other people at the gathering tell me that they have visited other areas in Kalimantan which already have been converted to oil palm plantations. According to them, the experiences of the people in these areas were mainly negative. “The palm oil companies broke their promises” (Teluk Keramat Village B, participatory observation, 14-03-15).

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24 nenek moyang, secara turun-temurun

A few weeks later, Lembaga Gemawan revisits the same farmer's group in village B. Again they gather late in the evening to discuss the situation. Two STSD members both give motivation speeches to the people. They urge them to stay united and not lose their guard for the danger is not over. One of them says: "we have to be organised, we have to fight and then we win". According to him, the people have to speak up against palm oil when the companies are not yet operating. The bupati of Sambas once asked him why he was already protesting while a license to operate (*Hak Guna Usaha*) was not even issued yet. He said that this is exactly what happened in Sumatra, where the conflicts have grown out of control.

"The people waited too long with their protests, they only started when the companies were already fully operating. By then, the companies had invested too much to let go and this made that they involved the armed forces."

The STSD leader further urges the farmers to go to meetings of the government, whether they are invited or not, because it is their right. This is especially important in case spatial planning or village finances are discussed (Teluk Keramat Village B, participatory observation, 10-04-13). The next morning we go to the market to meet a village head of a nearby village. The STSD leader from Village B invited him to have a talk about the work of the STSD and Lembaga Gemawan. The STSD leader tells the village head that the two organisations are aiming to cooperate with the local authorities. He says that some village heads regard them as enemies (*musuh*), but that they regret this, because they want to work together with the local authorities. The STSD leader first addresses the situation of farmers in Sambas, the challenges they face and how STSD and Lembaga Gemawan helps them to overcome these challenges. Then, cautiously, he changes the topic to palm oil, stating that it can be a threat to farmers, because they lack land tenure security. The STSD leader emphasises the importance of the role of a village head, who should protect his villagers and their lands (Teluk Keramat Village B, participatory observation, 11-04-13).

Then, we drive around the village. Some people are planting palm oil individually. The STSD leader says he does not see this as a problem, because what people do on their own land does not affect the other villagers. He says that only richer farmers are able to plant oil palms on their own. On the way back we stop to chat with acquaintances of him. He introduces me as a student interested in agriculture. He asks the people to tell me more about their livelihoods and the challenges they face. A woman tells me that she cultivates rice and rubber and that this is difficult if the price of rubber is low. The STSD leader asks her to tell me what she thinks of palm oil. She replies that she is fine with it, as long as they do it far away in the forest. He reacts:

"Well that is the problem. The law forbids to plant palm oil in the forest, so where do you think they will plant it? We will surely lose our land if we permit oil palm to enter our district. It is the aim of the STSD to unite farmers to protect their lands. Never loosen your guard, because that is when palm oil companies come to seduce you with their good stories. Accepting oil palm will mean that you lose your land. Think about your grandchildren, they need that land" (Teluk Keramat Village B, participatory observation, 11-04-13)

We then meet two elementary school teachers. The STSD leader asks them to tell me what they think of palm oil. The man says he is fine with it, as long as the wages are good. There needs to be a minimum wage. He thinks of palm oil as something far away. The STSD leader interrupts him and says: "I disagree. I reject palm oil one hundred per cent. It will make us lose our land. There is no compromise possible; we must reject it in total". (Teluk Keramat Village B, participatory observation, 11-04-13)

#### Village C

In Village C, the people mainly depend on rubber production and rubber seedling nurseries. The host of the meeting is a rubber farmer too. He says that he succeeded because of rubber: he build a stone house, sends his children to school and has a motor cycle. Rubber will give him around IDR 300.000 a day, while according to him, palm oil produces no more than IDR 30.000, a difference of 10 times. In the meeting the programme of Lembaga Gemawan is explained. Lembaga Gemawan staff discusses laws and policies about land and natural resource management. Reports are shown about the status of permits of palm oil companies in the area. After the meeting we visit the rubber gardens. The rubber farmers tell me:

"Harvesting rubber is easy, we get up at five, work for three hours and then we have done our work. Women, children, everyone can do it, it is light and easy work. When the prices are bad, we store the rubber, because rubber can be preserved a very long time. Palm oil fruits have to be processed within 24 hours or else they will rotten. So when the price is low, you still have to sell it. The problem we have with rubber now is that there are too many steps between us and the company. That is why the company will come to us next week to discuss how we can shorten the chain. After we are finished harvesting rubber, we can grow other crops or do other work. We mix the rubber trees with exotic and local varieties to get the best result." (Teluk Keramat Village C, participatory observation, 15-03-13).

#### Village D

In the evening, a farmers group from Village D travels to Village C to have a meeting with Lembaga Gemawan and the STSD. The leader of the farmers group explains their grievances to me. He said:

"What should we eat if our lands become oil palm plantations?" I ask him how he knows about the risks of palm oil. He replies: "I know it from the television. Every day again we see on the news that there is some problem with a palm oil company, never with another kind of company." (Teluk Keramat Village C, participatory observation, 15-03-13).

Then, a man from Riau shares his experiences:

"In my province, a lot of oil palm has been planted. I have seen what it causes. The people were promised to receive a plasma plot, but they did not receive anything. Migrants took their places instead, even foreigners."

The host adds: "I have worked on an oil palm plantation in Malaysia. It is very hard work (*sakit*), the palm oil fruits have sharp thorns and we have to spray poison. Oil palm is a very spoiled tree (*manja*); it needs fine fertiliser, pesticides. Rubber does not need anything." (Teluk Keramat Village C, participatory observation, 15-03-13).

After the palm oil issues are discussed, the STSD and Lembaga Gemawan point the farmers to the rights that they have and that they need to claim these from the government. For example, they show the law on sustainable protection of agricultural land.<sup>25</sup> The STSD leader says:

"This is the law, made by the government, not by us. The government always says that the land is owned by the government and that we have no right to it. But here is the law which they made themselves, stating that we have a right to land."

#### A meeting of the Farmers Union

On April 10 2013, the STSD organised a meeting for STSD leaders from throughout Sambas district, in a village in Teluk Keramat. Some twenty people attend the meeting: STSD leaders and their wives, members of different OR's and three representatives of Lembaga Gemawan. The meeting is opened by the STSD leader, with a speech about the importance to stick together as farmers and to organise to protect customary lands. Then, he introduces the former village head who was the first leader of the STSD and was once attacked by "company criminals". He tells the people about his life story and his fight against palm oil, which eventually put him in the hospital. He motivates the people to keep on fighting against palm oil companies. The meeting continues with a discussion about the current situation of the rubber market.

During the meeting I sit in the back of the room with the women. They follow the meeting, while keeping an eye on the children and the food. I have a conversation with a woman about her livelihood strategies and the challenges of the expansion of oil palm. She tells me she rejects palm oil. Cultivating rubber is not easy, because the price keeps dropping. However next to rubber she can cultivate rice, fruit and vegetables. She taps rubber from five in the morning until 10 o' clock in the morning. Compared to palm oil, the price of rubber is still better. Also, rubber is something that she has learned from her ancestors (*secara turun-temurun*). Palm oil has a low price, especially when you have little land. You cannot eat palm oil, so with palm oil she would have to buy everything, while now she can consume what her family produces. She predicts that if her family enters the palm oil sector, they will have to work all day and have no time to cultivate anything else. Some people are willing to accept palm oil, because of false promises. This woman is from Sintang, where this already happened. People were promised a plasma area, but they never received it. She uses words like "sweet promises" and "temptation"<sup>26</sup> to describe the strategies of palm oil companies. The people get money even before the company starts their activities. But the neighbours are the victims; their lands are sold as well. According to her, companies also

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25 Undang Undang Nomor 41 Tahun 2009 tentang Perlindungan Lahan Pertanian Pangan Berkelanjutan (Law 41, 2009 on sustainable protection of agricultural lands).

26 "Janji janji manis manis" and "merayu".

bribe the bupati. I ask her what the people will do if the company comes in and resumes activities. She emphasises that she and her neighbours will demonstrate again.

### 5.3 Case II: Sejangkung

Next door to Teluk Keramat, sub-district Sejangkung experienced similar palm oil-related disputes. Lembaga Gemawan became involved in disputes in Hamlet E and Village F during a community mapping project. These disputes evolved rather different from the dispute in Teluk Keramat though. The disputes between the communities and the companies were absorbed into an international campaign against the Wilmar Group, one of the biggest palm oil companies in the world.

#### 5.3.1 Hamlet E

The Hamlet (*dusun*) E is a separate part of a village and houses approximately 500 people. It can only be reached by boat; from Sambas it takes a little more than an hour by speedboat to get there. Hamlet E is partly built above the river with wooden houses on poles connected to each other by wooden planks. The river is of major importance for the livelihoods of the people of Hamlet E, because it provides them with food, water, sanitation, and transport to the sea and the city. Traditionally, the people of Hamlet E live of the wood they harvest from a secondary forest near the village. The timber is used to make boats and furniture, which are sold in Sambas city. Nowadays, most people in Hamlet E are Malay Muslims. A man from Hamlet E explained that they are living in Hamlet E since before independence “*sudah sebelum merdeka*”<sup>27</sup>. Before the Malays moved into the area, it was inhabited by Dayak. The forests and lands around Hamlet E are managed communally. There is no individual ownership over land and no one holds a personal land certificate. The official status of the land is APL (*Areal Penggunaan Lain*, which means as much as the land use category “other”), thus it is not recognised by the government that it is a forest. The people of Hamlet E do not have a permit to harvest wood and therefore they are often accused of illegal logging by the local authorities. According to members of the STSD in Hamlet E, the people have tried to obtain a logging permit. However, the district government refused to provide the permit and even threatened to arrest them if they did not give part of their “illegal harvest” to the government. The APL status of the area made it easy for the bupati of Sambas to issue a permit to convert the area to oil palm. This would not have been the case had the forest status of the area been officially recognised. (LG 6, personal communication, 19-03-13).

The first permit for oil palm was allocated to the Sinarmas Company in 2002. They established the PT. Bantanana Eka Jaya to build an oil palm plantation. According to the STSD, Sinarmas cleared land that belonged to Hamlet E without permission of the community. When people complained Sinarmas offered them a deal: Sinarmas would use the land allocated to them in the location permit for the nucleus plantation. The remaining hectares of secondary forest would also be turned over to the estate. The villagers would then receive fifty per cent of that land back, planted with oil palms. This would serve as the plasma plantation. The offer was refused and the

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27 “Before independence” is an expression that I have heard several times. People use it to express that something is the way it has been for a very long time.

community continued to express their dissatisfaction through consultations with the company and hearings with the local government (village head, camat and bupati). According to a staff member of Lembaga Gemawan, the dispute between the community and the Sinarmas Company was caused by three factors. First, the company was operating outside of their concession area, second, they were not hiring local people for the work, and third, the villagers lost timber as their source of income. In 2005, the dispute turned violent when people of Hamlet E burned down the base camp of PT. Bantanan Eka Jaya and attacked the plantation workers<sup>28</sup>. “We did not know what else to do, because our protest was ignored.” (Hamlet E, group interview, 8-04-13). After this attack, Sinarmas ceased their operations and sold the plantation to PT. ANI, a supplier to the Wilmar Group. PT. ANI continued the work of Sinarmas and opened up more land, again without consulting the people of Hamlet E. It was noticed by some villagers that preparations were made to build a road towards Hamlet E. The people of Hamlet E organised a meeting, attended by the village head and representatives of the Wilmar management. PT. ANI explained that they did not know of the existence of Hamlet E<sup>29</sup>. The first meeting was unsuccessful, but in a second meeting an agreement was made that the company would not enter an area of three kilometres alongside the river. The company offered to split this three kilometre area in nucleus and plasma areas, but the people declined this offer. In September 2006, PT. ANI sent a letter to the districts office complaining that they cannot work due to resistance of the local communities. Around 5800 hectares could not be planted due to the dispute.

### 5.3.2 Village F

Village F is close to Hamlet E. The people here mainly live of rubber production and wet rice cultivation. Lembaga Gemawan has been active in this village since 2005, with a community mapping project. The community of Village F got into a conflict with another supplier to the Wilmar Group: PT. WSP<sup>30</sup>. In November 2005, PT. WSP opened up land close to Village F. The next month, some villagers noticed that the company had opened up land outside of their concession area, damaging the community’s rubber plantations. This incident was reported to the village authorities. In January 2006 the company again opened up land outside of their concession area. The villagers of Village F responded by confiscating an excavator and five chainsaws and stopping 31 workers from the company. The village authorities sent a letter to PT. WSP demanding them to stop their activities in Village F. The company said they made a mistake, because they did not know where exactly the borders of their concession were. The matter was settled after the company paid a fine determined by customary law. Tension remained however and rose again after a second company was given a permit for palm oil. PT. SAM also entered the area of Village F. Again, Village F was not involved in the company’s plans. In January 2007, the district government facilitated a meeting, bringing together representatives of the company, the village and the government. The representative of the Wilmar group apologised for opening up land outside

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28 The burning down of PT. Bantanan Jaya is not an isolated incident. The base camp of PT. KMP in Sajingan Besar was burned down as well (Kontak Rakyat Borneo, personal communication, 30-4-2013).

29 It does not seem logical the company did not know of the existence of a hamlet that burned down the base camp of the previous company.

30 PT. Wilmar Sambas Plantation

of their concession area and for failing to provide socialisation to the community. In defence, he claimed that the company did have permission of the village head of Village F for its activities. The next month, 516 villagers of Village F made a public statement demanding Wilmar to stop their activities in Village F. The company said that it would stop all activities, but that the village may regret their decision in the future. The conflict was not over at this point. The people of Village F were angry that the suppliers of Wilmar had opened up land, destroying rubber plantations of the community. The paid compensation (*ganti-rugi*) of US \$550 was regarded too little to repay the damage suffered.

### 5.3.3 International campaign

After receiving several complaints, Lembaga Gemawan decided to document all palm oil-related problems in Sejangkung. For the first time, their work shifted full attention to palm oil problems. The institute discussed the cases with other NGO's concerned with palm oil issues. In the winter of 2006, the RSPO held its annual meeting. Lembaga Gemawan was invited to the meeting by Sawit Watch. At a side meeting for NGO's, Lembaga Gemawan's director presented the Sejangkung cases. Hereafter, Milieudedefensie (Friends of the Earth) proposed to cooperate to further research the Wilmar Group in Sejangkung. This resulted in the report *Policy and Practice, Pride and Prejudice* (Milieudedefensie, Lembaga Gemawan, Kontak Rakyat Borneo, 2007). This report is an indictment against the conduct of the Wilmar Group in Indonesia in general and in Sejangkung in particular. It expresses concerns about the sustainable image of the Wilmar Group that is promoted by the company and its financial donor, the IFC. Several accusations are put forward to argue that the Wilmar Group should not be regarded as sustainable and that it therefore should not receive financial support from donors. The first accusation is that the Wilmar Group companies in Sambas practice land clearing by means of fire. Apart from fire cases in Hamlet E or Village F, also land burning cases from other sub-districts are mentioned. The second accusation is that the Wilmar Group companies do not hold or have not completed their Environmental Impact Assessment, as required by the RSPO. The third accusation concerns Wilmar's conduct in Village F and Hamlet E. The Wilmar Group companies have converted land to oil palm plantations and opened up land without "free, prior and informed consent" of the communities, which is according to this report the main cause of the dispute with these communities. The last accusation is about converting forests to oil palm plantations, without conducting an independent High Conservation Value Forest assessment, also required by the RSPO. It is stated that orangutans have been seen in this area, which indicates that the area may be a habitat for them. The report encompasses events throughout the Sambas district and compares these to other areas in Indonesia and Uganda. Therefore, the report is about more than just the dispute between the communities of Village F and Hamlet E; it is a broad indictment against misconduct of the Wilmar Group in Indonesia.

At the initiative of Friends of the Earth, the report was launched internationally and became part of a campaign against abuses in the palm oil sector. The report was presented to the RSPO, the Indonesian national government, the government of the Netherlands and to an international network of NGO's. Moreover the findings were presented in the media. The Wilmar Group rejected most statements of the report (Milieudedefensie, Lembaga Gemawan, Kontak Rakyat Borneo, 2007).



After the report was launched, an official complaint was filed to the RSPO. The RSPO did not respond immediately. Board members of Lembaga Gemawan commented that they did not hope too much of the RSPO's response, for at that time their complaint board was still weak (LG 4 and 7, personal communication, 29-03-13).

Lembaga Gemawan's director said: "our international NGO friends felt we could not stop here. Forest Peoples Programme proposed to take the case to the IFC, because the IFC had just granted a loan to Wilmar" (LG 10, personal communication, 6-5-13). A group of nineteen Indonesian and international NGO's signed a letter of complaint to the CAO on Wilmar's behaviour in Indonesia. The complaint concerned conflicts in different parts of Indonesia, among which the Sejangkung case of Village F and Hamlet E, but also conflict areas in other parts of West Kalimantan and West Sumatra.

In the letter, the signatories expressed their concerns about the investment plans of the IFC in the Wilmar Trading and Wilmar International Company. According to them, the IFC was violating its own standards by financing Wilmar, because Wilmar did not comply with the standards of the IFC.<sup>31</sup> They claimed that after field research they found the following violations of IFC standards:

- Illegal use of fire to clear lands
- Clearance of primary forests
- Clearance of areas of high conservation value
- Takeover of indigenous peoples customary lands without due process
- Failure to carry out free, prior and informed consultations with indigenous peoples leading to broad community support
- Failure to negotiate with communities or abide by negotiated agreements
- Failure to establish agreed areas of smallholdings
- Social conflicts triggering repressive actions by companies and security forces
- Failure to carry out or wait for approval of legally required environmental impact assessments
- Clearance of tropical peat and forests without legally required permits

The first the accusation, illegal use of fire to clear lands, was also brought to the district court of Pontianak, which ruled in favour of the Wilmar Group, because there was a lack of evidence to support the accusation. Lembaga Gemawan comments that this court decision was a result of corruption (LG 6, personal communication, 19-03-13).

After a preliminary stakeholder consultation, the CAO Ombudsman decided to take up the case. The complaint was categorised in three topics: disputes with local communities, violations of Indonesian national law, and IFC's violations of own standards by investing in the Wilmar Group (CAO, preliminary stakeholder assessment document, 2007). Topic one and two were decided to be handled by the Ombudsman, while topic three was transferred to the CAO's Compliance department. The following up on this story will be further described in 5.3.5.

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31 Letter to CAO 18-07-2007

Topic 1: Concerns where Wilmar's own plantations impact communities and the environment negatively – mainly in the Sambas region:

- Clearance of primary forests by Wilmar
- Takeover by Wilmar of indigenous peoples customary lands without due process
- Failure by Wilmar to carry out free, prior and informed consultations with indigenous peoples leading to broad community support
- Failure by Wilmar to negotiate with communities or abide by negotiated agreements
- Failure by Wilmar to establish agreed areas of smallholdings

Topic 2: More systemic concerns relating to the adequacy of Environmental Impact Assessments; government permitting processes and local approvals; and the use of fire to clear land:

- Illegal use of fire by Wilmar to clear lands
- Clearance of areas of high conservation value by Wilmar
- Social conflicts triggering repressive actions by Wilmar companies and security forces
- Failure by Wilmar to carry out or wait for approval of legally required environmental impact assessments
- Clearance by Wilmar of tropical peat and forests without legally required permits

Topic 3: Concerns where IFC's due diligence and application of policies have had adverse impacts on communities and the environment.

- Wrong classification by IFC of project as Category C not Category A
- IFC did not follow the IFC's newly adopted E&S Review Procedures
- IFC did not give due consideration of IFC's newly adopted Performance Standards PS1 - PS8
- IFC did not adhere to the IFC's Information Disclosure policy
- IFC did not assess / detect Wilmar's non-compliance with several Performance Standards
- IFC wrongly noted on its website that Wilmar was compliant with RSPO standards (already addressed) (CAO, 2009a).

To address the first topic, the Ombudsman sent a team to Village F and Hamlet E. In the preliminary stakeholder assessment (2007) it is stated that:

“Some in these groups have stated that they reject the presence of Wilmar and other commercial palm oil companies, whom they see as threatening their forests and encroaching upon their land without permission. These views are strongly held and people are clearly concerned about the impacts of oil palm plantations on their livelihoods. They feel that big corporations have the power to take over large amounts of land, leaving the villages with very little. We heard from some spokesmen of these villages that they do not yet trust a dialogue process – because previous dialogues have not resulted in implementation of agreements. These groups want Wilmar to meet two preconditions before engaging in further discussion: a) Wilmar stops all operations on its plantations (and should respect the Ministry of the Environment letter of 14 April, 2007, which asks Wilmar Sambas Plantation to stop fur-

ther actions), including no planting, no harvesting, no clearing, no expansion in Sambas; and b) that Wilmar suspends its purchases from Duta Palma.”<sup>32</sup> (CAO, 2007).

After this ground check, the CAO decided to take up the case, because they found enough evidence supporting the accusations. Wilmar accepted the demands of the communities, except for that they wanted to continue to nourish and water the oil palm seedlings. The CAO commenced negotiations with the communities of Hamlet E and Village F.

#### 5.3.4 Dispute resolution through the IFC's Ombudsman

According to Lembaga Gemawan, the position of the community of Hamlet E was changing. While at the time of the Sinarmas conflict the people had been united and supported in their struggle by the village head of Village E', now local authorities and other elite members like religious leaders chose the side of the company. The representative of Lembaga Gemawan in this case, comments:

“As the village head and other elite members started to plant oil palms themselves, taking money from the company, one by one the people felt discouraged to resist. The people were traumatised by the Sinarmas conflict. The local police threatened to arrest them, so they were afraid to take further action. Who would feed their families if they were in jail? The people of Hamlet E had always been loggers; they were used to having enough money. Every week they earned 500.000 rupiah, at least. But logging became illegal and they lost their source of income. So they were seduced by promises of money by the government. Only a small group of people continued resisting the oil palm plantation.” (LG 8, personal communication, 29-4-13).

The CAO Ombudsman facilitated a meeting between Hamlet E and PT. ANI on 29 February 2008. In this meeting it was stated that the community of Hamlet E was willing to accept the nucleus-plasma system offered by the company. The community asked for further socialisation to be informed on the benefits and negative aspects of palm oil and the ins and outs of a partnership system. According to the community representatives, the company did not meet this request.

On 14 May 2008, the community of Hamlet E formulated their demands to the CAO<sup>33</sup>:

- A total of 1.166 hectares can be converted to an oil palm plantation. This area concerns the land that was already planted (763 hectares) and the land that was already stacked (403 hectares). The remaining 327 hectares will be preserved as a forest. Of the oil palm plantation, 80 per cent will be destined for the plasma area, whereas 20 per cent will be destined for the nucleus area.

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32 PT. WSP and PT. ANI both sold land to the Duta Palma Group. This group is one of the largest Indonesian palm oil grower companies. In May 2013, Greenpeace reported that Duta Palma is the first member of the RSPO to be expelled as a member for serious misconduct ([greenpeace.org.uk](http://greenpeace.org.uk), 2013).

33 Surat pernyataan tuntutan masyarakat dusun Hamlet E, desa Village E terkait masuknya kegiatan perkebunan kelapa sawit Wilmar Grup (PT. Agro Nusa Investama) ke dusun Hamlet E, desa Village E kecamatan Sejangkung- Kabupaten Sambas, 14 Mai 2008.

- The status of the nucleus area will be that it remains under ownership of the community of Hamlet E.
- The company needs to pay IDR 200.000 per hectare per year to the community to rent the land used for the nucleus plantation. This money will be used for community development.
- For the nucleus area, the company needs to pay a compensation of IDR 2.000.000 per hectare to compensate for the loss of access to resources. The compensation has to be paid directly to the community and this will be monitored by a joint committee.
- The plasma area will be divided over the households in the community, which are 230. (each household will hereby receive around 4 hectares)
- Wilmar (PT. ANI) is not allowed to further expand the plantation. The community maintains their forests and farm fields which they have handled in accordance with the tradition of their ancestors.
- Wilmar (PT. ANI) has to be consistent in the payment of the rent as stated in point 3.
- Wilmar (PT. ANI) is not allowed to damage the environment or cause damage to the social and economic status of Hamlet E.
- In the future, Hamlet E will not allow any further entrance of palm oil companies.
- Before an agreement can be made, the community mapping should be repeated, facilitated by the CAO.

On 24 November 2008, the parties reached an agreement. The letter of agreement states that both parties agree that there has been a dispute about the land use of 1493 hectares belonging to Hamlet E. The dispute was caused by land clearing for conversion to oil palm.<sup>34</sup> The dispute concerns 327 hectares of forest, 763 hectare of oil palm plantation and 403 hectares of cleared and stacked land. The company agreed to not expand their activities to other areas. It is agreed that the 327 hectares of forest will be maintained as a community forest (*hutan dusun*). If it is ever found that this area is converted to something else, the area has to be reforested. The 763 hectares which already are an oil palm plantation will be used for the nucleus plantation. The company is allowed to use the land for 35 years, from 1 September 2006 onwards. If after 35 years the company wishes to continue to use the land, new permission from the community is required. The 403 hectares of stacked land will be used for the plasma plantation. The company will manage the plasma plantation during the first five years of development, starting from January 2009. The company will also set up a cooperative and arrange credit schemes. The credit will be used for the expenses made during the maturing period and has to be paid back by the owners of the plasma plots. After the maturing period, the management of the plasma area will be handed over to the future owners of the plasma plantation. Here it has to be noted that this agreement is the opposite of the initial demand of the community, who wanted the 763 hectares as plasma area and the 403 hectares for the nucleus area.<sup>35</sup>

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34 SK Kerjasama pemanfaatan lahan antara Hamlet E dengan Pt. Agronusa Investama, 2008: pendahuluan.

35 Surat pernyataan tuntutan masyarakat dusun Hamlet E- desa Village E terkait masuknya kegiatan perkebunan kelapa sawit Wilmar Grup (PT. Agro Nusa Investama) ke dusun Hamlet E desa Village E kecamatan Sejangkung- Kabupaten Sambas, 14 Mai 2008.

For the nucleus area, the company agreed to pay a compensation for the use of the land to the community of IDR 300.000 per hectare through the team for the disbursement and distribution of the compensation for the plantation. In addition, the company will pay a contribution of IDR 40.000.000 a year for community development during the five years of the maturing period of the plantation. The company will also help with social and economic community development through a Community Development Program, in the form of plantation management trainings, social events, strengthening household livelihoods, according to the needs of the community. Last, the parties agreed to repeat participatory mapping of the areas concerned. This mapping will be facilitated by the CAO, Sawit Watch, Lembaga Gemawan and the land agency of Sambas. The letter of agreement was signed by seven representatives of Hamlet E, one of them a board member of Lembaga Gemawan. Four representatives of PT. ANI signed the letter<sup>36</sup>. The CAO declared the dispute “settled”. The CAO will continue to monitor the compliance to the agreements. Several members of Lembaga Gemawan state that for Hamlet E, the choice of accepting the plasma plantation was not really a choice. The forest had been destroyed and could not be easily reforested, so the people lost their source of income. Therefore, they had to accept the nucleus-plasma plantation. The staff member who handled the case at the time, states that at first he was against mediation at all. He was sure that with mediation, the people would lose, because they had less power than the company and moreover, they did not understand the language and legal terms that would be used. Therefore, Lembaga Gemawan accompanied the people during the process, giving them trainings in negotiation skills and explaining them the palm oil system and its positive and negative aspects (LG 8, personal communication, 29-04-13). LG 10 comments:

“To us, mediation is a step that is only taken when the people have already lost. Mediation is meant to save what can be saved. The land was already lost and people had fought for a long time. The people felt hopeless. But we were able to convince them, did they want to lose everything or did they want to hold on to what they could? We do not regard this case as a big success, but there was no other choice.” (LG 10, personal communication, 6-5-13).

A Lembaga Gemawan member added that the people of Hamlet E lost because they did not form a unity in opposing the company. Their village was divided and only the hamlet was against, while their village head was in favour of palm oil (LG 3, personal communication, 1-5-13).

A member of Kontak Rakyat Borneo said:

“In Hamlet E, the result of the negotiation is positive and negative at the same time. It was successful in a social sense, because there is no more conflict and violence. But it is not a positive outcome for the people, because they are now indebted. When the people accepted the palm oil plasma scheme, they did not have any choice. Their livelihoods

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36 Surat kesepakatan kerja sama pemanfaatan lahan antara masyarakat dusun Hamlet E dengan Pt. Agronusa Investama (24-11-2008). Memorandum of Agreement Co-Management of Land Utilisation Between Hamlet E Hamlet Community and Agronusa Investama Co (24-11-2008).

were destroyed. If the CAO negotiation had never happened, I think they would still be fighting against the company. However, negotiation was the best choice, because the company would not have been moved otherwise and it would have resulted in a dead-lock.” (Kontak Rakyat Borneo, personal communication, 30-4-13).

A Lembaga Gemawan also points to the debt as a negative consequence of the negotiation. He said:

“Only now, during the annual meeting of the cooperative, the people start to realise that they have a debt of IDR 37 billion and each of them has to pay IDR 300 million each month. Only now they realise this.” (LG 8, personal communication, 29-04-13).

He encouraged the remaining opponents to work as a plasma farmer to monitor the activities of the company from close by. He asked them to make a report of all the problems that occur. Now, every month a representative of Lembaga Gemawan travels to Hamlet E to discuss the situation with the seven people that resist the palm oil company, who call themselves the “team of seven”.  
Post-agreement developments

After the agreements between Hamlet E and PT. ANI and Village F and PT. WSP, a monitoring and evaluation team was set up, consisting of representatives from the government, NGO’s, the communities and the CAO. A report of a meeting in 2009 describes that both in Village F and Hamlet E preparations for a plasma partnership have commenced. Regarding Hamlet E, PT. ANI was found to comply with the compensation agreement. Some complaints were put forward that not all plasma areas were planted yet, according to the company due to a lack of seedlings. According to Lembaga Gemawan, there was a difference in attention to the plasma area compared to the nucleus area, leading to a lesser quality of the plasma plantation. Further, the forests were reforesting in a natural way, while the community wanted to reforest them with appropriate species for agroforestry. The company has not yet undertaken action to do this. The cooperative *Koperasi Cempaka Biru* was established, but still requires capacity training. These training have not yet been provided by the company and therefore Lembaga Gemawan gave trainings at own initiative.

On 17 April 2013, the CAO Ombudsman made another visit to Hamlet E. In preparation of this visit, Lembaga Gemawan first visited the STSD group of the community. The members of the STSD are the same as the seven members of team 7, those who wanted to keep on resisting the palm oil company. Instead, now they monitor the actions of PT. ANI and report each problem. They prepared a report on all problems they found to present to the CAO. The complaints encompass:

- mismanagement leading to unnecessary costs for the plasma cooperation;
- lack of care for oil palm trees in the plasma area hampering their productivity;
- wrong application of fertiliser leading to a waste of money and damage to oil palm trees;
- the fresh fruit bunches are picked up too late, leading to a spoiled harvest;
- the roads are not well maintained;
- safety standards for plasma workers are not applied;
- Ambiguities and unjustified expenses found in the budget reports.

During the meeting between the Monitoring and Evaluation Team, the community and PT. ANI, it was decided that the concerns of the community would be discussed directly between the cooperative and the company at a later time.

### 5.3.5 The dispute continues at the international level

With the closure of the negotiations, the dispute was not fully resolved yet. The original complaint to the CAO-IFC had been grouped in three categories. The third category about “concerns where IFC’s due diligence and application of policies have had adverse impacts on communities and the environment” was transferred to the CAO Compliance department. This CAO department assessed whether the IFC’s has assured itself with national law and international legal commitments in providing finance to projects. The CAO Audit report dated 19 June 2009, found that: “IFC did not apply its Performance Standards to several investments connected to the Indonesian palm oil sector” (CAO, 2009b). The first response of the IFC was that it recognised that mistakes had been made and they promised to improve the procedures. However, they also emphasised that:

“Production of palm oil, when carried out in an environmentally and socially sustainable fashion, can provide core support for a strong rural economy, providing employment and improved quality of life for millions of the rural poor in tropical areas.”<sup>37</sup>

The coalition of complainant NGO’s were displeased with this reaction, which they named “an inadequate response”. They urged the World Bank and the IFC to suspend their financings to the palm oil sector in Indonesia until the deficiencies in IFC procedures were solved. The IFC eventually agreed and placed a moratorium on new investments in the palm oil sector in Indonesia, until a strategy was developed to target the troubles in the sector.

In the meantime, the coalition of NGO’s, including Lembaga Gemawan, kept on sending complaints to the CAO about IFC’s investments in the Wilmar Group. For example, complaints were filed about disputes in Jambi and in Riau (Sumatra). Further, a letter was sent to urge the CAO to broaden attention to Wilmar to the full supply chain of Wilmar, looking beyond plantations directly owned by Wilmar.

“Furthermore, we note that whereas Wilmar is required by RSPO’s procedures to resolve such problems in all its own majority-owned subsidiaries, under the IFC’s procedures (as affirmed by the CAO audit), the company is obliged to apply the IFC Performance Standards to its full supply chain, which logically includes the palm oil and fresh fruit bunches that the company sources from non-Wilmar subsidiaries. It is our understanding that Wilmar International sources about 30% of its internationally-traded palm oil from its own subsidiaries and 70% from other companies. We are writing this letter to therefore urge that the CAO addresses these wider systemic issues, perhaps by reconvening a

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37 The World Bank /IFC/ M.I.G.A. Office memorandum (04-08-2009) to Meg Taylor, CAO, CCAVP.  
Subject: Final IFC Management Group Response to CAO’s audit report on Wilmar.

dialogue between Wilmar International, IFC and the concerned community and civil society organisations represented through the signatories of these complaints.”<sup>38</sup>

If the CAO takes up this matter, then this means that the dispute in Teluk Keramat with PT. SAM potentially will become subject to the CAO and inherent international attention as well.

In March 2013, the CAO conducted a monitoring research. It concluded that the IFC sufficiently was committed and took action to address the conclusions reached in the Audit Report. The CAO found that all items have been closed and therefore closed the audit.

The impacts of this case are not limited to Hamlet E and Village F. Pesqueira and Glasbergen (2013) refer to this case in their article on politics of scale in strategies of Oxfam Novib at the RSPO. They write how Oxfam Novib tried without success to problematise land-related discussions inside the RSPO. Their success in this area changed when the report of Friends of the Earth and Lembaga Gemawan was published. According to Pesqueira and Glasbergen, the external criticism that stemmed from the publication of this report pressured the RSPO to amend its policies in a manner that further regulated the conduct of its members (Pesqueira and Glasbergen, 2013). Land related problems from now on received more attention in the RSPO. The Voluntary Principles on Security and Human Rights and the Free, Prior and Informed Consent principles were included in the Principles and Criteria for the Production of Sustainable Palm Oil.

The international campaign had some negative consequences for Lembaga Gemawan. In a newspaper article published in Antara KalBaR (Antarakalbar.org, 2013), the Indonesian Palm Oil Association GAPKI criticises “an NGO from Indonesia” for accusing the palm oil sector in Sambas of damaging the environment and fostering poverty. The spokesperson of GAPKI says that this is not true and that to his surprise the Indonesian NGO was supported by “young people” from European NGO’s who, as he suspects, have never even been to Sambas. The news article actually refers to the director of Lembaga Gemawan speaking at the invitation of the World Bank in Germany. Lembaga Gemawan is dismissed by GAPKI as an Indonesian NGO with support of people who have never been to Sambas, and thus do not know what is happening there. In an article in the Kaltimpost, the government of East-Kalimantan states that there is a black campaign going on to damage the image of palm oil from Kalimantan. This campaign is allegedly led by foreign NGO’s in order to improve the market situation of edible oils produced in their own countries (kaltimpost.co.id, 2013).

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38 Letter from FPP and allies to Meg Taylor (CAO) (07-03-2012). Subject: Addressing systemic problems with Wilmar International.



## 6. Politics of scale in Lembaga Gemawan's dispute resolution strategies

The theoretical framework as discussed in chapter two concerned the role of politics of scale in processes of dispute resolution. Actors involved in disputes strategically invoke scales through discourses and actions to address disputes. Meanwhile, these discourses and actions are shaped and constrained by social constructions of scales. As multiple actors with diverse interests are engaged in scaling processes, actors may have to create counter-scales to contest unfavourable scale frames. An analytical framework was elaborated to identify three different and yet overlapping forms of politics of scale in processes of dispute resolution. This chapter applies this framework to the case study presented in chapter five. It appears that scales and counter-scales are created to shift discussions to levels at which the actors have more power to access decision-making, resources and legitimacy.

### 6.1 Linkages of redress

The disputes described in the case study started as small-scale “local events”. People in specific communities felt aggrieved by plantation companies (the incorporated companies (PT) of the parent producer companies) when their customary land was converted into oil palm plantations, or when preparations were being made to do so. The current plantation policy model stipulates that negotiations with communities are the responsibility of the company. However, in the case study, these negotiations with plantation officials and local authorities failed. Palm oil opponents were in an adverse power position because companies had more resources and were supported by the village authorities and village elites in at least five of the case study villages. Communities reacted by committing theft, forcing plantation staff to stop their work and setting fire to plantation property. The government responded to these acts by criminalising the palm oil opponents, deploying local forces and taking people to court. In court too, palm oil opponents are in a weak power position, because companies have the resources to influence the court’s decisions and have the Indonesian law on their side, which strictly condemns threats to plantations. In short, the government deploys a local scale frame on palm oil-related negotiations; these should be dealt with at local levels. This is to the disadvantage of communities that reject palm oil, because of their weak negotiating position and the criminalisation of their acts of resistance.

The NGO Lembaga Gemawan has built linkages of redress to create connections between local grievances and scales at which remedies for the grievances could (better) be obtained. To this end, they constructed counter-scale frames to contest the local scale frame on palm oil-related disputes deployed by the government and companies.

First, Lembaga Gemawan developed a counter-scale frame to convert the resistance against palm oil into a district-wide social movement. The STSD farmers’ union was set up to unite isolated and remote communities. Separate local disputes could in this way be united to advocate the existence of a broader spatial pattern of problematic oil palm expansion. Local resistance initially regarded as criminal activities, now gained legitimacy as a social movement. Lembaga Gemawan and the STSD created linkages of redress between the grievances of the communities and the dis-

district government. On the one hand, they argued in meetings with the communities that the district government is responsible for their grievances: palm oil is considered a threat to their livelihood opportunities and traditions (act of naming) and the district government is identified as the facilitator of this threat (act of blaming). Communities are encouraged and given training how to demand redress with the district government (claim) (communities from Teluk Keramat, for example, demanded “brother Dhe”, the bupati of Sambas, to withdraw licences of companies). On the other hand, Lembaga Gemawan and the STSD organised hearings and workshops to advocate the counter-scale frame with district government officials and law enforcement officials. They argued that oil palm expansion was threatening food security, diminishing livelihood opportunities, violating land rights and destroying the traditions and culture of Sambas. According to Lembaga Gemawan, within this context, palm oil resistance should be seen as legitimate, not criminal, actions. The construction of this counter-scale frame served to make palm oil-related grievances legitimate claims addressed to the district government.

Second, Lembaga Gemawan constructed a global scale frame to build linkages of redress. In Sejangkung, the dispute resulted in a deadlock and immediate solutions were needed. The counter-scale frame which is focused on the district government is intended to create long-term, structural linkages of redress, but is not (yet) suitable for achieving an immediate response. Lembaga Gemawan, in co-operation with international NGO’s, linked local grievances to politically resonant themes at global levels, thereby creating a global scale frame for the Sejangkung disputes. In the report on the dispute the grievances were set out as being about environmental destruction and violations of indigenous rights. Land clearing by burning, peat-land destruction and destruction of habitat for orang-utans were mentioned as part of the companies’ misconduct, although these practices were not the initial cause of the grievances of the communities (act of naming). The subsequent international campaign contributed to the land disputes being included in RSPO and the IFC’s concerns about sustainability. In this way, they built a linkage of redress between local land disputes and global mechanisms, concerned with social and environmental sustainability of palm oil.

The use of this scale frame is not without challenges. Lembaga Gemawan’s engagement with global anti-palm oil movements backfired when stakeholders of the palm oil sector in Indonesia constructed a counter-scale frame onto Lembaga Gemawan as “representing foreign interests”. Linking Lembaga Gemawan to “foreign black campaigns against Indonesian palm oil”, disparaged Lembaga Gemawan. Government officials both at district level and at the village level have become cautious in their interactions with NGO’s. In order to counter the global scale frame Lembaga Gemawan promotes itself specifically as a local NGO, indigenous to West-Kalimantan. During village meetings and meetings with village authorities, Lembaga Gemawan staff speaks in Bahasa Sambas and emphasise their origin as Malay farmers from Sambas and Singkawang. Furthermore, the institute promotes itself as a local organisation, which aims to improve the livelihood opportunities of the Malay communities of Sambas. Lembaga Gemawan does not present itself as an anti-palm oil organisation, rather as an organisation for farmers, who, occasionally, address palm oil issues.

## 6.2 Networks of interdependence

In paragraph 6.1 the local scale frame was described as working against communities. In order to challenge this scale frame, Lembaga Gemawan also aimed to change the existing network of interdependence. According to the current plantation model based on the “partnership” principle, the responsibility for negotiations with the communities about land issues is placed in the hands of companies. In the case study, land was labelled as APL, which made it suitable for conversion to oil palm. The lack of formal land certificates and the weak position of customary law made it difficult for the communities to maintain their claims over land. Their lack of legal capital, knowledge and financial resources further weakened their negotiating position. Therefore, Lembaga Gemawan tried to build new networks of interdependence to shift negotiations about land issues to scales at which the interest of communities would be better served.

First, Lembaga Gemawan created a counter-scale frame to redefine oil palm expansion as an issue of spatial planning (act of naming), for which the district government (and not companies at local levels) is responsible (act of blaming). At the village level, Lembaga Gemawan encouraged communities to cultivate and use as much land as possible and communities were educated on how to claim land via the existing land management programmes of the government (claim). At district government level, Lembaga Gemawan exercised pressure to implement spatial planning programmes that would provide alternatives to oil palm (e.g. social forestry). They also facilitated negotiations between government officials and communities and assisted with community mapping programmes. This counter-scale frame is intended to exclude plantation companies from direct control over access to land and create networks of interdependence in which non-palm oil communities become policy targets of the district government using spatial planning programmes. This strategy was successful in some communities. However, it is difficult to accomplish institutionalisation of spatial planning relations, because of the personal character of the relations between government officials and plantation companies and because of the interest districts governments have in attracting investments from large agribusinesses.

Second, in co-operation with other (I)NGO's, Lembaga Gemawan aimed to create new networks of interdependence between local communities and global stakeholders of the palm oil sector. To this end, the consortium of NGO's used the global production chain of palm oil to construct new norms and responsibilities. The case in Sejangkung and the subsequent international campaign were one of the triggers that ensured that the “free, prior and informed consent” principle was introduced in the RSPO's Principles and Criteria for the Production of Sustainable Palm Oil. This case therefore contributed to the topic of “land disputes” becoming a standard part of sustainability indicators of the RSPO. Moreover, financial donors of the palm oil sector were identified as being responsible for misconducts of plantation companies. IFC policies were amended and a temporal moratorium was placed on new palm oil investments. Concerns over land disputes at the IFC and the RSPO became institutionalised into a network of interdependence, in which these institutions could be held accountable for palm oil-related disputes at local levels. In Sejangkung, a monitoring team served to continue the interdependency between the communities and the IFC's Ombudsman. This network of interdependence may serve other communities dealing with dispute matters in the future.

The newly-created network of interdependence between local communities and the IFC's Ombudsman nevertheless showed some limitations. The choice of addressing the disputes of Hamlet E and Village F using the Ombudsman provided certain possibilities for redress but excluded other ones. The dispute resolution strategy of the CAO is focused on negotiation and on reconciling disputing parties. The premiss of the negotiations was to construct a palm oil scheme in such a way that it would serve the interest of both the companies and the communities. The option to reject oil palm and expel the companies from the area was not open; the companies would never have agreed to be expelled, all the more because they had a better negotiating position. The position of the communities, on the other hand, was weakened by the past outbreaks of violence and internal divisions between advocates and opponents of oil palm. The latter had no choice but to enter negotiations, since they had already lost their source of income. Through negotiations however, they could try to get compensation as well as a favourable smallholder scheme agreement. After the negotiations had been finalised, the dispute was resolved. The case is mentioned in several articles as a successful example of dispute resolution using global dispute resolution mechanisms (McCarthy, 2012; Pesqueira and Glasbergen, 2013). However, in Hamlet E, the people are not fully satisfied about the results and complain about non-compliance with the agreements. Whilst Lembaga Gemawan believed that the CAO negotiations had delivered fairly favourable outcomes regarding compensation and ownership, which would have been difficult to achieve without the CAO, this process of dispute resolution excluded all options stating "no oil palm."

### 6.3 Linkages of opportunities

It became clear from the violence that Lembaga Gemawan endured while assisting opponents that it had few possibilities of addressing disputes as isolated local events. The counter-scale frames that Lembaga Gemawan constructed to create linkages of redress and networks of interdependency, also served to link opportunities of different scales to access knowledge, resources, legitimacy and decision-making power. Linking these various opportunities enabled other actors in turn to use scale frames strategically.

First, by presenting palm oil production as a threat to the livelihoods and the traditions of indigenous peoples, Lembaga Gemawan built a variety of networks of association with the agenda of national and international NGO's and research institutions concerned with this theme. In this way, Lembaga Gemawan was able to access knowledge and financial resources which were used to set up programmes to support alternatives to oil palm, such as the rubber programme.

Second, the Sejangkung case shows how different scale frames can interact and mutually construct each other. In the first place, the INGO's were the ones who constructed a local scale frame about misconducts of palm oil companies. The local disputes in Sejangkung came to represent the abuses of the palm oil companies in general. While the international campaigns would probably have been launched with or without the existence of the Sejangkung case, this case strengthened the legitimacy of the campaigns. The findings of the report of Lembaga Gemawan and Milieu-defensie provided a genuine charge against one of the biggest palm oil companies in the world, which made the case suitable to be dealt with by the CAO. At the same time, the case catalysed a

broader campaign against palm oil in general. A member of Friends of the Earth states that local cases of dispute can strengthen the legitimacy of broader campaigns. Friends of the Earth and Milieudéfense used local disputes cases in Indonesia to show that biofuel is not beneficial to “developing countries”. (Friends of the Earth, personal communication, 30-08-2013). The disputes in Sejangkung eventually resulted in an amendment of the IFC policies and an 18-month World Bank moratorium on financing new palm oil investments. These achievements are not in the first instance a solution for the communities in Sejangkung; they are intended for the interest of communities throughout palm oil-producing countries.

Third, Lembaga Gemawan was confronted with a dispute which had few options for a resolution. In contrast to the disputes in Teluk Keramat, in Sejangkung land had already been cleared and even planted with oil palm. A return to the old situation was no longer possible. Lembaga Gemawan used their international connections with other NGO's to find a dispute resolution opportunity at a global level. Through their connection with NGO's such as Friends of the Earth, Forest Peoples Programme and Sawit Watch, Lembaga Gemawan managed to access the dispute resolution mechanism of the CAO. The communities would not have been able to make a claim at that level on their own. So communities at local level benefited from the global campaigns against palm oil. The involvement of the CAO also strengthened the legitimacy of Lembaga Gemawan as a partner in the negotiations. Whereas previously Lembaga Gemawan was not acknowledged as a negotiating party of the disputes, they were now regarded as representing the community.

A fourth linkage of opportunities can be identified. While the international campaigns have been directed at the international Wilmar Company, it is clear from the case studies that smaller domestic companies are causing similar problems. However, as these companies do not profile themselves as “sustainable palm oil companies” for the global market, they are less sensitive to criticism. This makes it more difficult for NGO's to target those using international campaigns. For example, Duta Palma has been banned from the RSPO due to severe misconduct, but continues to produce and sell CPO all the same. As such companies tend to sell CPO to larger international companies who do value their sustainable reputation, NGO's can target these companies by targeting their buyers. Both palm oil companies in Teluk Keramat, PT. SAM and PT. Patiware, are members of the Ganda Group, which is related to the Wilmar Group. At the moment, NGO's are lobbying to make palm oil companies and their stakeholders responsible for the production methods and land-acquiring practices of all of their CPO, including the CPO bought from other companies. By reframing small producer companies as part of the production chain of large transnational companies, NGO's hope to gain opportunities to hold them responsible. This is, however, still an on-going process, which will require a lot of effort in order to counter-scale small domestic companies as being the responsibility of “global palm oil stakeholders”.



## 7. Conclusion and discussion

### 7.1 Conclusion

The expansion of large-scale oil palm plantations in Kalimantan coincided with- and further nourished a growing global concern about the negative environmental and social impacts of this type of agribusiness. The palm oil sector was associated with deforestation and a rise of land disputes involving indigenous communities. In response to these concerns, stakeholders of the sector set up international sustainability standards to enhance sustainable and equitable practices in palm oil production chains; this exaggerated the global character of palm oil's governance network. Critics feared, however, that such standards would not be enough to achieve tacit results in upstream locations, where other interests prevail. At the same time, the globalised governance network provided new opportunities for dispute resolution, which would not have been available within the setting of such "upstream locations". This thesis examined dispute resolution strategies of a West-Kalimantan NGO (Lembaga Gemawan) regarding palm oil land disputes in Sambas district. It was studied to what extent and how this NGO engaged in scale framing and counter-scale framing to shift the levels at which such disputes are discussed. Special attention was paid to how international sustainability standards played a role in dispute resolution strategies. In this way, this thesis aimed to evaluate how international sustainability standards contribute to processes of dispute resolution in context of upstream locations of palm oil production chains.

In West Kalimantan, the expansion of oil palm plantations only began to take a real flight after the Reformation. This means that the palm oil sector in this province developed within a context of decentralisation and neo-liberalism. The central government mainly played a facilitation role. Law and policies gave large responsibilities to companies regarding negotiations over land with communities. District governments, in need for investments, supported the activities of palm oil companies by creating favourable regulation and issuing licences. Further, government officials and companies were involved in personal reciprocal relations. Meanwhile, communities were in an adverse negotiating position regarding negotiations with companies about access to land and land rights, due to the weak protection of (unregistered) customary land claims and criminalisation of acts of resistance against plantations. District government policies and practises as well as national law and policies on plantations, land rights and natural resource management deployed a local scale-frame on where, how and by whom land negotiations should be dealt with.

Lembaga Gemawan identified this as an unfavourable situation to the interests of communities that rejected palm oil companies. They found that communities were in a weak position to reject expansion plans of companies and that acts of resistance were labelled as criminal acts. The strategies they deployed to resolve disputes are diverse. First, they united and organised palm oil resisting communities throughout Sambas in a farmers union. Through this union they aimed to strengthen alternative livelihoods, build knowledge about the palm oil system, make communities aware of plantation expansion plans and activities, and train communities on how to voice grievances at district level. Second, Lembaga Gemawan lobbied at district level to advocate that palm oil resistance is legitimate and that the district government should take responsibility for

disputes and that they should work to prevent disputes. Third, the institute, with help of INGO's, brought a specific dispute case to the Ombudsman of the IFC.

Two counter-scales that Lembaga Gemawan constructed can be identified. First, the institute created a district scale frame on responsibility for negotiations about land. By advocating palm oil as an issue of spatial planning, Lembaga Gemawan made the district government responsible, instead of the companies. They also created a district scale frame on palm oil resistance: instead of local criminal acts, palm oil resistance was framed as a legitimate district wide social movement. The district scale frames were not always successful, at least not on short term. When a dispute resulted in a deadlock, Lembaga Gemawan constructed a global scale frame. The dispute was re-framed in terms of environmental destruction and violations of indigenous rights: themes that were politically resonant with international NGO's. With help of INGO's the dispute could be brought to the Ombudsman of the IFC, whereby the local dispute evolved into a dispute at global level.

Lembaga Gemawan applied different scale frames to disputes that had similar causes. The following factors explain their choices. First, in Teluk Keramat, where a district scale-frame was applied, plantations were not yet established. Voicing grievances and demanding a withdrawal of licenses was still an option. Second, the companies involved in the disputes in this case were small companies who had no international reputation to protect. They were no direct beneficiaries of international donors such as the World Bank / IFC. In the case in Sejangkung however, the plantation already had been established. Communities lost their source of income and were internally divided. This made their position to reject palm oil weak. To the communities and Lembaga Gemawan seeking help at global level was a last resort. Meanwhile, to the INGO's involved, the dispute in Sejangkung provided an opportunity to achieve other goals. Cases like the one in Sejangkung, could serve as examples to prove that despite international standards, palm oil companies engaged in harmful practises. Moreover, these cases contradict the paradigm that palm oil (or any other large scale mono-culture crop) is necessarily beneficial to people in rural areas of developing countries.

Regarding the question what consequences can be observed from the use of international sustainability standards as part of dispute resolution strategies, the following can be concluded. The mediation team of the CAO was successful in being accepted by all stakeholders in the dispute as a legitimate mediator. The negotiations initiated by this team resulted in an agreement between the company, the community and Lembaga Gemawan. Further, because of the CAO team, Lembaga Gemawan gained legitimacy as a stakeholder in the dispute. After the dispute was settled, the monitoring and compliance team functioned as a big stick in case of in compliance to agreements or new complaints. The violence ended and the deadlock was broken. However, the involvement of the CAO changed the claim of the community from "withdrawal of the company" to "best possible nucleus-plasma arrangements". The option to reject palm oil was hereby finally closed. The option of involving the CAO in disputes is only available if the involved company is a direct beneficiary of the IFC or MIGA. Further, to bring a case to this level, communities need a representative that knows how to do that. Then, to ensure that communities do not enter negotiations in a weak position, they need training of negotiating skills and legal knowledge.



On global level, bringing the Sejangkung case to the CAO contributed to amendment of policies and more attention to the theme "land disputes" at the RSPO. In the case study, the RSPO itself however did not play a role in the dispute resolution process of the people in Sejangkung. Rather, they functioned as a platform to advocate the existence of a relation between palm oil and land disputes.

Returning to the main research question regarding to what extent and how politics of scale played a role in the dispute resolution strategies of Lembaga Gemawan and what the consequences for processes of dispute resolution were, the following can be concluded. Lembaga Gemawan identified existing scale frames that constrained possibilities for redressing grievances. Thereupon, Lembaga Gemawan strategically constructed counter-scale frames to build linkages between grievances and more favourable possibilities for redress. Disputes were represented in such a way that they would be politically resonant and legitimate to certain actors who could provide redress. Further, by constructing scale frames on responsibility beyond the direct involved actors, Lembaga Gemawan contributed to the institutionalisation of new networks of interdependence. Last, Lembaga Gemawan constructed scale frames to link opportunities of different scales, to access knowledge, legitimacy, financial resources and decision-making power.

The case study showed that politics of scale is not only about using scale as a strategy, as an instrument to achieve a goal. It also showed how scale frames can work to the disadvantage of certain actors and how actors and discourses are included and excluded. Within certain scale frames, particular solutions are favoured while others are disregarded. Further, the case study showed that scale framing is not a tool exclusively available to "social movements". All stakeholders that are involved in a dispute engage in constructing scales to determine how, where and by whom problems should be solved or addressed. Therefore, the concept "counter-scaling" of Kurtz (2003), is essential in analysing politics of scale. Actors that seek redress for grievances need to identify existing scale frames that limit or constrain access to redress. These unfavourable scale-frames can then be contested by constructing counter-scale frames. At the same time actors need to recognise that their scale constructions interact with constructions of other actors with other interests. Goals are therefore not necessarily directly achieved just by re-scaling the problem. However, in dispute resolution processes, the strategic use of politics of scale can help less-powerful groups to address their grievances. Improving scaling abilities of such groups is a relevant strategy for NGO's that aim to assist them.

## 7.2 Discussion

This research addressed the extent to which and how international sustainability standards can contribute to processes of dispute resolution in the complex political contexts of districts. It is clear that international sustainability standards are often not part of the realities in these locations. Outcomes are largely determined by local politics and personal relations. This is not a critique on international sustainability standards per se, but it is a finding that needs to be taken into consideration regarding the establishment of standards, their implementation and the monitoring of their compliance. It is not necessarily the oil palm tree that is the "the bad guy".

However, the combination of the factors of need for lots of land, the mono-culture system, and the dependency of poor and isolated districts on investments and the weak protection of land rights in Indonesia make that oil palm expansion in Indonesia so often results in land disputes.

If the RSPO and the IFC are serious on the Free, Prior and Informed consent principle, they need to make sure that communities are in a position to reject oil palm if they feel that this is not in their interest, before oil palm plantations are developed. In this case study, international sustainability standards only played a role after oil palm was a fait accompli. In this way, international sustainability standards are not preventing structural disputes and are only relevant after grievances have already been caused. The key here is not so much in improving standards, but rather in empowering communities. Communities that are in the concession areas of palm oil companies often do not know about sustainability standards or how they can be used. They do not know how and where to file complaints. Only with help of intermediaries, communities can access the RSPO or the IFC Ombudsman. These sustainability initiatives have the responsibility to recognise that local contexts leave communities in weak power positions to negotiate with companies. Improving scaling abilities by building legal, social and economic capital can empower communities so that international sustainability standards become of meaning to them.

In the justification of this research, I referred to Rist, Feintrenie and Levang (2010), who stated that it is not a question of palm oil or not, but how to ensure best practices in palm oil production. While this may be true on global scale, this is not true on local or district scale. If this statement is assumed as a truth and research is biased to this “how” question and is focussing on more or better standards, then this is a form of “premature problem closure” (McCarthy, Gillespie and Zen, 2012). Palm oil problems are not solved with standards alone and “sustainable palm oil” is still palm oil. No matter how sustainable, the system that the palm oil sector embraces at the moment, with large scale mono-culture areas, has consequences for livelihood opportunities of people. Especially in West-Kalimantan, where many planned palm oil plantations have not yet been established, partly due to resistance of communities, the question of “palm oil or not” is still very relevant. Strengthening alternatives to palm oil is an effective strategy to prevent further expansion of the oil palm. INGO’s could focus their attention more on this strategy next to campaigning against palm oil.

This research aimed to understand the role of Lembaga Gemawan in dispute resolution processes, to produce input for discussions with communities and NGO’s. It became apparent that NGO’s such as Lembaga Gemawan can empower communities by strengthening their scaling abilities. By assisting communities with (legal) knowledge, social capital and financial resources, NGO’s can help communities to voice grievances beyond the ears of directly involved parties in the disputes. By identifying adverse scale frames and strategically constructing counter-scale frames, NGO’s can enable communities to address their grievances more effectively. Meanwhile, NGO’s should identify the limitations of scale-frames to respond to these limitations.

Regarding this research, there are several limitations. First, due to time and resource constraints, the analysis is based on two cases. Although they represent dispute cases regarding

Malay communities in West-Kalimantan, different outcomes may be found in other provinces. In West-Kalimantan palm oil is relatively a new phenomenon, whereas in Sumatra palm oil was introduced decades ago. Dispute resolution processes in such areas probably are different, because stakeholders have different positions, interests and network connections. Further, a limitation is that in doing the case study, I was dependent on Lembaga Gemawan to collect data. This may have caused a bias towards the negative aspects of palm oil. However, the point of this research was not to give a value judgement about palm oil, but merely to evaluate the context in which international sustainability standards are used for dispute resolution. A third limitation of this research is that in data collection, I had limited access to information from government- and palm oil company officials. These limitations can be overcome by long term empirical research. More case studies on disputes, involving multiple NGO's and other districts than Sambas, as well as more interviews with government officials and stakeholders of the palm oil sector should be done in order to identify more opportunities and challenges of using international sustainability standards in dispute resolution processes in the palm oil sector of Indonesia.

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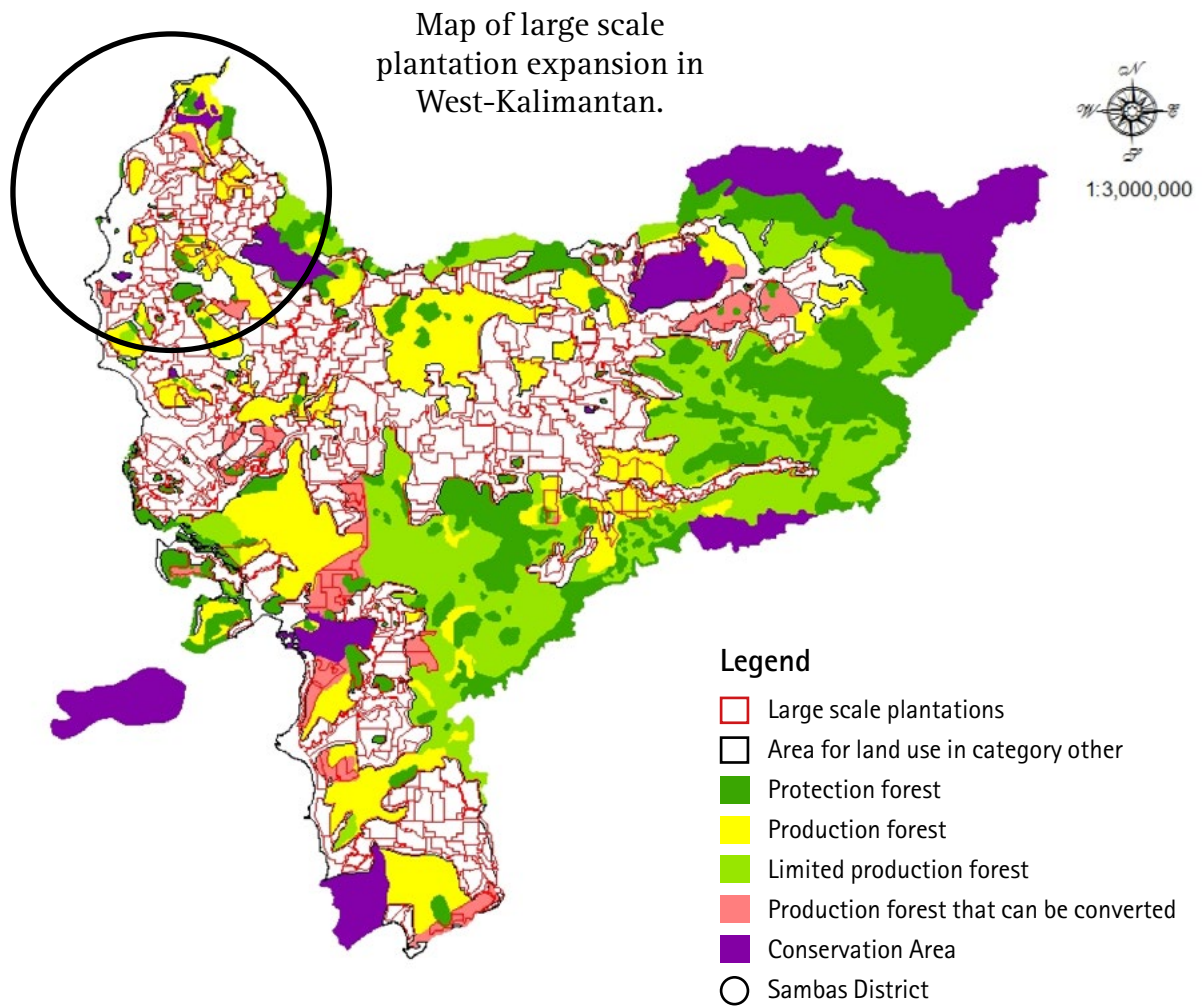
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## Appendix: Map of land use in West-Kalimantan



Source: Lembaga Gemawan (2012).