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# Counter-Mapping against Oil Palm Plantations: Reclaiming Village Territory in Indonesia with the 2014 Village Law

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**ABSTRACT:** This paper explores how villagers in Sambas District of West Kalimantan, Indonesia, attempt to protect their land rights against oil palm companies by engaging in mapping and spatial planning, in context of the implementation of Indonesia's 2014 Village Law. Drawing on theoretical debates about counter-territorialization and counter-mapping, this paper considers how villagers use the Village Law to legitimate taking control over their territory. Although village-level spatial planning and mapping initiatives do not guarantee that land rights will be protected in the long term, spatial plans and maps can serve as leverage in negotiations with companies and government officials. Moreover, the activities of mapping and spatial planning help to organize people and boost discussions about land rights and different aspirations for land use. Proactive village-level spatial planning is necessary to find ways to maintain pre-existing ways of using land, and to counter notions of empty land, available for companies to claim.

**Keywords:** 2014 Indonesia Village Law; land conflict; oil palm; counter-mapping; spatial planning

## Introduction

The news about the new Village Law (No. 6/2014) generated excitement in Sungai Putih,<sup>1</sup> a Malay village in Sambas District, West Kalimantan, Indonesia. In addition to high hopes that the direct transfer of money into the village treasury would bring socio-economic development, villagers also regarded the Village Law as a new opportunity to protect their land rights against appropriation by oil palm companies. Over the past decade, oil palm plantations have expanded rapidly in Sambas; according to a district government report 202,331 hectares of land, about thirty-two percent of the total area of the district, have been allocated to thirty-five oil palm companies since 2014. In September 2016, the district government reported that thirty-one oil palm companies were active in the region.<sup>2</sup> As of 2018, twenty-six of these companies have planted oil palms.<sup>3</sup> Oil palm expansion has led to conflicts between local communities and companies, as well as disparities within communities. In February 2018, local media reported on twelve ongoing conflicts in Sambas.<sup>4</sup>

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<sup>1</sup> All names of villages are pseudonyms to protect people's identity.

<sup>2</sup> [pontianak.tribunnews.com/2016/10/19/hingga-sepetember-2016-bpmppt-sambas-telah-keluarkan-31-izin-perusahaan-sawit](http://pontianak.tribunnews.com/2016/10/19/hingga-sepetember-2016-bpmppt-sambas-telah-keluarkan-31-izin-perusahaan-sawit) (accessed March 27, 2018).

<sup>3</sup> [atlas.cifor.org/map/atlas/](http://atlas.cifor.org/map/atlas/) (accessed: February 26, 2018).

<sup>4</sup> [pontianak.tribunnews.com/2018/02/01/dprd-sambas-identifikasi-12-perusahaan-perkebunan-sawit-bersengketa-dengan-masyarakat](http://pontianak.tribunnews.com/2018/02/01/dprd-sambas-identifikasi-12-perusahaan-perkebunan-sawit-bersengketa-dengan-masyarakat) (accessed January 30, 2018).

These conflicts are about future livelihood and labor opportunities, food security, people's autonomy as independent farmers and their flexibility to respond to change, and their historical attachment to ancestral land.<sup>5</sup>

The key issue is that concessions for oil palm plantations often overlap with land that is also claimed, inhabited, and cultivated by local villagers. A local farmer whose rubber garden was included in a concession for oil palm articulated this by saying, "There is nothing wrong with oil palm, but the location for the plantation is wrong." As Tristram Moeliono has explained, a structural issue underlying land disputes in Indonesia is the way government institutions and officials design, understand, and implement spatial planning. In the absence of spatial plans (or incomplete and ambiguous spatial plans), all sorts of governmental development targets, as formulated in development plans, "can and have been used instead as a reference to regulate access to land and its use."<sup>6</sup> Hence, if spatial plans do not regulate in detail which areas are available for plantation development and which areas are not, the government can allow plantation development anywhere in the name of development, without considering pre-existing local land uses. For example, Sambas' spatial plan of 2015-2035 does not specifically address plantation development, leaving unclear which areas are available for this use.<sup>7</sup>

Indonesian government institutions and companies have legitimated land claims in places such as West Kalimantan by citing the formal status of land as state land and the lack of formal property titles by villagers.<sup>8</sup> Scholars of Indonesian law have demonstrated that informal land rights are weakly protected by the law.<sup>9</sup> In light of these problems, non-governmental organizations (NGOs) in Kalimantan have stressed the importance of more democratic spatial planning in which local ways of using and understanding land are acknowledged. One of these organizations is Lembaga Gemawan, an NGO from Sambas and Pontianak that works in villages to strengthen livelihoods of farmers, and sees potential in using the new Village Law to advocate for better protection of local land rights.

Radjawali et al. indicate that a key feature of the new Village Law is greater autonomy for villages to demarcate their territory, clarify village borders, and make their own maps.<sup>10</sup> This autonomy had been profoundly restricted during the New Order regime (1965-1998), when national government institutions and district governments had strong control over how funds for village-level projects could be spent.<sup>11</sup> Vel and Bedner point out that the 2014 Village Law contains two major innovations: a significant increase in village budgets and the option for villages to obtain the status of *desa adat* (customary village), which grants them rights to manage the customary commons.<sup>12</sup> The increased budget could have a particularly large impact on villages in marginalized areas where there are few other opportunities to earn a cash income.<sup>13</sup> This is also a challenge, because it brings a risk of

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<sup>5</sup> De Vos 2016.

<sup>6</sup> Moeliono 2011, 308.

<sup>7</sup> District Regulation Sambas District (No. 17/2015) regarding spatial planning 2015-2035.

<sup>8</sup> Most of the land in the concession was designated as non-forested land (*APL, Area Penggunaan Lain*), which is available for agricultural use. The concession also included forest land which in Indonesia belongs to the state. Although the Constitutional Court ruled in 2013 that customary forest land was no longer automatically state land, Van der Muur (2018) points out that it is still difficult to effectively claim forest land based on customary rights. Non-forest land can be registered as private land only through a certificate of the National Land Agency; unregistered land belongs to the state.

<sup>9</sup> Bakker and Moniaga 2010; Bakker and Reerink 2015; Fitzpatrick 1997; but see Fay and Denduangrudee 2016.

<sup>10</sup> Radjawali et al. 2017.

<sup>11</sup> Vel et al. 2017.

<sup>12</sup> Vel and Bedner 2015.

<sup>13</sup><http://www.insideindonesia.org/cash-for-the-cashless> (accessed April 9, 2018).

mismanagement and corruption.<sup>14</sup> Regarding *desa adat*, villages may only consider changing their status if they expect to gain significant benefits, for example if they have large areas of high-value common land.<sup>15</sup> Yet, on paper, the Village Law also provides opportunities for villages that do not opt for the status of *desa adat* to renegotiate control over village land.

After the implementation of the Village Law, Lembaga Gemawan organized several workshops in Pontianak and other places in West Kalimantan for academics, civil society actors, government officials, and villagers to discuss how the Village Law could be used to strengthen local autonomy. Two features of the Village Law were stressed: first, to receive funding, villages must clarify their spatial borders with a map.<sup>16</sup> Second, village governments may issue village regulations (*peraturan desa*) regarding village-level spatial planning, these must be endorsed by the district government. Lembaga Gemawan and other NGOs in Kalimantan use these options to promote village-level spatial planning in response to, and in anticipation of, claims to village land by public and private investors.<sup>17</sup> In Sambas, Lembaga Gemawan assists fifty-five villages to map their lands and resources. However, it is so far uncertain if such initiatives are sufficient to successfully claim or reclaim land against companies holding formal concessions, especially if plantations are already in operation.

Drawing on theoretical debates about counter-territorialization and counter-mapping, this paper explores how villagers engage in this process of land counter-claiming against oil palm plantation companies, in the context of the new Village Law.<sup>18</sup> By comparing one case, where resistance from local communities partly stopped plantation development, with a second case, where plantation development went ahead, I highlight the tensions between new options to claim land through legal procedures and realities on the ground which hamper such initiatives. While recognizing mapping's potential to raise new conflicts and exclude certain groups of people, I argue that the cases described in this paper show that mapping and spatial planning *activities* are ways to organize people, initiate discussions about land use, and advocate for alternative pathways for rural development instead of large-scale oil palm plantations.

Debates about the Village Law and spatial planning and mapping initiatives in Indonesia resonate within a wider debate about rural development and the protection of land rights for rural and indigenous communities around the globe with respect to current trends in accelerating large-scale resource extraction. There is an urgent need to look beyond solutions that only address conflicts when they have already occurred, for example by facilitating negotiation and mediation between companies and affected communities. Such initiatives are often characterized by skewed power relations and imbalanced compromises that may lead to new conflicts.<sup>19</sup> Bottom-up spatial planning initiatives may provide more structural solutions to land acquisition-related conflicts but need to be critically examined in local contexts to understand the challenges and opportunities as well as the short and long term consequences they carry.

This paper draws on eleven months of ethnographic research in villages in West Kalimantan between 2013 and 2016. During this time, I combined participatory observation of daily village life with informal and semi-structured interviews with approximately fifty

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<sup>14</sup> <https://nasional.kompas.com/read/2017/08/11/23514291/tak-tersentuh-kpk-kades-jadi-aktor-korupsi-anggaran-desa-terbanyak> (accessed: March 3, 2018).

<sup>15</sup> Vel and Bedner 2015.

<sup>16</sup> Village Law (No.6/2014), art 8.3f.

<sup>17</sup> <http://jariborneo.blogspot.nl/2014/11/perdes-tata-ruang-desa-dan-gerakan-bela.html> (accessed March 3, 2018).

<sup>18</sup> I acknowledge that communities/ villages are not homogeneous entities but rather differentiated through class, gender and generation. Moreover, within communities there is significant and mistrust between supporters and opponents of plantations.

<sup>19</sup> Dhiaulhaq 2018.

villagers, officials, and staff members of six NGOs in Pontianak and Jakarta. I also participated in twelve village meetings in eight villages.

The paper is outlined as follows. After discussing my theoretical framework on counter-territorialization and mapping, I introduce the research area and describe how oil palm expansion has led to changing property relations and conflicts. Then, I compare two cases and analyze the challenges and opportunities of using the Village Law to protect land rights. In conclusion, I argue that despite the risks and challenges, considering the rapid expansion of large-scale land acquisition projects for resource extraction, pro-active, bottom-up spatial planning is necessary to prevent and address land conflicts.

## Creating territories for resource extraction

In Indonesia, the amount of land used for large-scale oil palm plantations almost tripled between 2000 and 2017, from 4,158,077-ha to 12,307,677-ha, and this is expected to grow further due to a growing demand for vegetable oil and biofuel.<sup>20</sup> This expansion has been facilitated by increased liberalization of the plantation sector, with more power for companies, and decentralization of regulatory authority to districts.<sup>21</sup> After the fall of Suharto's New Order regime (1965-1998), district governments gained significant discretionary power to control and manage natural resources, including responsibility for issuing concessions.<sup>22</sup> Decentralization intensified patronage networks between government officials and companies, and this has enabled private companies to gain control over massive areas of land, often at the expense of smallholders.<sup>23</sup> Although the number of independent and contracted smallholders is quickly increasing in some regions, particularly in Sumatra, in Kalimantan large-scale plantations dominate the landscape.<sup>24</sup>

The Civil Society Coalition for Fair and Sustainable Spatial Planning calculated in 2014 that sixty-nine percent of West Kalimantan Province had been divided into concessions for oil palm, mining, and logging companies and twenty-six percent had been designated as protected forest area, leaving only five percent for people's infrastructural, housing and farming needs.<sup>25</sup>

A key state assumption is that all land is available for resource extraction. Resource rich areas around the globe have been "discursively, politically, and physically constructed as "vacant", "ungoverned", "natural," or "uninhabited" spaces, hence available for companies to claim.<sup>26</sup> The erasure of pre-existing ways of understanding, using, and governing land and installing and legitimizing new forms of control has been conceptualized as territorialization, "drawing boundaries around geographical space, excluding categories of individuals from these spaces, and proscribing or prescribing specific activities within these boundaries."<sup>27</sup> Territorialization for oil palm expansion has been legitimated in Indonesia by characterizing land as "unproductive" (*tanah terlantar*), "degraded" (*lahan kritis/ terdegradasi*), or "empty" (*lahan kosong*).<sup>28</sup> Particularly in Indonesia, where land tenure arrangements are subject to

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<sup>20</sup> Afriyanti et al. 2016. McCarthy et al (2012) point out that many land deals are virtual and land conversion projects are not always realized.

<sup>21</sup> McCarthy 2010; Pichler 2015.

<sup>22</sup> McCarthy 2004.

<sup>23</sup> Aspinall 2013; Brad et al. 2015; de Jong et al. 2017; Pichler 2015.

<sup>24</sup> In Kalimantan, there are 6,29,480 hectares of mature industrial plantations versus 295,149 hectares of mature smallholder plantations, Directorate General of Estate crops (*Dirjenbun*) 2017, 14.

<sup>25</sup> Li 2017b: 1164.

<sup>26</sup> Rasmussen and Lund 2018, 388. See also Ito et al. 2014; McCarthy and Cramb 2009; Tsing 2005.

<sup>27</sup> Vandergeest 1996, 159; see also Peluso and Lund 2011; Vandergeest and Peluso 1995.

<sup>28</sup> McCarthy and Cramb 2009; Harahap et al. 2017, 457 point out that "policy and ministerial planning documents use inconsistent terms in local language when referring to degraded land."

legal pluralism, territorializing activities are also a way to claim authority against other authorities.<sup>29</sup> Designating concession areas to companies is a way for the state to gain control over land at the expense of local (customary) authorities and local inhabitants. This is because once companies obtain commercial use rights (*Hak Guna Usaha, HGU*) from the state, which gives companies the right to use the land for thirty-five years with the possibility to extend for another twenty-five years, previous land users are assumed to have given up their rights in exchange for compensation.<sup>30</sup> At the point of expiry of the HGU, land returns to the state and is not automatically returned to the previous users.<sup>31</sup>

### **“Map your land before someone else will”: Countering oil palm claims**

The expansion of oil palm plantations in Indonesia has been challenged. “Map your land before someone else will,” is a slogan of AMAN (Aliansi Masyarakat Adat Nusantara), the national indigenous rights movement, encouraging indigenous communities to map their territories before government or private actors make claims. It represents a trend for NGOs to engage in mapping to advocate for land rights of indigenous rural communities. This trend started long before the implementation of the Village Law; the reformation period after the New Order brought more political agency to rural communities to counter claims by state and private actors.<sup>32</sup> Currently, NGOs across Indonesia use advanced GIS tools and even drones to produce maps that counter official state maps. Counter-mapping and spatial planning initiatives are part of a broader movement in Indonesia to strengthen land rights of rural and indigenous communities, as well as the urban poor. Depending on location and context, mapping and spatial planning activities may be based on customary claims or, as in Sambas, on regulating particular functions of the land such as forest, sustainable food cultivation, or peatland restoration areas.

The point of mapping is not simply to clarify ownership or how land is used within communities. Rather, it is often specifically focused on representing and claiming land rights in relation to other parties in a form and language they understand, thereby often and perhaps inevitably changing land rights. While unclear, overlapping land rights in a context of legal plurality have often been dubbed a root cause of land conflict, tenure insecurity often only occurs when the value of land rises and new actors start to make claims.<sup>33</sup> In response to increased tenure insecurity, villagers engage in new forms of claiming territory and authority, for example through mapping.

Counter-mapping is “a process of collectively identifying local resources, defining patterns of land ownership and use, tracing historically and culturally significant sites and negotiating individual and community control over local resources. The goal of these efforts is to appropriate the state’s techniques and manner of representation to bolster the legitimacy of customary claims to resources.”<sup>34</sup> By using these state techniques, counter-mappers hope that their claims to land and other resources will be more difficult to ignore in the process of developing spatial planning and issuing permits and licenses to companies. As a staff member of Lembaga Gemawan explained, local villagers rely on oral tradition, but companies and government officials only listen to documents:

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<sup>29</sup> Sikor and Lund 2009.

<sup>30</sup> HGU (Hak Guna Usaha, Commercial Use Right) leases under the Basic Agrarian Law (UUPA 5/1960: 28-34) involve rights issued by the government on so-called “state lands” to plantation, fishery, or livestock businesses for periods of twenty-five to thirty-five years, and these rights are renewable (Lucas and Warren 2003, 89).

<sup>31</sup> Afrizal and Anderson 2016.

<sup>32</sup> Bakker and Moniaga 2010; Bakker and Reerink 2015; Lucas and Warren 2013; Rachman 2011; Warren 2005.

<sup>33</sup> Feintrenie et al. 2010, but see Hall 2011.

<sup>34</sup> Peluso 1995, 384.

The people can manage their lands without maps. However, when they are dealing with a company, the company will ask: where is your map? Where are your village borders? Where is your proof? So, our map provides the power of a document...With this document we can prove that land is not empty.

Another staff member stated that in a case of conflict with a company, community maps can help articulate local claims because these show the boundaries between villages, different land use zones (for example, borders between crop land, conservation land, and forest), and areas designated for smallholder plasma plots and for the companies' nucleus plantations.<sup>35</sup> This is important, because plantation development often erases traditional natural border markers. Moreover, as companies and governments do not usually have maps that show detailed land use at a local level, communities who have these maps are in a more advantageous position to claim specific areas and exclude other areas from plantation development.

While mapping may be a way to facilitate more bottom-up spatial planning, there is no guarantee that this will indeed prevent the loss of land. Counter-maps may freeze property relations and exclude certain groups of people, for example women, lower classes or certain ethnicities.<sup>36</sup> In addition, mapping can make resources more legible and subsequently also more vulnerable to appropriation by government or private actors.<sup>37</sup> Notably, participatory mapping is also done by oil palm companies, which may benefit from information about resources and fixed village borders. Maps also may create disparities within communities, as previously fluid borders between villages and between land belonging to different families or individuals become fixed.<sup>38</sup> In this regard, Lembaga Gemawan comments that mapping is different from titling, as mapping does not register individual ownership, it merely indicates land use areas within the village territory. Another problem is that although the Village Law allows village mapping and village spatial planning, there is no strong legal basis to integrate these bottom-up initiatives with formal (national and district) spatial planning.<sup>39</sup> The NGO network for participatory mapping (*Jaringan Kerja Pemetaan Partisipatif*, JKPP), which was established in 1996 after the government opened up the possibility of public participation in spatial planning,<sup>40</sup> laments that the authority responsible for geospatial data often questions the legitimacy of mappers and their methodologies and techniques for mapping, in particular when it comes to territories of customary communities.<sup>41</sup> Eventually village spatial planning is subject to district spatial planning and national and district development targets.<sup>42</sup>

The problem of legal recognition aside, counter-mapping entails more than producing cartographic maps that represent alternative utilization of space, it is also a process of giving

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<sup>35</sup> Plantations in Indonesia use a Nucleus-Plasma scheme model, which in theory means that a company manages a core estate (nucleus) which is surrounded by smallholder plots (plasma). Smallholders are tied to the estate until they have repaid debts for developing the smallholder plots. Tied smallholders receive assistance from the core estate for inputs, knowledge and credit. The original Nucleus-Plasma scheme designated 80% of the plantation to smallholders. Since 2007, this has been reversed and core estates now make up about 80% of the plantation, and sometimes also manage the smallholder plots together with the core estate. Ministerial Regulation (No26/Permentan/OT 140/2/2007). See Gillespie 2011 and McCarthy et al. 2012.

<sup>36</sup> Peluso 2005. See also Fox et al. 2006; Roth 2007.

<sup>37</sup> Dewi 2016.

<sup>38</sup> Bryan 2011; Fox et al. 2006; Pramono et al. 2006; Radjawali et al. 2017.

<sup>39</sup> Village Law (No.6/2014) stipulates that village borders need to be defined by means of a village map (art. 8f), and mapping village borders needs to involve the relevant technical authorities. Note that the law refers to mapping village borders, not to mapping land use within these borders. Art 38(4) stipulates that village regulations regarding spatial planning need to be acknowledged by the district government.

<sup>40</sup> Pramono et al. 2009.

<sup>41</sup> <http://jkpp.org/2015/04/12/imam-hanafi-satu-peta-untuk-semua/> (accessed April 5, 2018).

<sup>42</sup> But see Radjawali et al. 2017 regarding a case where a community map was used in court as proof of detrimental environmental mining impacts.

meaning to land. Mapping is foremost a social practice, part of processes of claiming and counter-claiming, involving also demonstrations, violent action, planting perennial crops, or forms of infrastructural violence such as constructing roads or placing land marks.<sup>43</sup> In this way, counter-mapping is more than an effort to articulate existing claims regarding land and related resources and make these visible and legible to outsiders, for example to influence formal spatial planning. The activity of mapping is also a way to initiate discussions and negotiations (and sometimes conflict) about the utilization of space and its meaning to different land users. These discussions may occur within villages, but also in local media and within district governments where policies regarding regional spatial planning are made.

The extent to which mapping can be used to avoid dispossession or to reclaim lost land depends on socio-economic and political relations on the ground. The implied viewers of maps, for example state officials, are not necessarily the actual viewers of maps.<sup>44</sup> Claiming not only happens in direct confrontation with competing claimants, but also through everyday practices. Using land *as if* others acknowledge your claim can reinforce the status quo: this is also true for companies who produce palm oil as if they have the necessary permits. Hence, to understand the potential of mapping and spatial planning, it is crucial to consider these activities as part of broader processes of counter-claiming, including continuing everyday land use practices as if other parties acknowledge the legitimacy of these practices.

### **Oil palm land conflicts in Sambas**

In 2008, a farmers' movement was established in Sungai Putih village, located in the western part of Sambas, where the population concentration is much higher than in the north and east. From the main road, a narrow concrete path through rubber gardens and rice fields leads to this scenic village of 1915 inhabitants, most of whom are Malay Muslims. According to local history, the village was founded sometime in the early twentieth century by a seafarer from Sumatra and his Balinese wife. At that time, some Dayak families lived in the area, but they eventually moved inland. Although nowadays all villagers are Muslim, some traditions such as ceremonial decorations and food still refer to the Balinese origins of their ancestor. Despite stories about overseas ancestors, residents regard themselves as indigenous to the region because they were the first to clear the forest and cultivate the land. This land has been passed on through several generations, making it ancestral land (*tanah turun temurun*). Most land is owned by individual households and people know which land belongs to whom, even when land is not being used. However, if land remains uncultivated for a long time it may be claimed by others who must negotiate with village authorities. In contrast to Dayak and some Malay communities in other regions in Kalimantan, Sambas Malay do not self-identify as a *masyarakat adat* (customary community) and there is no institutional representative of Malay *adat* in the same way as in Dayak communities. Nevertheless, land tenure arrangements are also based on local notions of property rights, which in practice are a combination of Islamic law, state law, and customs that have been developed and maintained through generations.

Initially, most Malay communities in Sambas were strongly oriented towards the sea for fishing and maritime trade. This changed when around 1910 the Dutch colonial government encouraged villagers in Sambas to convert forest into rubber gardens to accommodate a growing global demand for latex. The shift to smallholder tree cropping and later rice cultivation had a profound impact on land tenure arrangements. Sambas District

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<sup>43</sup> Bryan 2011; Peluso 2005; Roth 2007; Li 2014 and 2017a.

<sup>44</sup> Orlove 1991. In a conflict between government ministries and peasant communities over reed beds in Lake Titicaca, both state and community maps were mostly viewed by the map makers themselves. Rather than looking for confrontation, the contesting parties disengaged from each other and continued their daily practices as if the other party acknowledged their claims.

became the only district in West Kalimantan where a significant portion of the land was individually registered and used for permanent agriculture.<sup>45</sup> In Sungai Putih, residents collectively cleared the forest and converted this land into gardens and fields. These gardens and fields were divided among individual households, the amount of land each household received depending on status, contribution to the forest clearing, and capabilities to cultivate the land. The new gardens and fields were passed on from parents to children through inheritance partly based on Islamic law. Nowadays, Sungai Putih options for clearing forest land are limited, but in other villages young families can still obtain land by clearing secondary forest and converting this into gardens or fields. Other options to access land include purchase, leasehold, sharecropping, and farm work. Individual plots are often registered with a land clarification letter (*surat keterangan tanah*) issued by the village head. However, land rights are seldom formalized with land titles registered with the National Land Agency.<sup>46</sup> Land in Sungai Putih, as in most of coastal Sambas, is classified as non-forest land, which makes it officially available for agricultural use, including oil palm cultivation. In the current district spatial plan (2015-2035), a large part of this land is classified as “plantation area” (*kawasan perkebunan*) suitable for crops like oil palm, rubber, black pepper, and coffee. The plan does not distinguish between large-scale industrial plantations and small-scale gardens cultivated by individual households.<sup>47</sup> In reality, land in this area is a patchwork of tree crop gardens, orchards, rice fields, grasslands, and different kinds of forest. These range from intact to degraded and completely burned.

### *Land Rights become contested*

In 2006, land tenure arrangements came under pressure after the district government granted a location permit (the first step in plantation licensing process) for 20,000 hectares to an oil palm plantation company, including land in Sungai Putih and eleven other villages. The plantation company belonged to an Indonesian agribusiness group that was not a member of the Roundtable on Sustainable Palm Oil. The land consisted mainly of rubber gardens, rice fields, mixed cropped gardens, and secondary forest of bamboo and rattan. The location permit granted the company the right to commence with preparatory activities such as marking the borders of the concession area and negotiating with local communities about land transfers. In this preparatory phase of plantation development, the company engaged in activities which gradually transformed the landscape and social relations. In one village, the company established a seed nursery. In other villages, the company placed land marks and constructed roads and canals. The company did not fully disclose the details of the plantation project to local communities. Although there were rumors about plantation development, it was not clear when and where and under which terms the company wanted to establish the project. The company did not organize a general socialization meeting<sup>48</sup> to inform local communities. Rather, negotiations took place in the houses of local government officials and individual landowners. In one village, a landowner reported that the company offered compensation for the loss of crops. The company did not offer to buy the land and claimed that the land was state land and without a formal certificate the land owner could not claim that he had the right to sell the land.

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<sup>45</sup> Ward and Ward 1974.

<sup>46</sup> Although the district government is currently working on a land titling program, mainly for houses. See <https://kalbar.antarane.ws.com/berita/359362/bpn-sambas-akan-serahkan-12-ribu-sertifikat> (accessed March 27, 2018).

<sup>47</sup> The Plantation Law (No.18/2004, art. 1.6-7) does recognize this difference defining a plantation company, *perusahaan perkebunan*, as a company with a defined scale and a permit.

<sup>48</sup> At these meetings company staff or government officials disseminate information regarding projects to affected communities.

In particular, the red cement land marks that the company used to mark the borders of the concession area triggered the organization of resistance in affected communities. Upon finding these land marks in their gardens and fields, people feared that the company might appropriate the land without their consent or offering compensation. There were various reasons why people rejected the plantation project. First, people did not trust oil palm companies, because of violent conflicts that had occurred in nearby plantations. The company fueled this mistrust by not informing the communities about the details of the plantation project, such as the exact location, land tenure arrangements regarding the nucleus and plasma of the plantation, terms for land transfer, allocation of profit, or prospects for the palm oil market. People feared that if they transferred their land to the company, they would receive nothing in return. Second, the promise of jobs on the plantation was not regarded as attractive. People that would be fit to work as laborers on the plantation mostly worked on plantations in Malaysia, where they received relatively higher wages payable in Malaysian Ringgit while maintaining land in the village for their future and their descendants. Moreover, many people stressed that they did not want to become “coolies” (*kuli*) on their own land and lose their independence as farmers.<sup>49</sup>

Under the leadership of the village head, Sungai Putih became the center of resistance against the company. In 2008, the village head was attacked and beaten unconscious by thugs who had been allegedly hired by the company. This violent incident triggered a mass demonstration in front of the district government’s office. The protesters demanded that the company’s plantation license be revoked. Initially, the district head agreed to this demand and revoked the license on the spot. However, after the company took the matter to court, the license was reactivated. Nevertheless, the company was not able to proceed with its plans in Sungai Putih and other villages where resistance had been well organized. Instead, they focused on land twenty 20 kilometers north, which is now in operation.

Since the demonstration, the farmers’ movement has grown and now has members in villages throughout Sambas. This network enables members to monitor and spread information about company activities, and if necessary organize meetings and follow-up actions such as requesting information from government institutions, issuing formal complaints, reporting legal violations to the police, and organizing demonstrations. After several years of relative peace, at the end of 2015, a rumor circulated that the company wanted to file for a commercial use right (*HGU*), consolidating control for at least thirty-five years. The village government of Sungai Putih feared that this permit would include all the land in the original concession area, which would transform their land into state land. The National Land Agency confirmed that the company had requested a commercial use right but asserted that it only concerned the area where the plantation was already established. However, they could not dismiss the possibility that the company might expand its plantation in the future, or that other companies would not obtain a concession. The land agency told the villagers that it was up to them to protect their land rights on the ground.

### *Mapping against future dispossession*

In response to uncertainty about the company’s expansion plans, the village government of Sungai Putih invited Lembaga Gemawan to conduct a participatory mapping program. According to Gemawan’s director, mapping is the first step in village-level spatial planning to counter governmental spatial planning, which often fails to take the interests and rights of local communities into account. Through engaging in their own mapping process, villagers can translate their aspirations for development into a language and document which can be

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<sup>49</sup> De Vos 2016.

presented to and understood by other parties, including company and government officials. In West Kalimantan, local land tenure arrangements are often not acknowledged by the government and private actors, because they are not formally registered. Companies have argued that they do not require the consent of communities because the land they target is officially state land.<sup>50</sup> When projects target such land, communities have little leverage. Therefore, the Director argued, it is important that villages develop detailed maps and policies for spatial planning before district governments can allocate land to companies under the premise that it is “empty” or “unproductive.”

Since the implementation of the 2014 Village Law, Lembaga Gemawan has framed its mapping activities as “an effort to implement the Village Law,” as the law stipulates that to receive funding, villages need to complete their administration of village assets and resources and clarify village borders. To map village land, Lembaga Gemawan uses homemade drones and GIS (geographic information system) to produce high-resolution photographic maps. In Sungai Putih and two neighboring villages, mapping experts and a team of village officials and villagers worked for five days to map the land. The result was a photographic picture of the village from above clearly showing houses, arable fields (for rice and vegetable cultivation), rubber gardens, and agroforest areas. Based on this map, the village government has created its own spatial plan that divides the village into different land use zones, including rubber gardens, rice fields, mixed-crop gardens, and residential areas. Rice fields can be classified as sustainable food crop land (*lahan pangan berkelanjutan*), which makes this land unavailable for plantations or mining. The zones should be legally formalized, which is enacted after formal approval by the district government. Importantly, once enacted these zones cannot be converted to other types of land use, such as for oil palm, without formal permission of the village government. The district government can only approve the village spatial plans when all villages in the sub-district have mapped their land and the borders between villages have been clarified. In addition, village-level spatial plans need to be in accordance with district-level spatial plans, which may be problematic if villages include forest land, which cannot be converted to other types of land use without approval from the Ministry of Forestry. However, according to Lembaga Gemawan staff, it is important for Sungai Putih that the district government did not oppose their mapping program, which means that they are not likely to object later. Nevertheless, the village map might have power even without formal acknowledgement, as explained by the former village head of Sungai Putih, who now works for Lembaga Gemawan:

I stressed to the villagers the importance of land. Many parties seek access to land and if we don't have regulations in place to protect our land, companies can easily take it. To secure our land rights, we need to have a village map. Then we have a better position at the negotiating table with companies and the government. If there are no clear village borders, land will be developed according to parties' self-interest. We need a clear and strong village map, so we can protect our land against exploitation.

However, there is also doubt about how to proceed. In Sungai Putih, the mapping process did not include registering individual claims or describing local land tenure arrangements. One of the village officials involved in the process was concerned that if all land were registered through individual titles, it would be easier to sell land to outsiders, especially as the price of land has increased due to the many land investment projects in the region. A female villager disagreed:

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<sup>50</sup> De Vos et al. 2017, also reported by Afrizal and Anderson 2016, and Elmhirst et al. 2017.

I think that mapping will not lead to a change in land use, because all land is already owned by someone. All land definitely needs a certificate, but this requires significant funds and the process can be long. However, nearly all villagers already have a land clarification letter from the village head.

### *Complexities on the ground*

In December 2017, only thirty kilometers north of Sungai Putih, 200 villagers from four villages, accompanied by activists from the farmers' movement, attended a hearing with the regional parliament (Dewan Perwakilan Rakyat Daerah, DPRD). In an interview with local media, a representative from the farmers' movement stated that the villagers have been in conflict since 2008 with a plantation company that holds a 14,968-hectare concession, because the company had incorporated approximately 2,500 hectares of village land without compensation. Moreover, plasma gardens the company had promised had not been delivered. After nine years of conflict, the villagers demanded that the company's concession be revoked, it returned land to the former owners, and it compensate farmers for lost income. If the hearing did not lead to an acceptable solution within one week, the villagers threatened to harvest palm fruits on a plot of land they said belonged to a farmer's group.

This conflict had turned violent in 2013, when villagers seized and burned company assets. At the hearing a DPRD representative declared to local journalists that if indeed the villagers had legal rights to the land in question and could demonstrate this with a land clarification letter from the village head, the company had to return the disputed land. However, he proceeded to say that if the villagers did not have these documents, and the company had formal permission, the villagers should not take matters into their own hands but should "let go." He concluded that the government intended to mediate between the conflicting parties and he hoped for a quick solution.<sup>51</sup> All parties agreed to stop harvesting palm fruits until the district government provided clarity on the matter. After one month, the government appointed a special task force to mediate the dispute, after which the company recommenced harvesting palm fruits. Thereupon, thirty villagers seized two trucks filled with palm fruits and surrendered them to police as evidence that the company had breached the temporary agreement to not harvest. At the time of writing (2018), the case was being discussed at the provincial National Land Agency, where the company asked for legal certainty. Meanwhile, the villagers who continued harvesting have been called to the police station and might face criminal charges for stealing palm fruits.

The implementation of the new Village Law has so far not affected the outcome of this case. Nevertheless, this case is important to understand the challenges of using this law, because it shows the tension between legal approaches to protect land rights and politics on the ground which allow companies to operate without having completed all the steps in the permit process (the company does not have an HGU).<sup>52</sup> In this situation, mapping, spatial planning, or seeking government intervention might not help if government institutions approach the case in a narrow legalistic way. Many villagers do not have formal land titles, nor legally or politically acknowledged customary rights. Furthermore, in the past the company was not stopped by letters and a signpost from the district government demanding it stop working on community land. This means that even if the parties reach an agreement, this will probably be a compromise as it is unlikely that the plantation will be forcibly closed. This case demonstrates how difficult it is to make counter-claims on land once plantations are in

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<sup>51</sup> <https://www.youtube.com/watch?v=1SUEsOAJYTo> (accessed: September 3, 2018).

<sup>52</sup> According to the new Plantation Law (No.39/2014) it is illegal for new plantations to operate without an HGU, but see Afrizal and Anderson 2016 on how this can be circumvented.

operation. In this case, mapping and village spatial planning alone will not be enough to reclaim land already in use by the plantation company. Furthermore, this case shows that addressing oil palm conflicts case by case is problematic, because even if companies and villagers reach an agreement in certain cases, these compromises hide underlying structural problems.

### **What role for the new Village Law?**

To reiterate, the purpose of the new Village Law was to strengthen the autonomy of villages to control their territory and reduce poverty. The two cases outlined above illustrate the complexity of claiming land rights in the context of intense competition over land due to corporate land investments. This complexity has remained after the implementation of the new law because it does not give a strong basis to formally integrate village-level spatial planning with district and national spatial plans, and in practice companies can operate without having obtained all licenses.

Nevertheless, when mapping and village-level spatial planning takes place *prior* to plantation development, the law can help communities avoid companies taking over land without first informing land owners and asking their consent. Despite uncertainty regarding the legal and political recognition of village-derived maps and regulations, when they go against vested interests, these strategies contribute to processes of claiming in several ways. First, village mapping and spatial planning activities are ways to organize villagers and raise awareness about tenure insecurity in the wake of corporate land investments. In the case of Sungai Putih, mapping activities provided an opportunity for the farmers' movement and Lembaga Gemawan to keep people on their guard regarding oil palm companies, as mapping was preceded by meetings in different villages. Second, when companies claim land that is located within a mapped village area, villagers have more leverage in negotiations. Companies can no longer claim land without first obtaining at least formal consent from a village government under the pretext that no one holds legitimate (formal) land rights. Third, at a district level, maps that show actual land use in villages help to counter narratives of "unproductive" or "empty land. However, whether this will indeed give communities a more powerful position in negotiations with government officials and companies, to decide for themselves if they want to engage in oil palm production or not and on what terms depend on politics on the ground.

Meanwhile, there are several challenges to villagers using mapping and spatial planning to protect their land rights. First, the regulations that endorse village-level spatial plans need to be approved by the district head. This may be problematic. For example, when part of the land under scrutiny is forest land, the plans cannot be endorsed by the district government. Moreover, in this particular case the Sambas District government for the past decade has promoted oil palm production, so it is uncertain whether the Sungai Putih village spatial plans will be accepted. The former village head of Sungai Putih thinks that it is in an advantaged position because the current village officials supported the newly elected district head against another candidate, which may have created some goodwill towards this village.

A potential weakness of village-level spatial planning is that land can still be sold by villagers who hold formal land titles to outsiders, who in practice may convert land into plantations. Villagers fear that this mode of plantation development is happening in Sambas: there are rumors that plantation companies are buying up land plot by plot. The Village Law does not allow government officials to prohibit this. In addition, if village-level spatial plans are not in accordance with district-level spatial plans or interests, they may be overruled by the district government.

A second challenge is that the success or failure of mapping greatly depends on the position of a village government. Village officials may be inclined to facilitate land investment projects instead of protecting land rights of villagers. Previous research demonstrates how village governments often play an important facilitating role in plantation development. Companies and higher-level government officials pressure and seduce village officials and elites with promises, bribes, and threats.<sup>53</sup> In one village I studied, Lembaga Gemawan also conducted a village mapping program. However, the organization failed to establish close relations with the village government, and the map was not used to develop spatial planning and land-use regulations. In such a case, a map can also become leverage for companies or other parties, because this map also indicates the presence of uncultivated degraded forest land.

A third challenge often pointed out in mapping literature is how to prevent new conflicts from emerging in the process of mapping and spatial planning. In my case study, village borders have been rather flexible, but formalizing these borders can create conflicts between villages. On the other hand, one village head reported to local media that mapping may help to solve existing conflicts about village borders, as even one or two meters of land are very valuable at the moment due to oil palm investments.<sup>54</sup> An additional dilemma is that villagers often cultivate land outside their village borders, including land that is not part of any village. In these situations, land claims will not be secured by village-level spatial planning or mapping village land; on the contrary, the position of these land users may be jeopardized even further.

Fourth, it remains a challenge to make participatory mapping programs genuinely participatory. One major challenge is how to include women (from different classes, ages, and backgrounds) in the process to secure their land rights.<sup>55</sup> To address this problem, Lembaga Gemawan organizes a village school for women (*sekolah desa perempuan*). The purpose is to educate women about the law and train them to participate in village governance. Women in Sungai Putih stressed that they wanted to be involved in decision-making regarding village governance, but that they struggled to get their voices heard in a male-dominated village governance space. Although women were not explicitly excluded from village meetings, often husbands represented the household. Women said they felt shy to go to a meeting when they were not explicitly invited. A participant of the village school remarked:

When we attend meetings, we should not be expected to be there just to serve food and coffee. We should be able to sit in front and say what we have to say. Hopefully, with the training and the diploma we get from the village school, the village government will acknowledge that there are educated women in the village who need to be invited to meetings.

She also stressed that women have other priorities than men regarding village development: while men focus on tangible issues such as infrastructure and buildings, women want to organize workshops and trainings on agriculture and small business management. The inclusion of women in participatory mapping and spatial planning is particularly important because in Sambas women often are the ones cultivating the land, as many men work as labor migrants in Malaysia. Moreover, women also depend on forested land within village territory that is not under cultivation and often not individually owned, to gather firewood, medicine,

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<sup>53</sup> De Vos, Köhne and Roth 2017; Köhne 2014.

<sup>54</sup> [suarapemredkalbar.com/berita/sambas/2017/01/31/pemetaan-tapal-batas-desa-di-kabupaten-sambas-cegah-konflik](http://suarapemredkalbar.com/berita/sambas/2017/01/31/pemetaan-tapal-batas-desa-di-kabupaten-sambas-cegah-konflik) (accessed: September 3, 2018).

<sup>55</sup> De Vos and Delabre 2018; this problem is also noted by Radjawali and Pye 2017 regarding their drone project.

wild fruits, vegetables, and rattan. Hence, it is important to make sure that all the land they depend on, not only cultivated land, is included in the mapping process.

Lembaga Gemawan acknowledges that mapping alone cannot protect people's land rights, in particular when the district government promotes plantation development to enhance overall rural development. Hence, this NGO has developed several programs focused on socio-economic development and environmental protection in villages, such as a rubber training program that aims to strengthen rubber farmers' incomes by improving the quality of rubber and connecting farmers to rubber factories to sell their produce without intermediary agents. Other projects include a farmer's credit union, a program to promote organic farming techniques, and women's groups that produce traditional Sambas cloth and handicrafts. Such programs, which aim to strengthen village economies, reinforce alternative rural development pathways, countering the argument that oil palm development is the only path to socio-economic development in the district.

Four years after implementation, the potential of the Village Law to strengthen local autonomy strongly depends on the knowledge, networks, and interest of village officials and community leaders, and on their capacity to deal with interests that go against village plans.

## Conclusion

Oil palm expansion in Sambas has accelerated land tenure insecurity, leading to conflicts. Confronted with company land claims, villagers have engaged in a combination of counter-claiming activities, including protesting and seeking government intervention, and more recently village mapping and spatial planning. Their claims have been challenged by oil palm companies and government officials who legitimate plantation development by citing the formal status of land as state land, rejecting local claims. Since the implementation of the Village Law, villagers have a stronger legal basis to engage in spatial planning which can be used to counter notions that their lands are available for companies to claim. Moreover, village-level spatial plans can help to advocate other pathways to development based on local ways of using land.

Yet, it remains uncertain whether such initiatives will protect land rights in the long term, because outcomes of claiming processes strongly depend on local power relations. Paradoxically, when district governments and village governments support plantation development, mapping and spatial planning can even be a tool to facilitate dispossession.<sup>56</sup> Moreover, plantation companies have operated without having fulfilled all legal requirements, and without obtaining prior consent from local land users. This means that companies may well ignore village maps and spatial plans. In the case cited above in which a plantation had already been established, the district government was reluctant to support villager claims, even though the company had not obtained all permits.<sup>57</sup>

Despite its shortcomings, the 2014 Village Law has fostered discussions among policy-makers, academics, and civil society actors about village autonomy. In this case study, mapping and spatial planning activities brought this discussion to villages, making people aware of tenure insecurity following the rush for land for oil palm development. In Kalimantan, the slogan "map your land before someone else will" does not mean that villages necessarily need maps to be able to govern their territory. Rather, this slogan should be seen from the perspective of the National Land Agency telling villagers that they must protect their land themselves regardless of the legal status. When village lands are targeted for plantation

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<sup>56</sup> Dewi 2016; Peluso 2005.

<sup>57</sup> Planting oil palm as if all required permits have been obtained is a powerful claiming strategy. See Orlove, 1991.

development, maps and spatial plans, in combination with other claiming practices, can be used as leverage in negotiations with government officials and oil palm companies.

These cases from West Kalimantan provide some important insights for the debate about land rights and conflict in the context of large-scale land acquisition. First, addressing land-related conflicts requires pro-active, village-level spatial planning that is considerate to local ways of using and understanding land, and to consequences for land use in the short and long term. This means that solutions are needed that go beyond obtaining prior consent from communities, to consider the different functions of land that cannot always be compensated by money or corporate social responsibility initiatives. Village-level spatial planning activities, through mapping or by other means, can be used to find ways to maintain pre-existing ways of using land rather than regulate land conversion. This needs to become part of governance initiatives to regulate land acquisition.

Second, mapping and spatial planning initiatives are important as social practices. This is not because such initiatives directly solve or prevent land conflicts, or clarify land use and ownership, but because they are a way to initiate discussions about different aspirations regarding land use. Moreover, mapping and spatial planning activities make the problem of conflicting claims known to other parties. In this way, claiming is partly a performance: when local media report about drones flying over villages to map land, companies and government officials who are involved in the permit process know that villagers are engaged in protecting their land rights, and countering claims of “empty” and available land.

Lastly, the counter-claiming practices that I have described are not only targeted at getting back particular plots of land or denouncing the misconduct of specific companies. Rather, by framing their claims in relation to how land should be used and by whom, counter-claiming practices helped to raise more fundamental questions about rural development through industrial agricultural production on plantations, by putting alternative pathways to development on the map. The long-term outcomes of mapping and spatial planning are uncertain, but, such claiming practices at least keep the discussion alive and make contestation visible.

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