

The alternative dispute resolution (ADR) and customary (*adat*) land dispute in Indonesia¹

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The development of Indonesian legal system has been uncertain. The transition from the Dutch colonial legal administration into Indonesian legal system attempts to enforce the concept of unity in diversity and to implement the unification of legal system but it has never been accomplished. The effort seems turning to be simply adopting the western law that is much more rational and logic to capitalization and individualization. By implementing a massive, highly-centralized bureaucratic system has bypassed the necessity of Indonesia as plural society and destroyed the existing nature of legal pluralism. The hidden conflict on land accusation and land rights between state land law 1960 and the various existing native customary land rights is inevitable and creating non-judicial settlement (ADR) to resolve it since the judiciary system has been witnessed as state based interest. Negotiation and mediation are preferred settlement for resolving customary (*adat*) land disputes but sacrificing the legal certainty. The current movement of local autonomy and the new democratic system have gradually changed the relationship between state and people and between the state law and local practices. However further problem emerges whether the judicial system is able to bring up the necessary justice on the adat land acquisition.

Introduction

Establishment of a National Land Law in 1960 which was mostly adopted from Western Law, attempted to unify many different customary land tenures in Indonesia. However this law has even created dualism on its implementation because the customary land tenure still carries on within its own traditional system (Benda-Bechmann 1981) while the urban areas are enforced the state land law. The new Basic Agrarian Law 1960 bears the western concept of private ownership that is different from the customary land tenure based on communal land ownership (Kroef, 1960 and Hooker 1975) therefore most customary land ownerships encounter legal validity during the conversion process

This problem has created discrepancy in customary land tenure and led to uncertainty, inconsistent and unjust in dealing with customary land acquisition (Haverfield

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1999). Customary land disputes associated with local communities claim to the state and multi national companies land acquisition upon the use of adat land (*tanah ulayat*) and has proven to be juridically difficult and politically delicate (Lucas 1992; Haverfield 1999).

In the previous presidential era from 1966 to 1997, the government supported by military forces systematically diminished the existence of the communal lands. Even though the customary land rights are acknowledge and used as a base of Agrarian Law by legislation³, but state, as the highest authority above all has systematically exercised his power to take over the customary lands. Many local communities struggled to fight the central government policies; however, the repressive method employed on these occasions covered up and ceased any customary land conflicts (Lucas 1992). State often exercised their power to abolish any attempts to uphold customary land rights. The attempt to incorporate customary land tenure into Indonesian (modern) land tenure system is merely government rhetoric (Haverfield 1999);(Abdurrahman 1990).

The challenge by local communities has become more prominent with the increasing support from the non-governmental organizations (NGOs) concerning the existence of communal (traditional) land rights. Furthermore, major customary land dispute which involves government or giant private/ multi national companies and local community has become a major issue and produced an important progress in developing alternative dispute resolution methods. Alternative dispute resolution (ADR) has been favorable being used in resolving customary land disputes because litigation or formal judicial process faced legislative barriers, such as unjust legislation, unfair trial and the excessive power of state. However the limited knowledge, skills and experts on ADR have become obstacles in achieving satisfactory results.

Begun in 1970, NGO has started to advocate customary land dispute by using ADR. Negotiation and mediation were conducted, however these methods rarely produced satisfactory results. Imbalance power between companies or state and local communities or NGO leded to unfavorable climate of negotiation and mediation. State and giant multi national companies also seemed lack of good faith to resolve dispute. They were favor to negotiate as merely a lip service in order to be perceived as generous toward customary people. This might also be on purpose to obtain positive image from the international funding agencies or international communities. This paper will discuss the issues, progress

³ See art. 3 and art 5 Basic Agrarian Law no 5 of 1960.

and difficulties dealing with implementation of ADR in customary land dispute and attempt to give suggestion on the development of ADR method especially in resolving customary land dispute.

Customary (*adat*) Land Tenure

The history of land tenure in Indonesia may be best described in three major stages. The first stage is the time period before the first Land Law 1870 enacted by the Dutch Colonialisation Government. The second stage is the period from the establishment of first Land Law 1870 to the Land Law Amendment 1960. The last stage has been the period after the Land Law Amendment 1960 established that attempt to cease judicial dualism in land tenure systems and to acknowledge the customary land tenure system. In fact, customary lands have been systematically neglected during the implementation of the Land Law Amendment 1960.

During the first settlement, land was not belonged to individual, but to the monarch. People had the rights to cultivate and to use land for dwelling, therefore they paid a compensation fee to the monarchy (Rajagukguk 1995). However, land, especially in the remote area, that was not far from the influence of the monarchy was administered and managed by customary people. Customary people managed their land with their owned customs. Local community usually appointed their leader and he/she was responsible to manage the land for the needs of community.

In the early 17th century, the Dutch colonial government conquered some parts of Indonesia and ceased the monarchy system. The conquered lands were given to the European and Chinese people for mass plantation and mining with long lease period – up to 75 years (Rajagukguk 1995). The remained hinterlands were managed and organised by the customary communities. In the late 18th century, the Dutch colonial administration enacted the Agrarian law and declared that all unused and unoccupied lands belonged to the state (Agrarische Wet 1870). This policy created uncertainty for the status of customary lands which most of them were unoccupied because they were usually used as reserved properties. Customary people believed that their lands served not only for settlements but also for their survival in the future. The Dutch government created massive plantations and mining that occupied the customary lands and these policies produced hidden conflict for centuries. The

customary people were continuously struggling to fight them in war against the Dutch colonial government.

When the Dutch Colonial period ended to be replaced by Japan colonization, there was no such land law enacted at that time and customary people reoccupied their customary land. After Indonesian independence 1945, Land Law Amendment 1960 was established. The Land Law 1960 is also considered as a fundamental land reform in Indonesia. However its implementation creates conflict and discrepancy especially in the field of customary land tenure system. State has continuously exploited customary lands through mining and logging companies and threatened the life quality of customary people. Customary land disputes have commenced and become major issues since the NGOs' advocacy and the increased awareness on the existence of customary land.

The customary (adat) Land Disputes

Most customary society reflects their harmonious relation with nature (land) because they believed that they are not able to live without land. Land is perceived as a basic need for people. They attempt to preserve and maintain land in order to survive. They also manage and regulate their land usage by using their own customary law and practices. Considering this point of view, the new Land Law no 5 of 1960 adopts customary land tenure as fundamental bases of land tenure system amending the *Agrarische Wet* 1870. However in reality, during the intensive development process state systematically neglects the existence of customary land (Lev, 1965). The exploration and exploitation of natural resources on the customary land have been continuously conducted.

Customary land disputes in Indonesia derive from incompatible perceptions, needs and interests between the local community and the state (companies) about the existence of the customary land rights (Lucas 1992) in one hand and the in adequate judiciary and legislation to be taken into effect. It is clearly stated in Land Law 1960 that the land tenure system acknowledges the existence of customary (traditional) land tenure unless it is contrary to "national interests" (art. 5). The local community has right to dispose land that belong to them and manage the land with their local legal practices (art. 3). However, state also has right to dispose land when it is needed for developmental purposes in order to elevate the

welfare of society (art. 1)⁴. There are many misused of customary lands that create environmental destruction and poverty. Consequently, on these occasions, local communities have rights to take them back and state or companies must be responsible for their misconduct.

In addition, since rapid industrial development occupied most customary lands, the term of “national interest” has been misused in order to exploit customary lands. The establishment of the multi billion mining projects in gold, copper, natural gas, petroleum and timber throughout Indonesia have exploited most customary lands and diminished the quality of customary people life. The lands and the forests that they depend on have been continually exploited and created major environmental destruction. The environmental degradations and destructions have produced natural disasters and threaten customary people life. Customary people feel unsafe and loose their control over their land and their traditions. Customary people have started to claim their rights and raised disputes against companies and state. The conflicts turned out to be more complex and created complicated tension (Brown and Marriott 1993).

However due to repressive political approach on those occasions, customary communities were threatened and abolished to claim their right on customary land. Customary people seem require legal assistance and experts to increase their awareness and to advocate their rights to land. Expert and third parties assistance will not only help customary people being equally and properly treated but also develop the broader knowledge of ADR practices in resolving the customary land dispute.

At the beginning, customary land disputes were brought to the public by the advocacy of the environmental concerned non-government organizations (NGO) in early 1970. Public debates have become popular concerning the customary land disputes and consequently increased the public awareness and sympathy. Other NGOs also started to take a part on the advocacy movements. Early on, the formal judicial settlement was not a focus because the judicial system was seemed as being not neutral. Considering government involved as a party, it was thought that court might loose impartiality and this would lead to unfair trials. Some cases were also terminated due to the political reason⁵ such as Freeport

⁴ In many cases, the term of development has wide range of interpretations and unclear as only based on the programs supported by Government.

⁵ District attorney has the right to terminate legal preceding which may indicate to create political tension and instability or threatening national stability.

case in Jayapura, Mobil Oil case in Sumatera and other cases involved multi national companies.

Comparing to individual case of customary land dispute which involves individual and customary people (local community), Supreme Court decision stated that the customary community has his own right to manage his land (Supreme Court no.307 K/Sip/1956). The customary land tenure was based on customary law and the Court has no right to interfere the decision made by customary community concerning the customary land ownership (Supreme Court no. 301 K/Sip/1958 and no. 149/K/Sip/158). Customary land can only be occupied and used only by the local people. The time period of customary community right is considered to be unlimited (Supreme Court no 340/K/Sip/1958). However these decisions unable to be implemented in major customary land disputes. It is clearly understood that court might lose impartiality when the state or multi national companies involved as a party, because the judicial system is considered as part of the state.

Considering that political situation, ADR has become alternative settlement chosen. Walhi and other NGOs initiated to mediate and conciliate disputants to resolve conflicts even though its efforts initially faced great difficulties such as physical and psychological intimidations, limited access to local community and companies and other physical pressures. NGO also tried to develop networking through major location of disputes and employed any means, such as using media, international NGO and other international institutions, to give pressure to government or companies to negotiate. They operated not only in advocacy but also in providing awareness to majority of people about the problems. They have successfully increased societal awareness on the case of customary land dispute. Many new local NGOs have been created and its networking has produced effective collaboration to provide and share information. NGOs movements on building public opinion is one of the effective tools in elevating the societal awareness and give pressure to both government and involved companies. However their limited knowledge and skills on the ADR practices would result in the ineffective process.

The threats of customary land dispute resolution process

Customary land disputes are complex in nature. Disputes involve many parties with various interests and needs. The NGOs' assistance on the customary people produces benefits in term of balancing power and providing pressure to government or companies to

resolve dispute. However it might also create difficulties during the ADR process because of the NGOs' high expectation toward the dispute. The emotional attachment and societal involvement also lead to adversarial position and produce complicated tensions (Brown and Marriott 1993). Moreover, the culture and value conflict has created boundaries of parties to build common understanding. These issues lead to uncertain and unclear outcomes to be addressed. There are at least three major characteristics of customary land dispute resolution found. These are the adversarial nature of dispute, lack of good faith and a moving process from a facilitative approach to an evaluative approach. These characteristics are described and discussed in order to provide best method in dealing with customary land dispute.

The adversarial nature of disputes

Customary land disputes are considered to be adversarial in nature. Parties place themselves in the opposite position. The great efforts of customary community on the one hand and the reluctance of companies to negotiate on the other hand create more complex issues and produce complicated tensions between parties. The various participants and society involved in ADR process also lead to the adversarial position and produce fragile environment and climate of ADR process. Therefore mediator or conciliator must address these issues in order to maintain a favorable climate. Not only who people in charge is important but his/her adequate knowledge and skills on ADR and local legal practices are also necessary. There are three main factors that are important to discuss in dealing with the adversarial position:

- **Parties positioning**

Due to the complexity of the issues and variety of people involved in the customary land disputes, parties place themselves in opposite position to the others. The emotional attachment to the conflicts due to the great offence toward traditions, beliefs and culture (Johnston and Ferguson 1998) and also accompanied by the human right violation results in customary people resistance and opposition to the companies/state. On the other hand, State and multi national companies commonly treat customary people as subordination to the ordinary people and tend to neglect their existence due to their lower level of education and traditional way of live.

In addition to the original land disputes, customary land dispute has also been commonly followed by the human rights violation that urged parties on the contradictory position and created complicated tension. Customary people also experienced frustration and uncertain about their rights and future due to the delay and unsatisfactory response from both government and companies. Moreover the uncertainty and the unfair law enforcement would make greater circumstances to customary people to be adversarial with companies or state.

Third parties assistance are required for customary people in reflecting their needs and emotion through ADR process. Third party role might be able to reduce the emotional tension and the adversarial position which may effect on the unsatisfactory process.

- **The drawback of expert third parties assistance**

The role of third parties in mediation or negotiation is basically to help disputants to raise and acknowledge their interest and needs (Menkel-Meadow 2001). Third parties' assistance serves an important role in helping disputants to disclose their interests and needs (Wall, Stark et al. 2001). By using experienced third parties' assistance, ADR process may become easier to reach agreement. However, experienced third parties assistance would also potentially lead to adversarial process as a nature of litigation (Boulle 2001) and the party's expectation of third party expertise may also neglect the good faith (Wall, Stark et al. 2001). The third parties' interest and needs also created complexity, such as his/her hidden needs and interest mixed up with disputants' interest and needs. Based on the expectancy theory, disputants will expect their own benefits and outcomes from third parties assistance rather than the mutual outcome (Wall, Stark et al. 2001). The process will likely turn out to be adversarial.

The NGOs are acknowledged as an opposition role against intensive industrialization. They seem place themselves being in contrary to government. They are also against environmental destruction and human right violation. This role stipulates NGO contrary to the state or multi national companies. Concerning the involvement of NGO in customary land disputes, the climate of disputes would become more adversarial. The mutual understanding between parties might often

difficult to obtain. Some of well known NGOs might expect high achievement through their advocacy so that the process of mediation or conciliation turn out to be similar to litigation.

- **The Impartiality and power imbalance**

Maintaining neutrality toward parties is one of the mediator's responsibilities in assisting disputants to resolve their conflict. It is commonly understood that mediator must place his/herself independently toward the parties. Mediators' impartiality will lead to maintain favorable climate of the process (Boulle 2001; Pirie 2000). Neutral position may also provide adequate circumstances to bring justice and to easily elicit parties' needs and interest. However, when the parties possess different level of power or "local government" serves as mediator, it is quite difficult that neutral position will be achieved.

The role of local government in serving as mediator between local communities and mining companies is critical in term of its neutrality. The benefits received by local government from the companies may result in losing neutrality and trust. Assigning informal (charismatic) leader to be mediator will be preferable in resolving the customary land disputes. Informal leader may enable to develop mutual trust and understandings.

Lack of Good Faith

Customary land dispute resolution has proceeded in a difficult manner. The complexity, emotional attachment and tension can be considered as main properties of disputes. Long period of time and other physical offenses might also commonly form unfavorable climate. In addition to this situation, political issues most commonly attach to the disputes because dispute deals with the huge amount of investment and government credibility toward the foreign investors.

The repressive approach conducted by using military power indicates lack of good faith to resolve it properly. Delay response and the company's resistance to negotiate with customary people rather than political elite neglects their existence and ignores the original disputes. By using any means, companies also try to disregard the original disputes and avoid responsibility.

Moreover, the implementation of decision/awards has generally taken too long. Due to different person being involved in the process from one who implemented the decision, the implementation of award usually require another form of process. A lower rate of implementation may be caused by lack of responsibility of person who had to implement the award because he/she was not involved in the dispute resolution process (Brown and Marriott 1993). Due to long time period of process, changing managerial position of companies (party) often requires resettlement of the disputes and sometimes produced different results. Lack of timely implementation of the awards would be a result of non-binding decision.

Moving from a facilitative approach to an evaluative approach

Dispute resolution, both mediation and negotiation, initially used facilitative approach in order to make parties aware of the problems and to raise their interests and needs (Brown and Marriott 1993) especially when the dispute resolution was voluntarily created by parties. A facilitative approach is beneficial to disclose parties' hidden needs so that the mutual understanding between parties will be easy to determine; however most customary land disputes progress in very slow manner and in a difficult situation. The preliminary process often required long period of time and great effort but the results was limited. Freeport case took almost 10 years before the ADR commenced and became public issues.

The human right violation has also been commonly attached to the original disputes. The government repression approach has killed and injured thousands of people in major mining locations and destructed customary people settlement and traditions (Simons 2000). Frustration and other emotional attachment occupy through the ADR process. Moreover the adversarial position of parties creates unfavorable climate to develop common understandings. As a result, a dispute resolution approach tends to shift from a facilitative approach to an evaluative approach because of the failure to reach shared understandings and interests.

The evaluative approach operates more on exercising parties' rights and tries to put disputes into the legal framework than to facilitate parties to build common understandings. In fact, there is actually no clear and adequate legal framework fitted to customary land disputes so that the alternative solutions are usually difficult to reach. Each party attempts to

insist his/her own individual preference rather than sharing their needs to provide best alternative solutions.

Many factors may contribute to that process but limited knowledge about the local legal practices and traditions may be one of the important factors. Regarding the disputes located on the customary community territory, it is necessary to take local legal practices into account. The awareness of the local legal practices and traditions will produce the important background to understand the real customary people interests and needs. This awareness is not only beneficial for resolving but also for preventing the dispute appropriately.

The other factor also comes from the limited knowledge about the ADR practices. The formal ADR practices are quite new as a mean of resolving conflict in Indonesia; however the traditional dispute resolution has been commonly used informally by local (customary) communities. In some extent, both methods actually have similar purpose to bring disputants into cooperative settlement. Traditional ADR is usually used locally and only served for local community purposes. Meanwhile the formal ADR has grown and developed becoming an accumulated knowledge and being theoretically adequate for resolving particular conflicts more appropriately than litigation. Furthermore, the ADR practices has been acknowledged widely and used as preferable settlement.

The Next Agenda

Adat land disputes bears complexities, sensitive for exploitation and great different needs and interests. The inadequate ADR process and mechanism has intensified the nature of conflict and complicated resolution method. Some issues have to be taken into account in order to properly settling down the customary land dispute appropriately: the more understanding of local practices, the wider range of involved parties, the problem solving approach and developing customary land dispute tribunal.

Understanding Local Legal Practices and Local Culture

One of the problems emerged during the mediation and negotiation process is an inadequate knowledge of local legal practices (customary law). Both mediator and other party have difficulties to understand the customary law. The “rational western approach” of conflict resolution may not correspond with local people’s culture and values (Johnston and Ferguson 1998). The different way of thinking between local people and government or

companies may lead to the different expectation and attitude therefore the parties' interests become difficult to define and common understandings are failure to build (Lund B., at all. 1994)

Culture shapes and drives human behavior and it may also provide predetermine human activities which transmitted by the members of society (Johnston and Ferguson 1998). Understanding the culture will provide adequate picture about what people think and their expectation. Most customary people still preserved their collectivism and harmonious relation to nature (Piere J. A. 2000). Tradition is preserved and maintained through the human activities. Therefore they may perceive conflict in different ways. Customary land disputes are perceived as the negligence of community order therefore the certain tradition and custom must be carried out in order to reestablish the order.

Cultural differences between parties produce different perceptions reflected in different interests and needs. These differences have to be overcome by increasing party's awareness of the local legal practices because the disputes located in the customary community territory. The awareness of local legal practices and local tradition may serve predetermined condition before moving to the main course of ADR. By understanding local legal practices and culture, similar background will be achieved so that better climate of negotiation will proceed through the ADR process.

Proper representation of parties (wide range of involved parties)

Customary land dispute involves society and some times it also includes many societies. The representation of the society in the dispute resolution is very important (Menkel-Meadow 2001). The proper representation is not only dealing with the number of people being involved but also the right person in charge. It is often difficult to justify the number of people and to choose the right people should be included. Each community has different kinds of rule and structure. In Dayak's communities, community leader serves for all purposes of community's needs. He is responsible for community's lands, maintaining order and other needs. In contrast, Balinese community has more specialized role in which each role is served by different person. However, in most cases community leader commonly serves best representation of community.

The best representation of companies also plays important aspects. Person being involved in the process should also be included in the implementation of results. This would

maintain the responsibility, consistency and accuracy of ADR process. Otherwise result implementation might face obstacles and it may require another form of ADR process.

Involving wide range of society in the land dispute resolution has been widely used in resolving community disputes (Brown and Marriott 1993) and it was considered effective in some extent. The proper representation of parties will increase the likelihood of successful implementation. However, it also potentially turns out to be complicated and difficult to achieve outcomes. When many people involve, the climate becomes fragile and easy to alter from the main objectives due to the collective pressure. ADR practitioners must be aware of this situation. Dealing with this situation requires adequate experience and skills.

Problem Solving Approach

No single method does fit well to resolve customary land disputes. Using various methods of dispute resolution increases the opportunity of parties to choose best alternatives to deal with the problems. ADR in customary land dispute requires flexible method which is possible to change over time because the nature and boundaries of the problems are often unclear. Problem solving approach may be best method in resolving customary land dispute.

Defining the existing problems must be carried on the first stage. The important role of mediator or facilitator is to assist parties defining their problems clearly. Problems must have solutions. Problems also require operationalisation so that the alternative solutions can be drawn. However some of customary land disputes consist of emotional problems. Thus, mediator or conciliator responsibility is to eliminate problems from emotional attachment. Keeping the process on the problems and developing alternative solutions clearly are the important part of the customary land dispute resolution.

Developing the Customary Land Dispute Tribunal

One of the major problems dealing with customary land dispute is insufficient knowledge about ADR practices and the certainty of sanctioning the resolution made. By developing customary land dispute resolution tribunal, ADR practitioners are able to share their knowledge and experiences and would be beneficial not only to improve ADR practitioners' skills and societal awareness but also to provide certainty. The tribunal must be independent institution consisting of experienced ADR practitioners as well as prominent local experts.

Land tribunal is important to create standard and rule of conducts on the process of resolution and the implementation of the decision. By involving local community experts, the impartiality and independency of the process could be maintained. The tribunal would provide the necessary guideline for ADR practitioners to deal with customary land dispute resolution. Due to the local and cultural diversity, the method of ADR employed must be developed and adjusted for the needs of the existing problems.

CONCLUSION

Resolving customary land disputes requires particular mediation and negotiation methods due to complexity of the problems developed and adjusted to the needs of the existing problems. These unique circumstances need for expanding and broadening the concepts of mediation and negotiation. Therefore ADR practitioners' knowledge and skills must be improved into adequate level. The improved knowledge and skills will produce better ADR practices and also increase societal awareness. The awareness of cultural differences and the flexibility of dispute resolution process would be beneficial in addressing the customary land dispute resolution. In some extent, the concept of impartiality and confidentiality may also require different form and understandings in order to provide and to maintain fairness and trust. The development of customary land dispute tribunal should be given priority to provide certainty both on the ADR process and the sanctioning of decision. The customary land dispute tribunal should consist of independent local experts who could maintain the impartiality and trust.

Appendix. I. The brief summary of the ADR processes on Freeport Case and Aurora Gold case.

Freeport McMoRan (FMCG) vs Papua Community (Papua)

Freeport McMoRan Copper and Gold (FMCG) is the largest gold and copper mining company in Indonesia. The company has operated in Papua since 1968 based on the mining contract between the Government of Indonesia and Freeport McMoRan. The dispute started in 70's supported by NGO's advocacy. "Amungme" customary community claimed that Freeport occupies their land and it must be returned. Freeport was also accused for destructing their traditions and their main plantations. Long period time of efforts against Freeport was conducted but no adequate result was achieved. In 1974, massive demonstration against Freeport resulted in settling the mediation process. The local government served as mediator and produced the January Agreement 1974. However this agreement did not reflect the needs of customary people. The agreement was made by government and Freeport and neglected customary people's needs.

The Coalition of NGOs made up from various NGOs was created to advocate Amungme right on their customary land. Strong public opinion and international pressure forced Freeport to renegotiate. In September 21st, 2001, facilitation process was carried out in New Orleans USA – Freeport McMoRan Head office. NGO's legal aid institute assisted Amungme's representatives and Freeport's general manager and its lawyer represented Freeport McMoran. The parties signed the awards which include:

1. Freeport commits to pay compensation fund US\$2.5 million for its misconduct during 1996 -2000.
2. Freeport commits to pay rehabilitation fund US\$ 500K every year.

Indo Mura Kencana (IMK)/Aurora Gold (AG) vs Dayak Community (Borneo)

Indo Mura Kencana (IMK) is the second largest gold mining company operated in Indonesia. IMK has been operated since 1985 and conducted land clearance through 12 districts and occupied major local traditional mining locations (Mining Advocacy Network, 2001). IMK got mining permit from the State in 1985 and AG invested 90% share of IMK. During its operation the Aurora Gold (AG) took over the ownerships in 1997. The Dayak communities objected its intensive exploration and exploitation which cause to environmental destruction and destroy their source of living and traditions. The AG has also been accused to conquer Dayak's customary lands and to occupy local owned mining site locations.

The consortium of Dayak communities claims to State and AG's head office in Sydney about the IMK's misconduct. Assisted by the local NGO, Dayak communities sent written letter of their claims and statements to the IMK/AG office and the state through the minister of mining and power. The Dayak communities claim statements included:

1. IMK/AG should apologize publicly to its misconducts.
2. IMK/AG should acknowledge the existence of Dayak's customary lands and should ask communities' permission and obey the customary law.
3. IMK/AG should conduct environmental recovery program along the Barito River.
4. IMK/AG should withdraw from the local traditional mining location.

5. IMK/AG should provide compensation for its misconduct during its operation. The state (central government) did not give any response but the local government gave a green light to facilitate the case. In its written statement, AG claimed that he was not responsible to any problems related to the mining operation because mining contract was made between Indonesian government and IMK. AG rejected all claims and refused to negotiate. AG also claimed that the IMK's misconduct was happened before AG took over the company. Therefore, AG should not be responsible to that case.

Due to the intense pressure from the communities, local government made initiative to set up mediation process. However the neutrality of local government was questionable, because local elites also took benefits from the mining operation. The result of the first mediation was that some of individual compensations were paid by IMK/AG, but the main problem was not resolved. Mediation process was not well prepared and IMK/AG's representatives had little attempt to resolve it. The other statements claimed were canceled.

IMK/AG's delay response to the major claims created dissatisfaction. In fact, the IMK/AG's written response rejected all Dayak communities' claims and refused to negotiate. Dayak communities were disappointed with the response and occupied the IMK/AG's mining site. The level of conflict became worse and each party placed himself in adversarial position. In 1999, local NGO created the consortium of legal adviser made up from some Indonesian Legal Aid Institutes and customary concern NGOs to provide legal assistance and negotiation on behalf of Dayak's communities. The conflict still exists and becomes intensive due to wide range of parties involved.

Sources: summarised from:(Bachriadi 1998 ; Maryana 2000 ; INFID 1996; Kompas Interactive 28 August 2001).

Appendix 2. Major Customary Land Disputes in Indonesia

Project (location)	Total Area	Status of Company	Methods of ADR being Used	Disputants
Petrochemical factory (central java)	200 ha	Multinational joint venture (Shell, Asian Development Bank, Mitsubishi, C Itoh, Pertamina, Int. Finance Corporation)		Local community (lc) vs. State
Freeport Gold & Copper Mining (Irian Jaya)	130 Km square	US owned Company \$US60 billion	<ul style="list-style-type: none"> • Negotiation, Third Party's Intervention, • First negotiation: dealing with compensation of land-> resolved The parties signed the awards which include: <ol style="list-style-type: none"> 1. Freeport commits to pay compensation fund US\$2.5 million for its misconduct during 1996 - 2000. 2. Freeport commits to pay rehabilitation fund US\$ 500K every year. • Second negotiation: dealing with compensation of environmental degradation -> pending 	Papua community vs. Freeport
Nuclear Plant (central Java)		German company \$US24 billion	In dispute	Lc vs. State
Barito Pacific Lodging and Timber Companies (Borneo)	15200 ha	Private company	In dispute. <ul style="list-style-type: none"> • First negotiation: dealing with compensation of land. → Unresolved • Second negotiation: dealing with compensation of environmental 	DAYAK BAHAU vs. BARITO PACIFIK

Project (location)	Total Area	Status of Company	Methods of ADR being Used	Disputants
			degradation. → Unresolved	
Palm Oil Plantation “Lonsum International” (Borneo)	18000 ha	British – Indonesia Joint Venture company	In dispute	DAYAK BENUAQ vs. LONSUM INTERNATIONAL
“Rio Tinto” Gold mining Company. (Borneo)		British and Australia Joint venture mining company	In dispute: <ul style="list-style-type: none"> The company breaches the negotiation agreement 	DAYAK KELIAN vs. RIO TINTO MINING COMPANY
“Unocal” petroleum and natural gas company (Borneo)		United State of America (USA) owned Company	In dispute	KUTAI vs. UNCOAL
“Indo Mura Kencana/ Aurora Gold” gold mining company (Borneo)	47962 ha.	Australia – Indonesia joint venture company	In dispute.	DAYAK (north Barito) vs. PT INDO MURO KENCANA (Aurora Gold Company)
“Newmont” gold and copper mining company (Nusa Tenggara Barat)		USA owned company	In dispute	Newmont company vs. Local community
“Mobil Oil” petroleum company (Sumatra)		USA owned company	In dispute	
Kedung Ombo Dam (central Java)	5968 ha.	World Bank 22.5 MW electricity \$US76.5 million	In dispute - the people relocation	Lc vs. State (central Gov.)

Sources: (Maryana 2000; Simons 2000; Bachriadi 1998; Lucas 1992)

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