MEDIATION AS AN ALTERNATIVE SETTLEMENT ON OIL PALM PLANTATION DISPUTE
(A Lesson from Oil Palm Plantation Mediation in Sidomulyo Village, Ogan Komering Ilir District, South Sumatera Province)

Adrian Nugraha, Muhammad Syaifuddin, Febrian, and Ade Uswatun Hasanah
Faculty of Law Universitas Sriwijaya Palembang
E-mail: nugrahadrie@gmail.com

Abstract
Mediation is considered as one of the effective solutions to resolve as well as tool to alter oil palm plantation disputes. This research was conducted with socio-legal approach. The test method was done by descriptive qualitative data analysis which describes a situation or phenomenon with words or sentences then separated by category for the conclusion. This research finding suggests that mediation has played a crucial role especially in decreasing the dispute intensity and achieving the agreement between conflicting parties. Subsequently, mediation by integrated team of dispute resolution was divided into two stages: first stage was commencement of the mediation process and the second was implementation of mediation. Furthermore, several approaches that can do to alter dispute into a long-term harmonious relationship, namely: first, using the legal certainty approach; second, Company-community partnerships approach; and third, capacity building for mediator approach.

Keywords: altering dispute, mediation, oil palm plantation

Introduction
Oil Palm Plantation Companies, particularly grandiose plantation, have frequently been connected to negative social power on rural communities and native people. According to McCarthy, even though oil palm many times shows to improve revenue, it influences social relations and land ownership in rural areas in ways that may lastly work towards the well-being of impecunious people. Other studies...
represent that most dispute between plantation corporations and communities occur because of land acquisition and plantation expansion. Furthermore, dispute take place because of lack of admission of customary rights, neglect for the corporate social and environment responsibility, and breached agreements.2

Minister of Agriculture Regulation Number 11/Permentan/OT.140/3/2015 on Indonesian Sustainable Palm Oil Certification (ISPO) explains that mediation can be applied to resolve oil palm dispute. Mediation, facilitated by a third party, is measured helpful predominantly when the parties are not able to settle the dispute themselves through negotiation because mutual trust shortage and diverse negotiating force, and the skeptic willingness of the parties to solve peacefully.3

Based on this research in Sidomulyo Village, Ogan Komering Ilir District, South Sumatera Province, Oil palm Plantation Company that has promised to act ethically has been accused of land grabbing, ignoring construction of plasma oil palm for society and implementing of corporate social and environment responsibility. Therefore, Sidomulyo citizens are excluded from the benefits of this oil palm plantation. To resolve this case, District Government of Ogan Komering Ilir has assigned Integrated Dispute Resolution Team to arrange mediation.

This research is expected to have benefits for community in general, legal practitioners and also oil palm plantation companies which means to promote constructive dispute resolution strategies, mainly to present empirical and practical studies on the practice of oil palm mediation.

Problems

There are two problems discussed in this article: first, how dispute settlement between Oil Palm Plantation Corporation and Sidomulyo people is applied and second, how to alter oil palm and plantation dispute through mediation.

Research Methods

This research was conducted by socio-legal approach that intends to make an explanation of the examined issue in connection with the legal and social aspects. Socio-legal research is empirical research oriented towards the discovery of theories about the process and working of law in society or investigating bearing on the laws with social phenomena.4 Law was obeyed by the public so effective, because it is considered to have a representation of sense of justice that grow and thrive in the community.5 This research was trying to explore the empirical reality of oil palm plantation dispute resolution through mediation in Sidomulyo Village.

This research was conducted in the Office of Ogan Komering Ilir Integrated Dispute Resolution Team and location of the dispute is in Sidomulyo Village, Sungai Menang Sub-District, Ogan Komering Ilir District, South Sumatera Province. Various data collection methods were used including interviews with First Assistant of District Secretary of Ogan Komering Ilir as a representative of Integrated Dispute Resolution Team, Focus Group Discussions in Sidomulyo Village, and literature review related to the law and dispute settlement.

The test method was done by descriptive qualitative data analysis, which describes a situation or phenomenon with words or sentences, then separated by category for the conclusion. Data processing was done by classifying, analyzing and concluding.

Discussion

Mediation between Oil Palm Plantation Corporation and Sidomulyo People

A problem will turn into a dispute if the problem remains unsolved. Dispute occurs when a problem is not resolved immediately. If the parties can resolve the problem properly then the dispute will not emerge. Otherwise, there will be dispute.6 Oil palm plantation disputes are generally associated with land dispute, local manpower recruitment, implementation of Corporate Environmental Social Responsibility (CESR) and plasma oil palm plantation for native people promise. Oil palm tends to be developed as enormous plantation with serious problems for prior occupants and workers, ensuing land disputes and human rights abuses.

One of the efforts to resolve oil palm plantation dispute is through mediation process. Mediation is often selected by the oil palm plantation dispute parties after various efforts with other approaches failed to reach to their dispute.7 Mediation could be inferred as a process (litigation or non-litigation) in which a third party, called a mediator, facilitates management of the dispute without having the competency to enforce a solution.8 The purpose of mediation is not only to reach agreement but also to make the interaction between parties move towards a more positive and sustainable one. In this oil palm dispute case, mediation is not only applied to resolve dispute but also to boost conditions that establish long-term harmonious relations between Oil Palm Plantation Company and society. Moreover, mediation is frequently preferred because it tends to set potentially responsible parties savings in time, money, and perhaps even resentment.9

Mediator plays an important role in resolving oil palm plantation dispute. The role of mediator is assisting the dispute parties to facilitate a positive interactional turn towards empowerment and affirmation by supporting the parties’ ability in communicating their sight, making decisions and also improving their harmonious relations. The objective of mediation in oil palm dispute was not only just muffling the dispute and reaching agreement but also altering it. To achieve this objective, the mediators take several tasks. First, the mediator represented as a facilitator. This includes facilitating and managing throughout mediation process. The mediator facilitates meetings for the selection of representatives of the natives and the oil palm company in the mediation process to assure that the selection process and outcomes are treated by the parties as legitimate. Second, the mediator also acts as an advisor including providing advice, options or potential solutions for the parties without imposing the decision especially when a deadlock occurred.10 Third, the mediator also represents as a capacity developer. The parties come from different backgrounds (an example: consultant, scientist or non-governmental organization) which can influence their concepts and views concerning the dispute issues and on how to address them.11 Through capacity developer, mediator tries to expunge discrepancy between parties concerning negotiation capacity by providing informal training to the dispute parties dealing with negotiation techniques.

Through mediator aid, not only did the parties save themselves the time and cost of a solvable litigation, but also did they reach a

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result benefiting the oil palm industry investment. If the case had been litigated, the judge might have enforced a large civil penalty. In mediation, the parties were able to alleviate the potential penalty in exchange for the parties promise to implement oil palm plantation industry project.

Chronology of a dispute between plantation companies Sidomulyo natives began in December 2013. A group of citizens headed by Ida Bagus Alit occupied plantation land owned by oil palm companies. They set up a tent and settled in this plantation land. This group also banned the harvesting and lawn care activity by blocking main roads and threatening conduct. Further, Ida Bagus Alit group stated back its claim by doing demonstration to District Government of Ogan Komering Ilir Office on January 2014. This community groups demanded the following: first, restitution of land that has not been compensated; second, construction of plasma oil palm plantation for Sidomulyo natives; and third, agricultural fostering and construction of health facilities through Corporate Social and Environmental Responsibility (CSER).

Dispute settlement occurring in Sidomulyo Village was carried out by Ogan Komering Ilir Integrated Team of Dispute Resolution after the mediation efforts undertaken by the Sungai Menang Sub-District Head in earlier did not reach mutual consensus. Mediation by this integrated team of dispute resolution was divided into two stages: first stage was commencement of the mediation process and the second was implementation of mediation. In the commencement of the mediation process, this integrated team conducted a dispute analysis the purpose of which was to obtain a deep understanding of the dispute (an example: the chronicle, the causes, their interests) by balanced communication from both dispute parties. This stage was also used to build trust between Integrated Team of Dispute Resolution as mediator and disputing parties. Trust building was critical considering that the complicity of Integrated Team of Dispute Resolution as mediator was not easily accepted. Because of the mediators’ background, the parties expressed their concerns about independence and neutrality of the mediator. Moreover, mediator must be respected and has authority to help resolve the dispute. Mediator should be able to help dispute parties to communicate with each other in order to obtain mutual consent. The mediator also functions to relieve anger, frustration, and pre-venting confrontation.

In Sidomulyo case, the community members worried that integrated team had been bribed by oil palm Plantation Company, and will be on the company’s side. However, after several intensive communications, both parties were finally willing to participate and sit together to achieve the optimum solution for all concerned.

When both dispute parties agreed to commit to mediation, the second stage was implementation of mediation in which representatives of the dispute parties to be involved in the mediation process. In Sidomulyo case, the representatives from the community consisted of village head, Ida Bagus Alit as the head of demonstration, religious leader, customary leader and some influential people.

At the initial stage of implementation of mediation, integrated team of dispute resolution and dispute parties started the mediation process, which particularly consisted of sequences of meetings (together and detached). This was done to identify, discuss the problems and negotiate the choices for solutions, seek consensus and discuss how to build harmonious relationship between the parties.

The next step, mediation moved on to discuss, examine and produce choices for mutual agreements. In Sidomulyo case, after various meetings, each party developed a concept of the agreement and distributed it to get general understanding of each party’s suggested choi-

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ces. At this phase, the role of the integrated team was to help the exchange process and to provide support especially to the villagers to develop the agreement concept and explain the company's position. After both parties understood the content of the agreement concepts, the dispute parties met and discussed the combined agreement, with the result being a written and signed agreement. Oil palm plantations dispute resolution by an integrated team of dispute resolution in Sidomulyo case, took up to a year from 2014 to 2015.

The agreements results were approved and signed from dispute settlement between oil palm plantation and Sidomulyo natives as follows: first, Oil Palm Plantation Company has made compensation on land claimed by Ida Bagus Alit. After being checked by integrated team of dispute resolution and dispute parties, land documents claimed by Ida Bagus Alit turned out to be doubtful authenticity. Second, oil palm plantation company agreed to facilitate the construction of community plasma plantation in the area in the reserved land and outside the concession company with an area of 3.110 hectares. Third, oil palm plantation company agreed to conduct agricultural fostering in this community plasma plantation. Fourth, oil palm plantation company promised to conduct public health CSR in collaboration with local health clinic. This collaboration plan related to the free health treatment program for the Sidomulyo natives.

**Altering Oil Palm Plantation Dispute through Mediation**

Dispute always has a side which is to create alteration and culture influenced. Inherently disputes carry risks and potential benefits. In terms of alterations, basically the dispute is one of the ways a family, community, companies and society has changed. Disputes can also alter our understanding of others, encourages us to mobilize resources in new ways. Dispute brings us to the clarification selection of choices and the power to seek solutions.

As an alternative dispute resolution, mediation has performed a fundamental role for altering oil palm plantation dispute in Sidomulyo, especially in decreasing the dispute intensity and achieving the agreement between the dispute parties. The mediation has assisted the creation of a favorable environment for dispute parties' interaction, creates trust between the parties and also supported problem-solving processes. By means of capacity development activities facilitated by the integrated team of dispute resolution, the mediation process in Sidomulyo has also empowered the dispute parties in terms of obtaining increased understanding of the issues connected to the dispute and their ability, in discovering and determining the solution that can be considered the empowerment role of altering mediation.

Based on this research, one of the problems that arise in Sidomulyo case is how the mediation results obeyed by the parties. This appeared the question of how to ascertain the sustainability of the mediation results and, more than that, how to alter dispute to reach long term purposes (an example: transforming of the quality of the relationships, altering the parties' conduct to be more cooperative and erasing of parties' discrepancies). To maintain the sustainability of the mutual consensus as a mediation results, institutionalization of agreements is required.

Several things to maintain the sustainability of the mutual consensus by the results from mediation and to alter dispute into a long-term harmonious relationship between the oil palm plantation company and the community include: first, using the legal certainty approach. This approach is done by formalizing the mutual agreement obtained by the dispute parties in a form of binding agreement validated by a notary or legal authority including specific agreements on the implementation mecha-

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nism. Mediation results that set forth in the
notary document are *prima facie* evidence of the
facts. It is such statements or agreements
contained in notary document, considering the
notary is a public official that has the authority
to witness or notarize a fact.15

*Second*, Company-community partnerships
approach. dispute alteration and continuity of
the mediation results can be reached by not
only just achieving and performing the agreement
but also implicating the construction of long-
term cooperative and partnership between oil
palm plantation company and Sidomulyo vil-
lagers living in and surrounding the oil palm
plantation. Oil palm company and community par-
tnerships can furnish a platform for the com-
pany and villagers to accommodate other dis-
pute parties' needs and build a starting point
for creating good mutual and harmonious rela-
tions as well as admitting multiform local land
rights.16

*Third*, capacity building for mediator ap-
proach is needed, particularly the capacity build-
ing for oil palm plantation dispute resolution
mediator. Mediator skills are one of the impor-
tant factors in successful mediation. The im-
portance of developing the mediator's competence
is how to prevent and manage dispute through
targeted training programs in dispute altera-
tion. This is principally significant because oil
palm plantation dispute settlement does not
allow more potential mistakes in consequence
of the risk of aggravating the situation. This is
in accordance with the vision and mission of
mediation as an alternative dispute resolution
by principles of simple, time-saving, low cost
and can realize the justice to reach a win-win
solution.17 Specialized knowledge from capacity

building needed by the oil palm plantations dis-
pute resolution mediator among other regarding
various regulations relating to mediation and oil
palm plantations, interaction and impacts of
the oil palm plantation development to local
communities, local subsistence and existing
land uses in the contiguous and/or over-lapped
area and also the development and manage-
ment of oil palm plantations.

**Conclusion**

Mediation has performed a fundamental
role for altering oil palm plantation dispute in
Sidomulyo, especially in decreasing the dispute
intensity and achieving the agreement between
the disputing parties. Mediator plays an impor-
tant role in resolving oil palm plantation dispu-
te. The dispute settlement occurred in Sidomul-
yo Village was carried out by Ogan Komering Ilir
Integrated Team of Dispute Resolution. Medi-
tion by this integrated team of dispute resolu-
tion was divided into two stages: first stage was
commencement of the mediation process and
the second was implementation of mediation.
Several approaches that can do to alter dispute
into a long-term harmonious relationship and to
maintain the sustain-ability of the mutual con-
sensus by the results from mediation: *first*,
Using the legal certainty approach; *second*,
Company-community partnerships approach;
and *third*, Capacity building for mediator
approach.

**Suggestion**

Considering the potential of oil palm me-
diation as an alternative dispute resolution, a
lesson from Sidomulyo case; in terms that this
research put forward the following three rec-
ommendations. *First*, advanced study on oil
palm mediation is needed to support the iden-
tification of optimum practices. *Second*, pro-
motions of oil palm mediation including construct
the necessary capacity for mediator. *Third*, a
group of practice of oil palm mediation prac-
titioners and experts are necessarily established
to collaborative learning program especially to
reciprocate their knowledge and experiences.

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