

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)^Ω

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

Abstrak

Mediasi dipandang sebagai salah satu solusi efektif untuk mengatasi serta alat untuk mengubah sengketa perkebunan kelapa sawit. Penelitian ini dilakukan dengan pendekatan sosio-legal. Metode pengujian dilakukan dengan analisis data deskriptif kualitatif, yang menggambarkan situasi atau fenomena dengan kata-kata atau kalimat, kemudian dipisahkan berdasarkan kategori untuk membuat suatu kesimpulan. Temuan penelitian ini menunjukkan bahwa mediasi telah memainkan peran penting terutama dalam menurunkan intensitas sengketa dan mencapai kesepakatan antara para pihak sengketa. Selanjutnya, Mediasi oleh tim terpadu penyelesaian sengketa dibagi menjadi dua tahap, yaitu: tahap pertama adalah persiapan proses mediasi dan yang kedua adalah pelaksanaan mediasi. Selain itu, beberapa pendekatan yang dapat dilakukan untuk mengubah sengketa ke dalam suatu hubungan yang harmonis jangka panjang, yaitu: *pertama*, menggunakan pendekatan kepastian hukum; *kedua*, pendekatan kemitraan perusahaan-masyarakat; dan *ketiga*, peningkatan kapasitas untuk pendekatan mediator.

Kata kunci: merubah sengketa, mediasi, perkebunan kelapa sawit

Introduction

Oil Palm Plantation Companies, particularly grandiose plantation, have frequently been connected to negative social power on rural communities and native people. According

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.¹ Other studies

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¹ JF McCarthy, "Processes of Inclusion and Adverse Incorporation: Oil Palm and Agrarian Change in Sumatra, Indonesia", *Journal of Peasant Studies*, Vol. 37 No. 4, October 2010, London: Routledge, page 823.

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 community⁵. 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

² Krystof Obidzinski et al, "Environmental and Social Impacts of Oil Palm Plantations and Their Implications for Biofuel Production in Indonesia", *Journal Ecology and Society*, Vol. 37 No. 1, March 2012, Canada: Department of Biology Acadia University, page 28.

³ Rachael M Field, "A Mediation Profession in Australia: An Improved Framework for Mediation Ethics", *Australian Dispute Resolution Journal*, Vol. 18 No. 3, November 2007, Australia: Thomson Reuters, page 184.

⁴ Yeni Widowaty and Fadia Fitriyanti, "Membangun Model Perlindungan Hukum Terhadap Masyarakat Sebagai Korban Pencemaran dan/Atau Perusakan Lingkungan oleh Korporasi Dengan Prinsip Restorative Justice", *Jurnal Media Hukum*, Vol. 27 No. 1, June 2014, Yogyakarta: Faculty of Law, Universitas Muhammadiyah, page 3.

⁵ Zulfadli Barus, "Analisis Filosofis Tentang Peta Konseptual Penelitian Hukum Normatif dan Penelitian Hukum Sosiologis", *Jurnal Dinamika Hukum*, Vol. 13 No. 2, May 2013, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, page 312.

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

⁶ Sri Hajati, Agus Sekarmadji, and Sri Winarsi, "Model Penyelesaian Sengketa Pertanahan Melalui Mediasi Dalam Mewujudkan Penyelesaian yang Efisiensi dan Berkepastian Hukum", *Jurnal Dinamika Hukum*, Vol. 14 No. 1, January 2014, Purwokerto: Faculty of Law, Universitas Jenderal Soedirman, page 39.

⁷ Ahmad Dhiaulhaq, Toon De Bruyn and David Gritten, "The Use and Effectiveness of Mediation in Forest and Land Conflict Transformation in Southeast Asia: Case Studies from Cambodia, Indonesia and Thailand", *Journal Environmental Science and Policy*, Vol. 45, January 2015, Amsterdam: Elsevier, page 133.

⁸ Rahadi Wasi Bintoro, "Implementasi Mediasi Litigasi di Lingkungan Yurisdiksi Pengadilan Negeri Purwokerto", *Jurnal Dinamika Hukum*, Vol. 14 No. 1 January 2014, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, page 17.

⁹ Lester J. Levy, "Why Mediation Succeeds in Environmental Cleanup and Mass Tort Cases", *Westlaw Journal Environmental*, Vol. 33 Issue 25, June 2014, Australia: Thomson Reuters, page. 3.

¹⁰ Ahmad Dhiaulhaq et al, "Transforming Conflict in Plantations Through Mediation: Lessons and Experiences from Sumatera, Indonesia", *Journal Environmental Science and Policy*, Vol 41 April 2014, Elsevier, page 26.

¹¹ Husen Alting, "Konflik Penguasaan Tanah di Maluku Utara: Rakyat Versus Penguasa dan Pengusaha", *Jurnal Dinamika Hukum*, Vol. 13 No.2 May 2013, Purwokerto: Faculty of Law, Jenderal Soedirman University, page 277.

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 con-

cerns about independence and neutrality of the mediator.¹² 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 preventing confrontation.¹³

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-

¹² Riska Fitriani, "Penyelesaian Sengketa Lahan Hutan Melalui Proses Mediasi di Kabupaten Siak", *Jurnal Ilmu Hukum*, Vol. 3 No. 1, August 2012, Pekanbaru: Faculty of Law Universitas Riau, page: 20.

¹³ Muhammad Taufiq, et.al, "Forms and Mechanisms of Law Dispute Resolution Using the Principle of Pancasila based on Local Wisdom", *Jurnal Dinamika Hukum*, Vol. 16 No. 1, January 2016, Purwokerto: Faculty of Law, Jenderal Soedirman University, page 29.

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 solutions¹⁴.

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-

¹⁴ Ritha Safithri, "Mediasi dan Fasilitasi Konflik dalam Membangun Perdamaian", *Jurnal Academica*, Vol. 3 No. 2, October 2011, Palu: Faculty of Social and political Science Universitas Tadulako, page 677.

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 fact¹⁵.

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 villagers living in and surrounding the oil palm plantation. Oil palm company and community partnerships can furnish a platform for the company and villagers to accommodate other dispute parties' needs and build a starting point for creating good mutual and harmonious relations as well as admitting multiform local land rights.¹⁶

Third, capacity building for mediator approach is needed, particularly the capacity building for oil palm plantation dispute resolution mediator. Mediator skills are one of the important factors in successful mediation. The importance of developing the mediator's competence is how to prevent and manage dispute through targeted training programs in dispute alteration. 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 dispute 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 management 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 important role in resolving oil palm plantation dispute. The dispute settlement occurred in Sidomulyo Village was carried out by Ogan Komerling Ilir Integrated Team of Dispute Resolution. 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. Several approaches that can do to alter dispute into a long-term harmonious relationship and to maintain the sustain-ability of the mutual consensus 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 mediation as an alternative dispute resolution, a lesson from Sidomulyo case; in terms that this research put forward the following three recommendations. *First*, advanced study on oil palm mediation is needed to support the identification of optimum practices. *Second*, promotions of oil palm mediation including construct the necessary capacity for mediator. *Third*, a group of practice of oil palm mediation practitioners and experts are necessarily established to collaborative learning program especially to reciprocate their knowledge and experiences.

¹⁵ Aprilya Setiani, "Analisis Yuridis Proses Mediasi Dalam Rangka Penyelesaian Sengketa Bisnis", *Jurnal Lex Privatum*, Vol. 3 No. 2, April 2015, Manado: Faculty of Law Universitas Sam Ratulangi, page 164.

¹⁶ A.A. Nawir and L. Santoso, "Mutually Beneficial Company-Community Partnerships in Plantation Development: Emerging Lessons from Indonesia", *International Forestry Review Journal*, Vol. 7 No. 3, September 2005, The Commonwealth Forestry Association, page 184.

¹⁷ Sukresno, "Pemberdayaan Lembaga Mediasi dalam Penyelesaian Sengketa di Bidang Pertanahan", *Jurnal Masalah-Masalah Hukum*, Vol. 41 No. 1, January 2012, Semarang: Law Faculty Universitas Diponegoro, page 89.

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