

Thesis Title:

**Democracy, Land Conflict and Governance in
Indonesia:**

A Case Study of Land Conflict in Lampung Province (2010-2012)

By

Novri Susan

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The Graduate School of Global Studies

Doshisha University

Supervisor:

Professor Eiji Oyamada

Abstract

Land conflicts have escalated and become widespread throughout Indonesia during the democratic era as democracy has opened political space for social movements and protests on land issues. This study mainly focuses on an analysis of governance in land conflict in Indonesia. The main question in the analysis of governance and land conflict in Indonesia is: How has land conflict been managed under the governance during the democratic era in Indonesia? In seeking an answer, this research has taken a case study of land conflict, which developed to a national concern during 2010-2012 in Lampung Province, through qualitative sociological research conducting participants observation, interviews, focus group discussions, as well as secondary data gathering.

Governance in land conflict is particularly seen through two forms of practice of conflict management; namely peaceful mechanism (reconciliation) or state violence (repression). Impartial governance is theoretically expected to create interactive governance that emphasizes a peaceful dialogue and negotiation among the actors; namely the state, private sectors and civil society. Thus, it is particularly interesting to analyze Indonesian governance in land conflict from the perspective of impartial values of politics.

According to the National Land Agency, the term “land conflict” is different to “land dispute”. Land conflict describes a phenomenon that has a more collective impact which may influence the condition of the national social economy. On the other hand, land disputes are a more interpersonal conflict with an impact limited to individuals or organizations involved. Land conflicts have been increasing in Indonesia since 1998, particularly those between local communities and plantation companies or the forestry departments. Moreover, a Social Development Paper by the World Bank indicates that in 2007, land conflicts were recorded as the second greatest form of conflict. Indeed, by the end of 2010, there were approximately 9,471 cases of land dispute and conflict. The phenomena of increased land conflicts were also evident in the widespread customary community protests and resistance in many parts of Indonesia, including Lampung, Riau, Bima, Kalimantan, South Sulawesi and Jambi. In Lampung Province, as of 2010, there were 32 cases of land conflicts, where only five have been resolved. Following the increase in land conflicts, state violence also has increased as a measure to manage the unrest, and particularly so in governing land conflicts involving collective actors, such as the customary community and villagers.

The case study and analysis of land conflict in the Lampung Province identified several key actors; these included the customary communities, illegal farmers, plantation companies, NGOs, the police and military, central government and local government. However, the study also found other key actors who played significant roles in perpetuating land conflicts in the local context; namely land brokers and a tacit network of local elites who were utilizing idle

lands. These are termed, “gray actors” and are cited as the “spoilers” of the peace process. The land brokers’ role consisted of inviting illegal farmers into Lampung Province while the tacit network of local elites functioned to prevent the government from solving land conflicts, so as to protect the sectional interests of utilizing idle land.

This study found that the local community perceived the governance in land conflict as being mostly in the form of repression through state violence. Moreover, governance tends to take the side of economic elites involved in the plantation/forestry companies by providing legal protection. On the other hand, the legal framework of land governance is unable to handle and solve land conflict by more equalitarian means and does not implement the norms of legal justice, political equality, effective and efficient administration and concern for public interest. Moreover, Indonesia’s oligarchies were found to influence the use of state violence in land conflict management.

This dissertation is composed of six chapters. The first chapter is a theoretical elaboration of conflict perspectives and literature review on governance in land conflict in Indonesia. The second chapter focuses on the political economy in Indonesia, discussing the context of development history, political economy dynamics, and land policy. The third chapter is an elaboration and analysis of land governance in Indonesia. The fourth chapter analyses land conflict taking a case study in the Lampung Province through field research including an analysis of actors and issues, gray actors and conflict dynamics. The findings include the absence of a neutral third party, land brokers, the tacit network of local elites in utilizing idle lands, the role of gray actors in perpetuating land conflict, and partiality governance. The fifth chapter attempts to build theoretical findings and academic judgement on the partiality and impartiality of governance, tracking down the influence of Indonesia’s oligarchies in the use of state violence in land conflict management. The last chapter is an overall conclusion summarizing findings and giving recommendations as well as ideas for further potential research.

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Abreviation

BAL	: Basic Agrarian Law
BFL	: Basic Forestry Law
BPN	: <i>Badan Pertanahan Nasional</i> (National Land Agency)
DPR	: Dewan Perwakilan Rakyat (National House of Representative)
FGD	: Focus Group Discussion
Knupka	: <i>Komisi Nasional untuk Penyelesaian Konflik Agraria</i> (National Commission for Agrarian Conflict Resolution)
LPDPIL	: Land Procurement of Development for Public Interest Law
NLA	: National Land Agency
Polri	: Polisi Republik Indonesia (Indonesian National Police)
TNI	: Tentara Nasional Indonesia (Indonesian Military Force)

Glossary

- Conflict** : A situation of strong disagreement between two or more actors who struggle their interest toward resources.
- Governance** : The exercise of power in a country, and the processes of interactive activities, and decision-making among the actors involved in collective problem that lead to the formulation, reinforcement, or reproduction of social norms and institutions.
- Impartiality** : The power exercise of government that emphasizes equality before the law, political equality, effectiveness/efficiency of governance and concern for the public interest.
- Oligarchy** : Political economy elites group who dominate and control state policy and business.
- Partiality** : The power exercise of government that emphasize law unjustic discrimination, and concern for the self interest.
- Repression** : The government uses violence to handle conflicts.
- Violence** : An intentional action, involving the imposing of direct but unwanted physical obstruction on the bodies of others, who are consequently, made to experience a series of effects ranging from fear, speechlessness, mental suffering to pain and death.

Introduction

The Rise of Land Conflicts

This study is a response to the discourse of state violence in Indonesia's governance regarding land conflict management during the era of democracy. The assumption of democratic theory, particularly democratic peace, is that a democratic state is able to enhance the quality of the governance by mainstreaming equal dialogue and peaceful negotiation to solve conflicts. However, in Indonesia this is far from the case in the context of land conflict and the country's democracy has been marked by partiality and state violence in the implementation of land conflict management. Therefore, using a case study of land conflict in Lampung Province, this study explores the various ways in which Indonesia's governance manifests state violence in the course of its land conflict management.

Because land is a central resource for fulfilling basic needs as well as the economic interests of many groups of political/economic elites in Indonesia, historical and contemporary land conflicts have always involved a variety of interest groups at domestic, national, and international levels. In this context, the domestic group generally comprises local people and customary communities that often need to struggle to defend their customary land against modern economic development in which state and private sectors are liable to become a dominating influence throughout the conflict.

In many developing countries, such as Indonesia and the Philippines, there are statistically high numbers of land conflict cases that involve a low quality of conflict management systems on the part of the government. Indeed, the Indonesian Social Development Paper produced by the World Bank shows that land conflicts accounted for the second highest number of conflict cases in Indonesia occurring during the democratization era following 1998 (McLaughlin and Perdana 2010, 7). According to the Head of the National Land Agency, Joyo Winoto, there were 9,471 cases of land

dispute and conflict between 1998 and January 2010, and 2,913 of these had not been resolved later in 2010 (Winoto 2010).¹

Land conflicts are a part of the development history of every country and are generally triggered disagreements regarding the land ownership status. In regard to this, in Indonesia, where the interests of the political economic elites dominate land ownership both through private ownership and through ‘right to cultivate’ licenses on state land, the Agricultural Census of 2003 found excessive inequity in the land distribution whereby 20.1 million farmers only own 0.5 hectares of land per household. Furthermore, in 2010, land ownership by farmers (as opposed to business enterprises and development) on Java Island was only 0.3 hectares per household and 1.19 hectares on other islands. On the other hand, in 1998, only 666 companies had approximately 48.3 million hectares of forest concessions, known as *Hak Pengusahaan Hutan* (hereafter, HPH), and industrial forest plantation concessions, or *Hutan Talaman Industri* (hereafter, HTI). Thus, each company controlled an average of up to 72.6 thousand hectares. Among the companies, there were no more than 12 conglomerates controlling about 16.7 million hectares of forestland (Serikat Petani Indonesia 2010). Such domination of the use of state land can be seen in the many licenses issued to plantation and forestry companies. For example, the influence of the conglomerate, *Merauke Integrated Food and Energy Estate* (MIFEE) was demonstrated in 2010 when the Mayor of the Merauke district gave a license to one of its key business groups, Medco Inc, to undertake plantation industries on 300,000 hectares.² This illustrates the type of situation that has led to the outbreak of conflict between customary communities and commercial companies that are backed up by the government.

Governance and Land Conflict

There are at least three main reasons why land conflicts have become increasingly escalated in contemporary Indonesian democracy. First, many groups and communities

¹ The Indonesian government distinguishes between the concepts of land dispute and land conflict. Land dispute is characterized by interpersonal cases whereas land conflict by the involvement of communities or groups. See Head of National Land Agency Regulation No. 3/2011 regarding the Management of Assessment and Agrarian Case Handling.

² Medco Group is owned by Arifin Panigoro, one of the oligarchs of the previous New Order regime.

that had been disadvantaged and suppressed by the regime of the New Order (1966 - 1998) have recently been trying to reclaim their rights to land. Second, democracy has provided more spaces and opportunities for groups and communities to voice their interest regarding land. Third, land conflict governance still takes the form of poor or bad governance, which is indicated by the low capacity of land administration and the prevalence of state violence.

The increase in land conflicts has also been marked by the spread of resistance movements among the customary communities in many parts of Indonesia, such as those in Lampung, Riau, Bima, Kalimantan, South Sulawesi and Jambi. Many farmers and customary communities have established their own associations in order to organize their struggle in terms of land conflict dynamics (Fauzi and Bachriadi 2006; Rachman 2011). The critical question, in this respect, from a democratic perspective is: How is land conflict management realized by Indonesia's governance? At a basic level, the simple answer to this question should be that in a democracy land conflicts involve various governance actors at local, national, and global level - namely the government, private sectors and civil society, including customary communities – and these should be treated equally by the system. However, Indonesia's governance is still dominated by powerful actors such as governmental and economic elites.

This domination by powerful actors can be traced to the existence of a network of economic and political elites built to protect their interests (Mills 1956; Ferguson and Hadiz 2004; Winter 2011). Through this, political elites in state institutions protect the interests of economic elites by using their legal authority while, in return, economic elites provide them with various financial resources. This means that Indonesia's governance system has become biased and far from democratic. Hence, the inequitable situation in terms of access to land is a result of more than simple poor quality governance but of what I term here as *partialist governance*. Such governance does not result in the common good and certainly not in a win-win solution for all actors; rather it fulfills the vested interests of the elites. Furthermore, a consequence of partialist governance - in land conflict management, in particular - is the mobilization of state violence as a means of dealing with grievances within the community.

This study found that this lack of impartiality has marginalized local communities who lack economic and political capital. The consequence is that there are far fewer opportunities for the community to influence or renegotiate any policy, including land policy. Moreover, the powerful actors dominate the governance interactions by influencing the legal system to protect their interests. For example, Law No. 2 of 2011 about *Pengadaan Tanah Bagi Pembangunan untuk Kepentingan Umum* or Land Acquisition for National Development of Public Interest Law (hereafter, LPDPIL) does not provide a space or significant role through which the people can participate in the policy making process.³ This inevitably hampers the practice of interactive governance. At the same time, there has been increasing use of state violence during the implementation of land conflict management in Indonesia's democracy to deal with the resistance to this.

Furthermore, the study found that state violence tends to perpetuate the conflicts by provoking violent resistance on the part of the affected community, as was the case in the land conflicts between the customary communities and PT Silva Inhutani Ltd in Register 45, Mesuji District, Lampung Province. This conflict began in 1991 and to date remains ongoing.⁴ Essentially, this study is an effort to interpret the relations between Indonesia's governance interactions and the mobilization of state violence in land conflict management using a case study of these land conflicts in Lampung Province.

Research Questions and Objectives

The following research questions were identified to guide the research:

1. How was Indonesia's land governance conducted?
2. How has political impartiality been constructed and practiced in land governance?

³ In Chapter 5, I elaborate on the implications of LAL in relation to the domination of political economic elites in defining the concept of 'national interest'.

⁴ Mesuji District was previously the part of Tulang Bawang District and become new district in 2008. Therefore this research also went to Tulang Bawang district to understand the history of the conflict.

3. How responsive is Indonesia's governance in resolving conflict and mitigating state violence?
4. Has the exercise of governance in land conflict resulted into a win-win resolution of land disputes/conflict?

The research objectives of study are:

1. To determine the political philosophy that underpins the management of the land conflicts;
2. To analyze the governance principles used in the settlement of land disputes;
3. To analyze the conflict management methods used in Indonesia, in particular, whether these constitute responsive conflict management
4. To identify the relationship between impartiality/partiality in governance, conflict management and outcome in Indonesian land management.
5. To determine the perspectives of the different actors involved in land conflict management;
6. To explore the dynamics of land conflict in Indonesia's democracy through the case study of land conflict in Lampung Province, including conflict mapping and identification of all actors involved, including 'spoilers'.

Furthermore, it should be noted that this study considers the outcomes of governance interactions in land conflicts whether they manifest as the achievement of common objectives or in the practice of violence.

Research Methodology

This research primarily relies on the proposition of social construction theory that considers each actor to construct a reality that is manifested in all his/her social practices. According to this view, governance in land conflict is a reality that is constructed through the discourses among the concerned actors. From this perspective,

there is no neutral position for governance actors such as that of government, civil society, or the private sector. Thus, the government may perceive that their governance is right but community may see it as wrong. Consequently, this approach analyzes conflict situations by considering the knowledge and norms that the governance actors use to construct land conflict management, whether responsive or violent - as well as the values that underpin these.

Schwandt emphasizes that “in a fairly unremarkable sense, we are all constructivists if we believe that the mind is active in the construction of knowledge” (Schwandt 2003, 305) and, according to Berger and Luckman, language is rooted in the stock of knowledge possessed by every member of society. Therefore, social constructivism basically emphasizes the social context, history, and language. It portrays everyday life as it is manifested through language. Language is not only a tool of communication but also the knowledge of communities through which both subjective and objective realities are found. As such, language always defines the reality of an individual in society (Berger and Luckman 2011).

Consequently, qualitative research uses a social constructionist approach that is more concerned with the practice of language as a social process than statistical data. Therefore, it seeks to gather information as deeply as possible using observation, interviews, focus group discussions, and documentary research. Qualitative research has both strengths and weaknesses. Primarily, it aims to understand the subjective realities of the various actors. In order to reveal these, a qualitative researcher needs to gather as much relevant information as possible from a specific field. In regard to this, information such as that relating to the definition of conflict management can be found in the languages of everyday life. All information gathered is then used to interpret the

reality in which social and political dynamics exist. Hence the character of this study is discursive rather than statistical.

I undertook the field research for the case study in Lampung Province during 2010 - 2011 in order to examine how governance interactions in land conflict were constructed by the actors. This included a series of field observations and interviews, focus group discussions and documentary research in the districts of Mesuji and Tulang Bawang, Lampung Province, Indonesia.

In carrying out the field research, I encountered several obstacles that occurred in gathering information, such as security issues, difficulties in gaining a field license, and understanding native spoken languages. I also had to deal with issues of time in that the interview subjects' had to set aside some time and space for an interview.

Data Gathering

As part of the process of understanding the social construction of responsive conflict management in Indonesia, this research collected information relating to the social processes of the conflict dynamics by focussing on the following:

- a. Primary data; this is direct information which is collected from the field. Primary data is gathered from the following sources:
 1. Participant observations; in this research the purpose of participant observation is to understand the social practices related to basic human needs. By following the tradition of social construction theory, the researcher was able to maintain a distance from the research subjects and so avoid intervention in social political processes during the observation.

2. Interviews; the researcher conducted the interviews with subjects using an open interview technique. This technique is aimed at collecting information from subjects' knowledge related to their basic human needs and the institutionalization of conflict governance.
 3. Focus Group Discussions (FGD); this technique was used particularly to understand the contestation of reality among the conflicting agencies. To support this, the researcher also attended workshops, seminars, and discussions.
- b. Secondary data; this was compiled from research reports, library documents, mass media reports, books, and video.

Interview Guide

Interviews were conducted in the official Indonesian language and the extracts from interviews that are presented in this thesis were then translated into English by the author. I used an interview guide around which to organise the interviews. This guide is divided into three research questions as follows:

- a. What is the approach of the government in managing land conflict between a company and a community?
- b. When does the government need to use violence or negotiation in implementing land use policy?
- c. What is the legal framework of land conflict management?
- d. How does the private sector respond to political violence occurring during the development of conflict governance by local government?

- e. How do local communities and NGOs respond to the political violence?

Research Subjects: Conflicting Parties

The main subjects interviewed for the study were government representatives, key actors in the local community and civil society, and companies' key personnel. The field research was conducted in the following order:

- a. First, I made direct field observations in relation to the land conflict case in Mesuji dan Tulang Bawang districts of Lampung Province using secondary data from local sources.
- b. Second, I interviewed local communities and NGOs so as to get their perspectives about the land conflict.
- c. Third, based on the field observation and the local community's information, I interviewed some political elites and government agencies (including National Land Agency officials, police officials, and legislative representatives) in order to understand the concept and practice of land conflict management in Indonesia more fully.

Research Ethics

The research used the social construction approach which argues that the researcher should not intervene in the social processes of the research subjects. Thus, according to this approach, a researcher should keep his or her distance from the research subjects. Furthermore, during the field research, the researcher followed a code of ethics that aims to support value-free research in social sciences. According to this, it is a part of the researcher's responsibility to allow and respect the reality that is constructed by the

subjects as members of the society in question. Therefore, I was aware that the subjects of this research have their own rights, interests, and vision of their reality. However, as Schwandt (2003, 315) asserts, the issue of “moral-political commitment” is a crucial issue in constructivists’ work in understanding a feeling, vision, or saying. To bridge this contradictory position, the researcher considered the field conditions of the social context that would not involve a moral-political commitment. To this end, the researcher used empathy in understanding the words of the subjects without giving any political intervention. As well as the points mentioned below, this method facilitated the researcher in conducting value-free research.

Furthermore, in order to ensure value-free research, I followed several principles, as set out by Christians (2003) as a code of ethics to help maintain value-free field research. First, he asserts the importance of *informed consent*. According to this, subjects must agree voluntarily to participate—that is, without physiological or psychological coercion. Second in the code is the consideration of *deception*. This, Christians describes as: “The straight forward application of this principle suggests that researchers design different experiments free of active deception”. Third in the code is respect for *privacy and confidentiality*: “Codes of ethics insist on safeguards to protect people’s identities and those of the research locations”. Fourthly, Christians explains the importance of *accuracy*: “Ensuring that data are accurate is a cardinal principle in social science codes” (Christians 2003, 217-219). By following this code of ethics, the researcher ensured that his observations and interviews concerning land conflict management in Lampung and Bima Sumbawa were as value free as possible.

Procedure

In analysing the compiled field data, this research employed qualitative methods based on a social constructionist approach. Ideally, all collected data should be analysed using 'ongoing analysis'. This is a process of an analysis that begins directly after the researcher gains the data. Thus, this technique will be possible only when the researcher allows adequate time for the research. The limitation of time created by the need to conform to the university's schedule in conducting this research lead the researcher to use a technique of coding and classification.

In this case, the coding and classification technique was conducted after collecting all the information needed. Several steps were conducted in this technique: first, the researcher gathered the information from both the primary and secondary data; second, the researcher transcribed the interview records without adding or reducing any words in order to maintain a value-free process; third, I coded the data and classified it according to relevant topics; fourth, the researcher conceived a systematic description to show the social construction of governance in land conflict; and, fifth, I developed an interpretation and a systematic description in order to illuminate the relations between the concept of governance, impartiality and the conflict.

Rating of partial and impartiality of governance is sourced from conflicting actors in interview and Focus Group Discussion (FGD) on the mechanism of land governance. I uses interview results to determine the implementation of partial or impartial governance. When the majority of subjects argue that land governance does not open a dialogue or negotiation process, but engages in a state violence and initiate laws to serve political economy elites, this research interprets that impartiality is weak and partiality is strong. The report of Land Governance Assessment Framework (LGAF) by the

World Bank is used to evaluate the development and implementation of the legal framework in land governance in Indonesia.

The Limitation of the Study

This study can be mentioned as the study of government's conflict management and democracy through the case of land conflict between company and community. Therefore this study only concerns on how is a responsive conflict management developed and undertaken by government without going further to what should be the problem solving of land conflict.

Methodologically, I am aware that a qualitative research has a strength and weakness at the same time. A qualitative research aims to understand a reality. In order to reveal a reality a qualitative research needs to gather information as much as possible from a specific field. Information such about the definition of conflict management can be found in the languages of everyday life. All information gathered is used to interpret a reality in which social and political dynamics exist. In this research each variable influences another variable in a dialectic way. Hence the character of this study is discursive. This perspective can not explain a causal relation between two or three variables linearly since it basically does not have a research hypothesis but research question. This character is different from a quantitative research which has a hypothesis.

Study Structure

This thesis opens by providing the background of the study, including a literature review and research methodology. The first chapter, the literature review, is a theoretical discussion of conflict perspectives, governance, and conflict management; it aims to provide a clear explanation of governance in conflict studies. It considers issues

of partiality and explores the relationship between development and land conflict in general. The second chapter focuses on the context of Indonesia's political economy, providing an overview of the history of development in Indonesia and introduces relevant aspects of land use policy as well as the dominant actors participating in Indonesia's governance. Following on from this, third chapter examines the land management system in Indonesia, focusing on reforms introduced during the liberal democratic era that began in 1998. The chapter also explains the two different types of customary community and their relationship with the land in order to make clearer the position of the local community as one of the governance actors in land conflicts. The chapter fourth provides the case study of land conflict in the Lampung Province. It analyses the qualitative data collected during the field research, including an analysis of the specific governance actors and issues and conflict dynamics based on the research findings. These include an explanation of the absence of a third neutral party, the role played by land brokers, and the existence of tacit network of local elites who benefit from the conflicts. The findings also explore how these so called 'gray actors' play a significant role in perpetuating land conflict. The chapter fifth discusses the discourse of impartiality and partiality of governance, state violence and, with reference to the case study, tracks how Indonesia's current networks of oligarchies (as opposed to a single oligarchy as was the case under the previous New Order regime) influence the use of state violence in land conflict management. This chapter is the interpretation of the whole data and attempts to build a theoretical understanding of the findings and an academic assessment of the research. The chapter six provides a conclusion and recommendations for land conflict management, as well as further research possibilities.

Chapter 1

Conflict, Governance, and Conflict Management: A Literature Review

Introduction

This chapter is a theoretical discussion of conflict, development, and governance in relation to conflict management. As such, it aims to provide the foundations for the analyses of the issues involved in land conflict in Indonesia presented in the subsequent chapters. In order to understand the relations between governance and conflict, the chapter opens by presenting the various perspectives on conflict analysis that are prevalent in academic discourse; namely, conflict structuralism, conflict constructivism, and conflict in critical studies. Following this, I discuss how development creates conflict that needs to be governed democratically. The third part of this chapter reviews the literature relating to issues of governance, in general as well as discussing scholarship relating specifically to land conflict in Indonesia. In particular, I focus on the various modes of interactive governance, the ways violence has been theorized, the significance of impartiality, especially in terms of maintaining an effective democratic state, and the importance of responsive conflict management.

1.1 Conflict Perspectives

Before considering the relationship between conflict and governance, it is useful to review the three main approaches used in conflict theory: conflict structuralism, conflict constructivism, and critical studies.

1.1.1 The Structuralist Approach to Conflict

Every society coexists with the phenomenon of conflict. In other words, conflict is omnipresent. It cannot be denied or eradicated. It can only be managed in order to prevent violent actions by finding methods of resolving issues rather than avoiding or repressing it. Conflict structuralism argues that conflict is caused by the incompatibility

of / differences in the interests and goals of concerned actors when their goal can only be satisfied by a limited resource (Coser 1957; Dahrendorf 1959; Ramsbotham et al. 2005; Bartos and Wehr 2003; Carpenter 1988).

Conflict structuralism was initiated by Karl Marx through his theory of power relations and class struggle. This asserts that, historically, society was formed through a dialectical process of materialism that is manifested in the mode of production. This functions within the social system so as to meet the material needs of the people. Marx's theory shows that society is influenced and shaped by the constant opposition of two different classes, namely, the "owners" of capital and the "workers".

Thus, from a Marxist perspective, the mode of production in a capitalist society has created two hierarchical classes: the bourgeoisie (the owners) and the proletariat (the workers). This relates to Marx's contribution to sociological theory through his understanding that society is always in a political dynamic between two opposites of social class. In *Das Capital: Critiques of Political Economy* (1867/1996), written at the beginning of the industrial, capitalist revolution of society in Europe, Marx saw how the bourgeois class owned the "instruments of production", such as land and money (productive capital assets), and dominated the economy through the "mode of production"; in other words, economic capitalism. In contrast to the bourgeoisie, the proletariat class had nothing invested in the capitalist mode of production; they just had their bodies to be used as labor for the bourgeois class. In relation to this, Marx states that "of all instruments of production the greatest force of production is the revolutionary class itself" (Dahrendorf 1959, 9).

Marx's theory of conflict emphasizes the power relations between different classes based on the ownership of economic capital. Wallace and Wolf elaborate on this, suggesting three key principles in the conflict sociology of Marx. First, human beings naturally have a number of interests in a situation. Therefore, if someone needs to act in the interests of what is natural, it means that they have been cheated out of their genuine interests. Second, conflicts, both in history and contemporary societies, are the result of conflicting interests of different social groups. Third, they highlight that Marx understood the relationship between ideology and interests. In this respect, Marx

considered that values developed historically are a reflection of the interests of the 'ruling class' (Wallace and Wolf 1995, 79).

Dahrendorf, a Marxian scholar from Germany, writing in the fifties, argues that a conflict is liable to occur between two or more groups who are connected to each other in a system and structure. He termed such a situation as "[being] integrated into a common frame of reference". He further states that the unit of analysis in the sociology of conflict was a necessity that created social organizations to be together as a social system (Dahrendorf 1959, 164-5). According to Wallace and Wolf, the essence of the power described by Dahrendorf is the ability to control and make sanctions. Through this, those who have power are able to command and get what they want from those who are powerless. In Dahrendorf's view, conflict is inevitable in situations in which some have power and others are powerless. Consequently, power is a "lasting source of friction" (Wallace and Wolf 1995, 145). Hence, Dahrendorf argues that a sociological theory of conflict should reveal the frictions that occur between the rulers (the owners of authority) and those who are ruled (the powerless group) in a given social structural organization (Dahrendorf 1958, 173).

Dahrendorf's model of power seems to be influenced by the notion of ideal forms of authority – which Max Weber called formal legal authority – as the main source of power in modern society. Regarding this authority, Dahrendorf made five specific points: (1) The relations of authority are always between the super-ordination (i.e., the rulers) and the sub-ordination (i.e., the powerless); (2) Where there are relations of authority, the super-ordination group always expects to control the behavior of sub-ordination groups through the requests, commands, warnings and prohibitions; (3) Various expectations are embedded relatively permanently in social position rather than individual characters; (4) The existence of super-ordination always involves the specification of individual subjects to control, and of the social space that can be controlled; (5) Authority involves a legitimated relationship without protest. Moreover, maintaining this is the actual function of the legal system, that is, to support the implementation of legitimate authority (Dahrendorf 1959, 166-7).

When power is enacted through pressure and coercion, power residing in the relationship between groups functions to maintain a legitimate relation, whereby some

positions have a normative right to determine the fate of others and to treat them accordingly (Turner 1978, 144). Thus, according to Dahrendorf, the social order is maintained by the creation of authority relations in various types of existing groups at all levels of the social system. Power and authority are rare resources through which, and for which, groups compete and fight. Dahrendorf called his theory the “coercion theory of social structure” (Dahrendorf 1959, 173). Structural conflict analysis is relevant to this thesis because it contributes to the model of power relations between the governance actors in Indonesia land conflict and so provides a framework for understanding the situation in terms of power.

1.1.2 Conflict Constructivism

Constructivism is an epistemology that views knowledge as the essence of social change, thus it is very relevant to this thesis. According to this viewpoint, knowledge is understood to be an accumulation of experiences in the living world gained through a process of social construction. Consequently, it defines a reality that may be bad or good, true or wrong, virtuous or evil; moreover, individuals interpret other people using subjective knowledge and impose a subjective definition on them. Leading directly from this, conflict constructivism elaborates how a subject as a social actor interprets the “out-group”, that is, those who are not members of their social/political group, and externalizes their knowledge through social practice. This externalization is likely to create social dynamics or conflict. Therefore, this tradition sees conflict as a social practice enacted in respect to specific issues, in accordance with socio-political and historical contexts.

The constructivism of conflict is rooted in the sociological approaches of Max Scheler, Karl Mannheim and Peter L. Berger. Mannheim argues that when knowledge contains an interest in justifying a truth, or reality, it becomes an ideology. In other words, ideology appears in the living world through language (Mannheim 1991). Following Mannheim, Berger and Luckmann point out that language, as an ideology, has two contradictory interests; namely, maintaining the social reality of the living world and changing that social reality (*lebenswelth*). Therefore, through language, which can be verbal and/or symbolic, there is an inevitable ideological conflict among

the individuals. This conflict creates a dynamic within the living world in the various forms of social action, such as intimidation, war, violence and reconciliation. However, Berger and Luckmann, using Max Weber's concept of the monopoly on violence, argue that the state is the strongest actor that determines and wins the definition of reality in social systems. Through its authority, including that gained by state violence (military force and police), the state is able to enforce what reality should be in society (Berger and Luckmann 2011).

Following this, the constructivism of conflict was developed further through John Paul Lederach's conflict analysis, which focuses on the dynamics of language in the structure of social relations. He states that a constructivist's view proposes that social actions are undertaken on the basis that there is a meaning to them. Meaning is created through socially shared and accumulated knowledge and social and political conflicts are driven by the meaning given the actors involved in the situation. Thus, in analyzing conflict, the language embedded in the structure of social relationships is very important. To understand the connections involved in a social and cultural conflict is not only a sensitive question of consciousness, but involves "further adventures of discovery and archaeological excavation" of the general knowledge of social groups (Lederach 1996, 9-10).

As regards policy development, the social construction perspective understands this to be a reality because it contains knowledge and is transmitted by language. The state, through the political elites, imposes an internalization process on the general public by means of policy development. This, in effect, is a process of disseminating and socializing the political elites' definition of development to related actors, such as the private sector and local communities. The definition given by a government has to be accepted as reality; the truth that is accepted and followed. Nishimaru points out that during the authoritarian Suharto regime in Indonesia in the last half of the twentieth century, the internalization process of development took place through various media, including educational institutions, religious institutions and the mass media. Examples of the means of internalizing the concepts of development at the time of Suharto include the various forms of group education that were introduced: *kelompencapir*, P4 and

Friday prayer sermons (Nishimaru 1995).⁵ At the same time, Suharto used state violence to force his definition of development on the people of Indonesia. State violence was mainly used against groups that had different definitions of development and were critical of the regime; and thousands of activists were caught, tortured, raped and killed. According to a study by Kontras (2010), there were 15 cases of mass state violence carried out by Suharto during the years of his rule (1965-1998), including mining and land conflict issues. As a result, there were approximately 1,607,000 victims of state violence related to internalization of development under Suharto's regime (Kontras 2010).

In summary, conflict constructivism provides a comprehensive analysis of how social changes take place through a process of interpretation across individuals and groups. This interpretation process always involves language that represents an ideology and so occurs as an ideological conflict. This is important in the context of this thesis, as it provides a means of investigating the ideological underpinnings of a conflict situation and, in practical terms, of explaining how those who have a monopoly on violence have the greatest potential to shape the reality of that society.

1.1.3 Critical Studies

The critical tradition asserts that social scientists have a moral obligation to identify and criticize domination in social structures. Consequently, a main interest of critical social theory is the emancipation of people who are oppressed by cruel social systems. Moreover, followers of the critical tradition refuse to separate the consideration or analysis of facts from the values that underpin them. The approach is represented by Herbert Marcuse, Theodor W. Adorno and Jürgen Habermas (German) and Charles Wright Mills (US); on the whole, these scholars were heavily influenced by the works of Marx and, in some cases, by Max Weber's theory of intellectual property. More

⁵ *Kelompok* stands for *kelompok pendengar pembaca dan pemirsa* (a group of listeners, readers, and viewers). *Kelompok* was basically farmer groups in rural areas. This form of group was the most effective means of development internalization by the regime. P4 stands for *Pedoman, Penghayatan dan Pengamalan Pancasila*, that is, guidance, appreciation, and the practice of Pancasila. (This last is founded on five principles introduced by Sukarno under his Guided Democracy regime. See Chapter 2.) P4 was the internalization of nationalism and loyalty to the state through formal education. It was the part of basic educational curriculum.

recently, the work of Pierre Bourdieu (French) is also considered to represent the scholarship of the critical tradition.

Similar in outlook to conflict structuralism, Habermas' understanding of conflict was as a social practice that is inherent in the social system. It exists in the shadow of power relations wherein the nature of power is to dominate. Indeed, Habermas asserts that power essentially creates a 'steering' problem and therefore the tradition of critical sociology of conflict, as developed by Habermas, looks specifically at the condition of structural domination, which inevitably determines the direction of change. According to this, groups with authority within the social structure are capable of imposing various forms of policies on others that exceed the authority structure. As such, this constitutes a form of domination in itself. Habermas (1979) argues that communications created by domination are always loaded in favor of the powerful because they convey their interest in dominating and subjugating, which he called "instrumental communication".

The root concept underlying Habermas' notion of instrumental communication is instrumental rationality (*zweckrational*), which was introduced by Max Weber. This concept is considered the basis for the advancement of modern society and, in turn, rests on the idea of "instruments and goals" by asserting that certain forms of rationality have always striven to manifest as an instrument to achieve goals. Thus, according to Habermas, modern society is rooted in instrumental rationality and goals can be achieved through calculation, which can be done with high accuracy. All the calculations involved in this create technical steps that must be followed without interruption and in the prescribed order; this includes dealing with the disagreements and differences that arise in conflict. Consequently, conflict resolution should be approached with this awareness. Following on from this, Habermas argues that instrumental communication only provides a space to the owner of power; thus, it does not work to create agreement or mutual understanding (*verständigung*) between people in different societal levels. He explains mutual understanding as a representation of agreement on common good that requires an *intersubjective mutuality* in the communicative action (Habermas 1998, 2). Habermas further asserts that there are four layers of action involved when actors in different levels of the social structure are communicating in order to agree through intersubjective mutuality (Habermas 1979, 4):

(1) The message or discourse needs to be understandable or intelligible; (2) Each actor's discourse should be based on a reality; (3) The actor or speaker should be identified clearly and be understandable; (4) The actors should reach an agreement or consensus on the goal of communicative action.

According to Vitale (2006), in *The Theory of Communicative Action*, Habermas shows how instrumental rationality creates a communication designed to dominate. The nature of instrumental rationality is to use an instrumental arrangement of calculations and high accuracy to ignore the other's consciousness when it is considered illogical. Hence, instrumental communication has an interest in building domination through technical knowledge. The modern bureaucratic state is a structure that uses instrumental rationality and communication. In other words, the bureaucracy has the technical knowledge which enables it to dominate other actors. Thus, through this process, in Indonesia as in many other countries, domination by means of bureaucracy obviously creates an oppressed society.

Habermas' thinking has been used as support for the idea of forming a non-violent society through the concept of *inter-subjective communication* (Freundlieb, Hudson, and Rundell 2004, 3). When a discursive space is blocked by some form of repressive force, this can cause resentment, frustration and other forms of violence. In this case, Habermas (1979) explains that instrumental communication enabled by technical knowledge needs to be balanced by inter-subjective communication. Habermas' critical social theory of communicative action has been a significant influence on discursive conflict transformation, which emphasizes the ability of the actors involved to create discourses of justice and, more specifically, of their rights. Simultaneously, as explained by Ramsbotham, it is necessary to open spaces for dialogue that are free from domination as these can regulate the shape and structure of authority that legitimizes all the policies and decisions; however, they have to be willing to use the communication equivalent of intersubjective mutuality. This condition can be established by cosmopolitan democracy and citizenship that is inclusive (Ramsbotham et al. 2005, 298).

The critical tradition of conflict analysis was also developed by Charles Wright Mills in his research on the power structure in America in the mid-twentieth century.

Similarly to Habermas, Mills asserted that conflicts were strongly influenced by economic and political domination within the social structure. He argued that a relation of domination is created when a few elites control the economy and politics in general. Mills used the term, *oligarchy* to refer to this network of power elites. Through this, the power elites occupy strategic leadership positions within the social structure, such as political parties, religious organizations, military, corporations and government officials. As such, they make decisions that have major consequences for society and, consequently, they tend to utilize this source of power to gain wealth and fame (Mills 1956).

However, as Wallace and Wolf assert, power elites are not sovereign countries. They are professional politicians occupying the upper and middle levels of power: the congress, the legislative assembly and pressure groups. Their important positions in influencing public opinion and directing social action rely on training, knowledge and ownership of the sources of power, such as corporations, political parties, governmental agencies and military. Wallace and Wolf describe how scholars prior to Mills, such as Vilfredo Pareto (1848 – 1923), Gaetano Mosca (1859 - 1941) and Robert Michels (1876 - 1936), argued that only a small percentage of people in an organization might hold authority and these positions automatically embroiled them in conflicts of power. Elites usually share a common culture and they are organized, although not necessarily formally; but they act together to defend their position and their own individual advantages. In other words, the elite theory that Wolf and Wallace describe explicitly asserts the argument that the different interests of elites make conflict inevitable (Wallace and Wolf 1995, 68-9).

This theory explains how power elites have a great desire to progress themselves politically and economically. Hence, they need the people's support to establish the legitimacy of their political position and policies. The mass media, which has a strategic position and role in delivering information on national issues, provides tools through which the power elites can gain people's support; and this process works through a one-way process of communication. It is the power elites' channel for persuasion and, according to critical studies, society is merely a passive receiver of information from the power elites. Mills referred to this situation as the mass society.

Thus, critical studies with its emphasis on understanding of how power elites interact and protect their interests and on how bureaucratic/technical knowledge is used to dominate is especially relevant to this thesis' analysis since it provides an understanding of the context in which the land conflicts take place.

The three approaches outlined above each provide a particular perspective that informs the discussions in this thesis. Table 1, below shows a summary of the three perspectives and indicates how the different schools of thought and concepts relate to conflict theory:

Table 1: Conflict Perspectives

Conflict Perspective	Scholars	Key Concepts	Description	Element of Theory
Structuralism	Karl Marx; Lewis Coser; Ralf Dahrendorf; Paul Wehr and Bartos.	Power relations	Every social relation in a societal system is determined by the source of power, such as political authority and/or economic capital	The inequality of ownership of the instruments of production in society, such as land, money, etc.
		Involves many interested parties	Every actor has an interest in the social structure - both to change it and to maintain it	
		Resources	Based on power and interest, individual or group actors struggle to get and/or defend resources.	
Constructivism	Karl Manheimn; Peter L Berger and Thommas Luckman; John Paul Lederach.	Ideology	Based on accepted knowledge of social actors that defines a reality: right or wrong, bad or good	Differences in actors' interpretation of a reality, such as the definition of development - which creates an ideological conflict.
		Interests	A subjective desire to get resources to fulfill a need	
		Position	A social actor's position in the social structure and setting influences which ideology and interest is constructed	
		Language	Considered the instrument of ideology, used to	

			communicate ideology and interests to others	
Critical studies	C. Wright Mills; Jürgen Habermas	Power domination by elites	Elites dominate the social structure to control society	Analysis focuses on the domination of the social structure and system by power elites, including economic system.
		Communication	Means of delivering an ideological message based either on instrumental communication (to control) or inter-subjective communication (to create a mutual understanding)	
		Public space	A medium in which actors can speak free from domination of elites.	
		Research is participatory	There is no neutral theory therefore a researcher not only reports the findings but actively affects the power domination	

Source: Author's research

1.2 Development and the Causes of Conflict

Following on from the overview of the three major traditions of conflict analysis presented above, this section explores three root causes of conflict that relate to these: First, inequality in society in terms of ownership of the instruments of production, such as land and money, creates structural conflict. Second, the difference in interpretations of a specific reality by different actors, such as the definition of development, creates ideological conflict, as explained by the constructivist school of thought. Third, the domination by power elites of the social structure and system causes conflict in a way that relates to the theories of the critical tradition.

As explained in the introduction, this study focuses on land conflicts as a result of the impact of development; therefore, it is necessary to elaborate briefly on the concept of development itself. In relation to this, Wallerstein critically explores the genealogy of development, which he demonstrates to be linked to the politics of colonialism. In his

review of the history of colonialism, Wallerstein explains that at the turn of the last century, the French Ministry of Colonies requested Camille Guy, who was the head of its geographical service at the time, to produce a book entitled *Les colonies françaises: la mise en valeur de notre domaine coloniale*. According to Wallerstein, the literal meaning of *mise en valeur* is “making into value”, whereas in the French dictionary, “*mise en valeur*” (or in) is defined as “development”. At that time, this term for development was preferred over the perfectly acceptable French word, “*développement*”, when talking about economic phenomena in the colonies. As Wallerstein states, “[i]f one ... goes to *Les Usuels de Robert: Dictionnaire des Expressions et Locutions figurées* (1979) to learn more about the meaning of the expression “*mettre en valeur*”,⁶ one finds the explanation that it is used as a metaphor meaning “to exploit, draw profit from” (Wallerstein 2005, 1263). These connections indicate a direct association between the concept of development and exploitation.

Following Wallerstein’s genealogical work on development demonstrating that it has exploitation at its core, it becomes clear that development is bound to create a complex dynamic between political elites, economic elites, bureaucracy and identity groups. Such an understanding makes it apparent that exploitation and resistance will generate a dynamic interaction between various interest groups; and such interactions then appear in the form of social practices such as political reactions and the use of violence. This is borne out by empirical studies such as that conducted by Scott (1990) in his research on farmers’ resistance in Malaysia. He found that domination and exploitation that made the people suffer always created a resistance to power elites who were considered exploiters. Following this argument, it is clear that development basically contains the three main sources of conflict that relate to the traditions described in the previous section: inequality in terms of ownership, differences in the definition of development, and domination of the social structure by power elites.

Therefore, I would argue that development is, in essence, a form of conflict, in itself as it is a very dynamic process conducted by a plurality of actors with divergent interests, namely, the political elites of the state, economic elites, civil society and

⁶ ‘*Mettre en valeur*’ is the infinitive form of ‘*mise en valeur*’.

community members. Moreover, as explained by Mendus (2002), this complexity is also the situation in modern society where pluralism has become a permanent condition. Through the direct association between conflict and development elaborated above, development can be understood as an achievement process aimed at gaining control of limited resources (e.g., natural resources), in which the actors are aware of the incompatibility of the various interests and goals. Furthermore, for the purposes of analysis, land conflicts arising in a development project can then be defined as the incompatibility of interests and goals among the concerned actors in achieving possession of land as a limited resource. However, if development is understood to be conflict, then this requires a system and institutional design to manage it appropriately. However, states around the world have different systems and institutional designs for conflict management, determined by what has been built up through the political and economic system. Thus, any form of conflict management needs to be sensitive both to the part development plays and to the specific political conditions where it is implemented.

1.3 The Governance of Conflict

Although the state is one of the predominant factors in creating land conflict through its development policies, conflict resolution is also provided by the state. Moreover, since the state can be identified as the main actor in formulating and implementing development, the relationship between conflict—land conflicts, in particular—and the state is very strong. Many scholars have explored the relationship between the state and land conflicts. In the Indonesian context, analysis of this relationship is mostly approached through the perspectives of Marxist theory, social movement analysis, legal pluralism, public policy, state formation theory and, most importantly, governance theory. This section reviews the scholarship relevant to such an analysis. After presenting the various theoretical approaches used and the importance of governance in this context, I give a brief history of the concept of governance, followed by an exploration of the specific issues involved in impartiality and conflict management.

Firstly, Marxist theory emphasizes land as a mean of production of which ownership is dominated by the capitalist class with the proletariat, including poor farmers, being

expelled from the land. Furthermore, Marxist theory asserts that the state is utilized by the capitalist class to entrench its domination over land ownership and/or land use. However, in a democratic system such as in Indonesia, Marxist theory is not able to reveal the complexity of power relations in society and state. The domination by the state cannot be simplified by identifying one unified capitalist class since there are many complex political and/or economic groups.

From a slightly different perspective, social movement analysis explains the resistance of communities against state policies and the various strategies it uses, which involve collective actions such as land looting and farmers participating in civil disobedience (Scott 1976; Wolf 1969; Fauzi and Bachriadi 2006; Masud 2011). This form of analysis focuses on organization and discourse as collective action aimed at achieving the goal(s) of the particular group involved. As with conflict theory in general, this is influenced by the different perspectives of structuralism, social constructivism, and critical analysis, but the core of social movement analysis is collective action. In relation to this, Mustain Masud's research on the resistance of farmers on Semeru Mountain (Indonesia) during 1997 shows how the farming community there resisted the state policy of land use through a variety of forms of action. Moreover, he found that the community's resistance was affected by the domination of state and private sector in determining the use of state land. Masud focused his research on how the collective movement was mobilized by local leaders, the social meaning of land to the community, and the sociological character of the community (Masud 2011, 12).

Following slightly different lines, the theory of legal pluralism analyzes the contradictions among the laws and regulations, including state law and customary law regarding land. Particularly relevant in developing countries such as Indonesia, legal pluralism considers state law to hamper or even destroy the customary rights of the community on its own land (Kurniawan 2010; Daryono 2010). While this perspective focuses on the legal contradictions, it has less analysis of the political process behind the law or of how concerned actors make an effort to find an alternative form of conflict resolution. This is exemplified by Joeni Arianto Kurniawan's research, presented in *Legal Pluralism in Industrialized Indonesia: A Case Study of Land Conflict between*

Adat People, the Government, and Corporations regarding Industrialization in Middle Java (2010).⁷ Kurniawan found that there is a large inconsistency on the part of the state in enforcing the law concerning agrarian issues in Indonesia, namely, the Basic Agrarian Law. Put very simply, while this law recognizes customary law including land ownership by traditional communities, Article 3 of the Basic Agrarian Law emphasizes that the interests of customary law must not be used contrary to the state's interest or national interest.

On the other hand, public policy theory argues that land conflicts are caused by mis-administration in developing and implementing state policies related to land use, such as industrial policy, agricultural policy, and land redistribution policy. The quality of land administration in relation to this is a major influence on whether or not a policy can be accepted by the actors involved, which include the state, the private sector and the community (Afiff et al. 2005; Winoto 2009). According to this understanding, land conflict around the world, particularly in developing countries, is rooted in the low quality of land administration. This approach was taken on board in Indonesia by the National Land Agency between 2009 and 2013 in an attempt to answer the problem of land administration. Joyo Winoto, head of the National Land Agency during these years, stated that the organization developed a strategic plan for improving land policy that included reforming the Agency's organization and bureaucracy, developing land administration and service infrastructure, and improving land service and the administration process as a whole (Winoto 2009, 6). However, as evidenced by the analysis in this thesis, this has yet to have a significant effect on the governance of conflict in Indonesia.

Similarly, state formation theory is concerned with the expansion of the state's role in terms of undertaking its functions and regulating or intervening in the society in relation to development. Afrizal (2007) argues that state formation theory is particularly useful in revealing the relationship between state and land conflicts in Indonesia because the country is expanding the state's role and function in society. Thus, it explores how the interventions of the state apparatus in civil society and society in

⁷ 'Adat' is equivalent to 'customary' in this context.

general relate to the state's role and function in development. However, I would argue that formation state theory only successfully traces the early stages of the modern state's expansion in terms of its role and function and fails to explain the situation within the context of democratization where the state's role and function are changing.

Lastly, since the democratic system introduces new relations between the state, the private sectors, and society that are marked mainly by the reduction of state intervention in the economic and political realm, the state has been obliged to undertake what has recently (that is, in the past twenty years) been termed, governance. This is a new concept, promoting democratic order ideally by encouraging public participation in the decision-making process of state policy and peaceful conflict management. Governance, in a democratic system, is an interactive process of political economy involving multiple actors (namely, the government, the private sectors, and civil society), in making and finding a common good with equal relations (Koimaan 2003; Torfing et al. 2012). From the government's position, governance is intended to facilitate all actors concerned with development by upholding the principles of democracy, such as accountability, transparency, and participation. Therefore, governance theory in the context of the era of democracy in Indonesia is more relevant to the analysis of state and land conflicts presented in this study.

In recent times Indonesia's governance in relation to the issues of development remains under the control of the more powerful actors in the interaction, generally the government and the private sectors. This domination has created interventions in the model of interaction that marginalize the weaker actors. Due to this, some studies of land conflicts using governance theory show that there is a major problem of society's position in the decision making process. For example, in their research about conflicts in forest areas presented in *The Nusa Tenggara Uplands, Indonesia: Multiple – Site Lesson in Conflict Management*, Fisher et al. (1999) highlight the fact that land conflict is characterized by the weak role of poor people in the decision making process. They relate this to the fact that the communities inhabiting the forest usually have a very low level of education, little knowledge of governance and government, and local traditional values that are likely to be very different from modern mechanisms of development, all of which isolates the communities from the dynamics involved in the process.

Furthermore, Fisher et al. (1999) demonstrate that this marginalization of grassroots people is generally followed by the phenomenon of state violence. Suyanto (2004) points out that in many cases, the government prefers to engage in political violence to protect its policies rather than to facilitate a peace negotiation during land conflicts between companies and local communities. As he states, “large companies often used military power to intimidate and remove people from their land. Fires were often used to drive out the local community” (Suyanto 2004, 68).

Similarly to Fisher et al. (1999) and Suyanto (2004), Sirait (2006) argues in his book, *Conversion of Public Land and Tenure Security in Lampung, Indonesia*, that political violence was enacted on the local community by the government during the land conflicts of Lampung Sumatera. Furthermore, he asserts that the previous New Order government (1966 - 1998), as an authoritarian regime, usually forced Indonesian communities to give up their land to companies. Since the collapse of the New Order, during the democratization process that began in 1999, companies have had to negotiate directly with a community to buy their land under the rules of the free market system. However, as he further explains, the problem is that the government does not protect the negotiation process. Instead, it protects and supports the companies in their drive to possess the community’s land (Sirait 2006, 5).

Thus, land conflicts across the developing world are mostly characterized by the marginalization of society in general from any equal negotiation, on the one hand, and by the mobilization of state violence, on the other (Fisher et al. 1999; Suyanto 2004, Sirait 2006; Verbist and Pasya 2004). In many countries, the relations between governance and land conflicts have received special attention, particularly in the context of democratic states. In fact, the governance approach to analyzing land conflict management is especially relevant in democratic societies due to its focus on analysis of the interactions of governance actors and their consequences for the management of land conflicts. Consequently, this study aims to use the concept of governance to reveal why and how state violence and the marginalization of society in relation to land conflicts are reproduced during the land conflict management in Indonesia’s democracy. To facilitate this, the next four subsections explore the concept in more detail.

1.3.1 Governance: History and Concept

The concept of governance is diverse and much debated. However, in terms of development studies, its origins can be traced through the World Bank report on the crisis in governance in Africa during the 1990s. In this report, the World Bank states that governance is a means and process by which power is exercised in the management of national development (World Bank 1992, 1). A fundamental problem faced by the World Bank in respect to economic assistance was, and is, the entrenched corruption in developing countries. This has led to poor governance which has become a major factor in development failure.

In response to this situation, the World Bank requested developing countries to implement 'good governance' as a condition for receiving debt relief and economic assistance. The qualities of good governance, as set out by the World Bank, are characterized by the following: inclusive and enlightened policy making; a professional bureaucracy; a government that is accountability for its actions; a strong, participating civil society; and the rule of law (World Bank 1994). Therefore, according to Santiso, an assistance program improving the realization of good governance of developing countries should be made in conjunction with debt relief. The Development Committee of the World Bank reports that between 1996 and 2000 the World Bank started more than 600 governance related programs and initiatives in 95 countries and public sector reform programmes in 50 countries (Santiso 2001, 3).

Recently, the World Bank has defined the concept of governance more widely by including the following: exercise of power, mechanisms for electing a government, capacity of public services, and the formulation and implementation of policies. Moreover, according to Kaufman and Kraay, governance is defined as a system by which authority in a country is exercised. This system includes the following: the process by which the government is selected, controlled and replaced; the government's capacity in designing and implementing effective public policies; and the values of citizens and the state as they relate to the governmental institutions that govern economic and social dynamics (Kaufman and Kraay 2008).

The United Nations Development Programme (UNDP) is a main one of several influential international organizations that focus on governance capacity building programmes. It defines governance as the implementation of political, economic and administrative authority in all level of politics in a country and makes clear that, in practice, governance is indicated by compound mechanisms, processes and institutions in which citizens and groups struggle to gain their interests, deal with different aspirations and implement legal rights and obligations (UNDP 1997, 4). Recently, UNDP has used the term “democratic governance” to indicate the promotion of the ‘deepening of democracy’ through electoral and parliamentary support, decentralization and local governance reform, and rights-based legal and justice sector reform (UNDP 2013).

The World Bank and UNDP’s approach on governance is founded in institutionalism which is represented through structural adjustment policies. Their approach emphasizes that the strengthening of governmental institutions will be able to achieve the mission of development and poverty reduction simultaneously (Williamson and Hadiz 2004; Diedhiou 2007). In particular, the World Bank’s approach relies heavily on institutionalism as represented by structural adjustment policies, and so can be categorized as neo-liberal governance. This form of governance includes privatization, contracting out, and economic deregulation (Torfing et al. 2012, 27). Basically, the approach of neoliberal governance emphasizes that the strengthening of all governmental institutions simultaneously will be able to achieve the mission of development and poverty reduction (Robison and Hadiz 2004; Diedhiou 2007; Torfing et al. 2012). Nevertheless, even though institutionally strong governance has been developed, as yet, this approach has not substantially improved the poor governance in Indonesia which still involves corruption/clientelism in every governmental institution, patrimonialism, and poor public services.

Thus, at the theoretical level, governance has been developed by the World Bank and the academic community in order to provide a comprehensive concept that is applicable throughout the world. However, in many developing countries this has led to poor governance as indicated by the marginalization of some sectors of society, the mobilization of state violence in handling vertical conflict, and a general lack of

impartiality throughout the system.⁸ As the low quality of governance in Indonesia is the central theme of this research, this study adopts the work of Jan Kooiman (2003) and Jacob Torfing (2012) in order to critique the notion of institutional governance. Their work seeks to explain the concept of governance as based on the interactions between the actors involved in governance. The term used to describe this latter concept is *interactive governance*, which is defined as:

The complex process through which a plurality of social and political actors with diverging interests interact in order to formulate, promote, and achieve common objectives by means mobilizing, exchanging, and deploying a range of ideas, rules and resources (Torfing et al. 2012, 14).

Hence, interactive governance has three dimensions of practice that distinguish it from governance in general. First, it refers to a complex process of actors both governmental and non-governmental actors rather than a set of procedural steps. Second, the process is steered by a collective aim to define and achieve *common objectives* in the reality of divergent interests and aspirations. Third, the process is decentered, which means the common objectives are achieved through negotiated interactions among a heterogeneity of actors, namely, the government, economic groups, and community members (Torfing et al. 2012, 14-5).

In explaining the interactions of governance, Kooiman (2003) argues that they are divided into three types: interference, interplay, and intervention. Interferences occur as a form of self-governance where an actor undertakes an action that is directed at others, such as taking care of a child, lecturing to a class, or distributing a product. Therefore, interference is the primary level of social interaction. Interplay, on the other hand, involves a reciprocity of interaction where collaboration and cooperation are at the core of the interaction. Public-private partnerships are a clear example of this. Kooiman

⁸ Conflict can be divided into horizontal and vertical dimensions whereby a horizontal conflict happens between two or more communities that occupy equivalent levels in society while a vertical conflict happens between interest groups and government.

considers this type of interaction to be a mode of co-governance with the level of co-governance involved being determined by the level of interplay among the actors. The last type of interaction in Kooiman's model involves interventions. These are more formal and procedural, and can be described as hierarchical governance. An obvious example of this is the relationship between state and citizen, whereby the state governs the citizens with certain procedures and authorities. This relates quite closely to the World Bank's model of institutional governance.

As Kooiman explains, the various interactions of governance happen simultaneously in the processes of governance that he terms dynamism, intentionality, and diversity. Dynamism refers to the continual changes in society where societal entities are always creating political movement. Thus, an old system can be changed by a new system through critical movement on the part of political actors. Intentionality is the subjective knowledge, interests, goals, and missions of governance actors; while diversity is the configuration of governance actors in each interaction (Kooiman 2003). Essentially, these simultaneous processes of interactive governance should be in balance, and this requires appropriate governance to ensure constructive interactions where constant and equal negotiation and renegotiation are practiced among the actors. Thus, his model draws on an understanding of self-governance, co-governance and institutional governance. However, it is important to recognize that there is a danger within this that when powerful actors dominate interactions the co-governance model can turn into hierarchical governance; consequently, this raises particular concerns regarding impartiality and how to promote it in governance.

1.3.2 Impartiality in Governance

Kooiman and Torfing's notion of interactive governance in which all actors have equal positions is founded on the concept of impartiality that has been developed in political philosophy. In this respect, Mendus argues that impartiality is

closely associated with the requirement to treat everyone equally by, for instance, according them equal rights or granting them equal consideration in the distribution of social and political benefits (Mendus 2002, 2).

While, according to Held:

Being impartial means being open to, reasoning from, and assessing all points of view before deciding what is right or just; it does not mean simply following the precepts of self interest, whether based on class, gender, ethnicity or nationality (Held 1999, 239).

Impartiality in politics is nurtured by the notion of deliberative democracy which emphasizes an equal position of all actors in politics and involves respect for the “reasoning of the point view of others” (Held 1999, 239). Thus, ideally, interactive governance realizes equal interactions between actors, which requires a process of understanding the reasoning of others.

As Rothstein and Teorell (2008) argue, when all actors can participate in equal interactions to achieve common objectives, then a good quality of governance is attained. Moreover, they argue that, in theory, democracy provides political space and access to power for all relevant actors; in other words, political equality. However, good quality governance relies on “the impartiality of institutions that exercise government authority”. Furthermore, how power is exercised to realize the quality of governance is determined by the level to which impartiality functions as a norm in the societal sphere (Rothstein and Teorell 2008, 166-167).

A critical understanding of the notion of impartiality as a determinant of quality of government begins with the question: How does a state regulate relations with its people through public authority/power? Rothstein and Teorell suggest this can best be understood by considering two dimensions to these relations. The first is the “input”, which refers to the public’s access to authority. The second is the “output” dimension that relates to the way authority is exercised. In addition, they assert that a further condition of impartiality in the exercise of power is realized when in the implementation of “laws and policies, government officials [should] not take into consideration anything about the citizen/case that is not beforehand stipulated in the policy or the law” (Rothstein and Teorell 2008, 169-170).

Furthermore, Rothstein and Teorell argue that to understand and measure impartiality we need to be able to understand the interests embraced by government officials and elites. They state that, just as there are two dimensions to the relations between the public and authority, there are also two dimensions of interest involved in understanding impartiality: type of interest and scope of interest, as explained below.

Type refers to the distinction between self-regarding and other-regarding interests. Scope refers to the “demos” question: How many are to be included? Here, the question is whether the type of interest that dominates is to be for “everyone” or if it is restricted to one’s friends, family, clan, tribe, or other such groups (Rothstein and Teorell 2008, 175).

Through combining these two dimensions, they argue that four spheres of conduct relevant to the context of impartiality become apparent: the state, the market, the family/clan, and any interest group involved, as presented in Table 2, below. Using these dimensions of interest, impartiality can be seen in terms of whether a policy/power may impact on the interests of all or of a few and whether the type of interest that decision makers have is self-regarding or other-regarding.

Table 2: Dimensions of Interest

		<i>Type of interest</i>	
		Other-regarding	Self-regarding
<i>Scope of interest</i>	“All”	The state	The market
	“Few”	The family/clan	The interest group

Source: Rothstein and Teorell 2008, 175.

This provides a means of assessing if government institutions, be they the police, the judiciary or the forestry department, are able to realize impartiality in governance because their interactions in relation to governance are guided by public interest. However, when their actions in the exercise of their power are dominated by self-interest, it means the governance is vulnerable to falling into the condition of partiality.

Reviewing to aid this process, both Held (1999) and Rothstein and Teorell (2008) assert there are four norms that indicate when impartiality is practiced during the exercise of power in governance: equality before the law, political equality, effectiveness/efficiency of governance and concern for the public interest. These are presented in the Table 3 with the corresponding situations that are liable to occur when impartiality is not achieved:

Table 3: Norms of impartiality and partiality

Impartiality	Partiality
Equality before the law	Discrimination: clientelism, patronage.
Equality: dialogue/negotiation, multiple actors.	Domination: intimidation, ignorance, vote buying.
Effectiveness/efficiency: merit system, equal concern and respect to citizens.	Ineffective/Inefficient: corruption, corrupt bureaucrat.
Public interest: all interests are accommodated and there is concern to ensure transparency.	Self-regarding interest/interest group: patrimonialism, corporatism.

Sourced: summarized from Rothstein and Teorell, 2008; Held 1999.

This makes clear that the pitfalls involved in governance that lacks impartiality range from discrimination and clientelism, in the case of lack of legal equality, through intimidation and corruption to corporatism and self regarding patrimonialism.

Thus, to summarize the issues involved in understanding the concept of impartiality, good quality of governance is based on the equal involvement of multiple actors in the exercise of power. This means that governance should be inclusive and free from any partiality on the part of the elites and decision makers. However, when political and/or economic elites take over the governance process with their partial interests, governance can be considered as being hijacked. Thus, hijacked governance is marked by discrimination, domination, ineffective/inefficient systems, and self-regarding interest as set out in Table 3. Theoretically, the hijacking of governance can be carried out by powerful actors or elites with a great deal more political/economic capital than community members.

This study mainly uses the concept of impartiality as a means of assessing the quality of governance in land conflict; in particular, it focusses on how impartiality in governance interactions can realize a modality of land conflict management able to resolve land conflicts. Thus, this study aims to connect quality of governance with the ability to implement fair and effective land conflict management, as discussed in detail below.

1.3.3 Governance and Conflict Management

As elaborated above, development creates conflicts of interest for the various actors involved, especially so in relation to land; and this needs to be governed effectively. While democracy is a system through which conflict can be managed and transformed in order to prevent violence and so to resolve issues for the common good, it is also a mechanism for managing and containing the violence that stems from conflict. When a development policy provokes conflicts, the state must be aware that governance is not simply an administrative system but must also manage and govern conflict that occurs as a result of the implementation of policies. Indeed, Zartman argues that this is a basic part of governance:

Governance is conflict management. Governing state is not only the prevention of violent conflict from destroying the country; it is the continual effort to handle the ordinary conflicts among groups and their demands which arise as society plays its role in the conduct of normal politics (Zartman 1997, 1).

In theory, conflict management aims at preventing or minimizing any form of violence that may arise from the conflict dynamics (Carpenter and Kennedy 1988; Rubenstein 1996; Bartos and Wehr 2003). Therefore governance, as conflict management, can be conceptualized as a process aimed both at preventing violent conflict and at transforming conflict into problem solving. Moreover, in a democracy, governance actors need to have positive problem solving strategies to avoid using violence as a conflict strategy since this merely creates destructive effects such as protracted conflicts without constructive solutions, as well as death, injury and environmental damage.

Zartman asserts that there are a number of approaches to conflict available to governments. He describes these as ‘procedural attempts’ and he denotes them using the acronym, RAISAR, which stands for reconciliation, allocation, institutionalization, submerging, adjudicating and repression (Zartman 1997, 12). Table 4, below, presents these six procedures and indicates the practices they manifest as.

Table 4: Procedures of Conflict Management

Procedure	Description	Practice
Reconciliation	Bringing the parties together to dialogue and negotiation so as to resolve the conflict.	Dialogue
Allocation	A direct government decision to resolve the conflict.	Policy
Submerging	A government initiative that overcomes the conflict by offering higher goals and problem solving.	Mediation

Institutionalization	The establishment of procedures permitting society to deal with the conflict through decisions on any of the issues affecting the groups. This includes an independent judiciary.	System
Adjudication	The government creates strong rules concerning the conflicting parties and determines what is right and wrong in the conflict.	Policy
Repression	The government uses violence to handle conflicts.	State violence

Source: I. William Zartman (1997).

The practice of these procedures can be mapped into three types: mediation and negotiation (dialogue), government policy, and state violence. In democratic countries, state violence is exercised according to what the state considers to be relevant crucial conditions, such as the need to stop communal violent actions. In respect to this, Zartman points out that repression is the most ineffective procedure in terms of good governance since in repression only the powerful actors dominate the conflict resolution or policy, which is liable to undermine any attempts to ensure impartiality (Zartman 1997, 12).

However, it is worth noting that, in a democracy, while the exercise of violence by the state can be allowed in the handling of a conflict situation, it needs to be controlled in the public sphere. The use of violence has received much serious attention from scholars of conflict studies, ranging from Charles Darwin, Thomas Hobbes, J.J. Rousseau, Emile Durkheim and Max Weber to more recent scholars, such as Johan Galtung, J. Paul Lederach and John Keane. The more recent debates that are relevant to this thesis revolve around two main approaches to the concept of violence. First, violence is defined by Johan Galtung broadly and from a macro perspective. He argues that it is important to consider the potential impact of violence from a broad perspective that is, at least, not narrower than the form of the action itself. In relation to this, he states that “an extended concept of violence was indispensable” (Galtung 1969, 168).

Galtung created the dual concept of structural violence and direct (personal) violence. Structural violence is silent. However, it creates social injustice where people become poor in the midst of abundant natural resources and people cannot obtain land despite living in the vast areas of the country. Direct violence is more dynamic because it involves social actions, such as attacking, damaging and threatening. Consequently, it is also more visible.

The second understanding of violence that is relevant in the context of this paper is that suggested by John Keane. He argues that violence should be distinguished from other concepts, such as human security. Thus, through this, he suggests that violence can be limited to specific dimensions, namely actions, including those carried out by the state, or those with power; these are intended to injure, threaten and kill. This more specific conception of violence provides clarity on what constitutes violence and when an act should be considered as violence or as an accident. According to Keane, Galtung's theory of violence, including as it does all things at the personal, cultural and institutional levels, is too broad and unclear. Hence, he believes that violence should be defined more soberly and less normatively (Keane 2004).

Keane traces the etymology of violence to its roots in the Latin word, *violentia*; this means 'the exercise of force' against someone who is thereby 'interrupted or disturbed' 'interfered with rudely or roughly', 'desecrated, dishonored, profaned, or defiled'. Thus, he defines violence as an intentional action, involving the imposing of direct but unwanted physical obstruction on the bodies of others, who are consequently made to experience a series of effects ranging from fear, speechlessness, mental suffering to pain and death. He asserts that an act of violence has intentional components, namely, to directly harm the body of others, to deny the subject's freedom of speech and freedom to act, and institutional violence or bureaucratic violence. As Keane (2004, 35-36) states, institutional violence is done "by those who inflict physical pain and suffering upon others based on the logic and imperative of institutional system in which they are operating. Violence tends to become 'anonymous'." Generally, the effect of violence on the victims is to create a feeling of insecurity whereby they feel hunted, terrorized and marginalized like an animal (Keane 2004).

Along different lines, Englander describes violence as divided into two orientations: instrumental aggression and hostile aggression. He explains that instrumental aggression is the violence used to achieve certain objectives, such as maintaining or gaining particular resources. Consequently, this tends to be ideological or economic. On the other hand, hostile aggression is mobilized with the intention of injuring, torturing or destroying opponents. This type of violence is more fueled by hatred, vengeance and emotion (Englander 2008, 6-7). In practice, instrumental and hostile aggression tend to be mixed in a complicated way and state violence is, therefore, likely to be fueled by a mixture of the two types of violence. As instrumental aggression, state violence is intended to protect government interests while, as hostile aggression, it is aimed at hurting and causing genocide of the people.⁹

The number of land conflicts and related state violence that have been witnessed in Indonesia demonstrates how traditional conflict management has not been practiced successfully. To understand how this could be conducted more effectively in practice, more recent researchers have developed the concept of responsive conflict management. An understanding of this forms a basis for future discussion in this thesis that relate to the methods and standards necessary to manage land conflict so as to ensure constructive solutions to the land conflicts in Indonesia

1.3.4 Responsive Conflict Management

Responsive conflict management, which is based on the concept of responsive democracy, is a more recent development in theories of conflict management that is especially relevant to this thesis since it constitutes a practical way of implementing the notion of impartiality elaborated above. According to the Online Etymology Dictionary, the term, ‘responsive’ comes from the Latin word *responsivus*, which means “making answer” or “responding to influence or action”.¹⁰ Baum (2011) argues that responsive democracy is characterized by speed and quality of a good response to a wide range of public demands or grievances. In terms of development policy, responsive democracy

⁹ In conflicts in Indonesia, such as the land conflict in my case study in Lampung, political elites often stigmatize grassroots people as stupid, uneducated, criminal or *preman* (a member of gangster). This form of violence has exacerbated the distance between elites and people.

¹⁰ Available at <http://www.etymonline.com/>. Accessed August 21 2012.

aims to build a system and culture that enables strong responsiveness to the issues and aspirations of people relating to development. He argues that the main principle of responsive democracy is to reach a common good through mechanisms of deliberation. In practice, responsive democracy is optimally implemented at the level of local politics where direct communication is more effective and easier to conduct (Baum 2011). In relation to this, Johannsen and Pedersen argue that the democratic system ideally creates a responsive state that is characterized by constructive interactions among developmental actors; when such interactions become institutionalized, they constitute an intensive, equal, political communication and cooperation (Johannsen and Pedersen 2005, 3).

Indeed, when Indonesia's democracy was decentralized to the level of local politics, the aim was to encourage the realization of a deliberation process that included multiple actors involved in the development process (Diamond 1999; Held 1999). The intention behind this was to construct a form of responsive conflict management by supporting practices of political elites that favor impartiality in the interactions of governance as a means to resolving conflicts in a development policy.

In theory, such constructive interactions and cooperation are sustained by norms of impartiality in order to nurture the common good. Hyden and Samuel, from the UNDP Bureau for Development Policy Democratic Governance Group, urge that a responsive state is not only effective in undertaking policy, but also gains its legitimacy from the people through participatory democratic means (Hyden and Samuel 2011, 2). Thus, conflict management of a democratic state must become responsive by enabling more public participation, deliberation mechanisms, equal negotiation, and peaceful means of conflict resolution rather than violence. Moreover, responsive conflict management is an institutional design, system and practice that is intended to solve conflicts by mainstreaming democratic norms and principles. Therefore, theoretically at least, interactive governance with its equal interaction of actors realizes responsive conflict management.

1.4 Conclusion

This section presented a brief review of the academic debates regarding conflict, conflict management, and impartiality in governance. One of the challenges in this study is to explain conflict management in terms of the concept of governance so as to provide a foundation for the main analysis of land conflict management in Indonesia. In order to provide a clear explanation of the concepts involved, this chapter discussed different perspectives on conflict theory and development with the aim of understanding how development contains the root causes of conflict and so creates a conflict dynamic among the actors involved. The three root causes of conflict in national development identified are the inequality of ownership to the instrument of production in society, different interpretation of actors of the reality of a situation, and the domination of political economic oligarchies in the social structure and system, including the economic system. These, in turn, need to be managed through good governance in order to achieve a common good.

As this study is concerned with the management of land conflicts in Indonesia, where the state is ostensibly democratic, it adopts interactive governance theory, which understands governance as an equal interaction among the actors from all levels of the community. Ideally, this form of governance enables the actors involved in land conflicts to achieve what Kooiman describes as interplay interactions, which take the form of partnership and cooperation among the governance actors. However, if a powerful actor dominates the interaction, the governance will become hierarchical and will manifest as an intervention by government that is imposed on the others actors. Moreover, when the government and its political elites support the economic elites, the intervention will further marginalize community actors.

Furthermore, the interactions among the actors will affect the form of conflict management used which, as described by Zartman, may involve any of six procedural attempts: reconciliation, allocation, institutionalization, submerging, adjudication, and repression. However, Zartman emphasizes that the last of these, the repressive procedure, is not a constructive one because it prioritizes violence. As will be explored in detail throughout this thesis, in terms of land conflicts in Indonesia, the choice to use

state violence as part of a repressive procedure of conflict management is driven by the powerful actors, that is, the government and economic elites. However, democracy requires governance actors to employ interplay interactions among the actors so as to ensure that no powerful actor dominates the proceedings. Through this, responsive conflict management that employs an equitable negotiation process can be practiced to enable peaceful resolution of land conflicts.

Thus, even in countries that have achieved some level of democracy, governance relating to land conflict management remains deeply problematic. In the next chapter, I examine the Indonesian political context in which the land conflicts have developed to provide a background to understanding the current situation and the issues involved.

Chapter 2

Indonesia's Political Economy and Democracy

2.1 Introduction

Indonesia is currently the world's largest archipelagic country with more than 17,000 islands scattered over the equator with a total land area of approximately 1.9 million square kilometers (750,000 square miles). There are five main islands: Java, Sumatera, Kalimantan, Sulawesi and Papua. Around 6,000 islands are inhabited although the population is concentrated in Java Island, where the capital of Indonesia, Jakarta, is situated. Indonesia is the fourth most populous country in the world with approximately 255 million inhabitants according to a recent study. Indonesian society is diverse in terms of ethnic, religious, tribal and other identities. Indeed, with more than 300 ethnic groups and over 250 different spoken languages, it is much more diverse than its neighbor, Japan. In administrative terms, Indonesia has 33 provinces, 399 regencies, 98 municipalities, 6,694 sub-districts, and 69,000 villages. Its political system has been based on democracy since 1999.

Land conflict and its governance cannot be understood separately from the historical context of Indonesian political economy. The current situation, which can be described as escalating complexity and violence of land conflicts, is the result of a long period of development since the era of colonialism. Since its independence, Indonesia has basically adopted a liberal democracy by accepting the nature of its multi-identity groups. In 1955, 172 political parties participated in the first Indonesian general election. The four biggest political parties were the *Partai Nasional Indonesia* (PNI) (the Indonesian National Party), the Islamic Masyumi Party, the traditionalist Sunni Islamic *Nahdlatul Ulama* and the *Partai Komunis Indonesia* (PKI) (the Indonesian Communist Party). Four years after this first election, President Sukarno declared the *Dekrit Presiden* (Presidential Decree) of July 1959 in response to the failure of Constituent Body to formulate Indonesia's new Constitution to replace the *Undang-Undang Dasar Negara Republik* (UUD) of 1945. Following this, nationalist and

religious political parties shared power under Sukarno's semi-dictatorship as the Guided Democracy system. Sukarno was well-known internationally, in particular, for resisting the domination and interests of Western countries. However, in 1966, General Suharto replaced Sukarno as Indonesian president following an attempted military coup and established the New Order regime. This continued until 1998 when the Suharto lost power to be replaced by the more liberal form of democratic system that is still in power in 2015.

In Indonesia's history, each period of the different political systems had a different concept of national development. However, in every period, land conflicts always occurred following the introduction national policy on development. This chapter traces the context of Indonesia's political economy, firstly, giving an overview of the various approaches to development under the different regimes and then discussing in detail how the various elite elements have come to hijack Indonesian governance.

2.1 Development in Indonesia

Development under Colonialism

What was the meaning of development for the Dutch government in Indonesia during the colonialist era? As discussed in Chapter I, the French colonial government had defined development as the process of exploitation of any resources (Wallerstein 2004). Similarly, in the context of Dutch colonialism in Indonesia, the meaning of development was to exploit and draw profit from the country's land and natural resources. Therefore, the Dutch colonialist government and private enterprises mobilized their power resources, such as military force and bureaucratic control, to enforce their exploitation process in Indonesia (Ricklefs 2005).

Before the Dutch government, the *Verenigde Oostindische Compagnie*, in English, the Dutch East India Company (hereafter, VOC), had already monopolized trading in South East Asia from as early as 1602. Java Island was then under the control of VOC through regents, whose administrative districts were known as regencies. England took over Java from VOC in 1800 under Governor Raffles but returned it to the Dutch in 1816. Following this, in the years between 1820 and 1830, the Dutch government

enforced a cultivation system (*cultuurstelsel*) that suited its needs by compelling the Indonesian farmers to plant sugar, coffee, tobacco, pepper, cotton, cinnamon, and tea. The Dutch colonialist system fundamentally aimed to protect their interests in exploiting any natural resources, particularly through the plantation industry and cultivation system that were massively increased under Van den Bosch, the Governor General of what was then known as the Dutch East Indies from 1830 to 1877.

According to Geertz, this cultivation system was created throughout South Asia to supply the international market. In Indonesia, especially Java Island, the colonial government controlled the entailed system that was designed to extract cash crop production (especially sugar) from subsistence-oriented peasants. Geertz termed this system that involved both commercial and subsistence crops, “a dual economy” to explain the cultivation system of colonialism which created *agricultural involution* rather than development. Furthermore, he states that, in response to the world commodity prices and the first collapse of the global market, the capitalist administration of the Dutch government then took over land and labor for producing sugar, indigo, coffee, tobacco and other commercial crops so as to compensate for the lost income (Geertz 1963, 117-8).

The first attempt at regulating land use came in 1870 when the Ministry of the Dutch Government in Indonesia, under Engelbertus de Waalwas, issued the *Agrarische Wet 1870* (in English, the Agrarian Law) aimed at controlling and managing the land use policy. According to some scholars, the *Agrarische Wet* was created to support the Dutch Government’s policy on the cultivation system. Before *Agrarische Wet* was issued, the cultivation system was implemented randomly by the colonials occupying any of the Indonesian people’s lands without respect for their ownership, whereas *Agrarische Wet* acknowledged their ownership of the land through a legal document. However, one of the main purposes of *Agrarische Wet* was to regulate the use of land for the benefit of the plantation industry in Indonesia by the Dutch Government. This law stimulated the establishment of numerous Dutch private companies and provided them with *erfpacht* (rights to cultivate). According to Harsono, there were three types of *erfpacht*: (1) rights to plantations and large farms, up to a maximum of 355 hectares on Java Island and 3,550 hectares on other islands; (2) rights to plantations and small farms

for the European “poor” or social communities in the Netherlands Indies, up to a maximum of 355 hectares in Java Island and 3550 hectares in other islands; and, (3) rights to a health resort house and estate covering a maximum of 350 hectares (Harsono 1995).

In addition, the Agrarische Wet implemented a dual system through which to regulate land use, this involved Western laws combined with a local system specific to each region. In this way, the dual system of land use meant that Indonesian society should follow their local system which could not easily be transformed by the Dutch administration, while laws managing land ownership, as the part of civil law, were set up primarily for foreigners or non-Indonesians. Thus, Indonesian society during the colonialist era continued using the customary law system (*hukum customary*) which was different for each area; this was not written legally by the community but had been practiced as a reality through a long period of their social history. Land management by customary law was implemented collectively without any written and legal documents but with a consensus based on oral communication and witness. Therefore, community’s members used natural signs, such as a river or a hill to indicate a land border in this form of customary land management.

However, the dual system of Agrarische Wet was not enforced with a genuine regard for customary law. This lack of respect can be traced back to the *domeinverklaring* (the domain statement of the Agrarische Wet), which asserts that all land for which ownership could not be proven by an individual or community became the property of the state. Not surprisingly, the *domeinverklaring* created a tension with customary land management that was not supported by written/legal documents. In fact, through this domain statement, Agrarische Wet provided a legal way to take over the land of Indonesian people, both individual and customary lands, for the benefit of the cultivation industry. For instance, it granted the Dutch Government the right to take “unowned” land and rent it to companies for up to 75 years. Three of these *domeinverklaring* were created for different regions, namely Domeinverklaring (Stb. No. 118 of 1870), Domeinverklaring for Sumatera (Stb. No. 94 of 1874) and Domeinverklaring for Manado Regency (Stb. No. 55 of 1877).

Even at the time, many Dutch intellectuals criticized the Dutch Government regarding the implementation of Agrarische Wet because it meant that the Indonesian people became impoverished in their own land. In 1902, there was a protest against the Agrarische Wet in the form of the *van Kol Lawsuit*. In response to the critics and protest, the Dutch colonial government developed a social policy known as the Ethical Policy. This contained six programmes: irrigation, reforestation, colonization (transmigration), education, health, and credit (Ricklefs 2005). While this was intended to improve the situation for the Indonesian people, the Ethical Policy had several negative impacts on Indonesian society; these included horizontal land conflict and the creation of new forms of slavery on the part of the Dutch companies. This supports the assertion that the primary aim of the development of Dutch colonialism in Indonesia was to gain profit from the country's resources (Wallerstein 2005; Geertz 1963). Thus, land management during the colonial era was obviously intended to sustain development based on the capitalist interests of the colonial government. Furthermore, after Indonesia achieved independence in 1945, the Dutch government's land management system was to have a strong influence on Indonesia's future law system and land policy.

The Guided Democracy Era

In the post-colonialist era, after several years of the National Revolution, followed by a liberal democracy that did little to change the colonial influence on land use, the Indonesian government transformed land management into an integrated law system under Law No. 5 of 1960, known as the Basic Agrarian Law (BAL). This was the result of the policies of the Guided Democracy system that was introduced in 1957 by President Sukarno. During this period, resisting colonialism with its capitalist economic system became the major discourse in Indonesia. According to scholars of the sociology of law in Indonesia, such as Soetandyo Wignjosebroto, the Basic Agrarian Law was very much influenced by the political spirit of Guided Democracy to resist and detach the country from the liberal economics of capitalism. He states:

A very overlooked at the time; it was not results of the laws were made. In an atmosphere of Guided Democracy that wants more defined and disclosed at the time, it was revolutionary awareness to reject the thoughts that came from liberal capitalist countries (Wignjosoebroto 1994, 159).

Furthermore, Wignjosoebroto argues that the Basic Agrarian Law was still fundamentally influenced by the colonial (Western) law system through its private ownership system. The government's lack of expertise regarding the law system, particularly the customary law of Indonesian society, also had a serious effect on the content of this law. Although I discuss this law in detail in Chapter 3, here it is worth noting that after the Basic Agrarian Law was decreed in September 1960, Agrarische Wet and its dual system were no longer part of Indonesia's land management and there were at least two main consequences of this. First, the new law terminated all old land registration and titling laws and regulations established under the colonial system. Therefore, the dual system of Western law and customary law was dissolved. All land that had previously been registered under Agrarische Wet was to be adjusted to the new system and any land that was not registered in line with the new system within a certain period would become state land. Second, the Basic Agrarian Law established a system of land rights involving a mixture of tenure decrees and with different citizenship requirements determining the type of rights to be granted (Article 20-48). Moreover, as a strategy to protect Indonesian people from capitalist expansion, the new ownership system excluded foreigners from participating in it.

Following the implementation of the Basic Agrarian Law, the government issued two sectoral laws – that is, laws specific to certain sectors – namely, the Basic Forestry Law (1967 and 1999) and the Spatial Planning Law (1992). These were the legal influences that, later on, became strong factors in weakening and reducing the National Land Agency's present day function and role in conducting responsive conflict management regarding land-based issues.

The New Order: Developmentalism under Suharto's Oligarchy

After the era of Guided Democracy ended in 1966 following a failed military coup, Indonesia became a developmental state under the New Order regime of Suharto. Basically, a developmental state is rooted in the theories of John M. Keynes regarding the role of the state in controlling the market, which asserts that the state should take a strong role in any development project. This concept was developed to provide a solution to the Great Depression in the US during the 1930s and, in the form applied to developing countries, it is known as *developmentalism* theory. The concept of developmentalism promotes the stronger role of the state in managing and intervening in economic development instead of letting the market actors have a free rein. In particular, the state has a large role in planning and implementing development policy. Hence, a consequence of this is to build a strong state apparatus, such as an effective bureaucracy to enhance executive capacity and a strong police force and army to protect political stability (Leftwich 1998; Wallerstein 2004). The concept of developmentalism was adopted widely by Latin American countries, such as Brazil in the 1940s with the support of the US.

Generally, in developing countries, a developmental state manifests as an authoritarian regime in which interest groups such as civil society and economics actors are tightly controlled. All interest groups must agree to and follow the regime's policy. In Indonesia, as in many other developing countries, the main purpose of controlling the interest groups' activities was to realize national stability. Although the New Order regime was founded on the state philosophy of *Demokrasi Pancasila* (Pancasila Democracy), which emphasizes the concept of the state's social function and the principle of democratic deliberation, in practice, Demokrasi Pancasila was a political justification by which to quell public criticism of national development policies. Academics and social activists who were critical of Suharto's approach were classified as anti-Pancasila and could be jailed without a court process. Moreover, the New Order strengthened the roles of the state bureaucracy and security institutions – namely, the Indonesian national police (hereafter, Polri) and the military forces (hereafter, TNI) - in

order to protect the state from any political interruption that might cause instability (Evers and Schiel 1990; Robinson and Vadiz 2004).

However, besides its strong control of civil society, the developmental state of the New Order was also characterized by corruption within the state's institutions. Winters argues that this relates to the Suharto *sultanic oligarchy* whereby a few groups held a great deal of power and privilege, although strictly under the control of Suharto. He states that the centralization of power in Suharto's oligarchy even controlled the judicial institutions. Therefore, the law functioned to protect the oligarchy (Winters 2011). This, basically and intentionally, created a 'patrimonial administration', with the aim of ensuring the bureaucracy's loyalty to the Suharto oligarchy. Brinkerhoff et al. argue that patrimonial administration is mostly marked by control by dominant political elites, particularly through patron-client practice (Brinkerhoff et al. 2002).

The New Order achieved a high level of economic growth through industrialization, both manufacturing and natural resources based industry (Touwen 2010; IEO 2003). Consequently, during the 1980s and 1990s, the Indonesian developmental state was very successful in reaching its economic goals. Overall, the average economic growth during the New Order era was 7-8 percent per year; an achievement that is extremely different from the recent economic growth in 2009 that only achieved 4.5 percent per year (ADB 2009). Anne Booth refers to this as a "growth miracle". She explains that starting in 1968, the Indonesian economy grew at historically unprecedented rates and, although there was some slackening in the pace of growth in the years from 1982 to 1986, after 1987 Indonesia shared in the growth boom enjoyed by its ASEAN neighbors, Singapore, Malaysia and Thailand (Booth 2001, 1).

Thus, with the start of the New Order, the country embarked on a long period of economic growth and became a magnet for foreign investment, particularly in the petroleum, forestry and mining sectors (Thorburn 2004, 7). The forestry industry, such as wood and raw rubber, became one of the biggest industry sectors in terms of increasing national income. However, this massive industry created violent conflict between local communities living in the forests and the state or companies, which were backed up by military and police forces. Violent conflicts also occurred between

migrant farmers and indigenous people. In turn, the elites' response to the violent conflicts served to reinforce their political and economic power, as Thorburn states:

Confrontations between local communities and state - and armed forces-backed concession-holders and migrant farmers - were frequent and often violent. Cronyism and patronage led to ever-increasing concentration of political and economic power in the hands of a small group of conglomerates closely aligned to President Suharto and his family members, and tight political controls and a large and powerful intelligence and security apparatus suppressed dissent and public discussion of the pace and direction of change in the country (Thorburn 2004, 8).

According to data from *Serikat Petani Indonesia*, the Indonesian peasants' union, the Suharto regime transformed customary land into forest industry and commercial estates. In 1998, only 666 companies controlled approximately 48.3 million hectares of forest concessions and industrial forest plantation; thus, on average, each company controlled up to 72.6 thousand hectares. Moreover, among the companies, there were no more than 12 conglomerates controlling about 16.7 million hectares of forestland. In addition, Perum Perhutani (a state owned enterprise that has the duty and authority to enforce the exploitation and protection of the forests) claimed control of three million hectares of forestland. In 2000, there were 2,178 companies that controlled large plantations with a total land area of 3.52 million hectares (Serikat Petani Indonesia 2000, 5). According to Muslim Nasution, the former Minister of Forestry, Suharto and his cronies' companies controlled up to 8-9 million hectares of land, including forestland, through the HPH and HTI schemes (Nasution 1998).

The data on state land policy, given above, demonstrates the partiality of governance through which the capitalist group closest to the regime received more privileges enabling them to have greater control over land use. It is this lack of impartiality that has created the damaging gap between communities and industry in terms of land use. Drawing on their reports on land use disparity, Bachriadi and Wiradi divide the state land policies of the New Order into six forms of imbalance.

First, the state controls 74 percent of the total land in Indonesia. Moreover, in 1991, Suharto's government granted up to 60.2 million hectares of forest land to 567 companies. In 1999, after the collapse of the New Order regime, the subsequent government granted a further 21.6 million hectares of forest land to 420 companies and, in 2005, 28 million hectares to 258 companies (Bachriadi and Wiradi 2011). Second, during 2009, the state land policy also took over a great deal of land for mining projects, providing 555 mining companies with up to 264.7 million hectares for large mining projects. Third, there were significant imbalances in the land policy that granted land to the plantation industry. For instance, in 1998, the government granted land concessions of 2.97 million hectares to 1,338 private plantation companies while, in 2000, the land concessions for the plantation industry increased to 3.52 million hectares, and by a further 770 thousand hectares in 2005. From 2000 to 2012, the area of land that the government granted in land concessions for palm oil plantations reached 10 million hectares. Fourth, there were significant imbalances inherent in the Suharto government's land policy for new urban development and tourism in 1993, which covered an area of 1.3 million hectares. Moreover, in 1998, land developers were given permission to undertake numerous new urban projects on 74,735 hectares, these included building housing, country clubs and golf fields. Fifth, there were further imbalances in the land policy's support for industrial projects. In 1998, under Suharto, the industrial sector got permission to use up to 17,470 hectares of land. Six, the government provided permission to large farmers to control up to 21.5 million hectares (Bachriadi and Wiradi 2011).

From the data above, it is clear that during the New Order era the government tended to be far from politically impartial and the legal system of land management benefitted the interests of giant businesses. Moreover, the Basic Agrarian Law did not protect small farming communities nor did it respect customary law. As mentioned in Chapter I, the New Order regime dealt with the complaints and protests of small farmers and customary communities using state violence, whereby the government mobilized the state apparatus, in particular the military and police forces, to crack down on any protest or criticism.

However, Suharto's approach to land management was brought to an end when the Asian economic crisis in 1997 dragged Indonesia into political and economic collapse, which provoked criticism of his policies. The Independent Evaluation Office (IEO) states that inflation between 1997 and 1999 was approximately 10 percent per year; this is slightly worse than in other East Asian economies (IEO 2003, 11). There were various root causes of financial crisis in Indonesia, relating both to the global economic dynamics and to the internal conditions in Indonesia. At one level, the financial crisis can be understood as being triggered by the collapse of the regional stock market. However, internally, the crisis can be seen as a result of the vulnerable politics of Indonesia and the economic devastation of the banking system during 1996. The collapse of banking sector exacerbated the Indonesian financial crisis in which the main state banking institutions all had bad debt ratios. As a consequence, 16 banks closed in 1997. The overall effect was to destroy both Indonesian society's and the private sectors' confidence in the financial system. To give an idea of the extent of this collapse, it is worth noting that before 1997 there were 238 banks but only 162 banks remained in 1999 (IEO 2003).

The internal cause of the political collapse is generally attributed to the weakening of Suharto's control to the benefit of various political groups, including the Golkar Party and the military elites. This created a space for the emergence of political protest against the New Order and civil society elements took the opportunity to highlight Suharto's fatal errors in his governance of national development that they considered offences against justice. These included political repression; the increasing of corruption, collusion and nepotism in bureaucracy and other state institutions; the domination of Suharto's oligarchy, family and his cronies in the economy; and state violence. These mistakes provoked widespread protest against the New Order regime, which forced Suharto to step down from his political throne in 1998.

The Era of Democracy

Bacharuddin Jusuf Habibie, the vice president in Suharto's final era, took over the position of president in 1998, after Suharto was removed from office for corruption.

Habibie moved the democratic system in Indonesia forward in response to civil society's demand for *reformasi total* (total reform). He embarked on a strategy of responding to the people's grievances regarding political reform by promising free and honest elections in 1999, releasing political prisoners, decentralizing political power, lifting restrictions on political parties, and ending censorship of the press (Bunte and Ufen 2009, 3). Another policy that reflected his commitment to democracy was the 1999 referendum for East Timor. Overall, Habibie's first wave of Indonesia's political reform was successful and based on this and his institutional reform, Indonesia was able to build the foundations of democratization.

The general election of 1999 brought Abdurrahman Wahid, also known as Gus Dur, to power as the first democratically elected Indonesian president.¹¹ During his rule, the central government decided to decentralize state power by implementing local autonomy at the provincial level, based on Law No 22 of 1999. Through this, local government had more authority in planning and implementing policy development and inviting both domestic and foreign investments. However, Abdurrahman Wahid only ruled for 17 months because he was accused of corruption in the Bulog Gate scandal. Following this, Megawati Sukarno Puteri, Wahid's vice president, replaced him as president. During Megawati's era, local autonomy was transferred from the provincial level to the district level for the reason that the government wished the developmental process should be closer to the people. Hence, Law No. 22 was amended by Law No. 32 of 2004 (the Local Government Law). Local government also gained more rights in terms of a more equal fiscal balance between local and central governments based on Law No. 25 of 1999, which was later amended by Law No. 33 of 2004.

In line with this political decentralization, Indonesian democracy also embraced neo-liberalism. Although the embryo of economic liberalism had been present since the 1980s, the shift from a developmental state to a neo-liberalism state clearly happened more extensively following the start of the democratization era in 1998. Previous to this, in 1996 when the Indonesian economy collapsed, the International Monetary Fund (IMF) had forced the government to sign a Letter of Intention committing Indonesia to

¹¹ Abdurrahman Wahid was elected by *Dewan Perwakilan Rakyat Republik Indonesia* (DPR RI), the Indonesian House of Representatives, as the result of the 1999 general election.

introduce a structural adjustment program (SAP) to reform the economic system. IEO reports, the SAP in Indonesia was no different from that in other countries (Grenville, 2004). Its main aims were to: (1) reduce inflation; (2) reduce the national budget deficit; (3) stimulate exports; and, (4) make a schedule for foreign debt payment. Hence, to realize these goals, the IMF required the Indonesian government to implement several packages of structural adjustment programmes (IEO 2003, 30-4).¹²

While economic liberalism had alleviated the state's control and role in economics development in Indonesia, the SAP can be seen as the introduction of deregulation, privatization of all state owned enterprises (BUMN) and cancelation of subsidies for social services, such as education and health. In a few words, the intention was to let the private sectors take care of the country.

The decade between 1999 and 2009 constituted a period of transitional democracy which was marked by several political, social and economic issues, such as the political and economic contestation of the domination by the state power structure, corruption, and the revival of the New Order's political economic network. Some scholars, such as Maley, link this period to the major phenomenon of what he terms as the "*protracted transition*" of democracy (Maley, cited in Bunte and Ufen 2009). Maley asserts that Indonesia's democracy was in fact stuck in the transitional phase and consequently democratic processes were only conducted procedurally, without really adopting the underlying values. The procedural democracy was mainly manifested in the implementation of general elections and the multiparty system. However, democracy's values and principles, such as transparency, inclusiveness, participatory and nonviolent action were still not respected and had little influence in Indonesia's governance. The consequence is that poor quality of governance where non-participative policy, social injustice, corruption and state violence are reproduced.

The roots of this protracted transition phase of democracy can be traced through the phenomenon of oligarchic domination in the political economy. For more than ten years, a major political sociological phenomenon had been the establishment of new power centers of the oligarchy. As described in Winters' theory of *sultanic oligarchy*,

¹² See also for more details SAP in the Letter of Intention at <http://www.imf.org/external/np/loi/103197.htm>. (accessed in September 6, 2010).

while Suharto was the only center of power during the New Order, the collapse of his regime rendered an opportunity for the emergence of several new oligarchic power centers (Winters 2011). Moreover, liberalism, which provided a free arena for the political and economic elites, became the context for these new oligarchies to flourish. At the sociological level, the process of formation of new power centers had its roots in the revivalism of New Order political economy when the economic elites of Suharto's regime attempted to reassert themselves. During this time, the Cendana Family, which comprised the Suharto family and its network, established several political parties. For instance, Siti Hardiyanti Rukmana, Suharto's oldest daughter, and the retired General Hartono established the *Partai Karya Peduli Bangsa* (PKPB) (The Concern for the Nation Functional Party) in September 2002. However, in the 2004 elections, the PKPB got only 2.11% of the national vote.¹³ Moreover, the Cendana Family had more than 300 corporations in various sectors, such as transportation, construction, plantations, banking, and farming (Tempo 1998).

The current political and economic elites, such as Abu Rizal Bakrie, Jusuf Kalla, Akbar Tanjung, Prabowo Subianto and even Susilo Bambang Yudhoyono are the "children" of Suharto's sultanate oligarchy. This was borne out when Abu Rizal Bakrie, now the Chairman of the Golkar Party, publicly asserted his mission to use Suharto's concept of the *Trilogi Pembangunan* (Trilogy of Development) in support of his presidential candidacy in the 2014 general election. The aim of this strategy was to promote national stability, economic growth, and equal distribution (Emerson 1999). Bakrie was confident that this would save and enhance Indonesian prosperity. However, even he revised the concept by using the term *Catur Sukses Pembangunan Nasional* which means Four Successes of National Development. He also introduced the concept of nationalism in the context of globalization into the *Trilogi Pembangunan* (Bakrie 2012). Clearly, this political adoption of Suharto's concept, albeit in a slightly revised form, reflects the ideological connections between Abu Rizal Bakrie and Suharto.

¹³ The political parties established by the Cendana Family failed to pass the *Komisi Pemilihan Umum* (the Indonesian General Elections Commission) verification for 2014 general elections. See Kompas, "Tiga Partai Keluarga Cendana Gugur," *Kompas*, October 18, 12. <http://nasional.kompas.com/read/2012/10/28/22132878/Tiga.Partai.Keluarga.Cendana.Gugur.di.Tangan.K.PU>. Accessed June 12 2012.

These elites generally have dual identities, i.e., both political and economic, as elaborated in Chapter I, and mostly came from Suharto's former network and those of the new political and economic elites. They established new oligarchies as new power centers in Indonesia. In order to protect their property and accumulate more money, they employed the practice of engaging in transaction services with the government actors and, through this, their power networks were reproduced within Indonesia's development. Thus, as before, the new oligarchies came dominate the state power structure and control the policy of development.

One pertinent example of this domination can be seen in the process relating to the acquisition of licenses for a company to buy customary land (FWI 2003). The purpose of this domination is to maintain the elites' position in their financial games and it is, in turn, maintained by money. Indeed, this game of money marginalizes local communities, both economically and politically. This stimulates many local communities to resist development policies through mass protest, strikes and civil disobedience. When such resistance escalates, governance in a democratic system should provide a peaceful negotiation mechanism. However, as discussed in the previous chapter, this is seldom the case and this lack is especially acute in relation to land conflict cases (Hidayat 1998). Indeed, instead of the establishing a negotiation arena to manage conflict cases in policy development responsively, the government passed a regulation that protected implementation of development policy, namely Government Regulation No. 6 of 2010 on Civil Service Police Unit. This allows local governments to establish local governmental law-enforcement bodies, known as *Satuan Polisi Pamong Praja* (hereafter Satpol PP), in order to protect the implementation of policy development.

Satpol PPs represent one of several means by which the state supports violence in order to protect and guard the implementation of policy development, which is backed up by Polri and the TNI. In practice, the introduction of Satpol PPs encourages local governments to shut down any deliberation mechanisms and most local governments use this to protect what they call public interest and development. As in the case in Priok Jakarta, the Satpol PP law was used to sanction injuring more than 100 citizens who were protesting against insensitive development in the area (The Jakarta Post

2010). This illustrates how, in Indonesia's case, conflict in response to development is being managed through state violence rather than negotiation, which results in human insecurity. This bears out Duncan McDuer-Ra argument that "the condition of insecurity can be derived from a lack of development but also from development itself, or at least the way development is implemented" (McDuer-Ra 2009, 31). In Indonesia today, the way development and the governance process are conducted is more reliant on state violence than democratic means.

Therefore, this thesis argues that the new oligarchies have hijacked Indonesia's governance which, in turn, means that land conflicts are not managed responsively. Instead of institutionalizing responsive land conflict management with a peaceful negotiation process and a transparent judicial response, the government chooses to use state violence. One case of this can be seen in part of the land conflict in Bima, West Nusa Tenggara during 2011 where, on December 24, the police shot and arrested protesters and local community members who were directly affected by proposed developments. As a result of the state violence perpetrated by the police, three people died and 19 people were seriously injured (Kompas 2011). According to a local NGO activist in Bima that I interviewed during the field research (who remains anonymous by request and is given the name Sofman here), the protest was sparked by the contentious politics of Bima's political leaders manifest in refusing to cancel a mining license for the company, PT Sumber Mineral Nusantara. Sofman argues that this controversial decision indicates that there was some form of transaction service being conducted between the local government and the mining company. He states

If the mayor of Bima cared for his own people he would not reject the request for the license cancelation. We know he got paid by the companies. So that is why he asked the police to wipe out the protesters (Sofman 2012).

Indeed, the domination of political economic elites creates inequality throughout governance interactions. Even now, when the democratic system is fully embraced, the involvement of society in the form of local communities' participation in formulating and implementing local development policy is weak. In relation to this, Fisher et al., in

their research concerning land conflicts in Indonesia's forest areas, states that land conflict was characterized by the weak role of the people in the decision making process. Moreover, their study indicated that the communities living in the surrounding forest usually had very low levels of education, a lack of knowledge about governance, and local traditional values that were generally very different to modern mechanisms of development; thus, they were isolated from the dynamics of the decision making process in several ways (Fisher et al. 1999).

Fisher et al.'s work highlights the results of the politics behind such inequality, which Manor (1998) argues is the result of the greater freedoms given to private enterprises combined with the disadvantages of civil society's lack of knowledge and means. As Manor states:

There is a dissonance between greater freedom for the private sector—with which the new key developmental state ought to develop an enabling relationship—and democratization ... But, greater freedom for market forces often tends to produce inequalities. This can make it more difficult for civil society as a whole—the entire array of organized interests—to play a more energetic role, because it sometimes damages the capacity of less prosperous groups to do so (Manor 1998, 148):.

In fact, land conflict in response to development projects is the form of unequal interaction in governance that most often ignores the position of people and the local community; while, due to its direct effect on local communities, it is particularly liable to provoke people to resist violently. Deininger argues that, in development programmes in general, the failure of the institutions in managing land rights to respond to the demands of key actors could be the cause of the phenomena of land capturing, violent conflict and resource indulgence that, in certain circumstances, can devastate societies' ability to optimize their economic potential (Deininger 2003, xii-xiii). Moreover, Evers points out that if land management by the state is conducted badly, conflict and violence are liable to break up the social world and this, he argues, is the case in Indonesia:

Land is a basic element of life in any society. If land rights are not protected and land administration is chaotic, tension and disputes over land will erupt. If dispute resolution mechanisms do not function, courts are not trusted, then, such disputes will broaden into social unrest and even violence. The arbitrary and non-transparent management and administration of land in Indonesia in the past has aggravated this potential for large scale discontent (Evers 2002).

Development in Indonesia has brought political economic elites and civil society / local communities into numerous land conflicts. The partiality in governance caused by the dominance of the oligarchies, then, tends to require an appeal to state violence to resolve these. As I have argued in a previous paper, in the context of Indonesia, state violence carried out by political elites in the power structure is justified by the assumed need to safeguard national interests, maintain order and ensure law enforcement (Susan 2010).

Moreover, in the same paper, I demonstrate that the consequence of state violence is the further marginalization of local communities, thus exacerbating one of the foundational causes of conflict. Indeed, numerous scholars assert that local communities are often marginalized in this process of conflict management through the exercise of state violence (Deininger 2003; Pons-Vignon and Lecomte 2004; Hidayat, 1998, Susan 2010). Since the state and political elites prefer to engage state violence to protect their interests than to realize equal interactions in governance processes, military force and police are often used by the oligarchies. Therefore, upon the request of the elites, the TNI and Polri often get involved in intimidating and expelling people from their lands (Suyanto 2004, 68; Sirait 2006).

It is important to note that, as yet, there is no tangible data to prove that the TNI and Polri are used to protect elites' interests. However, during the field research for this thesis, the local community and NGOs activists in Lampung Province deduced this from the TNI and Polri's alignment with the companies' interests. As Saiful, a local community member (anonymous by request) testified during an interview that "The

police are not neutral. They protect the company by intimidating and killing us. You know, the government is preparing a grave for us”.¹⁴

To summarize the situation in terms of involvement in the democratic process, there is a seriously low level of local community involvement in the decision making process relating to land conflict issues (Fisher et al. 1999; Suyanto 2004; Sirait 2006; Verbist and Pasya 2004). Indeed, it can be stated that Indonesia’s land conflicts are characterized by the absence of equal interactions in governance aimed at solving such conflicts. Rather than attempting to make equal interactions possible and so find peaceful problem solving methods for land conflicts, the state often puts pressure on the local community to accept the imposed development projects. This means that the absence of equal interactions in governance one of the most entrenched barriers to realizing responsive land conflict management.

Thus, in modern day Indonesia, land conflicts and the implementation of land laws are in a dialectical process with political economic context. As discussed above, the country’s post-colonial years can be divided into three contexts, namely Guided Democracy (1945 - 1966), the New Order (1966 - 1998) and the contemporary era of democracy (1998 - the present day). In the context of this thesis, what is of particular interest is that the domination of Suharto and some political economic elites to Indonesia’s governance became entrenched during the period of the New Order. This indicates that governance during this time was extremely biased and inequitable, and there was an absence of impartial norms such as equality before the law, equality in terms of access to resources, effective/efficient policy implementation, and respect for the public interest.

Indonesia’s current model of democracy is still being debated by socio-political scientists. It is considered to be a liberal democracy, although the Constitution implies socialist values. The state philosophy of Demokrasi Pancasila, inherited from the New Order, emphasizes the state’s social function and the importance of democratic deliberation. Although, as mentioned above, Suharto had used this to undermine

¹⁴ Saiful (anonymous by request), Interview with the author, 2011.

criticism, after his downfall in 1998, the new democratic system guaranteed political freedom, press, media and wider public participation.

Indonesia's present day democracy is often called a "pseudo democracy" because of the contradiction between the Constitution and many of the state policies. For example, the 1945 Constitution, Article 33 (3) asserts that earth, water and airspace should be controlled by the state for the welfare of the people. However, most of land and water laws are more favorable to the private sectors, such as the Mineral and Coal Mining Law, the Basic Forestry Law and the Water Resources Law.¹⁵ These laws are commonly perceived to undermine people's rights and to detach indigenous communities from their own lands and forests. Moreover, as most of Indonesia's laws are the result of the intentions of the political elites (as elaborated in Chapter 5), this suggests that the political elites and law makers create the laws on the basis of a 'self-regarding interest'. If the regulations instituted by the political elites provide greater opportunities to the economic elites than to the people in general, then, it would appear that there is a close relationship among elites: the interests of political and economic elites are pragmatically and ideologically combined in an oligarchic network. As elaborated in the next section this has produced very destructive effects for good equitable governance.

2.2 Oligarchies: Hijacking Governance into Partiality

The shift from a capitalist developmental state to an economically liberal state after 1999 had a distinct effect on the political economic dynamics in Indonesia whereby the strong position of the political economic elites' network in the political economic system has been directing national development policy. Economic liberalism is functioning side by side with political liberalism or liberal democratization; thus, the deregulation process is being introduced simultaneously with the implementation of a

¹⁵ Recently, the leaders of Muhammadiyah, the second largest Islamic organization in Indonesia, proposed a judicial review of several laws related to management of natural resources, such as the Oil and Gas Law and Water Resources Law. Din Syamsuddin, the president of Muhammadiyah, in a discussion with me on July 20, 2013, stated that recently Indonesia's law system only benefits capitalism which makes it a paradox in terms of democracy.

multiparty system.¹⁶ This created a complex dynamic in the relations of the political and economic elites. Sociologically, economic elites are understood to be the owners of corporations, which apparently have “unlimited” amounts of economic capital, while the political elites control Indonesia’s power structure and control the legal authority. Thus, Indonesia’s political and economic elites have developed a political economic network based on self-interest.

This network is recognized as being intended to maintain and safeguard their interests in the power structure, class system and economic sphere (Hartmann 2007). Such networks of political and economic elites are known as a political economic oligarchy (Mills 1956; Robison and Hadiz 2004; Winters 2011). In the context of Indonesia’s current democracy, the oligarchic system appears more complicated than it was in the New Order era because it is no longer centralized. Rather, it is a collaboration of political and economic elites that creates new power centers. As Williamson and Hadiz (2004) point out, “the politico-economic oligarchies” have formed a network of the elites from the New Order who survived the wave of democracy and reconstituted the oligarchy in a different form. Moreover, they state that

the oligarchy of authoritarian rule now became a diffuse and confusing oligarchy of money politics, as patronage networks and mechanisms for the allocation of public power and wealth were reassembled within the new arena of parties and parliament” (Williamson and Hadiz 2004, 188).

Furthermore, the role of local political and economic elites in creating these power centers is being strengthened through the current emphasis on local autonomy since they are able to grab more legal powers and more authority by which to formulate development policy so as to suit their own interests. In this process, national and local elites are able to develop strong collaborative relationships.

Moreover, the development of these new power centers during Indonesia’s democracy can be traced to the phenomenon of the elites’ dual identity. Since the New

¹⁶ During this shift, deregulation transformed the public status of educational institutions and state owned enterprises became private institutions. By 2011, 18 of 38 state owned enterprises had been privatized.

Order era, some economic elites have developed dual identities as they openly have positions in political parties, as government officials and political leaders. The following individuals are a few notable elites with dual identity at the national level: Abu Rizal Bakrie (Bakrie Group), Surya Paloh (Media Group), Jusuf Kalla (Kalla Group), Arifin Panigoro (Medco Group) and Hary Tanoesudibjo (MNC Group). Abu Rizal Bakrie, president of the Bakrie Group which is one of Indonesia's major corporations with a large scope of business interests, is now the chairman of the Golkar Party through which he promoted himself as the presidential candidate for the 2014 general election. Surya Paloh has just established a new political party in February 2010, namely *Partai Nasional Demokrat* (the Democrat National party) or *Nasdem* for short, which passed the legal verification by the General Election Committee to participate in 2014 general election. Jusuf Kalla was the former chairman of Golkar (2004-2009) and vice president of Republic Indonesia (2004-2009). Arifin Panigoro is the founder of *Partai Demokrasi Pembaruan* (Democratic Renewal Party). While Hary Tanoesudibjo, the owner of MNC Group, had participated in the Nasdem Party since 2012 but since 2013 has moved to Hanura Party as the head of advisory board.

In the current democratic state, these individuals with their direct interests in economic companies form networks of political elites that constitute the power centers which compete to influence and direct Indonesian national development. Thus, the present oligarchy is not so much a single power source centered on a leader as a network of ad-hoc political and economic elites who work together and serve each other for their own sectional interests. These are generally fulfilled by means of transaction services which provide two way benefits between a politically powerful actor and service providers. In understanding transaction services, James Scott offers the concept of the patron-client relationship. This is ad hoc rather than formal. Scott argues that *patron-client* relations involve an exchange between actors with different roles relating to their social positions. It can be understood in terms of dyadic ties where one role is the patron and the other is the client. The patron has much greater power resources and influences to provide benefits and / or protection to the 'lower' status client. The latter reciprocates by offering general support and assistance, including personal services to

the patron (Scott 1972, 92-3). Brinkerhoff et al. argue that in contemporary society, patron-client practice creates a *clientalistic* practice (Brinkerhoff et al. 2002).

Indeed, such patron-client practice not only sustains the oligarchy but also undermines democratic processes throughout the country. Moreover, to understand the context of Indonesia's land conflicts, it is important to trace the mechanisms whereby this oligarchy directs the political economic system and development policy. In respect to this, transaction services are the social chemistry through which the dual identity elites at national level relate to those at the local level. Thus, companies owned by dual identity elites are able to build strong networks and control local elites at the same time. During the field research, this study found that national power elites utilize economic capital (money) and political authority (political party) to strengthen their political economic interests. Through this, the practice of using transaction services is reproduced throughout Indonesia's oligarchy.

In relation to land policy, this situation is illustrated by a recent case involving political and economic elites in the power structure, known as the 'Buol Scandal'. This involves Hartati Murdaya, a member of the Board of Trustees of the Indonesian Democratic Party (IDP) and the owner of the Berca Group, which comprises 36 companies (Kompas August 8, 2012). Hartati established two palm oil plantation companies in Buol, Central Sulawesi: Hardaya Inti Plantations Ltd (hereafter, HIP) and Cipta Cakra Murdaya Ltd (hereafter, CCM). The two together owned an area comprising 70,000 hectares of plantation land. By using transaction services, Hartati was able to bribe Amran Batalipu, the Regent of Buol, with approximately three billion rupiahs.¹⁷ The aim of this bribery was to get immediate land concessions for HIP and CCM for a further 52,309.24 hectares.¹⁸ According to my field study, local communities and civil society elements in Lampung Province believe that, much as in the case of Buol, their political leaders have dual identities and use transaction services to smooth

¹⁷ In relation to this, it is worth noting that Amran Batalipu is the chairman of the Golkar Party at the regency level.

¹⁸ See

<http://nasional.kompas.com/read/2012/09/13/16231837/Murdaya.Poo.Uang.Secuil.Gitu.Enggak.Ada.Artinya>. Accessed August 1 2013.

the way to providing licenses for cultivation rights. As Ahmad (anonymous by request), an activist from an NGO in Lampung, stated in interview with the author:

The political leaders in Lampung play a dirty politics. They have pseudo ‘plantation companies’ backed up by the police and military forces. Although they are not formally the owners of the plantation it has become an open secret that political leaders here have plantation businesses. It is about big money. They also sell the ‘right to cultivate’ licenses through their economic networks.¹⁹

The Buol scandal is just one of thousands of cases. Through consideration of so many examples, it becomes clear that the practice of using transaction services is entrenched throughout the oligarchies, maintaining and supported by their domination of the political economic system. In terms of Indonesia’s national development and democracy, this results in an alarming consequence for the democratic validity of the country. Williamson (2012) termed this, “*hijacked democracy*”. This phrase describes the situation where a democratic system that ideally functions through the principles of transparency, participation and accountability becomes undermined, or hijacked, through the practice of using transaction services. In relation to development, as Evaquarta points out, ideally development policies in a democracy should be developed through deliberation mechanisms by a combination of the government, private sectors and civil society or local communities; in particular, this needs to involve those directly affected by the proposed policy. However, until now, in Indonesia’s case, the decision making process involved is still determined by the government and private sectors alone (Evaquarta 2008).

Based on the Buol case described above, it is clear that the transactions between economic elites of the private sectors and the political elites of state have undermined the ideal concept of good governance in Indonesia. It is this process that accounts for the poor governance in Indonesia, generally, and in relation to land issues, in particular. Through this, the political economic networks are able to invalidate the desired norms

¹⁹ Ahmad (anonymous by request), Interview with the author, March 5, 2011.

of impartiality in governance; namely, equality before the law, political equality, effective and efficient functioning, and respect for the public interest.

The first of these, equality before the law, requires all actors involved in governance to have equal access to legal assistance and equal representation in the court system, based on legal justice. However, in my field research it became apparent that the economically and politically powerful actors tend to be protected by the law while civil society is not. This is especially clear in cases involving the granting of land concessions in which government actors give permission or a license for commercial use of land to benefit industrial interests. Between them, the government and the courts legalize such licenses even when under customary law the land belongs to the community.

Second, political equality of governance requires the government to provide negotiation and dialogue mechanisms to settle any conflict related to land issues. However, this study found that, during both the New Order and the recent era of democratic order, political equality is not maintained. While there have been many complaints and protests by the communities affected by this, the consequent conflicts have been mostly handled by the state by the mobilization of military force and the police to manage the people's grievances violently, as will be discussed in more detail in the case study presented in Chapter 4.

Third, effectiveness and efficiency of governance is far from being realized as a norm in governance. While the principles that underpin the competent running of governance processes are the merit system, equal concern and respect for citizens, through its bureaucracy, the government has created a very complicated process of land conflict management. Moreover, instead of attempting to realize these principles, the government avoids the issue, preferring to conduct its management in the way that engenders most benefits from the economic elites. The case in Lampung Province is a clear example of this, where citizens of Tulang Bawang and Mesuji districts who wanted to ensure land certification of their customary land received bad treatment from the officials. Indeed, it is seldom the case that officials meet with citizens and process their requests without lengthy delays while, on the other hand, they give companies very fast and efficient service.

Fourth, for a state to truly function as a democracy, the last of these norms, public interest, must be the basis of any state policy, including land use policy. However, as shown by the data about imbalance in land policy given above, the government tends to prioritize the interests of the economic elites while the interests of citizens, particularly of local communities and customary communities, are marginalized. Thus, it can be concluded that rather than having public interest as a motivating principle, governance favors the sectional interests of the political and economic elites.

Thus, impartiality in terms of governance in the current democratic system, as in the New Order is still basically very weak. The table below presents the status of governance in Indonesia in terms of impartiality for the four norms associated with good governance discussed above and indicates the corresponding norms of partiality along with their status.

Table 5: Impartiality of Indonesian Governance

Impartiality	Status	Partiality	Status
Equality before the law	Weak	Discrimination: clientelism, patronage	Strong
Political equality: dialogue/negotiation, multiple actors.	Weak	Domination: intimidation, ignorance, vote buying.	Strong
Effectiveness/efficiency: merit system, equal concern and respect to citizens.	Weak	Ineffective/inefficient: corruption, corrupt bureaucracy.	Strong
Public interest: all interests are accommodated and concerned, transparency	Weak	Self-regarding interest/interest group: patrimonialism, corporatism.	Strong

Sourced: Analysis based on Rothstein and Teorell, 2008 and Held 1999.

The above assessment of the status of impartiality in governance as strong or weak in terms of each of the norms given above makes clear that overall land governance in Indonesia is very weak. In considering the hijacked democracy of Indonesia,

Mohammed Mahfud, Chairman of the Constitutional Court (2008-2011), stated that Indonesia's democracy is in crisis because the people who should be the essential element in a democracy are being manipulated by elites. Therefore democracy's promise of realizing prosperity has not yet proved fruitful (Mahfud 2012). Thus, this manipulation of the system for the oligarchies' interests can be understood to play a fundamental role in the failure of Indonesia's land conflict management.

2.3 Conclusion

This chapter discussed how the context of Indonesia's political economy is currently strongly influenced by capitalist economics combined with the domination of a network of elites, many of them both economic and political elites that form interlinked oligarchies throughout the political system. Through the land management laws, the colonial government had increased the opportunities for economic elites and corporations to control land for their commercial interests. After gaining independence, Indonesia's land laws during the period of Sukarno regime aimed to protect and redistribute land ownership for farmers. However, the shift from the Sukarno regime to that of Suharto was mainly marked by the change in development policy to an approach based on developmentalism.

The regime of Suharto cancelled the land reform agenda of Sukarno's government in order to support the programme of foreign investments in businesses based on the cultivation of Indonesia's land. At the same time, economic development was dominated by Suharto's cronies and an oligarchy through which concessions were granted for millions of hectares of land. In order to maintain its control and domination of national development, the regime created a coercive politics through the partial and inefficient bureaucracy, and through military force. Any protest on the part of civil society was considered a threat to national development and dealt with severely in the name of national stability and security.

When the "sultanate oligarchy" of Suharto was overturned by the political reform movement, the new democratic system ostensibly opened more political economic

space to allow a variety of interest groups to influence national development. However, this subsequently became dominated by the re-emergence of Suharto's oligarchy as well as new political economic elites, a situation which basically hijacked Indonesia's democracy. This new network of oligarchies dominates the whole of the Indonesian political economy from the national to the local level.

In conclusion, the context of Indonesia's political economy is shaped by extremely partial politics which, as discussed in Chapter One, is exemplified by discrimination, political domination, ineffectiveness/inefficient bureaucracy, and self-regarding interest. Table 6, below, presents a summary of the laws passed in the four political periods discussed above and indicates how they function to support partial governance and/or hijacked governance, as elaborated in this chapter:

Table 6: Partiality in different Political Economic Periods in Indonesia

Political Period	Instrument of partiality/impartiality	Expression/ indication of partial governance	Expression/indication of hijacked governance
Colonial	Agrarische Wet	<i>Domeinverklaring</i> (domain statement): all land which could not be proven to be owned by individuals or the community became the property of the state.	Dutch private companies dominate land use (plantation industry).
	Ethical Policy	(ideally conceptualized)	1. New form of slavery practiced by Dutch companies 2. Corruption
Post-colonial era (Guided Democracy)	Law No. 5 of 1970, The Basic Agrarian Law	The status of customary forest land comes under state land.	None
	Basic Forestry Law	(ideally conceptualized)	None
	Spatial Planning Law	(ideally conceptualized)	None

	Basic Agrarian Law	Dominant interpretation of the definition of public interest enforced in law through governmental regulations.	<ol style="list-style-type: none"> 1. Land redistribution policy of previous Guided Democracy era was cancelled by the New Order to support the plantation industry. 2. Companies (generally, the political economic elites) were given privileged access to licenses to use customary land for industrial or economic purpose. 3. Government makes it easier to issue licenses for companies to use state land for business/economic purposes.
New Order	Basic Forestry Law of 1967	The status of customary forest land comes under state land.	<ol style="list-style-type: none"> 1. Until 1998, 666 companies controlled approximately 48.3 million hectares of forest concessions and plantations. On average, each company controlled up to 72.6 thousand hectares. 2. Customary communities had no chance to negotiate the policy related to land/forest use for industry.

	Spatial Planning Law	All citizens have to have legal documents to prove ownership of land without enacting a specific rule for customary land status.	The government avoids creating a space for citizen to negotiate this policy.
Era of democracy	Land Acquisition for Public Purpose Law	<ol style="list-style-type: none"> 1. The position of citizens and communities is not equal compared to government and market. 2. Very limited space for citizens to complain about the policies involved. 3. The market/ private sectors in a very strong position. 	The government and economic elites benefited by the law.
	Basic Agrarian Law (amended draft)	<ol style="list-style-type: none"> 1. Contains no article aimed at realizing a land reform program in Indonesia. 2. The position of customary communities is clearly not considered. 3. The position of private sectors is very strong. 	<ol style="list-style-type: none"> 1. The government seemingly ignores grievances regarding land reform. 2. New licenses for forestry industry, plantations, and infrastructure are issued to companies without concern for or agreement of local communities.
	Basic Forestry Law of 1999 (amended)	<ol style="list-style-type: none"> 1. Articles provide more power to market interests (elites). 2. There is no direct statement to acknowledge and recognize customary ownership of 	Domination of elites demonstrated by the issuing of new licenses, or renewed licenses, for forestry industry without the concern for or agreement of local communities.

		land/forest making the position of customary communities very weak.	
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Source: Author's analysis of several documents.

Clearly, such domination of Indonesia's governance by dual identity elites, and the consequent lack of impartiality, must influence and must shape the quality of governance. Hence, in relation to land management, this forms fertile ground for conflict. This study, through the land conflict case in Lampung, is particularly concerned with the consequences for governance of the far reaching partiality of the oligarchies in terms of land conflict management. To provide more detailed and specific background to the land conflicts, the next chapter provides an account of land reform and management in Indonesia. In particular, it describes the input from the World Bank and the work of National Land Agency, and also introduces the customary communities in Indonesia and their relationship to the land and land law.

Chapter 3

Land Governance in Contemporary Indonesia

Introduction

This chapter, firstly, provides an overview of the land management system in Indonesia. In particular, it presents the World Bank's Land Governance Assessment Framework (LGAF) as a major influence and the current role of the National Land Agency in relation to land conflict management. This discussion is important to understand the institutional design and legal framework of land governance. The contemporary Indonesian government has developed the legal foundations for land use policy that were set up during the Guided Democracy, New Order and democratic eras. This provides for an idealized institutional framework of land governance, including land conflict management; and land management policies still stem back to colonial times when the Dutch introduced the Agrarian Law of 1870. In the final section, I discuss the specific situation of customary communities in relation to land management.

3.1 Land Reform in Indonesian Democracy

The development of democratization greatly accelerated the land reform movement and agrarian reform in Indonesia, in part due to expanding development as discussed in the previous chapter. These reforms can be understood to comprise two waves: The first took place under the Guided Democracy government with the aim of realizing social justice by redistributing land for farmers and customary communities. It began with the passing of the Basic Agrarian Law in 1960 by the National Legislative Assembly, and this was followed by several subsequent regulations: the Government Regulation No. 56 of 1960 (Land Reform Law), the Government Regulation No. 224 of 1961 (Land Reform Objects) and Government Regulation No. 10 of 1961 (Complete Measurements of Villages). However, following this, according to Gunawan Wiradi, chairman of the board of experts for the Consortium for Agrarian Reform (KPA), the New Order government ignored the mission of land reform of the previous administration. As he

argues, in line with my argument in Chapter 2, during its rule the benefits of national industrialization were captured by a few political economic elites and the impact of this was that the land reform programme was erased from the development agenda. Consequently, the grievances of the peasants and indigenous communities accumulated during the New Order fueling their resistance (Wiradi 2000).

The second wave of land reform started in 1999 during Indonesia's era of democracy. In response to civil society's grievances that had accrued regarding land reform during the previous decades, President Abdurrahman Wahid (1999 to 2001) made a very controversial statement in 2000. He asserted that 40% of the state land had been stolen from the people (Nurdin 2011). The combination of the people's grievances and the president's support pushed the People's Advisory Assembly (MPR) to respond and, in 2001, it passed Decree No. 9 on Agrarian Reform and Natural Resources Management. Article 5 of this decree indicates the principles underlying it while Article 6 sets out the direction required for reform policy, as follows:

- a. Conducting a review of the various laws and regulations relating to land policy in order to synchronize between sectors for the creation of legislation that is based on the principles referred to in Article 5 of this provision.
- b. Reordering the control, ownership, use and utilization of land in a manner equitable with respect to ownership of the land for the people, good agricultural land and urban land.
- c. Organizing data collection and registration of land through inventory control, ownership, land use and utilization of a comprehensive and systematic approach to the implementation of land reform.
- d. Resolving conflicts regarding agrarian resources that arise during this same time will anticipate potential conflicts in the future in order to guarantee the implementation of the rule of law on the basis of the principles referred to in Article 5 of this provision.
- e. Strengthening institutions and authorities in order to carry out the implementation of agrarian reform and resolve disputes relating to agrarian resources occur.

- f. Seeking funding to implement agrarian reform program and resolving agrarian resource conflicts.

In 2003, the National Human Rights Commission (Komnas HAM) and civil society organizations (including the KPA), proposed a National Commission for Agrarian Conflict Resolution (hereafter, KNuPKA) to advise President Susilo Bambang Yudhoyono (2004 to 2014). However, to date, this has not been approved by the President. In order to answer Komnas HAM and the civil society's concerns and enthusiasm for KNuPKA, Yusril Ihza Mahendra, the Law and Human Rights minister of President Susilo Bambang Yudhoyono's government for the period 2004-2009, offered another way to manage and solve land conflicts in Indonesia. This involved (1) giving more authority and a greater role to the National Land Agency through Presidential Regulation No. 10 of 2006 and (2) amending the Basic Agrarian Law.

Consequently, the recent thrust of the second wave of land reform has been to strengthen the National Land Agency and amend the Basic Agrarian Law.²⁰ However, through the KPA, this has met considerable criticism from civil society of the draft of this amendment because (1) it does not include "land reform" and focuses instead on "governance" of land use; and (2) it does not erase the "right to cultivate" licenses granted to state owned enterprises (Nurdin 2009).

3.2 The Basics of Indonesia's Contemporary Land Governance

While the World Bank, through the LGAF, provides an assessment framework for Indonesian land governance, the legal basis of land management in contemporary Indonesia consists of the Indonesian Constitution and the Basic Agrarian Law. Thus, to understand the current legal situation in which land conflicts occur it is important first to have a clear idea of the details of these and how they function in practice. Article 3 (3) of the Indonesian Constitution and Article 2 (1) of the Basic Agrarian Law assert that earth and airspace are controlled by the state in the interests of the prosperity of the Indonesian people. This latter consists of 67 articles divided into four chapters: (1)

²⁰ Since 1999, other elements of civil society, such as AMAN, have also made efforts to have the Basic Forestry Law amended as the part of land reform.

Basic Principles and Provisions; (2) The Rights to Land, Water and Air Space, and Land Registration; (3) Penal Provisions; and (4) Transitional Provisions.

In practice, under Basic Agrarian Law, the control mechanisms of the state are undertaken by means of three structures, namely, formal registration for land rights status (*hak milik*), sectoral arrangements regarding land use policy, and law regarding state land (*tanah negara*). The first of these, land rights status has to be registered formally with the national administrative office, *Badan Tata Usaha Negara*. In Article 19, it states that all lands must be registered through the following processes: (a) the measuring, mapping and recording of land; (b) the registration of rights on land transfer of these; and (c) the issue of certificates of rights on land, which are then valid as strong evidence in court.

The second structure, sectoral arrangements, relates to industrial projects and activities involved in the exploitation of natural resources, such as mining, forestry, cultivating plantations and fishing (Basic Agrarian Law, Article 8). These sectoral arrangements are regulated by the state through sectoral law, in particular, Law No. 41 of 1999 on Forestry, Law No. 18 of 2003 on Plantation and Law No. 7 of 2004 on Water Resources, as mentioned above. The sectoral arrangements for industrial projects allow the use of private land status and state land. Moreover, industrial projects proposed by companies to use state land can bring that land under the regulation of sectoral laws.

In relation to the third structure, Abna and Sulaiman (2007) explore the definition of state land in Indonesia's land law. They argue that the term was only defined in Presidential Regulation No. 8 of 1953 on Management of State Lands (*Penguasaan Tanah-tanah Negara*). In this, Article 1 (a) defines state land as land under the control of the state and Article 3, paragraph 1, mentions that state land is controlled under the authority of the Internal Affairs Ministry. Although the Indonesian Constitution and Basic Agrarian Law do not clearly define the term of state land, the development policy related to land is often legitimated through sectoral laws, such as Law No. 41 of 1999 on Forestry, Law No. 18 of 2003 on Plantation and Law No. 7 of 2004 on Water Resources. Meanwhile, customary land is not recognized formally by the Basic

Agrarian Law since it is only put in the *konsideran* – the considerations attached to the Basic Agrarian Law (Abna and Sulaiman 2007).

Based on the land law explained above, in general, land status can be distinguished as two categories; namely, state land and private land. Private land is land with a definite right on it, whether registered or not (yet). Meanwhile, state land has two subcategories: state land rights which have been designated to a person or a legal entity, such as an organization or company, and free state land i.e., state land without any rights attached to it.

As mentioned above, the Basic Forestry Law is one of the sectoral laws that are particularly vulnerable to being utilized by political economic elites to take over indigenous territories. It divides forest lands into three categories, namely those used for production, those needing protection and conservation forests. In relation to the customary forestland, the Basic Forestry Law recognizes customary forest when it states, in Article 1 (6), that customary forest is state land in areas covered by customary community law. This article is basically intended to regulate customary communities' rights in managing their land and forest. Furthermore, Article 4 (3) states that forest control by the state shall respect customary laws, as long as it exists and is recognized, and doing so is not contrary to the national interest. Thus, although customary forest is written in Basic Forestry Law, state policy often ignores it in the name of national interest.

There is much evidence that forest land management under the Basic Forestry Law has devastated the existence and rights of customary communities in Indonesia. Indeed, Abdon Nababan, Secretary General of the Indigenous Peoples Alliance of the Archipelago (AMAN), states that Basic Forestry Law has been used as a tool to take over indigenous territories. While most forests are inhabited by many indigenous communities, these are often forced to leave the forest through state violence and the private sector's commercial activities. This law has caused uncertainty over the rights of indigenous peoples to their ancestral territories which, in turn, has created widespread poverty for many indigenous people (Nababan 2012).

This study uses the LGAF Based on the elaboration above, the condition of land governance in Indonesia can be elucidated by using the LGAF's indicator of land

governance to measure the quality of land governance in Indonesia. These include the legal status of land rights recognition, land use planning and taxation, management of public land, public provision of information regarding land issues, and mechanisms for dispute resolution and conflict management. To provide an overview of the legal background to these, the table below presents the legal framework of land governance that relates to each of these indicators.

Table 7: Legal Framework of Land Governance in Indonesia

Land governance indicator	Legal Framework
Legal status of land rights recognition	<ul style="list-style-type: none"> • UUD 1945 (Indonesian Constitution) • Basic Agrarian Law • People’s Advisory Assembly Decree No. 9 of 2001 • Basic Forestry Law
Land use planning and taxation	Law No. 12 of 1994 regarding Property Tax Law
Management of public land	Acquisition of Land for Development in The Public Interest Law
Public provision of land information	Head of National Land Agency Decree No. 3 of 2011 about Assessment and Land Cases Management
Dispute resolution and conflict management	Head of National Land Agency Decree No. 3 of 2011 about Assessment and Land Cases Management

Source: Author’s documents.

An LGAF report (2012) categorizes the land under the control of the National Land Agency and the Ministry of Forestry according to their tenure types. In Indonesian land governance these are firstly divided into urban and rural areas since conditions are so different in the two areas. In both urban and rural areas, tenure types are under the control of either of these state institutions. However, the Ministry of Forestry controls

70 percent area of forestland, which means land governance is influenced and shaped by its land use policy. Tables 8 and 9, respectively, show tenure types according to area, urban and rural, respectively, indicating which comes under the control of which department. In both tables, the tenure types under the National Land Agency are presented first followed by those under the Ministry of Forestry in relation to the specific rights, and the issues and overlaps associated with these. Regarding this division, it is worth noting that land conflict between customary communities and the private sectors or government is most often found in rural areas.

Table 8: Tenure typology in Indonesia for the Urban Sector

Tenure type	Legal recognition and characteristics	Specific rights, issues and potential overlaps
<i>Land under the control of the National Land Agency</i>		
State land	<p>Legal recognition: by the Constitution.</p> <p>Registration/recording: possible.</p> <p>Transferability: by application by eligible parties to the state through the relevant land office.</p> <p>Transferability of a title depends on its characteristics, use, and the identity of the transferee</p>	<p><i>Hak Guna Bangunan</i>, the right to construct and use buildings on non-owned state land. It can be granted to citizens and legal entities incorporated and domiciled in Indonesia. It can be held by Indonesian companies and foreign individuals and companies.</p> <p><i>Hak Pakai</i> is a right to the use of state land that is not owned. This can be held by foreign citizens domiciled in Indonesia and foreign corporate bodies having representation in Indonesia.</p> <p>Time periods: <i>Hak Guna Bangunan</i> is a renewable 30-year right. <i>Hak Pakai</i> can be granted indefinitely for a specific use and will lapse once that use comes to an end. It can also be granted for a limited period of years for unspecified use.</p> <p><i>Hak Guna Bangunan</i> and <i>Hak Pakai</i> can be granted as primary titles on state land or as secondary titles on <i>Hak Milik</i>/ a right of</p>

		ownership (see registered and certificated private ownership in Table 9). For secondary titles, continuation depends on that of the primary title and the relevant terms of the secondary title.
Registered and certificated private ownership	<p>Legal recognition: Basic Agrarian Law (Basic Agrarian Law) 1960</p> <p>Registration/recording: possible</p> <p>Transferability: to eligible parties</p>	Documentary non-registered evidence of possession, such as agreements to transfer or relinquish title or a power of attorney, is recognized and can be registered with suitable documentary evidence. Without such evidence, and under specific conditions, ownership can be registered following physical possession for more than 20 years.
Registered and certificated private possession and use	<p>Legal recognition: Basic Agrarian Law</p> <p>Registration/recording: possible</p> <p>to eligible parties for specified use only</p>	State companies or regional governments often claim ownership and control of land without documentary evidence of title. Thus, the entity that has ownership or control of the land is frequently unclear. A 2004 law requires that land controlled by the central or regional government must be registered. Transfer of such land must then be carried out with approval of the Minister of Finance and the relevant ministry.
Unregistered private ownership (possession and control)	<p>Legal recognition: Regulation No. 24 of 1997 on Land Registration</p> <p>Registration/recording: possible</p>	Documentary nonregistered evidence of possession such as agreements to transfer or relinquish title or a power of attorney is recognized and can be registered with suitable documentary evidence. Without such evidence, and under specific conditions, ownership can be registered following physical possession for more than 20 years.
Unregistered ownership by	Legal recognition: Basic Agrarian	State companies or regional governments often claim ownership and control of land without

government agencies	Law; Reg. No. 24/1997; Reg. No. 11/2010 (National Land Agency) Registration/recording: possible	documentary evidence of title. The entity that has ownership or control of the land is frequently unclear. A 2004 law requires that land controlled by the central or regional government must be registered. Transfer of such land must then be carried out with approval of the Minister of Finance and the relevant ministry.
Unregistered occupation and use of land	Legal recognition: Basic Agrarian Law; Reg. No. 24/1997; Reg. No. 11/2010 recording: No	People frequently occupy land (for example, on the boundary of a factory or power station). This is most commonly state land but may also be privately owned. Under specific conditions, ownership can be registered following physical possession of the land for more than 20 consecutive years.
Abandoned land	Legal recognition: Basic Agrarian Law; Reg. No. 24/1997; Reg. No. 11/2010 recording: possible	Abandonment of a plot of land for a certain period of time may lead to the termination of the title vested upon the land. The head of the National Land Office has the authority to determine whether a plot is abandoned. This will include cancellation of the relevant title and the categorization of the land as state land.
<i>Land under the control of the Ministry of Forestry</i>		
Unpermitted use of forestry-zoned land	Legal recognition: No. Registration/recording: No. Transferability: No.	In some urban and peri-urban areas, houses and commercial buildings have encroached on land zoned as forest land. However, where land is zoned as forest, it is not legally possible for a land title to be granted, regardless of the fact that no trees exist on the land and that buildings have been constructed.

Source: *The LGAF World Bank (2012)*

Table 9: Tenure typology in Indonesia for the Rural Sector

Tenure type	Legal recognition and characteristics	Issues and potential overlaps
<i>Land under the control of National Land Agency</i>		
State land	<p>Legal recognition: by Constitution.</p> <p>Registration/recording: possible through application to the state by eligible parties through the relevant land office.</p>	<p>In principle, all rural land is controlled by the state. This is very common with land in rural areas that often overlaps areas claimed by customary communities as ancestral land. The difficulties of recognizing customary land rights suggest that, in the past, registered title was often on customary lands and land claimed by customary communities may have been treated as available for grant of title by the land office.</p> <p>In certain circumstances, <i>Hak Pengelolaan</i> (the right to manage), which is derived from the state's authority to control land, can be granted as a primary title to governmental agencies. It is not generally transferable, but secondary rights can be issued on its basis.</p>
Registered and certificated private ownership	<p>Legal recognition: Basic Agrarian Law (Basic Agrarian Law) 1960</p> <p>Registration/recording: possible for eligible parties.</p>	<p><i>Hak Milik</i>, a right of ownership, provides the most comprehensive land rights in Indonesia.</p> <p>It is both transferable and inheritable and can be used as security. It can be held only by Indonesian citizens and, under very limited circumstances, certain Indonesian bodies (such as banks).</p> <p>A <i>Hak Milik</i> is a primary title and can be encumbered by the granting of secondary land rights.</p>
Registered and certificated private	<p>Legal recognition: Basic Agrarian Law (Basic</p>	<p>As for state land in urban areas, this is covered by <i>Hak Guna Bangunan</i>, the most common use right. It grants the right to construct and use buildings on non-owned land, a renewable 30</p>

<p>possession and use</p> <p>Unregistered private ownership (possession and control)</p>	<p>Agrarian Law) 1960.</p> <p>Registration/recording: possible.</p> <p>Transferability: to eligible parties, depending on its characteristics, use, and the identity of the transferee.</p>	<p>year right for citizens and legal entities incorporated and domiciled in Indonesia. It can be held by Indonesian companies and foreign individuals and companies.</p> <p><i>A Hak Pakai</i> is a right of use on state land that is not owned and can be held by foreign citizens domiciled in Indonesia and foreign corporate bodies having representation in Indonesia.</p> <p>d for different time periods. <i>A Hak Guna Bangunan</i> can be extended. <i>A Hak Pakai</i> can be granted indefinitely for a specific use and will lapse once that use comes to an end. It can also be granted for a limited period of years for unspecified use.</p> <p><i>Hak Guna Bangunan</i> and <i>Hak Pakai</i> can be granted as primary titles on state land or as secondary titles on <i>Hak Milik</i>. Where such titles have been created as a secondary title, their continued existence will depend on continuation of the primary title and the relevant terms of the agreement under which the secondary title was created.</p>
<p>Indonesian National Land Agency jurisdiction</p>	<p>Legal recognition: Basic Agrarian Law</p> <p>Registration/recording: possible but only to eligible parties for a specified use.</p>	<p><i>Hak Guna Bangunan</i> and <i>Hak Pakai</i> (see above).</p>
<p>Customary communities on lands under the</p>	<p>Legal recognition: Basic Agrarian Law; Reg. No.</p>	<p>Many customary communities live and use land under the jurisdiction of the National Land Agency. Provision exists for formal recognition and registration of customary land rights, but the</p>

<p>National Land Agency</p> <p>his comes under the Indonesian National Land Agency's jurisdiction.</p>	<p>24/1997; Reg. No. 11/2010 (National Land Office).</p> <p>Registration/recording: possible.</p> <p>s.t. criteria.</p>	<p>procedure is complicated, and such rights are subject to statutory ownership (see below). For establishment of such rights, regulations require determining whether customary rights still exist. The existence of customary land belonging to a specific customary community must be recorded on a land registration map showing the boundaries of the land and must be registered.</p> <p>Basic Agrarian Law or plots acquired or appropriated by government institutions</p>
<p>Individual customary rights</p>	<p>Legal recognition: Basic Agrarian Law; Reg. No. 24/1997; Reg. No. 11/2010.</p> <p>Registration/recording: No.</p>	<p>Documentary nonregistered evidence of possession, such as agreements to transfer or relinquish title or a power of attorney, is recognized and can be registered with suitable documentary evidence. Without such evidence, and under specific conditions, ownership can be registered following physical possession for more than 20 years. In rural areas, significant uncertainty relating to evidence of title and land boundaries exists.</p> <p>Although individual customary rights are legally recognized, they have limited relevance in practice.</p>
<p><i>Land under the control of Ministry of Forestry</i></p>		
<p>Land zoned as forest</p>	<p>Legal recognition: Law 41/99 (Forestry Law).</p> <p>Registration/recording: No.</p> <p>Transferability: No.</p>	<p>In forest-zoned areas, three types of overlaps are common. First, many oil, gas, and mining concessions are granted over land that is zoned as forest. Though concessions do not convey land rights (which, as those for use and access, must be negotiated separately with the Ministry of Forestry), lack of coordination among the relevant ministries (Energy and Mineral Resources vs. Forestry) often causes the issuance of overlapping permits or granting of mining concessions in forest where mining is</p>

		<p>prohibited.</p> <p>Second, forestry and mineral permits and concessions are often issued with limited regard for existing land occupation and use. This has caused significant problems, because many communities, including customary ones, live and earn their livelihoods on forest-zoned land.</p> <p>Third, land titles can be obtained legally only once land is released from forest zoning in a complicated and long process. But, in certain areas, titles have been issued over forest-zoned land.</p>
Customary communities using land zoned as forest	<p>Legal recognition: Law 41/99.</p> <p>Registration/recording: No.</p>	<p>Customary communities frequently occupy and use forest-zoned land. The Forestry Law states that the use of customary forests by a legal customary community may be carried out under certain conditions. However, the procedure can be cumbersome: the law requires verification of the existence of the customary community and the issue of a local government regulation confirming its existence.</p>
Forest-zoned land	<p>Legal recognition: Minister of forestry Regulation No. P.37/Menhut-II/2007 on Community Forest (as amended).</p> <p>Registration/recording: possible.</p> <p>Transferability: No.</p>	<p>Many non-customary communities occupy forest-zoned land and can obtain certain rights. A request for a permit to use an area as a community forest working area enables the governor or regent to propose that a specific forest area be designated as community forest working area. If approved, the Minister of Forestry issues a decree designating the area as community forest belonging to the specific community.</p> <p>Communities can then apply to the regent for a permit to carry out activities in the community forest. However, the procedure is cumbersome and overlaps exist. For instance, a community forest can be designated in an area that is zoned as protected forest or as production forest but</p>

		only if no other right or permit, including a concession, has been granted.
Individuals using forest-zoned land	Legal recognition: Law 41/99 (Forestry Law). Registration/recording: No.	It is not technically possible to obtain registered land title on forest-zoned land, although in certain areas of Indonesia this has occurred. From a legal perspective, land title can be obtained only after the land has been released from the forest zoning, which in most cases is a lengthy and complicated process.

Source: *The LGAF World Bank (2012)*

3.3 The World Bank's Land Governance Assessment Framework

LGAF states that five key areas of good land governance need to be established in order for it to work effectively: recognition and enforcement of rights; land use planning, management, and taxation; management of public land; public provision of land information; and dispute resolution and conflict management. These are discussed in detail below, indicating both the desired mechanisms and their effectiveness in practice. (Deininger, Selod and Burns 2012, 28):

a. Recognition and enforcement of rights

This requires a legal, institutional, and policy framework that recognizes existing rights, enforces them at low cost, and allows users to exercise them in line with their aspirations and in a way that benefits society as a whole. As elaborated previously, Basic Agrarian Law constitutes the umbrella legal document for the land management system in Indonesia. It recognizes land rights and divides these into 13 specific land rights that need to be registered formally. These are as follows: (1) *Hak Milik*: this is roughly equivalent to the freehold title of English common law jurisdictions, (2) *Hak Guna Usaha*: Cultivation Rights Title, (3) *Hak Tanam Industri*: Plant Cultivators' Rights, (4) *Hak Pengusahaan Hutan*: Forest Exploitation Rights, (5) *Ijin Pertambangan*: the Mining license, (6) *Hak Guna Bangunan*: the Building Rights Title, (7) *Hak Pakai*: the Right to Use Title, (8) *Hak Sewa untuk Bangunan*: the Right to Rent

Buildings, (9) *Hak Membuka Tanah*: Land Clearing Rights, (10) *Memungut Hasil Hutan*: Forestry Rights, (11) *Hak Guna-air, Pemeliharaan & Penangkapan Ikan*: Water Use and Fisheries Rights, (12) *Hak Guna Ruang Angkasa*: Airspace Use Rights, (13) *Hak-hak Tanah untuk Keperluan Suci & Sosial*: Land Title for Social and Religious Purposes.

Despite land rights recognition being quite detailed, the LGAF mentions that there are three factors that still create uncertainty in people's understanding of their rights (Deininger, Selod and Burns 2012, 108-116):

First, the Basic Agrarian Law only covers land that is not categorized as forestland; this is approximately 30 percent of national land and the remaining 70 percent, the forestland, is governed by the Ministry of Forestry although much of this area is already treeless and degraded. Despite this, since it is not covered by the Basic Agrarian Law, the local communities confront many difficulties when trying to gain legal recognition of their customary rights to land when it is part of the forestland area. Moreover, the Basic Agrarian Law does not regulate the recognition of group land rights. Therefore, groups such as customary communities have to 'individualize' the land rights to be legally recognized. This uncertainty in land rights law creates insecurity in terms of land tenure and, as a consequence, many conflicts have risen between local communities that have been living in forestland for generations and the government and/or commercial companies who gain rights through transaction services as elaborated in the previous chapter.

Second, while several regulations under the Basic Agrarian Law have been created to ensure certainty in regard to land rights, implementation at the lowest levels, i.e., those of the people most affected, is very weak and ineffective. This is a consequence of the lack of mechanisms to make the regulations more amenable to communities; for example, there are few training programmes for the people that cover new regulations on land administration. This lack of certainty and of training has placed civil communities in a 'no man's land' in legal terms since they have no idea of the mechanisms they need to follow or which governmental institutions they need to approach. Therefore, despite the reforms, urban and rural people alike still have difficulty in understanding the legal process involved in land recognition.

Third, there is very little land registered in women’s names. The World Bank considers this issue to be very important in order to recognize land held by women and to be gender sensitive. However, this issue is not yet present in recent discourse on land administration and policies.

Beside these three factors that create uncertainty in terms of land rights, I would assert that this uncertainty is also caused by complicated and overlapping regulations. The laws related to land management in Indonesia are extremely complex; indeed, there are more than 572 laws, regulations and other documents relating to land and formal government processes. In order to understand it more simply, Table 10 shows the hierarchical legal basis of Indonesia’s land:

Table 10: Legal Foundation of Land Management

Law/Regulation	Description
Pancasila	Five principles emphasizing the state’s social function and the principle of democratic deliberation
UUD 1945 (Indonesian Constitution)	Article 3 (3) states, “earth, water and natural resources contained therein are controlled by the state in order to be used for the welfare of people”.
Law No. 4 of 1960	Basic Agrarian Law (Basic Agrarian Law). Articles 1-15 provide basic land policy fundamentals for land management, and the subsequent articles do the same for technical land management.
Law No. 2 of 2012	This covers the Acquisition of Land for Development in The Public Interest.
People’s Advisory Assembly Decree No. 9 of 2001	This covers Agrarian Reform and Natural Resources Management
Presidential Decree No. 24 of 1997	This covers Land Registration of State Land
Presidential Decree	This gives revisions to the Basic Agrarian Law of 1960,

34/2003	conducted by the National Land Agency
Presidential Regulation 10/2006	Describes the functions of the National Land Agency operating at national, regional and sectoral levels. It principally applies to national land policies, land affairs technical policies, administration, surveying, registration, mapping and so on.
Presidential Speech 2007	The government asserted that it would lead the agrarian reform.
Government Regulation No. 11 of 2010	This covers Control of Abandoned Land
Head of National Land Agency Decree No. 3 of 2011	This covers Assessment and Land Management Cases.

Source: Author's research documents

According to Joyo Winoto, Head of the National Land Agency (2005-2012), other laws relating to land use were enacted in 1970 that ignored the Basic Agrarian Law; consequently some laws and regulations contradict each other. Winoto states that these contradictory laws have resulted in legal conflict and confusion which has impacted on land ownership and land tenure, leading to issues such as disparity of land holding, stagnation of agrarian reform, land disputes and conflicts, and abandoned land (Winoto 2009, 4). Further laws related to land management include Law No. 41 of 1999 about Basic Forestry Law, Law No. 24 of 1995 (Spatial Planning Law), Law No. 18 of 2004 (Plantation Law), Law No. 7 of 2004 (Water Resources Law), Law No. 27 of 2007 (The Management of Coastal Zones and Small Islands Law) and Law No. 4 of 2009 (Mineral and Coal Mining Law). Currently, Law No. 7 of 2012 on Social Conflict Intervention (SCIL) provides the new institutional framework of land conflict management since this law includes any social conflicts, including land conflict issues.

b. Land use planning, management, and taxation

Ideally, this area covers the arrangements for land use planning and taxation so as to avoid negative externalities and support effective decentralization. The LGAF reports that land use planning in Indonesia still does not operate in a well-coordinated manner among state agencies such as between the National Land Agency and the Ministry of Forestry. As elaborated above, the latter has its own direction in land use planning given by the Basic Forestry Law. On the other hand, during the decentralization process, the central government and local government have created different land use policies. Since local government has recently gained greater authority, including planning the use of land for their own economic gain, land use planning, and spatial planning documents relating to local governance differ from those of the Ministry of Forestry, the Ministry of Tourism, and public work sectors.

Restrictions on land use were included in the Basic Agrarian Law based on national or public interest values but these have proved very weak in their implementation. These restrictions relate to managing land use for goals concerned with the public interest, such as zoning in urban and rural areas, protection of environmental areas, protection of archeological sites and historic buildings, protection of national parks and conservation area, and so forth. The restrictions make the change of land use very difficult to undertake; to do so, the citizen or private company must get a permit from the government, which then grants the new land rights.

This is also related to property tax where authority is distributed clearly between central provinces and local governments at the district level. The central government, represented by the provincial government, manages the tax in return for 10 percent of the revenue. The local governments get 90 percent of which they return 16.2 percent to the provincial government and keep 73.8 percent.

Moreover, the cost of registering a property transfer under Tax Law No. 12 of 1994 and Government Regulation No. 46 of 2003 is charged at a high rate, compared to the rest of the ASEAN region; and this does not include any informal 'charges' made by officials. Moreover, land administration and policy is centralized in the national office so local offices do not have the authority to create specific policies and land administration problems can only be settled by the national office.

c. Management of public land

This refers to the clear identification of state land and its management that provides public goods in a cost effective way. It asserts that expropriation should be used only as a last resort, and then only for direct public purposes and there should also be provision for quick payment of fair compensation and effective mechanisms for appeal. It also calls for mechanisms for divestiture of state lands that are transparent and that maximize public revenue.

According to the Basic Agrarian Law every piece of land for which ownership cannot be proved by citizens or other concerned actors is state land. Moreover, actors who claim land ownership must provide a form of evidence that can be acknowledged by the court, such as a legal document of land title or a document written by an official of the village government. However, this study found that the land rights of the customary community and local people are often marginalized by this system. As with the case study presented in the next chapter, most communities are unable to prove their group land ownership since there is no legal document to prove it. On the other hand, because they are experienced in dealing with bureaucratic issues, companies in the private sectors can easily get documents of land ownership to show the court although they never live in that area. In my case study, the community of Mesuji dealt with a very long and complex court process to get rights to their customary land. However, at the time the field research was carried out in 2013, the community had not received any recognition of its land rights. Moreover, the land claimed by the customary community had been granted to the private sector in the form of Silva Inhutani Ltd, a commercial firm producing palm oil.

Basically, as the National Land Agency has control over the national land policies and programmes, and therefore has the authority to formulate, coordinate and implement the Indonesian land management, it monitors and controls land use restrictions, and land demarcation, and mapping, at a national level. However, because the Ministry of Forestry is authorized to control up to 70 percent of land including forestland, the consequent dualism in terms of authority often weakens the role and power of the National Land Agency; for example, the latter does not have the authority

to stop, control or evaluate the land use policy of the Ministry of Forestry. At the same time, the land management it does undertake does not provide detailed and open information regarding land issues to the public as discussed in the next section.

Furthermore, the government does not sell or grant licenses for use of any state land although it does publish information explaining the various schemas through which individuals or companies may be granted the right to use state land. As indicated in tables 8 and 9, above, these include *Hak Guna Bangunan*, which provides the right to have buildings on state land; *Hak Guna Usaha*, providing the right to cultivate state land, and *Hak Pakai*, which grants the right to use state land for other purposes. Holders of these schemas are taxed by the government according to *Pajak Bumi dan Bangunan* (tax of land and buildings).

However, the authority of the National Land Agency in controlling and implementing state land use policy cannot prevent or forbid the Ministry of Forestry from renting out forestland to plantations industry using its authority under the Basic Forestry Law. According to this, the ministry has the authority to convert forestland to other uses such as plantation areas. Moreover, under the terms relating to public-private partnerships, it allows the ministry to work in partnership with companies in the private sectors in order to manage national parks. However, in its evaluation of the abilities of the Ministry of Forestry in awarding tenure or land ownership, the LGAF found that institutionally the ministry was not effective in managing ownership rights for industrial purposes. Therefore, the limit on the amount of capital of the forestry industry is to be increased. Consequently, some problems occur through such issues as the absence of prompts to concession holders to cultivate their land with consideration of the sustainability aspect of their development. Furthermore, the lack of capacity of local communities means they have very little chance of participating in revenue gain from their land resources so they are unable to make use of these concessions. This is a main cause of local communities' resistance to the government's land use policy (Deninger, Selod and Burns 2012, 119) since it means that the local communities are often disregarded by the land use policy regarding the forestry industry.

d. Public provision of land information

Ideally, public provision means there is broadly accessible, comprehensive, reliable, current, and cost-effective access to information in the long run. According to the LGAF, the National Land Agency recently invested resources to create a systematic form of land registration that is accessible online. However, the current system was not built or implemented efficiently and most of the documents are in a paper version, yet documented digitally. During my field research at the National Land Agency office, the data related to land use policy was very hidden and/or very chaotic and so was quite inaccessible. Furthermore, online information was limited to very general information about land management and, at the local and district levels, very little data was available. This means that land management data provided by the government tends to be very general and shallow. Furthermore, less than 50 percent of registered properties are recorded on the official land maps and, in some cases, the tax system for land (cadastre) is still at the level of pilots schemes.

As discussed above, land use policy and administration are overwhelmed by too many regulations that overlap each other and this makes land administration very complex and hard to be processed by citizens and even by the private sectors. Moreover, the confusion between the authorities of the National Land Agency and the Ministry of Forestry has, in itself, greatly increased the number of unfinished disputes.

e. Dispute resolution and conflict management

In 2004, the Indonesian president mandated the National Land Agency to create a system of dispute resolution and conflict management. This was a response to the National Human Rights Committee (Komnas HAM) and various NGOs involved in land issues that demanded the government resolve some of the many outstanding land conflicts around the country. In relation to this, the World Bank had argued that the mechanism of dispute resolution must be accessible and able to authoritatively resolve disputes and manage conflict with clearly defined mandates and a low cost of operation (Deninger 2012, 121).

As the LGAF's report (2012) sets out, Indonesian land conflict management is undertaken by four different institutions that function as overlapping competencies to

handle land conflicts; namely, the civil court, the criminal court, the administrative court, and dispute-conflict settlements related to land administration and land entitling come under the National Land Agency's authority (Deninger 2012, 121). As this study found during the field research, the coordination between the different mechanisms is very weak. In many cases it was noted that the decision of one court may be rejected by a subsequent one.

Although I discuss the dispute and conflict management mechanisms of the National Land Agency in detail in the next section, here it is worth noting that these are still not effective due to the determination of the state to render the Agency more powerful in its role in decisions regarding land disputes, rather than establish an alternative institution more appropriate to resolving land conflicts. However, the formal dispute resolution mechanism under the Ministry of Forestry directs the actors in land conflict to the mechanisms provided through the administrative court or civil court. As this study found, while the National Land Agency grants the land concessions, local community members, such as those of Mesuji District, have to settle their land conflicts in the administrative and civil court rather than using the National Land Agency dispute resolution mechanism. However, the courts favor the big companies since they have legal documents acknowledged by the government. Therefore, for all these reasons, public distrust of the dispute resolution mechanism for land issues is very high.

The above discussion makes clear that, in all five areas identified by the LGAF, although some mechanisms are in place to support good governance, these are far from effective for a variety of reasons ranging from inefficiency through lack of capacity to confusion due to overlapping scopes of authority. Since, the National Land Agency is the institution generally responsible for dealing with land conflicts and its role is the subject of some confusion it is important to analyze its role and the problems involved in utilizing its capacity to resolve conflicts.

3.4 The National Land Agency

The National Land Agency is the authorized government institution in land management and land conflict management in Indonesia. As mentioned above, the government chose to strengthen the role and authority of the National Land Agency rather than establish another national commission for alternative land conflict resolution, along the lines suggested by Komnas HAM, such as KNUPKA. The predecessor to the National Land Agency in the Sukarno regime was instituted under Rudolf Hermanses as the Agrarian Minister in 1965. However, in 1968, the position was erased and replaced by the Directorate-General of Agrarian Affairs under the Ministry of Home Affairs. Through Decree No 26 of 1988, Directorate-General of Agrarian Affairs was changed into the National Land Agency as a non-departmental agency. In 1990, the National Land Agency officially became the State Ministry of Agrarian Affairs / National Land Agency. Since 2002 until now, the National Land Agency has functioned as a state institution headed by ministerial level officials.

As discussed above land governance by the National Land Agency is badly managed and it is unable to resolve the majority of conflicts within a reasonable time. To understand the reasons for this better, this section analyzes the problems involved in relation to the implementation of dispute resolution and land conflict management.

3.4.1 Problems of Authority

As a state institution that takes care of the national land, the National Land Agency has a fundamental problem in terms of authority – particularly so, in relation to its limited authority in land conflict management. The problem stems from the fact that, as institutional entity, it is sustained by the Indonesian legal system, in particular, through Presidential Regulation No. 10 of 2006 on the National Land Agency (hereafter, PRNLA). However, the PRNLA cannot function as an umbrella law that ensures the Agency is able to carry out responsive conflict management and there is a more extensive legal framework governing its work as shown in Table 11, below:

Table 11: Legal Framework of the National Land Agency

Legal framework	Description
Law No. 5 of 1960	Basic Agrarian Law
Government Regulation Number 40 of 1996	The Right to Cultivate, Right of Building and Land Use Right
Government Regulation No. 24 of 1997	Land Registration
State Ministry of Agrarian Regulation No. 3 of 1997	Implementation of the provisions of Government Regulation No. 24 of 1997, concerning Land Registry.
State Ministry of Agrarian Regulation No. No. 3 of 1999	Delegation of Authority to Grant and Cancellation Decision Granting Rights to State Land.
State Ministry of Agrarian Regulation No. 9 of 1999	Cancellation Procedures for Granting and State Land Rights and Rights Management
State Ministry of Agrarian Regulation No. 3 of 2006	Organization and Administration of National Land Agency of the Republic of Indonesia.
Government Regulation No. 13 of 2010	Tariff of Non Tax Revenue Applicable At the National Land Agency.
Presidential Regulation No. 10 of 2010	Land National Agency

Source: Author's documents.

According to the *Renstra* website, the National Land Agency has four principles, namely, “realization of prosperity, equity, social welfare and sustainability for the people”. Its vision is described as the ability “to realize lands for the prosperity of

people and sustainability and social justice system, nationality and state of Republic Indonesia”.²¹ Its main agenda are as follows (Winoto 2009):

1. Agrarian Reform: (a) Reform in Land Politics and Land Law; (b) Land Reform plus Access Reform.
2. Land Asset Legalization: (a) Private Land; (b) Public (State) Land.
3. Settlement of Abandoned Land.
4. Land Conflict Resolution

In order to carry out these functions, the agency has five deputies: the Deputy of Surveying, Measurement and Mapping; the Deputy of Land Rights and Land Registration; the Deputy of Land Regulation and Structuring; the Deputy of Land and Community Empowerment; and the Deputy for Assessment and Handling of Land Disputes and Conflict (hereafter, AHLDC).

The existence of this latter department reflects the urgency for the agency to manage and resolve land conflict. Through its main function of formulating and implementing policies in the area of land disputes and conflicts handling, the AHLDC has several secondary functions in relation to these areas: (1) to be responsible for developing technical policy regarding assessment and management of these; (2) to undertake a systematic assessment and mapping of issues; (3) to handle problems, disputes and land conflicts using the legal system or an alternative mechanism (non-law); (4) to handle specific land conflict cases; (5) to implement alternative problem solving methods through approaches like mediation and facilitation; (6) to implement judicial decisions related to land; and (7) to prepare a cancellation and termination of legal relationships of people and/or legal entities with the land in accordance with the legal system.

While these seven functions outline the National Land Agency’s theoretical authority through the AHLDC, the question arises as to what extent is this realized in

²¹ In *Renstra*, Badan Pertanahan Nasional 2010-2014. Accessed August 20, 2013 at http://www.bpn.go.id/CMSTemplates/getattachment.aspx?id=28768856-01d8-4950-943c-7fe658d22b80&f=Renstra%202010_Bab%20II-III-IV.pdf.

practice as responsive land conflict management. And, more pertinently to this thesis, why do many cases of land conflicts frequently involve state violence? Clearly, the legal framework, as represented in PR No. 10 of 2006, does not give the agency sufficient power and authority to handle land conflict and, as a result, it is unable to resolve many crucial structural land conflicts between farmers and companies. Indeed, there are many laws that hamper it in its ability to work more effectively, such as Law No. 18/2004 on Plantation, Law No. 41/1999 on Forestry, Law No. 7/2004 on Water Natural Resources, Law No. 4/2009 on Mineral and Coals and Law No. 27/2007 on Coastal Areas and Remote Islands.

As with the discussion of land management systems above, land use policy also involves sectoral agencies of the government, such as the Ministry of Forestry, the Ministry of Agriculture and the Ministry of Public Works. In the context of this study, the Ministry of Forestry is the sectoral agency that has especially strong authority. However, as I explore later in this thesis, this department is not only directly influenced by its legal foundations but also by the oligarchies' interests in the plantations and forest industry. This causes major obstacles for the National Land Agency in its attempts to realize the implementation of responsive conflict management because its authority is unable to cope and 'tame' that of the forestry ministry.²²

3.4.2 The Problem of Corruption

Since the enactment of the Basic Agrarian Law, the Indonesian government, through the National Land Agency, has been undertaking a land entitlement programme, which involves land registration, also known as land asset legalization, and this constitutes one of the Agency's missions aimed at alleviating the lack of resolution in land disputes and conflicts. However, the programme had been very ineffective before the current era of the democracy. In 1981, the efforts of the Indonesian government on land registration programmes had been carried out more rapidly through the Project on National Agrarian Operations (hereafter, PRONA) under the Decree of the Minister of the Interior

²² This is discussed in more detail in the case study of land conflict cases in Lampung Province in Chapter 4 where the specific problems of National Land Agency's authority in Indonesia's land conflict management and the effects of this are explored.

Agrarian No. 189. Later the same year, the Directorate General of Agrarian Affairs determined five areas in which PRONA was applicable. These were as follows: (1) those where the inhabitants could be defined as a group, this applied especially to the certification of land in areas affected by land acquisition for land reform where the former owner still has the rights to the land although it had been distributed among the farmers; (2) areas where a group set to lagging regions; (3) areas where the land has the potential to be productive enough to be developed; (4) in densely populated lands that had considerable potential for development where the inhabitants could be defined as a group; and (5) specific locations where the disputed lands were strategic and could be resolved. During its time, PRONA granted up to 900,000 titles.

Following PRONA, the Land Administration Project (LAP) was set up from 1995 to 2001 with the support of the World Bank. This consisted of a series of projects and cost a total of US\$140.10 million.²³ The World Bank's document states that LAP supported efficient and equitable land markets and alleviated social conflicts over land. Beside land registration, LAP supported the Indonesian government in developing good bureaucracy and long term management policies. LAP I was the first of the series and had the goal of registering all lands in Indonesia by 2020; however, according to the World Bank's report, it only registered around 2 million parcels of land. Following LAP I, the Indonesian Land Management and Policy Development Program (LMPDP) was introduced and this was completed in April 2003, resulting in further recommendations for a new World Bank loan for the second LAP (LAP II). This was supported by the World Bank and bilateral aid programmes from Australia, the Netherlands and the United States. However, despite this, the rise in recent years of land conflicts with a different typology and dimensions can be read as a significant indication of the National Land Agency's failure in land management. Despite millions of US dollars provided under the loan scheme of the World Bank, the Indonesian government still has not improved its performance significantly. Hence, the National Land Agency's ability to perform its role and function in alleviating land conflicts and violence is questionable.

²³ More information regarding Indonesia's Land Administration Project funded by World Bank is available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2002/07/31/000094946_02071304005043/Rendered/PDF/multi0page.pdf. Accessed on August 2 2014.

As Naja (anonymous by request), a member of the Commission for Agrarian Affairs of National Legislative, stated in an interview with the author:

The National Land Agency has a lot of problems in its bureaucracy and leadership. The institution only focuses on land entitlement while land conflict mediation and resolution are less cared for. Hence, the National Land Agency is actually weak in land management. The National Land Agency is a problem in itself in relation to Indonesia's land conflicts.²⁴

Thorburn points out that “land lore is rife with tales of contradictory regulations and instructions, graft, manipulation, excessive fees, deception, fraud and confusion” (Thorburn 2004, 2). Moreover, based on my field observation in Lampung Province, it is clear that the National Land Agency is weak in terms of human resources, lacking in office facilities and has a generally bad quality of documentation. Daryono argues that due to untrustworthy procedural mechanisms (namely, slack administrative controls, lack of an effective legal framework and weak governance), the National Land Agency work has led to arbitrary decisions, inappropriate processes, uncertainty and discrimination (Daryono 2010, 318). Indeed, based on my field research I would assert that the practice of bad governance and corruption within the National Land Agency has become the main obstacle in realizing good land management and the organization has a reputation of being one of the most corrupt and inexperienced agencies in the government.

3.4.3 Institutional Design of Land Conflict Management

The institutional framework of land conflict and land dispute management has been developed according to the Head of the National Land Agency's Regulation No. 3 of 2011 on Assessment and Land Case Handling Management of Dispute and Land Conflict. This regulation makes clear the meaning of the different terms used by the government in the context of conflict resolution. In Article 1, paragraph 1, it states that the term, ‘land affairs issue’, relates to any “dispute, conflict or case submitted to National Land Agency of the Republic Indonesia for the completion of treatment in

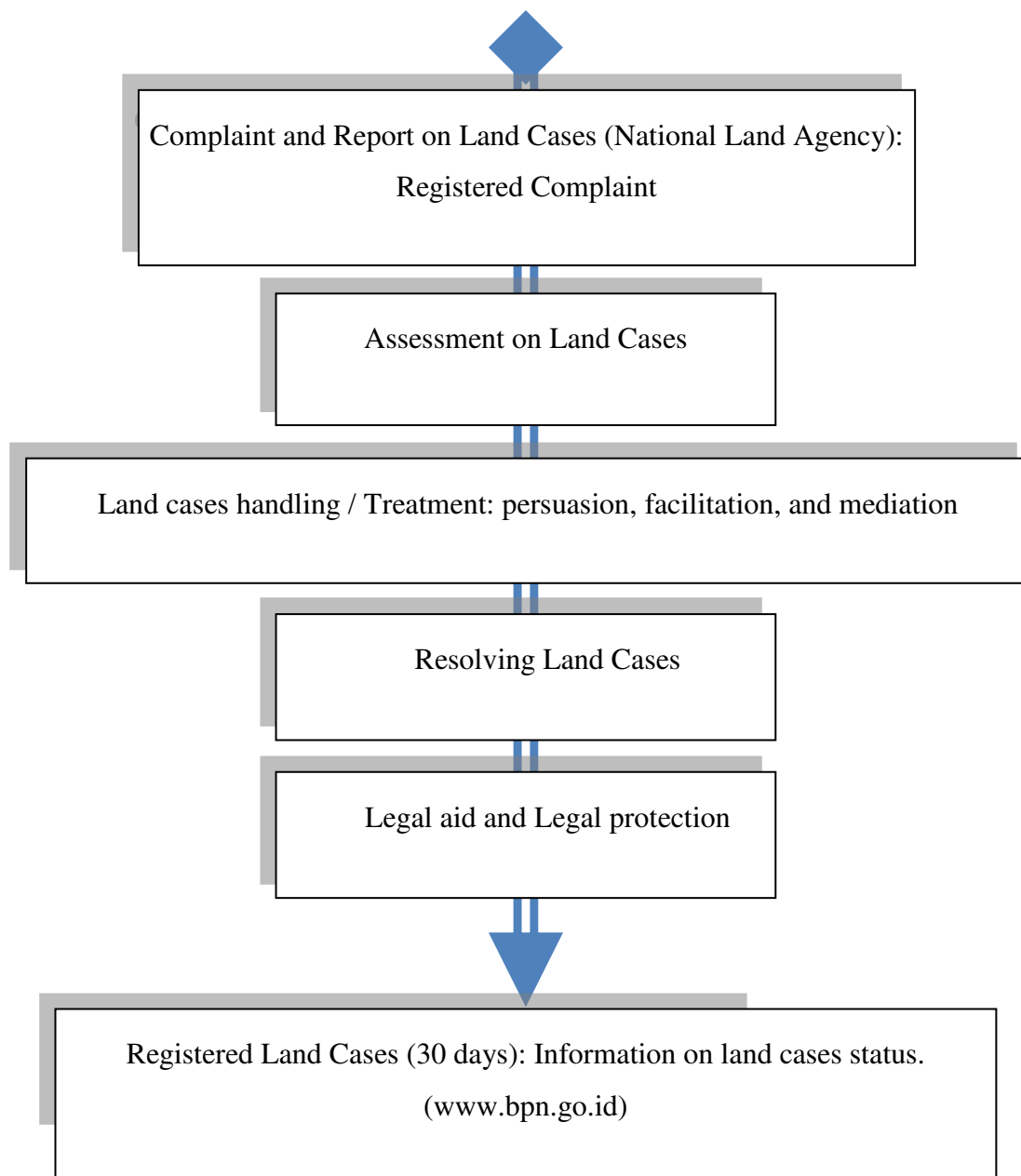
²⁴ Naja (anonymous by request), Interview with the author, 2011.

accordance with laws and regulations and/or land policies”. The same Article defines ‘land affairs dispute’ as being “between individuals, firms or institutions that has no broad impact socio politically”, while paragraph 3 explains ‘land conflict’ as occurring between individuals, groups, organizations, legal entities or institutions that have a tendency to have, or already has, a broad impact in the socio-political environment. The Article also describes a ‘land affairs case’ as a land dispute or land conflict for which the resolution is implemented by judicial institution or a judicial decision that has been sought by the National Land Agency for handling the dispute.

Following the National Land Agency Regulation No. 3 of 2011, land conflict is handled by the Deputy of the AHLDC (according to Article 1, paragraph 12). The goals of this department are: (1) to understand the root causes, history and typology of land cases in order to formulate a strategic policy in solving all the land cases in Indonesia, (2) to resolve land cases submitted to the Head of the National Land Agency so that the land can be owned, possessed, used and exploited by the owners as well as in the framework of certainty and legal protection (Article 2, paragraph 1).

Land case handling consists of four steps, namely internal assessment, external assessment, a mediation process and special treatment. Figure 1 below summarizes the processes involved in the National Land Agency land conflict management.

Figure 1: Institutional Design of Land Dispute and Conflict Management



Source: Adapted from National Land Agency Regulation No. 3 of 2011

Thus, there is already a land conflict management system under the National Land Agency that is able to enact responsive conflict management, namely, mediation. However, this mechanism is implemented more effectively for land disputes, i.e.,

interpersonal conflict, rather than land conflicts that involve a collective group, which is the subject of this thesis. As such, this will be analyzed more deeply in Chapter 4 through the specific case in Lampung Province but, first, the next section provides a brief general explanation of the situation of customary communities in respect to land management.

The institutional design of land conflict management provides stages of achieving land conflict resolution. However this design does not work effectively to handle land conflicts as the report of many unresolved land conflicts in Indonesia. This research found that from the six stages of land conflict management, impartiality of governance is not implemented consistently. The first stage namely complaint and reports on land cases likely can be implemented as the National Land Agency has provided cases of land conflicts data. However the second stage, land cases assessment is weak implemented particularly to the case of land conflicts. In this research case, local community in Mesuji and Tulang Bawang district, Lampung Province, never found the process of land cases assessment. The complaints are just kept as a data but there is no further action from the government or National Land Agency.

The land conflict handling, as the third stage, is mostly not realized. In this stage the National Land Agency has to deal with the contentious political economy actors in land conflicts. The actors that become the opponent of local communities such as forestry department and company have more authority and power to influence the process of land conflict handling. The contentious political economy actors will use a legal document to win the case in court process. At the same time, they never open a negotiation outside of court system. In turn, the third stage of land conflict management basically is take over by an partial governance. The indicator, instantly, is showed by no equal interaction of conflicting actors in choosing the mechanism of land conflict resolution. This third stage is also characterized by the mobilization of state violence. The fourth stage namely legal aid and protection, in turn, is very weak. As the case in Lampung Province, the local community testify that they never get any legal aid and protection.

Basically this study found that the land conflict management tends to take in the form of partial governance. It is hijacked by the power elites, political and economy that drives the land governance into their own sectional interest. More detail and specific analysis will be elaborated in Chapter 4 about land conflicts in Mesuji, Lampung Province.

3.5 Customary Communities and Land in Indonesia

Having provided an overview of Indonesia's land management system and land reform situation, this section explores the situation of one of the actors in land conflicts that is a main focus of this study, namely, the customary community. Indonesian society is very diverse and heterogenic in terms of ethno-religious identity; each island has developed a unique social system in which knowledge and customary law socially regulate everyday life, including land management for the community's members. One main characteristic of the customary land system is that the land is considered to be owned collectively rather than by individuals. In this context, land is connected to religious matters, to clan, tribal or kinship identity, and to nature. The position and role of the community's leader is very important in maintaining and implementing customs, and some communities consider their leader to be God's representative on Earth. Kohler equates the term, customary community, with his definition of *ethno-geographic* community, which constitutes a social group of people who share an ethno-geography and interact actively in practicing land use (Kolars 2009, 3-4). In particular, he explains how an ethno-geographic community creates and relates to its territory collectively:

Territory is a manifest ethno-geography – that is, a conception of land made concrete through acts of bounding, controlling, and shaping space, and being shaped by it in turn, over time. A territorial right, then, is a right to manifest one's ethno-geography – to have one's ethno-geography made viable through political, legal, economic, and other institutions. The entity that can have such a right is what I call an ethno-geographic community, which is a group of people marked

out by their shared conception of land and their densely and pervasively interacting patterns of land use (Kolars 2009, 67).

This describes the natural rights of groups whose lives have been bound up with the land for generations. On the other hand, the Indonesian government defines customary communities as *Komunitas Adat Terpencil* (Remote Indigenous Communities). Based on a report of the Social Ministry in 1999, the population of the customary communities was spread over 30 provinces with 229,479 families living in 246 regencies, 852 sub-districts, 2,037 villages and 2,650 locations (Depsos 2009). Consequently, Indonesia had 23 customary regions each with a different customary land system. According to this understanding, a customary land system or customary land tenure is a mechanism to manage land use collectively by following old traditions and community customs. Such customs are likely to have been created centuries before the modern state of Indonesia was founded. Moreover, it is important to understand that, as Szczepanski argues, Indonesian customary law is not a unitary system; every island and ethnic group has different customary law (Szczepanski 2002, 236).

According to the Head of National Land Agency Regulation No. 5 of 1999, Article 1, paragraph 3, a customary community is “a community of people who are bound by customary law order as citizens with a legal alliance because they live in a certain region or descent”. Every customary community has *hak ulayat* (customary land rights) which are defined in Article 1, paragraph 1 as follows:

authority under customary law possessed by indigenous people (customary community) on certain specific areas which constitute the living environment of citizens to benefit from natural resources, including land, in the region, for the survival and life, which stems from the outward and inward down decreased and no disconnect between indigenous and the area concerned.

Similarly, Article 1, paragraph 2, asserts that customary land is “parcels of land on which there are land rights of indigenous people”.

In practice, customary systems arrange any of the communities' social and production activities relating to the land, such as forest management, plantation, farming and breeding. These are known by various names, such as *Mamar* in Nusa Tenggara Timur, *Lembo* in Dayak – East Kalimantan, *Tembawang* in Dayak – West Kalimantan, *Repong* in Peminggir – Lampung and *Tombak* in Batak – North Tapanuli. However various their names, such activities are undertaken collectively in all these communities according to knowledge that has been socially constructed over centuries (Sirait, Fay and Kusworo 2001).

Nevertheless, in the present day, a crucial issue is how such communities can register customary land, forest and non-forest under the Indonesian government's land management, this is especially difficult since most customary communities do not have legal documents to demonstrate or prove collective land ownership. Moreover the whole concept of customary land rights, or *hak ulayat*, is alien to the Western understanding of land law on which the land reforms are based. Thornbun elaborates on this issue as follows:

The term of ulayat refers to common or community-controlled land, and its precise translation is problematic. The term (actually, its Dutch equivalent '*beschikkingsrecht*') was central in the works of Cornelius Van Vollenhoven, founding father of the 'Adat Law School' at Leiden, who premised that Indonesian adat [customary] laws were the expressions of a thought world alien to the minds of Europeans, but which could form the basis for a comprehensible and coherent legal system for the native population of the Indies if subjected to diligent and sympathetic investigation by Western jurists (Thornbun 2004, 4).

Thus, when the customary communities need to register their land and/or forest formally to comply with the Basic Agrarian Law that requires customary land to be categorized as private land, it is extremely problematic. As explained above, customary community uses an oral custom and witnesses to prove the collective ownership of land or forest; while, Indonesia's land laws obligate certain written and legal document. The upshot of this is that, in many cases of land conflicts between communities and private

companies, the government through the judicial institution supports the companies' interest. Moreover, Article 5 of Basic Agrarian Law states the following: (1) customary law must not conflict with the national interest; (2) customary law must not conflict with Indonesian Socialism; (3) customary law must not conflict with the principles of Agrarian Law and other Laws; and (4) customary law must not conflict with the religious laws. This article is often used by political elites to ensure that claims of customary land are rejected and the term, "national interest", is often utilized by political elites to protect a political economy interest on land use policy. This is exemplified in the case study presented in the next chapter where I discuss in detail the process through which the customary community of the Kampar District has been marginalized by political economic elites through its use.

Indeed, in practice, recognition of customary land rights has only been realized by a few local governments. Some of these have already passed a local regulation (*perda*) that protects customary land, including Perda 16/2008 on *tanah ulayat dan pemanfaatannya* (customary land and its utilization); Perda No. 12/1999 on *hak ulayat tanah* in Kampar District; Perda No. 9/2000 on *Ketentuan Pokok Pemerintahan Nagari* in West Sumatera; Perda No. 1/2002 on *Teritorial dan Ulayat Nagari Simarosok*; Perda No. 1/2003 on *Pemanfaatan Tanah Ulayat Nagari*; Perda No. 32/2001 on *Perlindungan Hak Ulayat Masyarakat Badui* in Lebak; and Perda No. 3/2004 on *Hak Ulayat Masyarakat Hukum Adat* in Nunukan.

3. A Typology of Customary Communities

In order to provide a clearer understanding of customary communities and how they function, particularly in relation to land management and land conflict, this section sets out a typology of customary communities in Indonesia based on my field research. Focusing specifically on issues concerning land conflict, customary communities can be divided into two types: indigenous customary communities and migrant customary communities. These have distinct characteristics as presented in Table 12, below.

Table 12: Typology of Customary Community

Characteristic	Indigenous-Customary Community	Migrant-Customary Community
Origin	Living on island for centuries.	Originating from other islands.
Livelihood	Dependent on nature/subsistence.	Earned through processing natural resources.
Economic culture	Less active in economic realm.	More active in economic realm.
Education	Traditional, less modern education.	Relatively modern education.
Social relationship	Excludes other groups.	More inclusive of other groups.

Source: Author's research field analysis in Indonesia.

As indicated above, in Indonesia's law system, a customary community comprises indigenous people who have been using and cultivating land for generations based on hereditary customs; they will often have been living in a region for centuries. Generally, these communities live exclusively in remote locations that may be in forest, mountain and coastal areas. The existence of indigenous customary communities in Indonesia's law system is identified as *Masyarakat Hukum Adat* (Indigenous customary community as a specific form of *Komunitas Adat Terpencil*) and the Indonesian Constitution acknowledges their existence through Article 18 B on Local Government. This Article states that "the State acknowledges and respects the Indigenous People and their customary rights", while Article 28 I (about human rights) asserts that "the State respects cultural identity and customary community rights".

The second type is the migrant customary communities that have travelled from other regions and will only become part of the indigenous community when they have

lived there for more than 30 years.²⁵ Such communities have been subject to specific policies since colonial times. As discussed previously, the Ethical Politics of Dutch Government during colonialism was implemented to respond to the critics of poverty in Indonesia. One of the policies relating to this was the trans-migration program (1905-1941), which continued during the New Order (1970s and 1980s). Through this, the migrants were sent from villages in Java, Madura and Bali to other islands, such as Kalimantan, Sumatera, Sulawesi and Papua. Fisher asserts that the migration from Java, Madura and Bali islands to Sampit, Central Kalimantan area started during the 1930s. Here, the migrants had to face the indigenous people on those already dense islands (Fisher 2001, 9-10). Some migrant communities may also have been forced into migrating through illegal land deals by land brokers.

The trans-migration communities continue to embrace and obey their customs in everyday life; and these cover all social and cultural activities in which land becomes a central part. At the same time, the trans-migratory communities invite their family and neighbors to come to the site of trans-migration and they also sell the land resettlement allotments they are granted at low prices. Some migrant customary communities created by transmigration or illegal land trading can live in coexistence with indigenous customary community. However, for some their presence creates tension and violent conflict with indigenous customary community. These conflicts may have complex root causes founded in custom, religion and land ownership.

A notable example of such violent conflict is that between the Maduranese migrant customary community and the indigenous community in Dayak in Sambas, West Kalimantan in 1950s and, again, in 1999-2001, which provoked a government crackdown on such activities in the area. The issue of land ownership by the Dayak indigenous community and their negative perceptions of the Maduranese custom became the main issues fueling the violent conflict (Cahyono 2008, 151-4; Smith 2005, 9-11). Thus, in any analysis of land conflict it is important to understand the typology of the customary communities involved, i.e., whether they are indigenous or migrant customary community. This is the case in the land conflicts in Lampung Province

²⁵ As testified to me by a migrant community leader in Binnuang, South Kalimantan.

discussed in the next chapter, where the conflict dynamic is also driven by social conflict between the indigenous community and the migrant community as well as resistance to the power elites' occupation of customary land.

3.6 Conclusion

This chapter provided an overview of how contemporary land management has been established in the context of the economic and political history of Indonesia. It explained the early roots in colonialism, Guided Democracy, New Order through to the present era of democracy. During the Dutch colonialist era, land management was set in the Agrarian Law of 1870, which distinguished between non-indigenous people, such as Europeans, and the natives (*pribumi*); thus, it created a duality in the approach to management. The post-colonial period was marked by the transformation of land management with Sukarno's government issuing the Basic Agrarian Law aiming to make land management measures more integrated. Through this, the dual system was removed and the lands controlled by foreigners were nationalized. However, the transformation model of land management in the post-colonial period still tended to dismiss the existence of the customary land held by indigenous communities. This neglect is exemplified by the condition that the use of customary land must not be contrary to the national interest; thus, creating one of the main causes of land conflict.

Furthermore, Indonesia's land management is actually more exploitative through the Basic Forestry Law. Indeed, this law provides the foundation for sectoral industry's exploitation in terms of forestry and plantations by asserting that stronger industrial interests were also national interests. Hence, it became the justification for the government's use of both non-forest lands and forest lands for the benefit of the national industry. It is significant, particularly in the context of this thesis, that the actors who benefit most from this are the political economic elites. During the New Order, Suharto oligarchy established companies in the forest and plantation industries, such as PT. Laamtoro Agung Persada and the ideology of developmentalism became used as the justification for exploitation of the customary lands. As a consequence, state

violence was often mobilized to provide control and sanctions against the people's resistance to policy development.

At the same time, legal regulations of land management, including both the Basic Agrarian Law and Basic Forestry Law, still do not make substantial provision for communities to have access to the deliberation mechanism. Through the power of the oligarchies and the legal system, the authority of the National Land Agency as an institution has been undermined and, while it may be able to resolve land *disputes* between individuals, it does not have sufficient power to manage land *conflicts*. The consequence of this is that the use of transaction services is rife and the effects of these on land management results in the mobilization of state violence against much of the grassroots resistance to this. Chapter 4 provides a more detailed discussion on the issue of land conflicts, focusing specifically on those in the province of Lampung during 2010-2011.

Chapter 4

The Land Conflict in Lampung Province

Introduction

Conflict analysis aims to comprehend the phenomenon and dynamics of conflict and its actors and issues in the context of political and social history. By considering the historical context of the local setting, it seeks to reveal the root causes and practice of conflict by choosing a certain perspective, theory or multi-disciplinary studies (Byrne and Senehi 2009, 3-12). Each case of conflict is unique according to its dynamics; thus, it requires a detailed, complete and balanced analysis. In this conflict analysis, the process includes analysis of the social and political context, actors and issues surrounding the land conflict, conflict dynamic and spoiler of conflict; the main goal being to comprehend how governance actors interact during land conflict dynamics.

In order to comprehend how deliberation mechanisms are blocked by the oligarchies, this chapter presents an analysis of land conflict in the case in Lampung Province. Furthermore, it examines how conflict management is implemented by the government, is it the responsive one or state violence? It specifically addresses land conflicts between customary communities, both indigenous and migrant customary communities, and the two commercial companies, PT Silva Inhutani Ltd and Barat Selatan Makmur Investasi Inc.

Land conflicts received nationwide attention in 2011 after the *Meguo Pak* customary community brought their case to Commission III of Dewan Perwakilan Rakyat (DPR), the House of Representatives following the use of state violence during the Lampung land conflicts. They claimed that, between 1999 and 2011, state violence killed 30 people and injured hundreds. The customary community was accompanied by Maj. Gen. (Ret.) Saudi Karip, a former member of the DPR. However, the roots of the conflict stem back to 1991 when the oil palm company, Silva Inhutani Ltd, was granted a temporary HTI concession for an area covering 32,600 hectares of industrial forests in

Register 45 of Sungai Buaya, literally Crocodile River, a forest area in Mesuji District. Two years later, in response to a letter from the Lampung Governor, the Ministry of Forestry issued a new license for expanding the cultivated land area by a further 10,500 hectares in the area. As a result, Silva Inhutani had a license to cultivate 43,100 hectares of industrial forest areas. In 1997, Silva Inhutani's concession was extended for 45 years and this proved to be the conflict's trigger in the industrial forest lands because several customary indigenous communities had lived for generations in the area of Sungai Buaya, and specifically in Register 45. Two years later, in 1999, the indigenous customary communities in the area demanded the return of customary land rights of approximately 7,000 hectares of the land that Silva Inhutani had acquired. This was the beginning of the long drawn out conflicts, which were further complicated by migrant farmers who started arriving in the area from the mid-2000s onwards, and that eventually involved numerous demolitions of villages. Initially, the community's resistance mainly took the form of formal demands, demonstrations and petty acts of civil disobedience; however, in response to the demolitions, this came to involve violent resistance using farming tools. By the time of my field research in 2010, the conflicts included the neighboring Tulang Bawang area and thousands of community members had been evicted from their homelands in Register 45.

After reviewing the socio-political context specifically in relation to the conflicts in Lampung, this chapter introduces the main actors involved and explains the main issues in these particular conflicts before giving details of the dynamics of the situation. This leads to a discussion of the 'spoilers' who, through their self-interested interference, use the conflicts to benefit themselves and in doing so make them more complex and intransigent.

4.1 The Conflict Context

Indonesia's land conflicts, especially those involving customary communities, tend to be long lasting as perpetuated conflicts. The usual process involves the economic elites bringing a land conflict to court. In general, this means they win the case because, as briefly mentioned in Chapter 3, they own the legal documents that prove their

ownership over the conflicted land area. Meanwhile, the customary communities lose since their only evidence of ownership is based on custom, stories or testimonial letters, and the courts do not recognize traditional evidence. Moreover, the complicated litigation mechanism generally leads customary community to feel unfairly treated. Therefore, resistance movements to reclaim land of customary communities have been mobilized in many parts of Indonesia. Such resistance no longer appears as a “hidden transcript” as it did in previous eras (Scott 1976) but is manifested as mass protest, land occupation and violent action against the government (Afrizal 2007; Astuti 2011).

As detailed in the previous chapters, land governance until now has some crucial issues that hamper the quality of land conflict governance. In Chapter 2, I discussed how the political economic context in Indonesia has been dominated by the interests of elites since colonial times. Land use policies, such as those aimed at transforming forestland into forestry, mining and plantations industries, have been hijacked by the political economic elites’ networks. Therefore, Indonesian governance in general, and land governance in particular, has been controlled by the partial interests of elites and is still far from being based on the principles of impartial politics. Thus, this dominance of partialist governance not only leads to the inability of the state to undertake good governance but also to the network of elites capturing governance so as to favor their own interests.

In Chapter 3, when focusing on the five dimensions recommended for Indonesian land governance by the LGAF of the World Bank (2012) - namely, enforcement and land rights recognition, land use planning and taxation, management of public land, land information and administration, and dispute resolution and conflict management – it was clear that none of these are established in good, impartial ways. This is apparent in the numerous overlapping laws, the institutional incapacity in land administration, and the conflict of interest between National Land Agency and the Ministry of Forestry.

Therefore, the socio-political context of the land conflict in this case study of Mesuji and Tulang Bawang district of Lampung Province is one of partial politics and weak land governance. As in many areas, this combination has resulted in the inability to find equitable resolutions to these land conflicts. In Chapter 2, I presented the norms of partiality that correspond to weakness in the basic norms of good governance (equality

before the law, political equality, effectiveness/efficiency of governance and concern for the public interest) (see Table 5). Here, Table 13 shows the status of areas of land governance that are affected by the partial politics that stem from these.

Table 13: Status of Partiality of Politics and Land Governance Status

Partiality of Politics	Status	Land Governance	Status
Discrimination: clientelism-patronage	Strong	Enforcement and land rights recognition	Weak
Domination: intimidation, ignorance, vote buying.	Strong	Land use planning and taxation	Weak
Ineffective/inefficient: corruption, corrupt bureaucracy.	Strong	Management of public land	Weak
Self-regarding interest/interest group: patrimonialism, corporatism.	Strong	Land information and administration	Weak
State violence		Dispute resolution and conflict management	Weak

Source: Author's research

These conditions created by partial politics and weak land governance directly affect the way the state responds to the local communities' requests and grievances. Generally, this explains why the state violence is still often reproduced in the era of democracy in Indonesia. Indeed the main methods the state uses is to limit the negotiation process severely and to openly employ the mobilization of violence. The peasant and customary communities do not have sufficient opportunities to open or maintain deliberation mechanisms in order to resolve the conflict with commercial companies. The main obstacle is Indonesia's oligarchies interest in national development where areas of land

are mainly the property of industry and it is within this context that the land conflicts in Lampung Province are analyzed.

4.1.1. Socio-geography of Lampung Province

The province of Lampung is situated in the southwest region of Sumatra Island, Indonesia, between 3 and 6 degrees of latitude and 103 and 105 degrees of longitude. It covers a total area of 35,376.50 square km (about 1.74% of the Indonesian area), bounded by the Indian Ocean to the West, Bengkulu and South Sumatra to the North, and the Java Sea to the East, with the Sunda Straits forming the southern border. The province was formed under Law No. 14 of 1964; its capital is Bandar Lampung and it has twelve regencies (*kabupaten*) and two municipalities (*kotamadya*). See the Figure 1, below, for a map showing where Lampung Province is situated in Indonesia at the circle marked in red:

Figure 2: Map of Indonesia showing Lampung Province



The province has 18 inhabited islands out of a total of 52. The indigenous community, which has inhabited Lampung since the 6th Century, is the *Ulun Lampung*

which means people of Lampung.²⁶ It is divided into 84 clans who manage and control different territories in Lampung (Hadikusuma et al. 1989). However, through its long social and political history, Lampung has become a plural society in terms of ethnicity and religion; and the social composition of Lampung society has become a mixture of Ulun Lampung, Javanese, Balinese, ethnic Madurans and Chinese. The BPS Lampung (2012), reported that in 2012 the population in Lampung Province was 7,608 with four or five different ethnic peoples spread across 14 cities/districts. Thus, Lampung province is a very heterogenic society which is recognized as *Sai Bumi Ruwa Jurai*. According to one of the customary community leaders, Mahmud, the meaning of this term is a place of two identities: that of the indigenous Ulun Lampung and that of communities from other areas (Saibatin). The inclusiveness of Ulun Lampung can be seen from the highly valued custom of “*nengah nyampur*” which means social inclusiveness (Mahmud 2010). However, in terms of wealth, Lampung’s society is very unequal as indicated by the report by BPS Lampung (2012); in 2011, poor people who earned less than 250 thousand rupiah comprised approximately 16.8% of the population.

4.1.2. *Administration and Politics*

Administratively, the Lampung Province has a provincial government, fourteen local governments, two municipalities and twelve districts. The provincial government is led by a governor who is elected directly by the people through five yearly local elections. The current governor is Sjachroedin JP from the Partai Demokrasi Indonesia Perjuangan (Indonesian Democratic Party Struggle).²⁷ The main functions of the governor relating to local autonomy are: (1) coaching and supervising district/municipality government, (2) coordinating the implementation of government affairs at the provincial and district/municipality levels and (3) coordinating the development and implementation of tasks involved in the supervision of the provincial and district/municipality. However, to a large extent, the position of governor is merely that of a central government representative and the local governments at district/municipality level actually have

²⁶ See Hadikusuma (1989) for a more detailed history of Lampung’s ethnic people.

²⁷ Sjachroedin JP was elected as Lampung Governor for the period 2008-2013.

more authority in implementing development policy. For instance, natural resources industries, such as plantation, mining and forest industry, are under local government authority at district and municipal levels. Consequently, in many situations, the greater authority of local government has encouraged them to blindly implement and support the exploitation of their natural resources.

The aim of such exploitation is to stimulate local economic growth and increase the local budget revenue. Hence, payment for issuing licenses for plantation, mining, forest industry, and mineral exploitation is a very attractive proposition and most Indonesian local governments give out a great number of such licenses. *Hak Guna Usaha* (HGU) – the right to cultivate – is given to many companies and the local National Land Agency office takes the role of issuing the legal document of land use through the local government. For instance, in Tulang Bawang District, the local National Land Agency office in coordination with the regent issued cultivation rights License No. Nomor: 47 of 1997 to Barat Selatan Makmur Investasi Inc for 9,513 hectares of land for palm oil plantation. This license has been extended until the end of the period of the current government.

It is this excessive natural resource exploitation that has caused the land conflicts and violence in Lampung and, consequently, this province is one of those that deal with exacerbated and violent land conflicts. According to Joko Said, the Vice Governor of Lampung from 2008 to 2013, there are averagely 40 land conflict cases every year in Lampung. However, Said states that the government could only handle 8-10 of such cases because the capacity of government to solve conflicts has not yet been optimized (Said 2012). During 1995-2005, there were 91 land conflict cases relating to 427,964.5 hectares of land and involving 133,738 victims. Said estimates that 80 percent of those cases were between communities and companies. Due to this lack of capacity and achievement, civil society has perceived that the government does not have the good will to seek effective and impartial problem solving mechanisms for these land conflicts. Indeed, Iwan Nurdin, the Secretary General of the Consortium for Agrarian Reform (KPA), argues that “Indonesia’s government was still lacking the commitment to seriously handle the land conflicts. Moreover, the government’s leaders and policy tended to stand for companies rather than to solve the problem of land conflict”

(Nurdin, 2011). Table 14 shows the numbers of land conflicts, their victims and the acreage involved for 2005.

Table 14: Land Conflict Cases in Lampung Province for 2005

District/Municipality	Cases	Victims	Hectares
South Lampung	24	34,065	98,500.15
Tulang Bawang	17	22,547	93,630.00
North Lampung	11	4,347	23,902.50
East Lampung	11	12,240	60,335.15
Central Lampung	10	8,265	46,005.88
Way Kanan	8	9,294	43,571.00
West Lampung	5	38,700	61,500.00
Bandar Lampung	4	1,284	470,00
Tanggamus	1	86	50,00
TOTAL	91	133,738	427,964.53

Source: Dewan Rakyat Lampung (2005)

According to the NLA Office of Lampung Province (2010) at the end of 2010 there were 74 land disputes and conflicts with 21 of these relating to land conflicts including conflict between customary communities and companies. Following the terminology set out in the Head of the National Land Agency's Regulation No. 3 of 2011, as presented in Chapter 3, section 3.4.3, most of land *dispute* cases were handled and resolved. However, the land *conflicts* were still not handled, let alone resolved. The Chief of Regional Police (Kapolda Lampung), Brigjen Pol Jodie Rooseto, states that Lampung was dealing with the most difficult land conflict cases. During 2011, there were 11 land conflict cases between big companies and communities in Lampung (Rooseto,

December 17, 2011). Table 15 shows the number of land disputes and conflicts in Lampung Province that were ongoing in 2009, as well as new cases and those that were resolved that year, followed by those that were ongoing in 2010 (NLA Lampung 2010).

Table 15: Land Disputes and Conflicts in Lampung Province

Typology	2009	New cases	Resolved cases	2010
Land dispute	24	13	10	27
Land Conflict	35	2	5	32
Land case	47	8	7	48
Total	106	23	22	107

Source: Annual Report of National Land Agency Lampung Province 2010.

The land conflicts are the most difficult form of dispute handled by the National Land Agency. As indicated in the table, there were 35 land conflicts in 2009 and only five cases were settled. According to an interview with National Land Agency Office staff of Lampung Province during the field research, there was no progress for the land conflicts in. The interviewee said that this was because National Land Agency found too many difficulties and complexities in handling land conflicts.

4.2 Land Conflict Mapping: Actors and Issues

4.2.1 The Actors Involved in Land Conflicts

During the field research, the I found that the actors in land conflicts in Lampung could be divided into various forms, each playing a very different role although, significantly, these roles sometimes overlapped. I categorized the actors involved as primary actors, secondary actors, a third actor and ‘gray’ actors. Primary actors are

those who are directly involved in the conflict relationship. In this case study, these are the indigenous customary community (the Meguo Pak), a migrant customary community and the commercial companies, PT Silva Inhutani Ltd and Barat Selatan Makmur Investasi Inc.

Both companies are engaged in oil palm plantation farming. Silva Inhutani is actually a joint venture company between a Malaysian company and a state owned enterprise, namely PT. Inhutani V. Its status is that of one of the private companies under the Sungai Budi Group in Lampung. Hence, the community members usually refer to Silva Inhutani as “Budi”. The Sungai Budi Group was established in 1947 in Lampung. This company’s areas of business are plantation and consumer goods, such as tapioca powder, oil palm and some other products.²⁸ In 2012, Sungai Budi Group’s revenue amounted to \$710 million and ranked at number 55 out of 100 biggest Indonesia’ companies (The Jakarta Globe, 2012).²⁹

Secondary actors are those who have interests in influencing the conflict dynamics, these interests may indirectly relate to the conflict through the primary actors and may provide support for the primary actors. These include civil society organizations with their interests in human rights, on the one hand, and the government, business associates and the security personnel hired by the companies from the local population, on the other. These latter are called *pamswakarsa* which stands for Pasukan Pengamanan Masyarakat Swakarsa (Civil Defense Forces).

The third actor is a responsive party that competently (at least in theory) provides conflict mediation. Ideally, this responsive third party is the government in the form of an institution such as the National Land Agency, Polri, TNI, the local forestry minister or a political leader. However, the influence of a responsive third actor in the context of land conflicts in Lampung province is often quite weak or even zero. Furthermore, the government institutions, such as National Land Agency, often tend to become secondary actors together with local and national civil society elements. In 2010, the central government established an ad hoc committee, named *Tim Gabungan Pencari*

²⁸ See the information about Sungai Budi Group at <http://daftarperusahaanindonesia.com/2012/04/budi-acid-jaya-tbk-pt-2/> [accessed July 2 2013]

²⁹ See the revenue report on the 100 biggest companies in Indonesia by the Jakarta Globe. Available at http://www.thejakartaglobe.com/pages/downloads/52-54-56_List.pdf. [accessed September 22, 2012]

Fakta or the Joint Fact Finding Team (hereafter, TGPF) for land conflicts in Mesuji Lampung. Nevertheless, the TPGF did not play the role of a third party and only produced some recommendations for the central government. Moreover, it became apparent in my field research that the effect of these was more than likely to have escalated the state violence rather than to resolve the root causes of conflict. Consequently, the research found that there was a notable absence of a responsive third actor and that this was the result of the economic elites and government institutions' practice of using transactions services. See table 16 to understand the conflicting actors map in the case of Mesuji, Lampung Province:

Table 16: Conflicting Actors in Mesuji and Tulang Bawang Lampung Province

Actors Type	Name	Position
Primary actor	Local community: Meguo Pak	Customary community in Lampung, Mesuji and Tulang Bawang, that struggle to reclaim their land in Register 45
	PT. Silva Inhutani Lampung	Company that got license of land use in the area of Register 45
	PT. BSMII	Company that got license of land use in the area of Register 44
Secondary actor	Local NGOs (Agra and KPA)	Advocating the local community to get their customary land
Third actor	Central government	The central government does not yet realize impartiality of governance but tend to be partial by taking a side of the company
	National Land Agency	Not able to make a land conflict handling due to their weak authority in front of forestry minister and department.
	Local government	The local government does not yet realize impartiality of governance but tend to be partial by taking a side of the company
	Police	Undertake repression to local community
Gray actor	Land brokers	Take the position of spoiler which makes land conflict more complicated

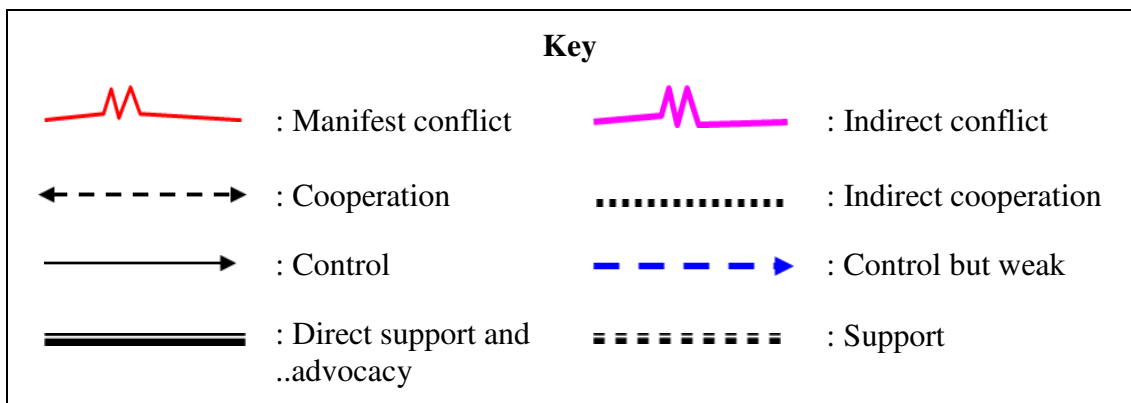
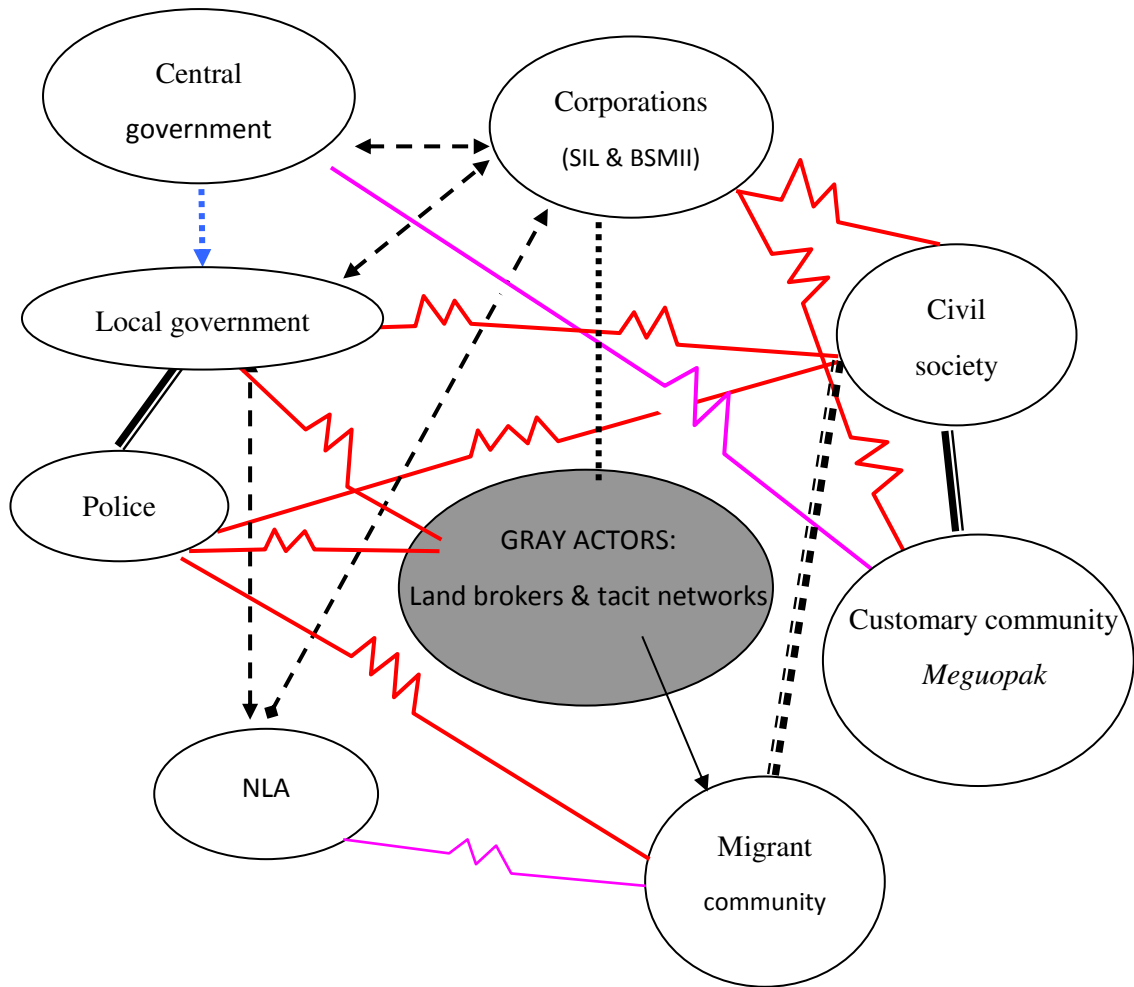
Source: Author's field research analysis

There are also other actors whose role and influence lie in a 'gray area'. I found that there are two forms of these actors both of which do not have clear issues or demands but have more complicated undefined relations with the conflicting parties. During a conflict, the first more obvious form of these actors builds a complex relational structure with all conflicting parties, whether primary, secondary or the third actor. The resultant relationship is characterized by opportunistic interests and the aim to benefit

from the political economy of the conflict situation. In the context of this study, the role of the gray actor is played by a land broker who moves swiftly back and forth between the members of the indigenous communities, the police and the government agencies. Through these activities the broker plays a significant role in creating a more complex conflict situation and causing the escalation of violence. Some gray actors set up some kind of NGO as a front to give their activities legitimacy. They are also likely to have a lot of members with martial training. The second type of gray actor is the tacit network of local elites that utilizes land that is idle due to the conflict for economic profit. This tacit network is very strong in the political economy of Lampung, and so determines the form of land conflict management implemented by the government. I discuss this in more detail in the section on 'spoilers'.

The conflict mapping represented in Figure 3, below, shows the actors involved in land conflict in Lampung Province and the complex relationships between them, indicating the specific nature of these:

Figure 3: Land Conflict Mapping in Lampung Province



Source: Author's analysis

The actors keep reproducing social practices of conflict which are generated by the interplay between interests, ideology, actor relationship, and legal systems. Before discussing the results of this in the section discussing the conflict dynamics in Section 4.3, it is useful to look in detail at the main issues involved in the conflict in Lampung.

4.2.2 Issues of Conflict

According to the Oxford online dictionary, an issue is “an important topic or problem for debate or discussion” in society.³⁰ Therefore, issues in the context of this study refer to the main important topics and problems involved in land conflicts, including land occupation, land ownership status, land policy, local resistance, and violence on the part of the companies, the communities and the government. Here, I divide these issues into three categories that are especially relevant to land conflict in Lampung: land occupation, criminal actions and security, and the position of the government.

Land Occupation

During my field research, the main issue that was being discussed among members of the customary communities was the crimes committed against the Meguo Paki (their community) by the commercial companies and the government. According to the members of the indigenous customary community in Mesuji District, the plantation companies carry out concession area expansion (through official leasehold) without the consent or agreement from customary communities who have been cultivating the area for generations. In this case, the concession area that was granted to Silva Inhutani Ltd by the official contract was 33,000 hectares but this was suddenly expanded to 43,000 hectares, as usual without informing or consulting the community.

The Meguo Pak suspect that this was made possible because the government and the company were engaged in various transaction services that involve collusion and corruption and which have led to the issuing of the legal document that gives a license

³⁰ See the Oxford online at <http://oxforddictionaries.com/definition/english/issue>. Accessed August 21 2012.

for an area so much greater than in the initial contract. As a result, the members of customary communities have been evicted from the customary land that was claimed as the concession area and they have been prohibited from using their own land and forestland areas. Moreover, the company has not paid – and does not officially have to pay - compensation for the land. In addition, although in theory the government attaches certain obligations to land and forest concessions, the company has not implemented these.

According to the Forestry Ministry Decree No. 93/Kpts-II/1997, there are twelve points of obligation involved in such concessions and three of these are directly related to customary communities. These points make clear that the company receiving the concessions must do the following: (1) help improve the social quality of people who live in or around the concession area; (2) permit the indigenous people/traditional communities and their members to retrieve, collect and transport forest products, such as rattan follow, honey, sago, resins, fruits, grasses, bamboo, bark, etc. in order to meet their daily needs; (3) support regional development and local economic development, as well as the welfare of the traditional communities living around the working area. Based on the community members' testimonies, it was apparent that Silva Inhutani has never realized these three obligations.

The issue of Silva Inhutani “occupation” of the Meguo Pak’s customary land is the most discussed issue in the area and was far-reaching in terms of its impact on the communities. As several leaders of the communities told me during the field research, according the community’s traditional ways, the lands were not owned personally, but collectively. Each customary community in the villages of Sungai Buaya had a certain area of land that belonged to the community. However, the government’s land use policy had destroyed their existence by dispossessing them of their customary lands. As one of the leaders stated in an interview:

We have lived here since hundreds of years before the country existed. We have utilized this land by hereditary customs without bloody conflict. All problems are resolved between community members through dialogue. This is our custom.

However, since the expansion of Silva Inhutani in 1997, we have all lost our livelihoods. We lost dignity as human beings. Think about it.³¹

Because the company has expanded its concession area without the community's agreement, they regard this process of expansion as the company's occupation of the customary community's lands. Understandably, this has provoked the customary community's resistance. Much of this resistance takes the form of reclaiming land and "harvesting" crops from the oil palm plantations owned by Silva Inhutani. Since this is only done on the area of land that is considered to be in the community's customary area, the community members argue that their action in harvesting the palm oil is within their rights.

One of the members of the Meguo Pak explained how their approach is necessary for their daily survival as follows:

We harvested the palm oil from the area which is claimed by the company. In fact, it is actually our area, it's our land! We do this [harvesting] because the government has never heard our complaints. Meanwhile, we need to pay for our families' needs like school for children and health. How can we pay for it all if we have no land? ³²

Criminal Action and Security

However, the company's response to the resistance is contentious. The main form this takes is when the company hires pamswakarsa. These are local people recruited from surrounding villages and from local security services and most of the big companies in Lampung create pamswakarsa, including Silva Inhutani and Barat Selatan Makmur Investasi. Many local community members in Mesuji and Tulang Bawang assert that pamswakarsa are recruited by the company to blur the dividing lines in the conflict between the local community and the company so as to turn it into an inter-community

³¹ Agus, (Anonymous by request) Interview by the author, 2010

³² Aga, (Anonymous by request) Interview by the author, 2010

conflict. Thus, as civil society organizations - such as the local branch of the Alliance of Agrarian Reform Movement (AGRA Lampung) - explain, the recruitment of pamswakarsa from the members of the community can create horizontal conflict (Kompas, 16 December 2011). The intention on the part of the companies is that the pamswakarsa will claim that they have a right to land use in Lampung. One of customary communities' leaders in Tulang Bawang testified concerning this, as follows: "We have protested about the company occupying our land. After the protest, we had to fight with the pamswakarsa. We chose to draw back to our homes after realizing some members of the pamswakarsa were neighbors."

Furthermore, it is through this intentional blurring of the conflict issues that the government gains legitimacy in employing political violence, so this strategy is very beneficial to the commercial companies. On the one hand, the pamswakarsa protects the plantation area from indigenous resistance and the stealing carried out by the members of communities. In relation to this, Silva Inhutani and Barat Selatan Makmur Investasi claimed that the stealing of palm oil done by customary members can be categorized as a crime and through this they justify the need to provide security personnel. Therefore, the companies recruited pamswakarsa. This was done through a security service company and, sometimes, directly from the gangs nearby the plantation area or outside the city. They recruited between 30 to 40 pamswakarsa personnel who were entrusted with the task of securing the area of the palm oil plantations.

However, the number of members of the customary community is larger than the pamswakarsa recruited so the company requests the police to provide further security in the plantation area. While the Chief of Regional Police Lampung Province, Ishaq Sulisty, stated that all security operations conducted by police are intended to protect state assets, including those in the Register 45 area, the police found the fact the land was bought and sold illegally to the public at low prices. Moreover, Sulisty asserted that the reason the land conflicts had not been resolved was due its complexity and the lack of an exact decision from the authority (Safari, 2011).

Nevertheless, through interviews with Silva Inhutani staff, this study found that both companies, Silva Inhutani and Barat Selatan Makmur Investasi, provided operational funding for the police to support their security operations. This operational funding is

not based on a legal contract between the company and the police as an institution and included money for operational rations such as meals – three times a day – and wages. The member of the Silva Inhutani staff that I met stated precisely that the money came from the company. He explained that the company had to provide a certain amount of money and facilities for the police and government officials:

Companies have to provide the money for them to get protection from theft and forest encroachers. I cannot mention the exact number. However, the amount paid is not small. Why do we have to pay? You know ... It's like a vicious circle. It's as if there is no compulsion to give money and facilities but then the company would not be secure. However, companies also need security, right? Otherwise they might not expect the police or the government to enforce the law.³³

This collusion is highlighted by the fact that the police personnel usually named such security operations, “*operasi senyum*” (smile operation) because they got extra money from the company. As stated by Safari (2011), Silva Inhutani’s public relations department gave the police personnel money to make the plantation area secure. These ‘money games’ have obviously meant that the police have been less than neutral in dealing with the land conflict between company and community. Indeed, it can be stated that this is a prime example of a service transaction between the police and a company. In a previous paper, I discuss how transaction services that do not follow the legal procedures are fundamental to the initiation of state violence because they have undermined the integrity of the police force. Although, as a state institution, the police are theoretically obliged to enforce the law without discrimination, such transaction services have transformed that same institution into “*centeng*”, i.e., mercenaries or those who work to give a security service for the cash payment. Consequently, rather than participating responsibly in the implementation of land conflict management, the police become at best unresponsive and at worst the agents of state violence (Susan 2010).

³³ Ahmed (anonymous by request). Interview with the author, 2011.

The Position of Government: Police

The unresponsive position of the police is well known throughout the customary communities. That the police take the side of the companies is indicated by their services for the company in the form of security protection. By the time it came to the point that the members of the community were protesting against the companies, the police had already been the companies' most powerful ally. Consequently, the police apparatus often represses the community, generally through Brimob,³⁴ a military unit of the police. Based on the testimonies of community members, the police do not hesitate to act violently, beating, torturing and even killing community members who resisted the demolition operation.

In the case of the land conflicts in Mesuji and Tulang Bawang, the police relied on the law and legal documents such as land titles and HGU licenses issued to the companies. For instance, in the Barat Selatan Makmur Investasi case in Tulang Bawang district, the police used the following to back up their support of the company: Law No. 2 of 2002 regarding the Indonesian National Police; a HGU license based on the Concession of Barat Selatan Makmur Investasi, Certificate No. 47/1997, regarding an area of 9,513 hectares issued by the National Land Agency Office of North Lampung; and a letter of application security for Barat Selatan Makmur Investasi No. 047 / Barat Selatan Makmur Investasi - KBN / MU / IA IX / 2011, regarding the request to secure the area of the company's oil palm plantation. Thus, the justification the police used was that they had to enforce the law (Kaplotes Tulang Bawang, 2011).

The legal evidence defines the customary community's protest and resistance as a criminal act and entitles the police to undertake the demolition operation in order to regulate the community. This use of law created diametrically opposed positions between law enforcement agencies (government) and the criminals (communities). In the land conflict case that is the subject of this case study, the police cooperated with other government agencies, such as local government, military and Satpol PP, to establish a joint team for a demolition operation. The purpose of forming this joint team was to ensure adequate strength to cope with a situation that was vulnerable to violence

³⁴ Brimob stands for Brigade Mobil or Mobile Brigade.

because of the large quantity of members of the community and the strength of their resistance. The main purpose of demolition operation was to regulate customary communities that occupied the area of land belonged to the company and it was perceived as an eviction by the community.

While the police justified their operations as being in accordance with the law, the customary communities rejected and distrusted the justification. Their distrust of the legal evidence was high. The source of distrust was centered on the community's perception of the government's performance which they considered to be biased through the practice of corruption, collusion and nepotism. The community understood the government agencies, including the police, as being able to create and issue legal documents for any purpose that suited them. An example of this is the land title certificate. The local National Land Agency office can easily issue a certificate to anyone who pays or bribes them. Hence, in Lampung, one area of land may have 10 to 30 certificates of land titles. Moreover, the company, being owned by one of the oligarchies, could provide a huge amount of money to make this possible, as had been done before. Due to this, the community could detect the money games that were being played although they did not have any material evidence in hand.

In an interview with the author, Marwan (anonymous by request),³⁵ a member of the customary community and former head of a village in Tulang Bawang District, stated that most people in Lampung had lost their trust in the government agencies. He explained that he had tried many times to find a solution to land conflict cases by approaching government agencies such as the police, the National Land Agency, the local legislative, and the Forestry Department. However, after eight years of effort, he had only managed to obtain numerous empty promises from the governments. When Zulkifli Hasan was appointed by the President to become Minister of Forestry, Marwan was sure that this would lead to a good solution to the land conflicts in Lampung. He went to the Ministry of Forestry office in Jakarta three times but only received the same promise. Although he was grateful that the ministry staff gave him some money to get back home from Jakarta to Lampung, he realized that all the promises of the central and

³⁵ Marwan (Anonymous by request). Interview with the author, 2010.

local government amounted to nothing since, to date, his land is still owned and cultivated by Silva Inhutani Ltd. What Marwan is still unable to understand is how it was possible for his customary land to be suddenly given up to the company. When he and other members protested about this to the court, the company proved they had the rights to cultivate the land by producing a license.

The government agencies, including the National Land Agency, the judiciary, and even the local political leaders were all perceived as being involved in making legal documents to support Silva Inhutani, as was the case with the legal document for land acquisition that had given that company permission to occupy the customary lands. It is this distrust of government agencies that causes the customary communities' resistance to accepting the legal and policy documents issued by government agencies as valid, which in turn means that they resist the law enforcement of community demolition so intensively. In this situation, there was an emotional escalation that came from the human spirit to defend their family, livelihood and collective self-esteem. Consequently, the community members mobilized a collective bond to protest against the demolition, using farming equipment as weapons to resist. When the demolition was carried out, the community threw stones at the police and they carried sharp objects and tools, such as machetes, to defy the police.

The resistance of customary community members was categorized as a crime by the police. However, the people had no legal means to reject what they considered to be an illegal occupation. In this situation, the escalation of violence often ruptured and caused injuries and death for both the police and, more often, for the community.

Thus, the main issues involved in the land conflicts in Lampung Province are related to disagreements over land status, distrust of the government, and state violence. Based on the field observation and interviews, these issues are summarized in Table 17.

Table 17: Land Conflict Issues

Actor	Perception
Local government	Legal and illegal activities, such as illegal farming and land conflict have to be settled through the court system (judicial approach). The government is responsibility for supporting economic investment and securing society from horizontal conflict. Customary land exists but needs to be processed by the court system.
Police	The local community has violated the regulations. The conflict is mostly caused by criminal action from the society such as stealing company's property or disturbing company's activity.
Customary community	They believe they have the right to get land reform and access reform for farmer communities. Problems caused by the government's ignorance and companies' occupation of their lands. Problems solved by resistance and collective violence.
Land brokers	Land should be redistributed to the community.
Tacit network of local elites	Land conflicts provide opportunities for utilization of idle lands.

Source: Author's research analysis

4.3 The Land Conflict Dynamics

This section explores the evolution of the conflicts and examines the dynamics that perpetuated them. Firstly, the conflict situation can be divided into four main phases; namely, a peaceful situation, the emergence of conflict / manifest conflict, escalation of violence, the 'gray' situation and conflict de-escalation. The interests, ideology and

relationships between the actors and the legal system determine the dynamics of the conflict which in turn impact on these phases.

The expansion of Silva Inhutani concession in 1997 included 7,000 hectares of land that had been the customary land of several villages in the Tulang Bawang area. Consequently, in 1999, these villages requested that the 7,000 hectares be returned to them. In response to the customary communities' grievance, the central and local governments made a policy commonly known as the "enclave" area policy. The intention of this was to create a special area for the three objecting villages where the communities could live. The area that was proposed for the communities to live on covered 2,600 hectares, while the remaining 4,400 hectares was still part of Silva Inhutani's forest concession. The enclave policy was rejected by the customary communities due to the small area offered.

Meanwhile, the Ministry of Forestry cancelled Silva Inhutani's forest concession in 2002 because the lack of capacity on the part of the company's management. However, in 2004, after a new Lampung governor was elected, the forestry ministry issued a new decree again granting the concession to Silva Inhutani. In an interview with the author, staff from the National Land Agency office in Bandar Lampung stated that the decree was actually given upon the request of the local government: "The decision is more political and the National Land Agency has no authority to [intervene]. The forestry ministry's decree on the forest concession was actually granted as the response to a local government request, not the National Land Agency".³⁶ After the reissuing of Silva Inhutani forest concession, the land conflict escalated again.

The conflict situation became more complicated in the 2000s when the migrant farming communities occupied several areas in Register 45 and set up three new villages: Moro Seneng, Moro Dewe and Moro-Moro village. Most of these illegal farmers came from Bali. Some asserted that their claim to be able to use areas of Register 45 was based on permission from customary community leaders and said they had paid a certain amount of money to someone who claimed to be a customary

³⁶ Munarman (anonymous by request), Interview with the author, 2012.

community leader. Others explained that they had bought the land from an NGO in Bandar Lampung that had told them it had government support:

We bought [the land] from the NGO; its center is in Bandar Lampung. They said that they were assigned by the government to regulate the exploitation of ground in Register 45. They said the land in Register 45 is not owned by the company, so this [land] is to go back to the community. I myself paid five million rupiahs, I paid it three times.³⁷

The migrant farming community, then, mixed with the customary communities in Lampung and this added to the complexity of the land conflicts.

In 2005, the local Legislative Assemblies of Tulang Bawang District and Lampung Province established a fact finding team to investigate the land conflict in Register 45. This team recommended that Silva Inhutani give compensation for land management work that the community members had done since the farmers, from both the migrant and the customary community, had cultivated the lands and spent an amount of money in doing so. Thus, Silva Inhutani also gained some advantage from the farming activities in the form of land maintenance by the communities and so the fact finding team recommended that they had to give compensation to the farmers. One of Legislative Assembly members, whom I interviewed during my field research, argued that land conflict in Lampung, and particularly that in Register 45, was inevitably complicated. I would add that this was exacerbated by the problem of weak governance on the part of the executive government, particularly in managing land use policy.

One serious side effect of the migrant farmers' illegal occupation in Register 45 was to duplicate the government officials, police and military that became involved. This added to the impact of the 'gray actors' who were quietly utilizing the weak governance to enjoy some benefits of the conflict by cultivating some areas of land in Lampung that had become idle due to the conflict. This was confirmed by an official from the National

³⁷ Made (anonymous by request), Interview with the author, 2012

Land Agency Office.³⁸ During my field research, he testified that many government officials, including police and military, cultivated the idle land to benefit themselves. Moreover, they protected each other by working in a network and the National Land Agency was too weak to handling this without more support.

Following this, the conflict management conducted by the government was implemented through means of violence since the police now looked on all the communities in Register 45 as illegal farmers or forest encroachers. In 2010, the migrant farmers requested 2,500 hectares of land be removed from the concession status. However, the Ministry of Forestry only offered another enclave policy where the communities were allowed to utilize an area of 149.1 hectares of the forest. The communities rejected this offer and still demanded the release of 2,500 hectares land in Register 45 area. In response to this rejection, many areas where Silva Inhutani and Barat Selatan Makmur Investasihad palm oil plantations were occupied by the community, which was therefore regarded as an ‘encroacher community’. Rizal (2010), the chief of police report for the Criminal Detectives Division of Tulang Bawang district said that farmers in Register 45 had violated criminal law since they stole palm oil and illegally occupied the land managed by the tow companies. During my field research in November 2010, the police, military, and local government were processing plans to create a “demolition committee” for Register 45. These were then put into action in the same month and the ‘encroacher villagers’ were evicted and their villages demolished using a significant amount of violence.

Lampung civil society elements supported the communities and condemned the state violence enacted by the government recognizing that the people were treated without mercy in the demolition operation. Moreover, although many of the people living in the area of the Registers 45 were from the indigenous customary communities, the police evicted all indiscriminately. In an interview with the author, Wardi (anonymous by request), an activist of KPA Lampung, asserted that local and central government only knew how to use violence and they did not know how to solve the problem. Furthermore, Wardi stated that the police and local governments gained large

³⁸ Adi (anonymous by request), Interview with the author, 2012

amounts of money in order to implement the demolition operation. He warns that this will be destructive for Indonesia:

So you must be aware now why the communities resist using violent means, too - because the government started using it. The government prefers to take the side of the company and give up the land to economic elites. You know ... I assure you that the government is preparing a grave for this country.³⁹

Thus, the land conflict situation was complicated and loaded by numerous sectional interests of the political and economic elites, which also increased the pressure on the land conflict management in Lampung, which in turn manifested as more state violence. To see historical line of land conflict dynamic, see the Table 19 at the end of this section which sets out the events of the land conflict in chronological order. The demolition operation conducted by the police resort of Tulang Bawang started in 2006. According to a community member from Register 45, whom I interviewed during my field research, the police personnel often intimidated the families between 2006 and 2011. In 2006, the demolition operation destroyed 74 of the community's houses and injured more than two dozen people. Since then, on average, the police and pamswakarsa have carried out two demolition operations and one routine operation almost every month of every year. Also, according to the testimony of another community member, during 2009 and 2010, two farmers were shot dead by the police. While between November 2010 and November 2011, an integrated team under police coordination conducted two further operations in which two more farmers were killed.

When the land conflict case in Lampung came to national public attention through the case of Register 45, the central government took the situation more seriously and rushed to create an ad-hoc team, namely the TGPF (*Tim Gabungan Pencari Fakta*) or joint team for fact finding, in December 2011. The former President Susilo Bambang Yudhoyono appointed Denny Indrayana, the Deputy to Law and Human Rights Minister, to lead the TGPF for the Mesuji land conflict case. The team consisted of

³⁹ Wardi (anonymous by request). Interview with the author, 2012

eight members including the Coordinating Minister for Political, Legal and Security Affairs and representatives from the following organizations: the law and forestry ministries, the National Police, Lampung and South Sumatra administrations, and the National Commission on Human Rights (Komnas HAM).

The TGPF presented five preliminary findings and seven recommendations. The findings were as follows: (1) the land conflicts in Lampung Province factually existed; (2) the land conflicts have been continuing for a long time, causing loss of life, injury and loss of material; (3) the TGPF would conduct and coordinate more closely focused investigations in relation to casualties in Register 45; (4) The conflict actors in Register 45 comprised the company (Silva Inhutani), the security forces, civil society / customary and migrant communities and government; and (5) The death toll at three locations in the period 2010 - 2011 was nine people. The initial recommendations included the following: (1) to accelerate the legal process concerning actors thought to be breaking the law through violence, especially to those who caused loss of life; (2) to seek legal assistance for suspects to ensure a fair legal process, (3) to protect witnesses and victims, (4) to give medical aid to those who needed it; (5) to anticipate the possibility of the spread of violence in the area of the conflict; (6) to conduct law enforcement against the land speculators or land brokers who exploited the situation; and (7) to evaluate the use of private security forces (pamswakarsa) (Kompas.com, January 16 2012).

To some extent the work of the TPGF was successful and the state violence was de-escalated after its formation. More recently, in September 2012, the central government, provincial government, police and the TNI created another “integrated team” to clear and regulate the Register 45 area from land encroachers. The budget was estimated as up to JPN 600 million (Kompas, October 18, 2012).

Thus, the dynamics between the various actors in the conflict have impacted on the how the violence developed while the pressure put on the government through public exposure of the state violence did lead to an amelioration of the situation. However, the issues are by no means resolved. Moreover, the part played by the gray actors deserves specific attention as although their influence is generally not easy to pinpoint they have a serious effect on the dynamics of the conflict.

4.4 Local Spoilers of Responsive Conflict Management

The concept of “spoilers” as a means to understanding the dynamics of conflict was originally conceived by Stedman (1997) in his article, “*Spoiler Problems in Peace Processes*”. In this respect, he defines spoilers as actors that cause conflict dynamics to be more complex and prone to violence; however, they are not primary actors who are directly involved in open conflict or related competition. Stedman argues that spoilers were differentiated into three types: limited spoilers, total spoilers and greedy spoilers. The limited spoilers are considered to have a limited purpose and can conceivably be included in responsive conflict management, given the right concessions. Total spoilers are more ideological and radical elements that refuse to support the creation of a negotiation process. Greedy spoilers are the combination of the other two types; however, their interest is more related to wealth accumulation than ideology.

Moreover, moving beyond Stedman’s definition, there are also what I have termed ‘gray actors’ in the case of land conflict in Lampung Province. These are agents who build a complex structure of relations with all conflicting parties. Typically, these relations are characterized by opportunistic interests that can help these actors to benefit from conflict situations. In conflicts that are the focus of this study, the gray actors are the “spoilers” of the conflict. Their position is close to that of greedy spoilers who pursue sectional interests and so profit from the situation. This section looks specifically at the gray actors involved in Lampung land conflicts, their methods and influence. Due to their nature these are hard to identify or make a clear assessment of their intentions. However, by exposing the conflict dynamics, it is clear that there are two actual practices that indicate the existence of gray actors: (1) the phenomenon of buying and selling land at the site of conflict situation undertaken by certain individuals and groups; and (2) the phenomenon of local government officials, police and military personnel who make use of idle land to create their own plantations. Between them, these two phenomena create two groups of gray actors, namely, land brokers and a tacit network of local elites.

4.4.1 Land Brokers Invitation

One of the TGPF's later findings was the existence of the land speculators or land brokers. This points to the determinant position of land brokers in Lampung land conflict, especially in relation to the conflict dynamics which involve increasingly complex and overlapping interests. In the field, the land brokers are not characterized by any clear political economic affiliation, but they may function as individuals or as organizations. According to my field observations, there is no indication that the land brokers work together; instead, they compete with each other in gaining potential buyers.

It has not been possible to map the land brokers completely as yet. However, this study has attempted to give as comprehensive picture as possible by mapping them through some samples found in the field. The aim of this was simply to determine the social identity and social practices involved when brokers offer the land to prospective buyers. In the context of this study, it is useful to consider the two forms of land brokers mentioned above - individual and organizational - separately as two distinct models.

The individual model of land brokers involves individuals who have a good understanding of the local information and a strong social networking capacity. Members of this group are very aware of the land problems in Lampung. However, at the field level, I found that they were not formally well-educated. This lends credence to this study's hypothesis that the individual land brokers were likely to have been born and raised in Lampung. Moreover, this means that the individual land brokers are also likely to have strong social connections with leaders or community leaders. One of individual land brokers encountered by me, the author, was actually a member of one of the customary communities in Tulang Bawang, here referred to as Ato to preserve his anonymity (as requested). Ato "owns" 800 hectares of lands spread across several districts in Lampung. According to him, the land still belonged to the customary community and so could be used by the people. Despite this, he also mentioned that most of the land was officially owned by him as the outcome of his own business. Therefore, lands categorized as belonging to the community through custom were not for sale but only for rent to farmers wherever they came from. He states:

If it is customary land ... yes ... I am not allowed to sell it. It is just ... sort of rent. Well, if the lands owned by myself ... yes can be sold. I have the certificates. If you want to buy land, you can contact me (Ato 2011).

On the other hand, organizational land brokers follow a model whereby a group of individuals establish an organization such as an NGO. According to several community members, such organizations have their own letterhead and office stamp but the composition of the members may vary widely. Some are indigenous residents of Lampung and others come from outside of Lampung. However, in general, their education level was likely to be higher than the individual land brokers. The information gained from some members of the farming community in Register 45 during the field research demonstrated that a member of one of the organizations works as a lawyer.⁴⁰ This phenomenon of a lawyer, and a local one, playing the role of an organizational land broker is surprising. During 2008, one organization, which is known by the members of the community as “*Pekat Raya*”, began actively and openly selling land of the Register 45 to the farmers from Bali, Makassar, Java and some cities of Sumatra.

Table 18 shows a comparison of the different characteristics of the two land brokers models:

⁴⁰ This statement is only based on the community member’s statement and so needs more evidence before being accepted as fact. However, the organization land brokers themselves claimed that their members knew the legal system in Indonesia.

Table 18: Land Brokers Model

Individual Land Brokers	Organizational Land Broker
Individual, non-formal players.	Group and semi-formal players.
Tend to be born and raised in Lampung.	Heterogenic members.
Tend not to be well educated.	Tend to be well educated.
Enjoy strong social networks based on kinship or customary community.	Enjoy complex social networks based on professional relations and local NGOs.
These players are particularly difficult to detect.	Tend to be more easily detected.

Source: Author's research and analysis

While my research indicated that there is a far greater number of individual land brokers, as indicated in the table, these are difficult to detect and so their influence is likely to be even greater than I was able to identify. However, whatever their numbers, the two groups, the individual and the organizational land brokers, have the same position and role in land conflict dynamics, namely, that of gray actors. While their impact runs throughout the conflicts, a particular effect of gray actors is to be instrumental in opening doors for migrant farmers' access to land in Lampung, as evidenced by the individual land broker's statement above that made clear he would sell customary land. Thus, since the 2000s, the number of illegal farmers settling in Lampung has been increasingly growing.

4.4.2 The Tacit Network of Local Elites

Although there is little documented evidence due to its clandestine nature, it is common knowledge among Lampung people that local elites utilize the idle land when its concessionary status has been neglected or not managed by the company that owns

the title. As mentioned by member of local Legislative Assembly, many government officials have also been utilizing the idle lands for their vested interest.

Through this, local elites in government and local economic elites have created a “tacit network” of production that is very slick and mutually beneficial. The local elites who utilize idle lands include government officials, members of the police, military and political party leaders. This study found that each local elite gets an allotted portion of idle land, averagely measuring about ten hectares per person. This data is not the result of a statistical count but an estimation given by several NGOs’ activists in Lampung. Mirna (anonymous by request), one of the local government officials and a key person in this study, explained to me how a government official gets a “quota” of idle land. The land was not licensed for private ownership but was licensed to be used for self-profit and the companies that had been granted the relevant licenses were not able to cultivate or manage the lands. Mirna explained how the system worked, as follows:

The quota of idle land is usually planted with cassava. Actually, just about anything can be planted. It is up to each user. We utilize the idle land because it has been left empty, derelict. The idle land is given through friendship in the office. If we later moved from Lampung, the land may be used by others.⁴¹

It is interesting that most of the local elites are known to be planting cassava in idle land areas. Cassava is the basic ingredient of tapioca, thus, companies producing tapioca powder, including Silva Inhutani and Barat Selatan Makmur Investasi, benefit from this by receiving cheap raw materials. The cost is cheaper because the company does not have to handle the risks involved in production.

Thus, the local elites are allotted idle land through their socio-political network. Typically, it is senior local elites who offer idle land through these networks although this form of utilization of idle land is definitely not in accordance with regulations. There are no legal papers showing that an area of idle land has been passed on to or managed by specific political elites, however, the specific quota areas of idle land

⁴¹ Mirna (anonymous by request). Interview with the author, 2011.

belonging to elites will be known collectively. These mechanisms to illegally re-allocate land are maintained socially through a network and the local elites mutually protect each other. Consequently, the police do not arrest them. Moreover, it was very difficult to find local government officials and political elite who would talk much about the issue of land conflict.

Thus, the phenomenon of idle land has created a ‘tacit network of local elites’ that is not formal and nor is it apparent at a social level. It is silent and invisible but strong. In this network, local elites take advantage of the situation created by land conflicts. During my field research, staff of the National Land Agency Office in Bandar Lampung acknowledged the practice of idle land utilization by local elites but made clear that the National Land Agency does not have the power to deal with the issue. Meanwhile, this tacit network has become embedded in the political and economic structure. Moreover, uncertainty regarding the resolution of land conflicts provides more opportunities for the utilization of idle land and consequently, this network of elites are likely to prefer land conflict situations to remain uncertain; the underlying reason being based on greed and the calculation of profit. For instance, the average value of the benefits obtained from cassava crops can reach up to 40 million rupiah per hectare. If each elite owns 10 hectares of idle land cassava, they will gain 400 million rupiah (equal to US \$ 40,000) per harvest.

The elites involved in these tacit networks employ plantation workers who nurture and harvest it. In certain cases, there are areas of idle land that local elites have not “registered” in the tacit network or, in other cases, local elites may be political opponents or business competitors at the local level who have different networks. Both these conditions result in raids and arrests of the workers in the area of idle land. Police usually allege that the workers are illegal farmers and arrest them accordingly if they are caught. However the police never catch the local elites who had actually become the “master” of the idle land. In an interview with the author, Gede Pasek Suardika, the chief of Agrarian Reform Commission of National House of Representatives stated that there was a definite advantage for elites in land conflicts, whilst the farmers or

customary communities were usually the victims.⁴² Thus, although the plantations in the area of idle land were actually ‘owned’ by some local elites, the workers were the target of law enforcement.

Although this study was unable to gain strong tangible data of how tacit networks maintain the land conflicts, circumstantial evidence and evidence gained through interviews, made clear that they maintain land conflict for the accumulation of their own wealth and are very likely to be a strong invisible influence on the dynamics of land conflict in Lampung. In particular, these underhand dealings must inevitably affect the performance of local government in implementing responsive land conflict management. The tacit network of local elites is also known to be a part of the financial game playing that functions at a local level. Land conflicts in Indonesia, as evident in the case of Lampung, have gray actors who cause conflictual relations to become increasingly complex and so undermine the responsiveness of land conflict management by the government.

4.5 Conclusion

Basically through the case of land conflict in Lampung Province, to analyze it has shown the existence of land conflict actors are very complex. There are four types of land conflict actors, theoretically, namely the primary actors, secondary actors, third actors and gray actors. The primary actors are Silva Inhutani Ltd, Barat Selatan Makmur Investasi Inc, the customary communities and migrant farmers. However, the third actors are not found in this case. The third actor is a neutral party who has a commitment and capacity to mediate conflict. National Land Agency as an institution that has authority to conduct conflict mediation has done nothing. The incapacity is caused by the weak authority and resource organization.

Instead of providing mediation, the police and the government play a role as a secondary conflict actor. State agencies are indicated supporting the Silva Inhutani and Barat Selatan Makmur Investasi. Policy does not manage conflicts through strategies based on deliberation mechanisms but on coercion and violence. It is examined that

⁴² Gede Pasek Suardika, interview with the author, 2011

state violence is often mobilized by the government and police in managing land conflicts. The conflict situation is further complicated by the presence of gray actors in the land conflict in Lampung, namely land brokers and the tacit network of local elites. Land brokers have invited farmers illegally to occupy and cultivate idle lands. Meanwhile, the tacit network of local elites has an interest in the utilization of idle land for their own economic benefit. The tacit network affects the performance of the government and police to apply the responsive conflict management.

The study found that the actors strongly defended their self-interest during the conflict dynamic. It is caused by the absence of deliberation mechanism that pushes a dialogue and negotiation process for best problem solving. The absence of deliberation mechanism is mainly caused by the practice of game of money practiced by oligarchies. Game of money is the social form of transaction services practiced by the oligarchies of the political and economic elites. It can be examined through the practice of Silva Inhutani in providing funds for the demolition operation. Civil society is now pressing the *Komisi Pemberantasan Korupsi (KPK)*, in English, the Corruption Eradication Commission, to conduct an investigation on the game of money in land conflict cases in Lampung.

This chapter found, in confirmation of my argument in Chapters 2 and 3 that the partial politics and weak land governance, both at central and local levels, have resulted in non-responsive conflict management. It is indicated by the limitations of the negotiation arena among the actors and in the mobilization of state violence. As discussed in Chapter 1, responsive conflict management, based on peace-orientated democracy, should emphasize impartiality in politics and peaceful mechanisms, such as reconciliation, submerging, and the institutionalization of negotiation. Referring to Zartman's (1997) procedures of conflict management, discussed in Chapter 1, the government and the private sector in this case have chosen to use a repression procedure. Table 19, below, presents the forms of land conflict management as they relate to each of Zartman's procedures and indicates their status in Indonesian government.

Table 19: Indonesian Land Conflict Management Status

Procedure	Description	Practice	Status
Reconciliation	Bringing the parties together in dialogued and negotiation table to overcome the conflict.	Dialogue	Weak
Allocation	A direct government decision to resolve the conflict.	Policy	Strong
Submerging	A government initiative that overcomes the conflict by offering higher goal and problem solving.	Mediation	Weak
Adjudication	The government rules strongly the conflicting parties and determines what is right and wrong in the conflict.	Policy	Strong
Institutionalization	The establishment of procedures that would permit society to deal with the conflict through a decision on the issues of either of the groups. It includes an independent judiciary.	System	Weak
Repression	The government uses violence to handle conflicts.	State violence	Strong

Source: Author's analysis based on Zartman (1997).

Through the analysis of land conflict in Lampung, it is clear that the tendency towards state violence and repression is becoming the primary mechanisms in conflict management. Moreover, there are several forms of actor with a variety of interests that are not directly involved in the conflict that have contributed to developing this situation. These mechanisms and influences impact the situation in far reaching ways and they are able to do so because the lack of impartiality in land governance both allows and even encourages this. Thus, a specific analysis of partiality in Indonesian land governance and its relationship with state violence is very important and, in

Chapter 5, I discuss this in detail. The table below shows the chronology of the conflicts in Lampung.

Table 20: Chronology of Contemporary Land Reform in Lampung Province

Date/Year	Agency	Action/Policy	Notes
October 7, 1991	Minister of Forestry issued Decree No. 688/Kpts-II/1991	Granted a temporary concession area of industrial forests (HTI) to PT Silva Inhutani in Register 45 of the Sungai Buaya area for 32,600 ha.	
September 25 1993	The Governor of Lampung sent a letter to the Minister of Forestry No.503/2738/04/93.	Expansion of a further 10,500 ha. of concession area for PT Silva Inhutani in Register 45 of the Sungai Buaya area.	
February 17, 1997	Minister of Forestry issued Decree No. 93/Kpts-II/1997	Granted an HTI concession to Silva Inhutani for a further 43, 100 hectares of forest area for 45 years.	
In 1999	Talang Batu, Talang Gunung and Labuhan Batin villages in Tulang Bawang District area	Requested a land reclamation of their land (7,000 ha) that had been included in the HTI expansion.	
2000	The government made a policy to respond to three villages	To create an “enclave” of three villages 2,600 ha and the remaining to be for HTI (4,400 ha).	
October 31, 2002	Ministry Decree No.9983/Kpts-II/2002	<p>Cancellation of Silva Inhutani’s HTI license for two reasons:</p> <ol style="list-style-type: none"> Silva Inhutani capacity made implement of industrial forest Plantation Development activities unfeasible both in terms of technical and financial. Silva Inhutani had not submitted an Annual Work Plan nor a Five Year Work Plan since 1999. 	

August 2004	Forestry Ministry issued Decree No.322/Menhut-II/2004	Cancelation of Decree of Forestry Ministry No. 9983/Kpts-II/2002 and Land expansion for Silva Inhutani up to 43,100 Ha.	
July 29 2004	The Governor of Lampung	Sent a letter to Forestry Ministry No 522/1240/01/2004 about the objection of three villages to Decree No.1135/Menhutbun-VIII/2000.	The communities kept demanding 7,000 hectares because the land belongs to customary communities.
From 2004	Farmers from Bali, Java, and Sumatera	Occupied some areas of Register 45 that was perceived as an "idle land". i.e., Silva Inhutani did not have any production processes there.	Silva Inhutani considered the farmers as land encroachers.
2005	PT Silva Inhutani	Reported the land 'encroachers' in Register 45 to police.	
January 2006	Police Resort of Tulang Bawang	To regulate the 'encroachers' villages in Register 45.	
December 2005	Local House of Representatives (DPRD II)	Created Joint Fact Finding Team in response to 'land encroachers problem'.	This recommended requesting Silva Inhutani to give compensation of land management rights.
January 2006	Police Resort of Tulang Bawang Regency	Distributed a letter No. B/56/I/2006 to local communities regarding clearing Register 45 land.	The 'land encroachers' were given an ultimatum to leave Register 45 by February 16, 2006.
January 2006	Communities in Register 45	Refused to leave Register 45.	
February 2006	Police Resort and local government of Tulang Bawang.	Coordination meeting to regulate Register 45.	Decided that the local government would send a request to central government requesting it to reconsider the wide land area 'occupied' by Silva Inhutani in Register 45.
February	Customary	Demanded the central government to	No response from the

2006	communities, Kampung Labuhan Batu	reconsider the 43,100 hectares area of Register 45.	government.
End of February 2006	Police Resort	Special demolition operation to regulate the 'land encroachers' in which 74 houses were destroyed.	
November 2010	Police Resort of Tulang Bawang	Evicted thousands villagers (from 'encroacher villages') in Register 45.	
October 2011	Customary communities (Meguo Pak) and NGOs	Reported the political violence of local government, police and TNI to National House of Representative.	
December 2011	President	Created Integrated Fact Finding Team for land conflict in Register 45.	
September 2012	Central government, provincial government, the police and TNI.	Created "Integrated Team" to clear and regulate the Register 45 area from land encroachers.	The budget was estimated up to JPN 600 million (Kompas, October 18, 2012)

Source: WALHI (2011).

Chapter 5

The Partiality of Governance

Introduction

This chapter is the author's exploration of how the governance in land conflict in Indonesia has been hijacked by political economic oligarchies. The mobilization of state violence in land conflict management, as illustrated in the case study in the previous chapter, is connected to the government concern with protecting the oligarchies' interest. Furthermore, as I argued in Chapter 2, these oligarchies, including the tacit network of local elites identified in Chapter 4, are able to hijack land governance to gain profit from land conflict. Here, I argue that the resultant form of partial governance, in which the community has been marginalized without a space for equal negotiation, requires the use of repression and state violence during the implementation of land conflict management.

5.1 Hijacked Governance

In this section, I explore how the practice of transaction services, as introduced in Chapter 2, is reproduced at both the central and local levels of politics to the extent that they are directing national development to advantage the vested interests of the oligarchies. I discuss the ways that the political economic oligarchies determine development and its regulatory system and the systematic consequences of this. This not only involves the oligarchies' hegemony taking precedence over national interest but actually redefining it, which further exacerbates the partiality that currently undermines the democratic principles in Indonesia's governance.

5.1.1 Hegemony on National Interest

This section aims to analyze how the definition of national interest is dominated by political economic elites and how this impacts on the legal framework governing national development. Hegemony is a social science-based concept developed by the

philosopher, Antonio Gramsci. He argues that the ruling classes, namely, the political economic elites, propagate their values and interests to the people's consciousness as cultural hegemony (Gramsci 2000, 189). This, in relation to contemporary Indonesia, I would argue that the hegemony of the oligarchies is maintained through a legal framework of national development.

Firstly, it is worth considering how this legal framework, which includes land management, defines the national interest. It is mostly determined by the Indonesia's law system including the land laws, in particular, the Basic Agrarian Law and Basic Forestry Law. As pointed out in Chapter 3, although these laws state that customary land is recognized by the state, where customary communities can manage their land to meet social economic needs, they also emphasize that the use of customary land must not be contrary to the national interest. However, the government explains that national interest refers to those matters that relate to the lives of many people and national interest is often defined equally with public interest. The term, public interest, can be found in every legal product relating to land management and infrastructure development. Significantly, the term is explained in detail in the Land Procurement of Development for Public Interest Law (LPDPIL). Article 1, paragraph 6, states: "Public interests are the interests of the nation, the state, and society to be realized by the government and used as much as possible for the prosperity of the people."

Furthermore, Article 10 describes eighteen areas of development in the public interest which, here, I divide into five clusters. The first cluster is the public infrastructure like public roads, highways, tunnels, railways, railway station, railway operations and facilities, reservoirs, dams, weirs, irrigation, drinking water supply, drainage and sanitation, irrigation and other buildings. The second includes the state and government infrastructure, such as national security and defense, state hospitals, public cemeteries, government agencies, the telecommunications and information networks of the government, and sports infrastructure. Third is the development of social facilities including waste disposal and treatment, public school infrastructure, public markets, public parking area, urban slums arrangement, and housing with a rent status suitable for low-income people. Fourth is the public space infrastructure namely public green spaces, public safety facilities, nature reserves and cultural heritage. The fifth is

economic development such as infrastructures of oil, gas, geothermal, ports, airports, and terminals.

Table 21: Development for Public Interest

Cluster	Description
Public infrastructure.	Public roads, highways, tunnels, railways, railway station, railway operations and facilities, reservoirs, dams, weirs, irrigation, drinking water supply, drainage and sanitation, irrigation and other buildings.
State and government infrastructure	National security and defense, government hospital, public cemetery, government agencies, telecommunications and information networks of the government, and sports infrastructure.
Development for social facility	Waste disposal and treatment, public school infrastructure, public markets, public parking, urban slums arrangement, and housing for low-income people with rent status.
Public space infrastructure	Public safety facilities, nature reserves and cultural heritage sites.
Economic development.	Infrastructure for oil, gas and geothermal production; ports, airports, and terminals.

Source: LPDPIL

The cluster associated with economic development is the one most criticized by civil society elements because it seems to serve the demands and interests of the economic elites. Furthermore, Article 12 (1) of LPDPIL explains that the government has to organize and be able to work together with the state owned enterprises and privately owned companies. Thus, the article provides the private sector with a very strong position in terms of the implementation of land acquisition. In response to this, forty civil society organizations have accused LPDPIL of serving the economic elites.

The KPA (2010) reports that this law was passed upon the request of the *Kamar Dagang dan Industri* (hereafter, KADIN), the Indonesian Chamber of Commerce and Industry, in the National Summit of 2009 conducted by the Indonesian government. During the summit, KADIN requested the government to pass LPDPIL so as to ensure that the land acquisitions can be done effectively and efficiently.

In addition, LPDPIL is supported by economic elites. As Eugene Leow, manager of the Development Bank of Singapore points out:

This [LPDPIL] could be a key step to begin building the infrastructure needed. ... Seeing this, investment will certainly run more smoothly because the government can give clarity on the duration and cost of development (Leow 2012).

Sofjan Wanandi, the owner of Gemala Group and the recent chairman of Apindo (the Indonesian Employers Association), also states that the private sectors support LPDPIL, and are awaiting its real implementation. However, LPDPIL needs to be supported by the other government regulations (Wanandi 2011). Another source of support is also reflected in the statement of the chairman of Indonesian Toll Road Association (ATI) who contentiously pushed the passing of LPDPIL (Jakarta Post 2011).

The definition of public interest basically directs where the development policies will go. It can either go to serve the people or the oligarchies. However, the support LPDPIL receives demonstrates how economic elites are in collaboration with the political elites to determine the definition of public interest. In an interview with the author, Muhammad Naja, one of the members of the House of Representatives Commission II, confirmed the existence of economic capitalist interests influencing the definition of the public interest and the implementation of national development policies. In reference to the directing of development, he stated:

The grassroots people should be the priority in development. However, the investors, economic elites, are very powerful in shaping the development in itself. The political elite, including those in Parliament, should fight for the people. Of

course ... there are some political elites who are in favor of investors, but some others are still trying to defend the people's interests. The National House of Representatives is a conflict zone that is determining development policy.⁴³

The fact that a variety of laws related to land management define the national interest / public interest within the framework of the oligarchies' vested interests indicates that it is a predominant phenomenon that national and public interest are constructed and determined by the oligarchies' vested interest. Thus, it is through the legal system that the oligarchies externalize and construct their knowledge structures to define what is accepted as national interest. In turn, the legal system has become the oligarchies' instrument for dominating national interest as is clear in the Basic Agrarian Law, Basic Forestry Law, and LPDPIL. However, unlike the legal system under the Suharto oligarchy that was constructed through hard coercion, the current Indonesian legal system, existing as it does in the atmosphere of democracy, does not appear in the form of "hard power". Since it requires the involvement of multi stakeholders, the oligarchies tend to use the "politics of soft coercion", which is "a sophisticated combination of instrumental objectivity and symbolic interactions" (Courpasson 2001, 2).⁴⁴

The politics of soft coercion presents complex interactions in the language of oligarchies in order to dominate the definition of national interest. Indeed, it constitutes an active interplay between the oligarchies and the context of liberal democracy. Through LPDPIL, in particular, this is manifested in the language used. Through this, the elites are able to act as if they support democracy and seek to encourage implementation of democratic policies - such as promoting equal interaction among the governance actors - while actually undermining this. Maria S.W. Sumardjono, a law scholar from Gadjah Mada University in Yogyakarta, Indonesia, explains that LPDPIL

⁴³ Muhammad Naja. Interview with the author, 2011.

⁴⁴ Instrumental objectivity, also known as instrumental rationality as explored in Chapter 1, is a practice aimed at achieving a goal by using systematic means or instruments. Symbolic interaction follows the sociology of knowledge tradition that understands symbols to be a language of verbal, actional, and material objects. Thus, symbolic interaction means a social process using language in a specific social setting.

reveals the increasing pragmatism of the current government. She argues that LPDPIL creates a shortcut that can bypass the people's objections to land acquisition; whatever the public's objection, all is settled by the courts, with compensation being decided by the court institutions (Sumardjono 2012).

Formally, LPDPIL provides an out of court negotiation mechanism. However, it also places a very tight time limit on this, requiring that such negotiations should be complete in up to 30 days. If there is no progress in a land settlement in that time, it has to be brought to the court. Another issue is that in chapters 22-25 of LPDPIL relating to public consultation it states that only people or groups with land rights can take part in the out of court settlement mechanism. However, the articles do not give more details as to what constitutes the definition of land rights. This means it can be interpreted as referring only to land rights with legal documents. While, in urban areas, people may have the legal document for their land rights, this is seldom the case for the customary communities, as discussed earlier. Thus, LPDPIL introduced a further means to marginalize grassroots people and customary communities. Last but not least, the Articles 22-25 do not provide specific mechanisms by which to define the meaning of public interest. Articles 19, 20 and 21 indicate that the definition and plan have been prepared by the government, and only need to be socialized. However, this leaves it open to interpretation by those most versed in legal matters.

Indeed, my analysis of LPDPIL found that the philosophy behind it is to make land a source of development, although the meaning of development is understood to be solely physical development (see Article 13) and private enterprise. Therefore, the land arrangements are divided only into two domains regulations: "public interest" regulation and "private interests" regulation (see Article 4). I would argue that this involves a narrowing of the meaning of development, especially since the term, public-interest, does not provide a means of specific advocacy for community and cultural roots. Moreover, through this, the land managed by the customary communities does not get any protection. In fact, it enables customary lands without ownership documents to be annexed for the public interest.

Through the politics of soft coercion whereby the state works with the private sector to carry out the development in the name of public interest, the oligarchies control the

definition of national interest. Obviously, oligarchies are benefited by the current definition of public interest since it gives them more power in terms of land acquisition and land use. Meanwhile, the Indonesian people, including customary communities, have to accept the definition of national interest as shaped by these political economic oligarchies and the political economy oligarchies can steer national development to their vested interests.

5.1.2 Partiality in Governance

Here I elaborate on the argument outlined in Chapter 2, discussing the details of the impact of the partiality in governance; in particular, I expand on the fact that Mohammad Mahfud, the former chief justice of the Constitutional Court, not only considers governance in Indonesia to have been hijacked but also the country's democracy in itself (Mahfud 2012). Therefore, governance is not able to realize an interplay interaction and partnerships among the actors being more driven by the oligarchies' transaction services. Here, I explore in more detail how current governance in Indonesia is taking the shape of partiality of governance.

Firstly, the biased definition of national interest is a determinant variable that steers the interaction process of governance. According to Koimaan's concept of interactive governance, which understands governance to be an interactive process of political economy involving multiple actors in creating a common good with equal relations (see Chapter 1), this condition has fallen into a state of hierarchical governance with much more intervention from the dominant actors than cooperation among actors. In particular, when intervention by the powerful actors in governance is in the form of policy, it must be accepted by the weaker actors, such as the local community. This hierarchical governance can be seen from the statement of a government official that I interviewed where he justifies this in terms of national interest. As Ridwan (anonymous by request), a police official at Tulang Bawang district, stated:

The policy of the state should be accepted because it has been formulated by the government. The policy is legal and concerns the interests of the nation. So, the

society should accept it. The police have a duty to guard and support any policy of state. If you are asking about the commercial companies here, we are not protecting them rather we are safeguarding the national economic interest.⁴⁵

Similarly, in another interview, Rahmad (anonymous by request), a government official of the Forestry Department in Tulang Bawang District, expressed a similar opinion. He argued:

The problem of land issues is very complex. Many groups have an interest in getting satisfaction during the conflict. However, the government must succeed in undertaking the policy designed. Since the land conflict in Lampung is now becoming more complicated to manage, if the government do not run the policy consistently, everything will get even worse. The public need to understand the procedure [of the law system].⁴⁶

The substance of these officers' argument is that their department must implement the state policy and the community must accept it. However, many members of the community question why the policy renders much more advantage to the big companies. In an interview with the author, one of the customary members in Tulang Bawang expressed this argument as follows:

What kind of state policy is it if it's only good for the government and companies? We are never involved in negotiations as to how to make this conflict better; or consulted as to what might reflect a win-win solution. Suddenly, we just have to obey the state. The police insist that we have to move off from our land. We are Indonesian citizen but we are being treated as aliens.⁴⁷

⁴⁵ Ridwan (anonymous by request), Interview with the author, 2010.

⁴⁶ Rahmad (anonymous by request), Interview with the author, 2011.

⁴⁷ Soleh (anonymous by request), Interview with the author, 2011.

This hierarchical governance in land conflicts between company and community has hampered any opportunities for equal negotiation; consequently, there is no interplay interaction among the governance actors, which, as discussed in Chapter 1, Kooiman asserts is essential to good governance. However, the government claims that the community leaders were involved as the representatives of society in discussing and negotiating the policy. This political claim is justified by the attendance of some community leaders at relevant meetings and the evidence of their signature on the registration papers. Ana (anonymous by request), one of the local Legislative Assembly members in Tulang Bawang district testified in an interview during field research as follows:

The government had invited their [the customary community] representatives such as the heads of villages and senior leaders to meetings. This was the case regarding the operation for regulating the illegal farmers in Register 45; this meeting was also attended by them. And they agreed with the government's intervention to regulate the land from encroachers.⁴⁸

However, the government's claim that governance interaction already involves equal participation of the community in Register 45 has been rejected by that community. The community members during the focus group discussion stated that the government only invited a few persons who were already bribed by the companies or government. Moreover, those persons never even made a direct communication with the people at bottom level regarding the meeting. Thus, the government has manipulated the negotiation at the level of political participation.

Furthermore, the decisions and policy are always marginalizing the people's wishes, and protecting and advantaging the government and companies' interest. In theory, when all governance actors are represented in a democratic way, decisions and policy of governance theory are mostly legitimate and accepted. However, in the case of governance in land conflict in Lampung Province, the numerous protests from the

⁴⁸ Ana (anonymous by request), Interview with the author, 2011.

community and their lack of trust in the policy indicate the government's failure to create interactive governance (Koimaan 2003; Torfing et.al 2012).

As explored in Chapter 4, the government is liable to get bribed by the companies to form policies that fulfill their interests including land use policy and security protection. The transaction services between state political elites and economic elites have supported and developed the hierarchical governance which is marked more by policy interventions on the part of the government than by cooperative mechanisms or partnerships. Furthermore, the governance in land conflict, as in the case of land conflict in Tulang Bawang, is clearly not interactive and responsive. The World Bank uses the term, poor governance, to refer to a state with high levels of corruption, bad administration, and legal uncertainty. However, this study reveals the domination of political economic elites which has created what I argue as *partialist governance* rather than impartial governance. Governance capacity building programmes conducted by international donors, such as the World Bank and UNDP, are more successful in terms of institutional governance or procedural governance. However, as Torfing et al. emphasize, in many developing countries, governance is mostly indicated by ineffective and inefficient bureaucracy, clientelism, corruption, and non-participatory policy (Torfing et.al 2012, 27). In the Indonesian case, Williamson and Hadiz argue that Indonesia's policy on economic liberalism and institutional reform that is supported by international donors mostly just results in formal and procedural governance (Williamson and Hadiz 2004).

Based on the root concepts of partiality and impartiality as discussed in Chapter 1, I would suggest that partiality is a set of beliefs or an ideology that intentionally serves a vested interest. Thus, partiality in governance is a condition where certain actors dominate governance interactions in order to gain their own vested interests. Therefore, the power and legal authority of state is being manipulated to hamper transparent administration, and to undermine public and political participation and justice so that vested interests can be fulfilled.

This 'hijacked' governance in Indonesia causes partiality in numerous governance interactions: police guard the companies, political elites practice collusion with the economic elites, and the local elites build a tacit network with the government officials

for utilizing idle lands in the case of land use policy. The oligarchies abuse state authority and the legal system with the practice of transaction services. The political elites, government officials, police and the military elites have manipulated state authority to serve the elites. Moreover, as explained by Williamson and Hadiz (2004) in Chapter 1, actors from the period of the New Order still influence the condition of partialist governance to some extent.

Thus, although the Suharto oligarchy was fragmented when the wave of liberal democracy arrived in Indonesia, the elites that were involved in the New Order oligarchy then reorganized their power structures through political parties and Parliament. While it is difficult to obtain concrete evidence of this, examples such as Hartati Murdaya's involvement in the Buol scandal provide tangible confirmation of the power reorganization of Suharto oligarchy. Hartati is Chinese economic elite who is close to Suharto family. In the early days of the era of democracy, Hartati was a member of the Indonesian Democratic Party advisory board. Other power elites involved in this re-organization of power are Abu Rizal Bakrie, Jusuf Kalla, Arifin Panigoro, Akbar Tanjung and others. Wardaya reveals how the power elites, in particular Arifin Panigoro, mobilized their power to keep Suharto from having to face the Indonesia court process. Indeed, this was the strategy these oligarchs used to survive in the liberal democratic era. By protecting Suharto from court they were able to secure their properties and their own political existence (Wardaya 2007, 180-183).

Alongside the reorganization of Suharto's oligarchy, a new form of oligarchy also developed. This was born and nurtured by the young, political and economic elites who had grown up during Suharto's era. This new oligarchy is represented by Muhammad Nazaruddin and Anas Urbaningrum from the Indonesian Democratic Party. Before the two elites' bond broke down, under Permai Group, Nazarudin drained national development projects including infrastructure developments and the production of medical devices. Urbaningrum became the Director of Anugrah Nusantara Inc which was under the Permai Group management.

In the case of land conflicts in Lampung Province, the reality of partialist governance is indicated by the transaction services between the companies and the police and other officials. Moreover, as pointed out in Chapter 4, the two companies

involved supported and bribed the local political leaders, the government officials, and the police, which caused the complaints of the communities regarding the communities having been sidelined by the central and local governments. Jazuli (anonymous by request), a customary leader in Tulang Bawang district, Lampung, made this clear in an interview with the author:

I have complained to the local parliament, the National Land Agency office, local government officials [regents], and the forestry minister - but I only got too many promises. Until now, we have not received the land settlement. It seems that the government wants to kill us! ⁴⁹

Partiality in Indonesian governance is a political process that dominates the interaction among actors involved in the formulation and implementation of policy to serve vested interests of the oligarchs. The consequence is that the governance in land conflict management has ignored and marginalized the voice of community and there is no chance for the community to participate qualitatively and make an equal negotiation in the governance interaction. Based on the analysis in this chapter, I would suggest that partiality in governance is indicated by the following mechanisms: an exclusive network of political and economic elites influencing governmental policy; government institutions providing a better service to political economic elites; the malfunction of government institutions in facilitating the people's grievance; the discrimination of the law institutions whereby they serve and protect the interests of powerful actors rather than those of the people; and the formation of the tacit network of local elites.

While the direct impact of partiality in Indonesia's governance is that the marginalization of customary communities and the lack of genuine partnerships and cooperation, there is also a significant connection between partiality in governance and the repression—mobilization of state violence, to manage land conflict in Lampung Province.

⁴⁹ Jazuli (anonymous by request), Interview with the author, 2010.

5.2 Violence: the Distortion of Democracy

Here, I argue that the partiality in governance in land conflict in Indonesia's democracy has turned land conflict management into a repressive procedure that, in practical terms, means less peaceful negotiation and more state violence. The report by the KPA on the land conflicts during 2010, 2011, and 2012 shows how state violence is reproduced. The KPA notes that during these three years, there were 198 agrarian conflicts in Indonesia and the areas directly affected by the conflict cover more than 963,411 hectares, involving 141,915 families; while, during 2012 alone, 156 farmers were arrested, 55 people were injured, 25 farmers were shot, and three people were killed (KPA 2012). While, state violence has been justified as the intervention of government to protect the national interest and is purified by legal justification so as to be interpreted as a neutral action, state violence that is only aimed at protecting the interests of political economic elites is not legitimate in a democratic system, and far from being a viable method of solving problems (Keane 2004; Galtung 2000; Zartman 1997). The next two sections explore the implications of this. Firstly, analyzing how partiality in governance leads and supports the phenomenon of state violence in Indonesia and then how this results in a spiral of violence in the context of land conflict in Lampung Province.

5.2.1 State Violence

An essential concept of democracy is the use of non-violence to manage conflict, and to ensure the actors involved are aware of the dangers of violence and gain mutual advantage in relying on non-violent political interactions (Keane 2004; Chenoweth and Lawrence 2010). Thus, many scholars believe that, if the levels of democracy within a country increase, violence will decrease. However, the mobilization of violence in democratic states during the implementation of land conflict management in democratic countries is well documented. For instance, in the Philippines land conflicts are also marked by state violence. In the case of the land conflict in Mindanao southern Philippines, the government tends to use repression to force its people to accept

government policy on land issues. Not surprisingly, the policy does not solve the problems. Moreover, a further sociological condition is that the use of violence in the Moro-Moro conflicts in Mindanao has created “entrepreneurs in violence”, through whom the community, itself, uses violence to regulate their land (Gutierrez and Borrás 2004).

In Indonesia, democracy has been relatively well developed at an institutional level in that the country has undertaken general elections regularly where several parties compete for political power, decentralization has been implemented through local autonomy, and good governance practices have been adopted according to the World Bank’s land governance assessment framework. However, despite this, Indonesia’s democracy has also spawned a partiality form of governance that often resorts to state violence to protect the interests of the oligarchies. Vertical conflicts, including land conflicts in areas of mining, forestry, plantations and agriculture, are often governed through violence, as this study found in the case of the land conflict in Lampung Province.

State violence is a form of repressive procedure that directly obstructs the possibility of governance actors comprehending and resolving issues in cooperative ways. Instead, only the powerful governance actors, namely, the political elites, economic elites and the companies themselves, determine the resolution of conflict. As in the land conflicts in Lampung Province, while the Meguo Pak community has to accept this domination of governance, this has not led to a peaceful resolution, simply more repression. As a member of Meguo Pak testified in an interview with much emotion:

You know we have been cheated by the government and company [Silva Inhutani]. Suddenly we have to obey their policy and regulation. We cannot cultivate in the area of Register 45 anymore. We don’t know why they can do it. If we keep living here ... the police will arrest us, and intimidate and kill our families.⁵⁰

⁵⁰ Agus (anonymous by request), Interview with the author, 2011

The judicial settlement mechanism can also be considered as a form of institutional violence that enforces the government and companies' will because in so many cases the company wins because it can provide legal documents to the court. Consequently, the community's perception of the judicial mechanism is that it is the instrument of repression by the government and company and so it is regarded with very low levels of trust,

As Rahmed (anonymous by request), a head of a village in Tulang Bawang, states:

I do not trust the court anymore. How many times did I bring the case to the court? Countless! The result was nothing for me and the company won. Even when I went to Jakarta looking for help from political elites and government officials at Ministry of Forestry and the National Land Agency, the result was nothing. We got depressed and repressed by the government you know⁵¹

The National Land Agency office of Lampung Province states that land concessions, such as those in Register 45, must be approved by all competent actors such as the central government, the governor, the regent, a legislative member, and the local community because the policy has legal legitimacy. Thus, the land concession would only be issued by the government if all competent actors agreed on it. That is why the National Land Agency has issued its legal letter stating that it regards the areas of Register 45 to be land concessions of Silva Inhutani Ltd. Moreover, Sjachroedin, the governor of Lampung, argues that the policy on Register 45 has been decided through a democratic process with all competent actors including the customary community's representative.

In fact, the governor accused the Meguo Pak community members, who complained to the DPR, of being a terrorist group and preferred to pass the land conflict case on to the TPGF rather than resolve it locally (Koran Pagi Online December 24, 2011). This is supported by the government claiming not to believe that

⁵¹ Rahmed (anonymous by request) Interview with the author, 2011.

the Meguo Pak is a real customary community of Lampung. As Sjachroedin states in responding their protest, “I am offended for those who carry [the name of] traditional leaders. Do not invite outsiders into the land of his ancestors!” (Sjachroedin 2012). This rejection of the Meguo Pak community is another form of repression that is used instead of reconciliation or negotiation procedures. Furthermore, the repression is also confirmed by the arresting of the Meguo Pak leader, Wan Mauli, by the police after he made a report about state violence. He was arrested on charges of being a coordinator of illegal trading on Register 45 land. In response, the arrest has fueled a mass rally of community members to free their leader.

As mentioned above, the police of Tulang Bawang point out that, as a land concession of Silva Inhutani, Register 45 must be protected because it is a form of national interest. Since the area is already legally cultivated by the company, the police’s main duty is to realize public order and security. Therefore, all illegal activities such as cultivating land or harvesting the forest will be charged under the civil law. The security operation by government to regulate the community aims to protect the land policy that has already been decided without input from the community. Although there is an appeal from the members of the Legislative Assembly, at both local and national levels, for the government to use more peaceful negotiation mechanisms and find an alternative resolution, state violence for managing land conflict remains the main strategy.

As discussed in Chapter 4, the TPGF was created to investigate the root causes of conflict and made certain recommendations to facilitate resolution: accelerating and ensuring a fair legal process; protecting witnesses and victims; providing medical; the spread of violence in the area of the conflict; using law enforcement against the land speculators or land brokers who exploit the situation; and evaluating the use of private the pamswakarsa. So, what were the responses of the central and local governments to these recommendations? Rather than following them, the central government, the Lampung province government and the joint forces of Polri and TNI evicted thousands of illegal farmers and forest encroachers in Register 45. This was a large-scale integrated operation involving a state and local budget of up to 7.5 billion rupiah. The chairman of this integrated operation, Warsito, stated that the government would

blockade and secure the area until all the illegal farmers and forest encroachers had left the land. The intention of the program was to neutralize the conflicted area (Warsito, 2012).

There has been much strong criticism among the Indonesian public, including some of the political elites in DPR, in relation to the use of violence in managing land conflicts, arguing that state violence never provides a possibility of problem solving but creates a perpetual conflict. The lawyer for the Register 45 communities, Hasan (anonymous by request), asserted in an interview with the author, that the perpetuated land conflicts in Lampung were influenced by the interests of political economic elites. According to him, the current Forestry Minister, Zulkifli Hasan, is more concerned to serve the companies than to impose any problem solving mechanisms on them because the minister has investments in the companies that are in conflictual relations with the communities.⁵²

The land conflict situation in Lampung is very vulnerable to violence, both by the government and the community – but especially by the government with its much greater capacity to enact violence. Moreover, as the current plan is to evict thousand farmers from Register 45, the state violence will be likely continually reproduced. This study found the reality that state violence is more convenient to the government and business interests than other procedures of conflict management, such as peaceful negotiation, dialogue, and alternative resolution methods. In order to protect the policy from those who do not benefit from it, namely the communities, partialist governance has to mobilize state violence, including security operations, intimidation, and the arrest of community members.

⁵² Hasan (anonymous by request). Interview with the author, 2011. In relation to this it is worth noting that the current Minister of Forestry (2012), Zulkifli Hasan, is originally from Lampung. He is the owner of five companies: Batin Eka Perkasa Inc, Panamas Mitra Inti Lestari Inc, Sarana Bina Insani Inc, Hodaya Safari Utama Inc and Batin Eka Perkasa Inc. See Santoso (2010:) *Wajah DPR dan DPD 2009-2014*. P. 462.

5.2.2 Spiral of Violence

As discussed above, partialist governance in Indonesia tends towards repression in the form of violence in the name of national interest. In relation to this, Camara (1971) explains how the egoism of some privileged groups with power and capital can put countless human beings into unjust conditions and creates an environment of humiliation and hopelessness. In turn, this creates a situation of ‘violence attracts violence’ (Camara 1971, 30). This is true of the land conflicts in Lampung Province; the state violence has provoked the community’s resistance into taking the form of violent action, albeit only with tools traditionally used to work their plantations.

Similar, and sometimes more destructively, violent resistance of communities against the government and companies is found in many land conflicts in Indonesia, such as those in East Java, Jambi, and Nusa Tenggara Barat. These are often a reaction to state repression and distrust of the police institution is widespread throughout Indonesia. This was indicated by a report by Indonesian Police Watch that during 2011, alone, 48 offices, 12 cars and five police service homes were damaged or burned by civil society actions (Kompas.com, March 1, 2012). For instance, the violent resistance of the villager community of Bima in Nusa Tenggara Barat during the early months of 2012 was caused by the repressive procedure enacted by the government. In this case, the government closed down a negotiation process in order to keep and protect a mining company, and the police arrested fifty villagers who participated in a mass rally protesting about this to the government. Resentment regarding the repression was so high that it pushed the villager community into burning the government buildings and destroying some public facilities (Susan 2012).

The violent resistance that occurred in the Lampung land conflicts was less incendiary. During the escalation of the conflict in 2011, the customary community and farmers resisted the government using traditional gardening tools for weapons. Thus, they were clearly using them without special intentions or premeditated organization. As one of the community members, Mustofa (anonymous by request), stated in an interview:

We are fighting for our families who are persecuted by the government and the companies. Brimob⁵³ often uses terror and intimidation on us. And if we are expelled from our land, it means our kids do not eat and we cannot pay for school. There is no choice but to defend the land. We are to fight, and we are also angry at the police who defend the company. We use improvised tools for gardening to fight against Brimob.

Since the government considers the violent resistance of the community as unlawful actions it assumes they should be punished by civil law. On a more political level, it also sees the influence of the communism movement in this violent resistance. It claims this is indicated by the involvement of groups affiliated to the left wing movement, namely, *Liga Mahasiswa Nasional untuk Demokrasi* (LMND) (in English, the National Student League for Democracy) and *Partai Rakyat Demokratik* (PRD) (in English, the Democratic People's Party). As Ridwan, the police official in Tulang Bawang district, stated in his interview:

Besides the land brokers who exacerbate the conflict, there is a group of communists among the communities. This communist group has provoked the community to disobey the government. They ask the community to use weapons and resist violently during demonstrations and protests.⁵⁴

NGO's activists in Lampung, such KPA Lampung, point out that the use of traditional weapons or plantation equipment by the community to resist the government is the result of there being no negotiation space provided to discuss the issues involved, which means the interactions of governance exclude the participation of the community. The use of traditional weapons / farming equipment was not intentionally organized to resist the government but was a spontaneous reaction to the state violence. The community was left with no other options but to defend the only resource for their livelihood, namely, the land. Aswan (anonymous by request), a member of KPA

⁵³ Mobile military wing of the police.

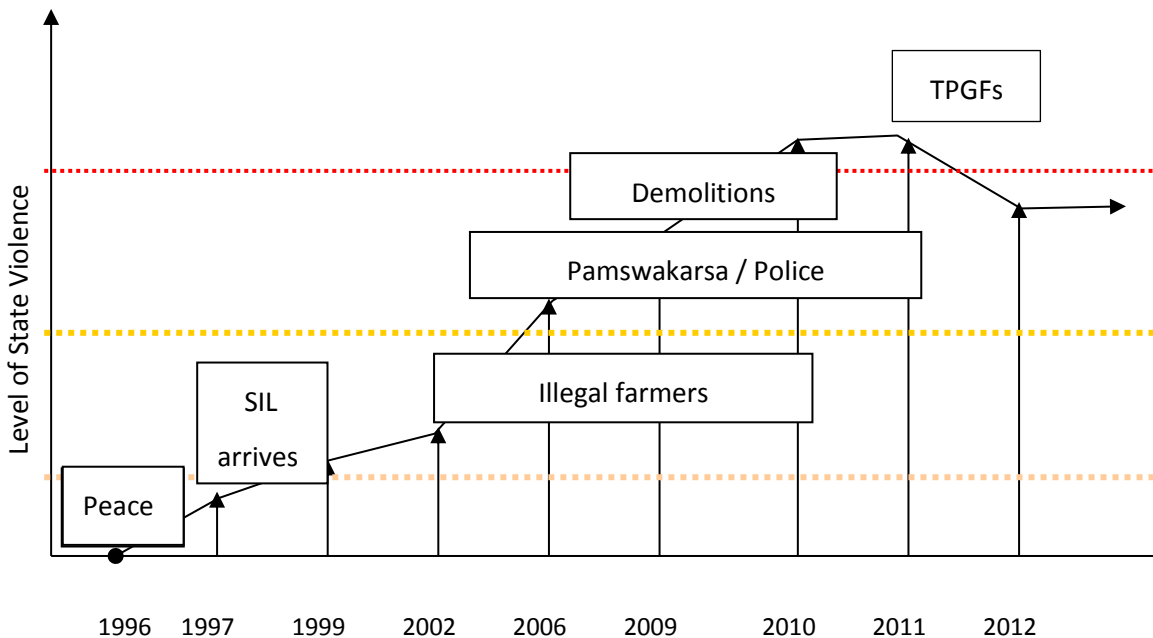
⁵⁴ Ridwan (anonymous by request). Interview with the author, 2010.

Lampung stated the following in an interview with the author:

We just let the community members bring farming equipment such as machetes, hoes, or just sticks during their protest to the government. Particularly ... when the police regulate the community through violence, is there any other choice for the community instead of violent resistance? ⁵⁵

The diagram below shows the relationship between state violence and the various events influencing the land conflicts in Lampung. This shows how the levels of violence rose with the interventions of the police and the demolitions and were to some extent reduced following the TPGF intervention, indicating that it had a positive effect on the spiral of violence, albeit temporary, and dissipated by the work of the second team in 2012.

Figure 4: Relationship between Interventions in Land Conflict and State Violence



Source: Author's research and analysis

⁵⁵ Aswan (anonymous by request), interview with the author, 2011.

Thus, the use of repressive procedures by the government to manage land conflict has clearly created a 'spiral of violence' in the land conflict cases between community and companies in Lampung Province. Both the original violation of the community's customary lands and the institutional violence of the development policies, and the legal instruments that justified these, has required state violence to support them - which in turn has provoked the communities into violent resistance. This is then used to justify further violence on the part of the state. At the same time, the government insists it is doing this to protect the national interest, as well as the interests of the companies on the land concession area. The communities have no more option but violent resistance because of the absence of negotiation space and low trust in the judicial settlement mechanism. This study suggests that such spirals of violence will continue to be reproduced in land conflict cases unless there is a significant change governance processes that allow equal participation by all actors involved and so eliminates of state violence.

5.3 Conclusion

The land conflict case in Lampung Province demonstrates how the interactions of governance actors in Indonesia is dominated by the powerful actors, namely, economic interest groups and political elites, including the governor, the regent and the police. This study found that these elites, or oligarchies, systematically shape land management through the enactment of legal regulations that benefit their interests in development. Hence, the legal regulations are intentionally designed to protect a state policy that marginalizes the weak actors, namely, the local community. This has reduced the trust of the community in any form of regulation introduced by the state. Moreover, whilst the physical violence in itself is used to support the regulations, in the case of land conflicts in Lampung Province, the legal regulations are perceived as a form of state violence against the community.

The domination of powerful actors has transformed Indonesia's governance into partiality which means the governance processes do not represent the interests of all the

actors. The partialist governance creates a political process that only fulfills the interests of political economic elites while it marginalizes the community. The consequences of partialist governance in land conflict management are the use of repressive procedures in the form of violence. In Lampung Province, the community members who struggle to reclaim the land are more often handled by state violence than by negotiation. According to the testimonies of community and NGO members that contributed to the field research, state violence acted by police takes the form of intimidation of family members, kidnapping and arresting the villages' leaders, and shooting people, sometimes lethally. Thus, state violence is employed as a means to handling the community's grievances.

As Camara's philosophy on violence indicates, the use of repressive procedures and violence to manage land conflicts in Lampung Province generally creates a spiral of violence. The feeling of being repressed by the government provokes violent resistance of community. Repressive procedures include demolition operations, absence of peaceful negotiation and biased judicial mechanisms. This study suggests that if partiality in governance cannot be eradicated, repressive procedures involving the mobilization of state violence will continue to be reproduced, and the spiral violence will not be erased.

Chapter 6

Conclusion

6.1 Implications of this Dissertation

This study used the concept of governance as a means to analyze land conflict management in Indonesia's democracy. There were two main challenges in this. The first was to explore the connections between the concept of governance and the various forms of conflict studies, particularly conflict management. To do this, the study explained each theory, then, identified the connections between the two so as to understand conflict management through the concept of governance. Secondly, the focus of the study is not only rooted in the local governance level but also focusses on the national level since the actors involved in land conflict management in the study come from national politics. Each of these actors interacts with the others to form the process of land conflict management through the case of Lampung Province. Therefore, the study attempted to comprehend the specifics of the governance actors from local to national politics through the case study.

The study relied on qualitative research using a social constructionist approach to enable an exploration of how governance actors interact during land conflict management in Indonesia. Therefore during the field research, I collected data mainly through observations, interviews (both structured and non-structured), and a focus group discussion. This was used to interpret the contested reality regarding conflict management from the perspective of the various governance actors. Through this, the study identified the issues and mechanisms that generally hamper the realization of responsive interactive governance in land conflict management. The findings can be seen as follow:

(1) The role of gray actors at the local level - namely, land brokers and a tacit network of local elites - played a significant part in exacerbating land conflicts in Lampung Province. The land brokers made the conflict relations more complicated by

inviting illegal farmers into the area while the effects of the tacit network of local elites was to make the government less responsive and sensitive to the community's complaints on land conflicts.

(2) Powerful actors, namely, the political economic oligarchies dominate governance interactions related to development and land conflict management in Indonesia. The case of the land conflicts in Lampung Province, illustrate how this domination has marginalized the customary communities and created a situation whereby it is impossible for them to negotiate equally with the company.

(3) As a result of this domination and the hierarchical governance it supports, the government is able to use its authority to force the community to accept the state policy on land by using institutional and direct violence.

(4) The domination of the oligarchies also distorts the functioning of government institutions related to land conflict management, including National Land Agency, the legal system, and the police. This is expressed in these institutions preferring to serve the economic elites and commercial companies rather than facilitate equal interactions with all concerned, including the customary community.

(5) The community perceives state violence to be carried out by the court institution and police.

(6) Violent resistance has become the community's current response to the state violence.

These findings can be understood as relating to two theoretical issues: partiality in governance and lack of responsive land conflict management.

6.1.1 Partiality in Governance

The World Bank Institute uses the term, poor governance to imply “the lack of transparency and access to public information, weak accountability relationships, and low levels of citizen participation” (World Bank Institute 2012). As discussed in Chapter 3, in an attempt to transform poor governance into good governance, the World Bank and other international donors set up a capacity building programme. This aimed

at improving the knowledge and skill of the governance actors in implementing the procedure of good governance. However, this study found, the recent poor condition of Indonesia's governance was not solely caused by the lack of institutional capacity but also by the domination of the political economic oligarchies in the governance interactions.

The domination of such powerful actors obviously creates an imbalance in governance interactions which are consequently marked by repression of the weaker actors, namely, the local community. Using the case study of land conflict in Lampung Province, the study explored how Indonesia's governance is driven and directed to benefitting the interests of these political economic elites. Consequently, I argue that, to some extent, Indonesia has fallen into a condition characterized by partiality in governance. Some main indicators of this include the following: (1) an exclusive network of political and economic elites that influence policy; (2) the government institutions are more concerned to serve powerful political economic elites than the community; (3) the law institutions tending to serve and protect the interests of powerful actors; and (4) serious malfunctions on the part of government institutions in dealing with the people's grievances. All these indicators have undermined the functioning of impartiality in governance. Therefore, the governance in land conflict is marked by domination, discrimination, ineffectiveness/inefficiency, and self-regarding interest.

In the context of the land conflict in Lampung Province, all indicators of partialist governance are confirmed by the community, as elaborated in Chapters 4 and 5. The story of Bazuli, a head of a customary community in Tulang Bawang district exemplifies this: Bazuli struggled for more than fifteen years to get a peaceful resolution to the conflicts regarding his customary land. Every government institution ignored his community's grievance, including the National Land Agency, the courts, the police, and the political elites at local and central levels. Moreover, according to him, his experience is very common for customary communities in Lampung Province. As in the case of Register 45 in Mesuji and Tulang Bawang District, customary community members throughout Indonesia have struggled to find ways of solving these issues whilst having to deal with the destructive tendency of partialist governance.

6.1.2 Unresponsive Land Conflict Management

As emphasized in Chapter 1, responsive conflict management is indicated by the presence of public involvement, deliberation mechanisms, equal participation in negotiations, and the use of peaceful means rather than violence. However, in the case of the land conflicts in Lampung, the governance interactions clearly do not realize these indicators of responsiveness.

The government actors justified this by saying that the land conflicts in the case of Mesuji and Tulang Bawang district are particularly complicated due to the variety of interests involved. However, through my observations of the land conflict dynamics, it became clear that the government tends to be more concerned to protect the interests of the commercial companies rather than create conditions that support negotiation. At the same time, the government has asserted a hierarchical mode of governance by implementing a policy that must be accepted by the community. This is manifested in the policy of the “enclave” area, in which the communities can cultivate a small part of the area covered by Silva Inhutani’s forest concession; this was launched without negotiation and in spite of the communities’ objections. It is this lack of negotiation space that has particularly stimulated the communities’ collective frustration and distrust of the local and central government.

The absence of negotiation is an obvious consequence of partialist governance. Therefore, it is not surprising that community members have the cynical belief that it is actually a political move aimed at further protecting the economic elites and commercial companies and, presumably, the transaction services between economic elites and government actors that support the developments. A particularly relevant example of this, presented in Chapter 4, is that the police received an amount of money from Silva Inhutani to finance the security operation that involved regulating the ‘unlawful’ community. This study suggests that partiality governance represents a further variable that directs the form of Indonesia’s land conflict management into one of state violence and, as such, has given rise to the unresponsive land conflict management in Indonesia’s democracy.

Following Keane's understanding that state violence can be categorized as institutional violence that is done by those causing physical injury, hurt and suffering using the justification of the logic and imperative of legal system that they are authorized to use. Through this justification, the perpetrators of violence seem to become neutral and 'anonymous'. The effect of violence is fear and feelings of insecurity (Keane 2004, 35-36). In line with this, in the land conflict case in Lampung, the government justifies state violence as being based on the imperative of legal system and being in the national interest. The community members are accused according to the civil law and legal instruments as part of the security operation. The effects of this include physical injury and insecurity as well as death and the loss of the community members' settlements.

State violence is perceived by the community members as a process whereby the people are sacrificed and requests for a negotiation process are blocked. This relates to Englander's argument, presented in Chapter 1, that there are two categories of violent orientation, namely instrumental aggression and hostile aggression (Englander 2008). The state violence in land conflict management in Lampung Province can be understood to be a combination of instrumental and hostile aggression: instrumental aggression when the state uses biased policies, partial governance and policies passed in the name of national interest, and hostile aggression through the demolition of villages and direct violence used on the community members. Consequently, the perception of the communities' members is that the state violence is intentionally mobilized to marginalize and sacrifice them to the interests of the political economic elites.

The condition of oppression, intimidation, and insecurity has eventually provoked a violent resistance among community members when they hold a protest or face the police demolition operations. During the field observation, I found that community members are always in a state of siege and keep their farming equipment ready to defend themselves. This study concludes that the state violence will create more violent resistance on the part of the community and the governance actors in land conflict management in Lampung have been trapped into a spiral of violence. A condition where there is no possibility of finding a solution based on peaceful mechanisms.

6.2 Implications of the Findings for Governance and Land Conflict Management

Since partiality has recently become a strong influence in governance interactions, the unresponsive conflict management that involves non-equal negotiation and a spiral of violence has become widespread in Indonesia's democracy. This is generally evidenced in all the land conflicts between commercial company or government and local communities in the country. Until 2013, there were land conflicts between local communities and companies in 22 provinces and 98 districts (Saturi 2013). These conflicts are mostly continuing, unresolved, and marked by state violence and the violent resistance of local communities.

The findings of this study essentially emphasize the governance interaction of actors in land conflict management which politically need to be balanced and equal to create egalitarian relationships that do not involve the domination of actors with less legal or official influence since this distorts the legal system and judicial mechanisms. As elaborated in Chapter 5, the dominant actors, namely political economic oligarchies define and shape the legal system in order to protect and achieve their interests through development. Therefore, the political elites gain more power in the form of legal justification of their interests.

The further problem is that the domination of the powerful political economic elites in governance interactions also supports repression through state violence. The democratic principles of Indonesia's governance will, in turn, be further undermined by both the state violence and by the violent resistance if the government is not able to lessen the domination of the oligarchies. However, this would require enormous effort and far reaching changes, such as strengthening the role of state institutions so as to enable them to reduce and domesticate the powerful actors of political economic oligarchies in land conflict management. One specific project that could make a significant difference is the establishing of KNuPKA, as first suggested in 2003. This would help to balance the elites' control of land conflict management by putting the governance actors in more equal negotiating positions under the principles of democracy and justice.

6.3 Suggestions for a Future Research Agenda

The study on Indonesia's land conflict management through the concept of governance is very interesting and challenging. Moreover, in Indonesia, the use of the concept of governance to analyze conflict cases is very rare. Therefore, this study recommends four further research agendas particularly related to the discourses of partial and impartial governance in land conflicts.

- a. The field findings relating to the role of gray actors in exacerbating land conflicts in Lampung has elicited further academic research questions. In particular, it would be useful to understand how their little documented activities directly influence the governance interactions in land conflict management at the local level. Research into this issue would possibly reveal some of the causes of the low quality of local governance in managing land conflicts in many areas of Indonesia.
- b. This study also identified the political/sociology dimension of governance interactions in Indonesia's land conflict management that demonstrate the domination of powerful actors, namely, that of the political economic oligarchies. However, it would be useful to find more detailed and specific information regarding the influence of these oligarchic networks in land conflict management. Therefore, it is urgent to undertake a research that focuses on tracing the anatomy of the contemporary network of oligarchies in Indonesia's land conflict management.
- c. The research found that there is spiral of violence created by the governance actors and government policy. Further academic exploration of this would be able to lay the groundwork by which to discover more peaceful mechanisms for resolving these issues.
- d. As one of the first of its kind, this study focused on qualitative research into the issues involved in partiality, and impartiality, governance. However, it would be useful to conduct more quantitative assessments of the effects of partiality in land governance by using a standard measurement method. Therefore, research on impartiality in politics using quantitative

measurements would be likely to significantly contribute to the progress of governance in Indonesia.

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