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Resolving industrial plantation conflicts in Indonesia: Can mediation deliver?

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ABSTRACT

During the expansion of industrial plantations across the Global South, forest and land conflicts have emerged on a very large scale. Despite recent reforms of resource governance, many countries are yet to develop effective formal mechanisms to resolve land and forest conflicts effectively, and mediation has emerged as an alternative conflict resolution strategy. This article contributes to the ongoing discussion of global large-scale land acquisitions ('land grabs') by examining how such third-party mediation works to resolve land conflicts. Bringing together mediation and the political economy literature, it considers how mediation works, and how politics, institutions and power shape the conflict mediation process and its outcomes. It derives its conclusions from extensive fieldwork based examinations of four 'successful' mediation cases in oil palm and pulpwood plantations in Indonesia. Our study finds that the ability of local disputants to sustain collective action, to transnationalize disputes, to intensify and to ripen the conflict are all critical in shaping mediation processes. While the empowerment of local communities can support mediation and improve procedural fairness, mediation only provides a partial solution to the conflicts caused by large-scale land acquisitions. Wider reforms to State law and land governance system, and initiatives to address key structural problems are required. Given the widespread use of third-party mediation to resolve conflicts across the Global South, the lessons from this study are relevant to the discussion of large-scale land acquisitions elsewhere.

1. Introduction

Conflict is common during the expansion of industrial plantations in the Global South. In land acquisition processes, often referred to 'land grabs' (Borras et al., 2011; Hall, 2011; Gerber, 2011; Li, 2015), state or corporate actors gain control of large tracts of land, neglecting the pre-existing and de facto land rights of local communities (Arezki et al., 2013; Yasmi et al., 2013). States often consider local people illegitimate settlers and exclude them as they lack formal evidence to prove their land claims (McCarthy, 2012; Maryudi et al., 2016). Furthermore, overlapping licenses or permits on the same piece of land between plantation companies exacerbate the disputes (e.g. Prabowo et al., 2017; Setiawan et al., 2016). Conflicts over land also occur because of regulatory overlaps (Sahide and Giessen, 2015; Setiawan et al., 2016).

Addressing the ever-increasing conflict over land and forest has become a challenging, but important task. Unfortunately, the formal system such as litigation in the judiciary system tends to be costly, slow, and prone to corruption (Nicholson, 2009; McLaughlin and Perdana, 2010; Syukur and Bagshaw, 2013). Under the legal pluralism prevailing

in many post-colonial contexts such as Indonesia, plantation licenses are allocated under State law while local land rights are based on traditional property right systems. Often, the former violates the later. Hence, State law tends to provide only limited means and space for resolving traditional or customary claims in the court system (McCarthy, 2005; Bedner, 2007). As a consequence, conflict parties seek other, possibly better, approaches to resolve conflicts.

Third-party mediation, it is argued, offers advantages and can be considered as an 'alternative' to the inadequacies of the formal court system (Nicholson, 2009; Bush and Folger, 2012). In Indonesia, mediation has been increasingly used to resolve large-scale-plantation-related conflicts. The number of organization providing mediation services in the forestry and other land use sectors has also grown (Dhiaulhaq et al., 2014, 2015; Samsudin and Pirard, 2015; Persch-Orth and Mwangi, 2016). The State has also recognized the mediation approach as a means of resolving land and forest tenure conflicts. Despite this, empirical study on mediation needs to be strengthened as this is an area that is less researched. This article examines the factors that support mediation, the political-economic dynamics shaping mediation

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practices, and the ability of mediation to deliver desired results. Bringing together the mediation and the political economy literature, we consider how mediation works, and how politics, institutions and power shape the conflict mediation process and its outcomes.

This paper advances the following arguments. First, the ability of local disputants to transnationalize disputes, to intensify and to ripen the conflict, and to support community engagement in prolonged negotiations are critical to accessing mediation processes and successful outcomes, alongside empowering local communities in the face of more powerful opponents. Second, a range of processual and contextual factors such as conflict mediation procedures, mediator's skills, trust-building and accountability are critical to supporting effective mediation and improving procedural fairness. Third, this study argues that mediation only provides a partial or limited solution in addressing the underlying conflict problems and therefore wider reforms of State law, land governance system and key structural problems are required if conflicts are to be reduced, avoided or addressed.

This article proceeds as follows: After introducing the analytical framework and research methods, we present a comparative analysis of the four case studies, discussing the preconditions, the nature of the process and the outcomes of mediation. Finally, we draw conclusions concerning the broader political-economic conditions that support mediation and the challenges and the limitations of the mediation approach.

2. Analysing conflict and mediation

Mediation is as an assisted negotiation in which an external third party assists the conflicting parties in the negotiation process to find solutions for their conflict (Wall Jr et al., 2001; Bush and Folger, 2005; FAO, 2000). Involvement of a third-party is considered necessary when the conflicting parties are not able to find solution to their conflict by themselves, for instance, due to the complexity of the conflict issues, lack of trust, huge power differences and the possibility of settling the conflict peacefully is in doubt (Bercovitch and Jackson, 2001; Dhialuhaq et al., 2015). In Indonesia, mediation is deeply rooted in traditional practices of informal deliberation (*musyawarah*) that seek to reach community consensus (*mufakat*) (Moore and Santosa, 1995; Syukur and Bagshaw, 2013).

Mediation literature suggests that in analysing mediation, it is critical to understand the processes as well as the context under which mediation takes place, which affect the mediation and its outcomes (Kleiboer, 1996; Bercovitch and Jackson, 2001; Wall Jr et al., 2001). The nature and state of conflicts such as conflict ripeness, intensity, issues, actors involved, including power differentials and previous relationships, usually inform mediation process, e.g. where to start and how to approach the mediation (Kleiboer, 1996; Bush and Folger, 2005; Kressel, 2006; Bercovitch and Lamare, 1993). Moreover, as mediation is a voluntary choice, the process and outcome of mediation are also largely determined by key factors such as the willingness of conflict actors to seek and accept the assistance of mediators, enter into dialogue and participate in mediation processes, together with the space for negotiation (Kleiboer, 1996; Pel, 2008; Nicholson, 2009).

Beyond analysing these conceptual aspects, analysts need to also keep in mind that conflict and resolution processes are political: politics provide both the means or the arena in which different actors gain or lose access to the benefits to be derived from tangible and intangible resources (Peluso and Watts, 2001; Ribot and Peluso, 2003). Therefore, analysts need to recognize and take into account the role of power relations created by the pre-existing political, economic and social conditions which limit or enable the ability of parties to access particular resources (Ribot and Peluso, 2003). Krott et al. (2014) argue that power is directly linked to specific actors, defining power as “the capability of an actor to influence other actors”. Hence, analysts need to understand the sources of power and the instruments used by actors to accumulate power, the various ways and forms in which one actor seeks to exert

control over the environment and shape the conflict and mediation, how and why weaker actors may be able to resist (or not) their more powerful counterparts, draw the process into mediation and influence the outcomes.

Research also needs to examine the political economic relations such as those constituted by existing structures and institutions (Ribot and Peluso, 2003; Eckerberg and Sandström, 2013): what roles do formal institutions and informal social, political and cultural factors play in shaping interactions and outcomes? (Bryant and Bailey, 1997; Robbins, 2011). It is also important to examine the political economic interests and actions of the actors who participate in processes, e.g. how political and economic competition influences the choices companies make, and the incentives for supporting (or not supporting) resolution.

Earlier studies of mediation in plantation-related conflicts in Indonesia focused on the processes of mediation, the strengths and weaknesses, and the effectiveness of those processes (e.g. Dhialuhaq et al., 2014, 2015; Samsudin and Pirard, 2015). Few studies, however, have considered the political economic conditions, power dynamics and interests that drive conflict parties to the mediation table and how such factors affect the mediation process and outcomes. This article takes the previous studies further by combining the analysis of technical and processual aspects of mediation with an examination of the broader political environment to provide a comprehensive understanding of mediation during large-scale land acquisitions. We argue that a political lens helps broaden the perspective beyond the technical or micro-level view.

3. Research approach

This article focuses on the case of Indonesia, where booms in key crops, such as oil palm, and acacia, generated substantial land acquisitions and conflicts (Hall, 2011; Hall et al., 2011; McCarthy et al., 2012; Pye and Bhattacharya, 2013). As these oil palm and pulpwood related conflicts are the most common (KPA, 2015), we focus here on these conflicts. While the data on industrial plantations conflicts in Indonesia is neither exact nor comprehensive, the Indonesian Consortium for Agrarian Reform (KPA)'s reports show the increasing number of conflicts over plantations. Over 2010–2015, more than one-third of the 1617 reported agrarian conflicts in Indonesia were in the plantation sector (KPA, 2015).

This article derives its conclusions from a study of four mediation processes involving local communities and large-scale plantation companies, with two cases involving oil palm and pulpwood plantations respectively (Table 1). The cases were selected based on the following criteria: (1) Mediation was applied to resolve the conflict; (2) The cases were ‘successful’ in the sense that the parties reached a mutual agreement. The study sought examples of successful conflict resolutions on the premise that they can indicate how transformational change in forest and land conflict resolution might be achieved as well as insights into the limitations of the mediation approach; (3) The study also considered conflicts involving a variety of mediators including non-governmental organisations (NGOs), national state, international mediators and private organizations, purposively selecting with different types of mediators to gain insights into the critical elements supporting outcomes; and (4) Practicality, for instance accessibility of the site and researcher safety.

The research used qualitative methods. Fieldwork in the case study sites in Jambi, Riau and West Kalimantan (Fig. 1) involved semi-structured interviews, focused group discussions (FGDs) and field observations. Interviews were also undertaken in Jakarta and Bogor with experts and practitioners regarding conflict resolution. During the first fieldtrip, the research developed an overview of the conflict through rapid conflict analysis and interviews with over 30 key informants. During the second fieldtrip, locations were revisited for in-depth data collection. In total, over 120 people were interviewed. Interviews focused on understanding: 1) The context under which mediation takes

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