

## Conflict mediation in industrial tree plantations in Indonesia

### Status and prospects

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#### Key messages

- Mediation is a conflict resolution mechanism that has emerged in countries with lots of conflicts related to land and industrial tree plantations. Its application on the ground, however, has yet to show satisfactory results.
- Mediation can be seen as a part of conflict transformation as it aims at reaching a long-term solution acceptable to all parties.
- There are many approaches to mediation in Indonesia, depending on legal processes and the status of mediators. In turn, this opens the door to mediation through the courts with certified mediators.
- The emergence of mediation and its recognition by the Indonesian Ministry of Forestry is closely linked to the acknowledgment of the presence of 'conflict' within the forest domain, which is opposed to the 'violation of the law' terminology that was traditionally used.
- Research of a case that stakeholders deemed a success in Jambi province in Sumatra, shows the challenges surrounding the application of conflict mediation, which can be fragile with the possibility of unsustainable outcomes if it does not fulfill its role as a means for conflict resolution.
- The limitations inherent in mediation should not prevent stakeholders in Indonesia from promoting it as an alternative approach in conflict management, from building a legal framework, or from developing experiences and a dynamic mediator network.

#### Background

Industrial tree plantations are expected to develop dramatically worldwide to meet demand for fiber, food and energy. In the last decade up to 2010, they expanded rapidly at a global rate of 5 million ha annually (FAO 2010).

Indonesian official data show an area of 10 million ha subject to HTI (*Hutan Tanaman Industri*, concessions for industrial tree plantations) licenses in this country alone (Kementerian Kehutanan 2014). However, Forest Watch Indonesia (FWI) analysis (2014) shows only 5.7 million ha have effectively been used for HTI establishment. A much lower figure is even provided by Jürgensen et al (2015) with 3.5 million ha of planted forests established in 2010. One reason for the planting shortfall lies with overlaps with community land. Efforts to optimize utilization of the 10 million ha with HTI permits could increase the number of conflicts defined as "disagreements that lead to tension within, and between people" (Vestegaard et al. 2011).

Conflict resolution is necessary to prevent violence (though conflict is not necessarily violent), injustice, economic loss, the occurrence of limited developments at the local level, and damage to the credibility of the state in terms of justice and law enforcement capacity. In 2013, 369 agrarian conflicts were recorded in Indonesia, covering a total area of approximately

1.2 million ha. The largest percentage occurred in the forestry sector with 31 conflicts involving a total of around 0.5 million ha (KPA 2013).

Data should be interpreted carefully as different sources show different results. For example, *Konsorsium Pembaruan Agraria* (KPA) recorded 163 agrarian conflicts in 2012 (KPA 2012), while Siagian (2012) in Komnas HAM (2012) recorded 738 cases of natural resource-related tenurial conflict. The organization HuMa is currently developing a system for indentifying agrarian conflict by collecting primary and secondary data through its collaboration network and Community Legal Facilitators in various parts of Indonesia.

This article looks at an approach to settling industrial timber plantation-related conflicts in Indonesia by focusing on conflict mediation, an approach often talked about in recent times (e.g. Dhiaulhaq et al. 2014). This paper aims to provide up-to-date information on the status of mediation application in Indonesia. This is justified by the variety of ways in which mediation is applied and because its flexible nature allows it to develop to suit the situation on the ground. Hopefully, this analysis can contribute to the debate on the prospects and choices of approach to conflict management and clarify the scope of areas therein.

This research is based on a literature review about mediation, and in-depth interviews with the main players involved in mediation in Indonesia, from public bodies like the Supreme Court to professional organization networks such as the National Forestry Council, as well as several non-governmental organizations. This research also presents a case study illustrating an example of conflict mediation succeeding as a solution to conflict resolution.

## Conflict management approaches and terminology issues

Conflict management is defined as an effort which can be simple in form or conducted through legal channels to resolve and seek a solution to a conflict at the initiative of the conflicting parties or a third party (Fisher et al. 2001 In Wulan et al. 2004). There are many options in conducting conflict management that Moore (2003) divides into four categories based on the involvement of conflicting parties: informal decision making by conflicting parties, informal third-party decision making, legal (public) authoritative third-party decision making, and extralegal coerced decision making (Figure 1).

Botes (2003) notes that conflict transformation differs from conflict resolution as it is defined as a process of creating long-term cooperation between stakeholders, as well as a process to overcome negative interaction between parties. Nevertheless,

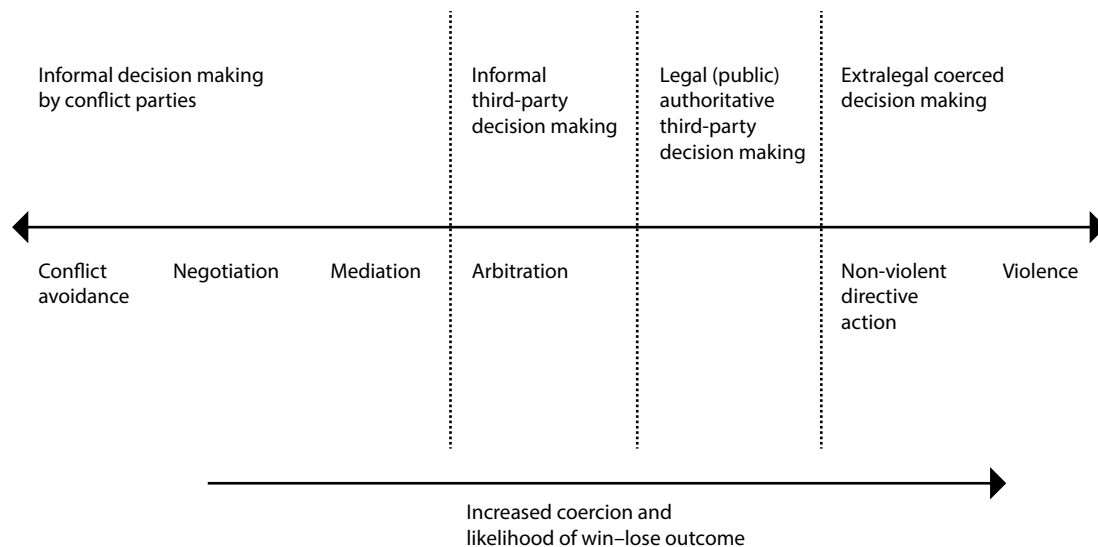
some experts position conflict transformation as part of a series of conflict management entities involving the following processes: conflict settlement, conflict management, conflict resolution and conflict transformation.

### Box 1. Definitions of mediation according to various sources:

Yasmi et al. (2010) "*Mediation — a form of third-party intervention in which a mediator facilitates conflict management but he/she does not have the authority to impose a solution*"

Soematrono (2006) "*Mediation is an effort to settle conflict involving a neutral third party, that does not have the authority to make decisions, to help the disputing parties reach a solution acceptable to both sides*"

Rahmadi (2010) "*Mediation is a dispute settlement process between two or more parties through negotiation or consensus with the help of a neutral party with no decision-making authority*"



**Figure 1. Conflict management alternatives and levels of stakeholder involvement.**

Source: Moore (2003) in Engel and Korf (2005)

## The emergence of conflict mediation as an approach to conflict management in Indonesia

### Definitions and characteristics of mediation

Forestry conflict management efforts advocated by the National Forestry Council (*Dewan Kehutanan Nasional*, DKN) in Indonesia are divided into two types. The first is interest-based conflict resolution, where conflict resolution efforts are akin to unearthing the roots of problems and settling those problems in a structured manner, such as rearranging policies underlying or relating to the conflict. The second is objective-based conflict resolution, where conflict resolution efforts approach the aims and wishes of conflicting parties, and try to seek a compromise. Mediation is part of objective-based conflict resolution (personal communication, Martua Sirait, 23 May 2014).

It seems that facilitators are often misinterpreted as being mediators, and the latter can also take the form of institutions with the power to decide yet not using their authority to make decisions. So it can generally be understood that mediation constitutes a conflict management solution bridged by a third party without authority, or a body that has authority but does not use it to force the course of mediation.

Before describing various types of mediation in Indonesia, we present a diagram of a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis. This analysis has its basis in the opinions of an expert from the Supreme Court, as well as key interviews with mediation experts and practitioners. The results of the analysis are summarized in Figure 2.



Figure 2. SWOT analysis of conflict mediation application in Indonesia.

Source: Rahmadi (2010) and interviews

## Mediation within the Indonesian legal framework: In and out of court

Mediation in Indonesia can take place in and out of court. Reference to out-of-court mediation in a forestry context can be found in Article 75, paragraphs 1, 2, and 3 of Law No. 41/1999 on Forestry, whereas mediation in the courts is found in the framework of Supreme Court Regulation (PERMA) No. 1/2008. Out-of-court settlements can be registered with the court to secure legitimacy of equal standing to the result of mediation in the court, through the submission of a 'temporary suit' (personal communication, Takdir Rahmadi, 8 May 2014).

Despite Law No. 41/1999 stating that forestry disputes can be settled out of court, it does not mention mediation specifically, and claims over land within the forest estate are still looked at in terms of criminal activities violating the law. Article 75, paragraph 1 of Law No. 41/1999 lays down a boundary where mediation cannot be applied in the sphere of criminal cases. Article 50, paragraph 3 of Law No. 41/1999 on Forestry literally prohibits encroachment and 'utilization' in forest regions and categorizes any violation of this provision as a criminal offence.

in 2014, in the context of the new president and government paying serious attention to the strengthening and recognition of community rights in general and customary rights in particular, and supporting local enterprises and community forestry, hopefully mediation can be promoted as an alternative option in conflict management, and included officially in legal processes and products.

Table 1. Differences between mediation in and out of court in forest-related cases

Mediation through the courts	Out-of-court mediation
Limited by time constraints (the maximum time allowed for mediation is 40 days with a maximum extension of a further 14 days)	Not limited by time (some cases go on for years)
Mediation is an obligation for civil cases (including forestry cases)	Mediation is a voluntary option; can only be applied in civil (noncriminal) cases
Mediators can be chosen by the conflicting parties or by a judge in the judicial mechanism	Conflicting parties can ask certain organizations to mediate between them, or mediation can be facilitated by a third party (e.g. the Ministry of Forestry, DKN)
Regulated in PERMA No. 1/2008	Mentioned as an alternative choice for conflict settlement in Law No. 41/1999 on Forestry
Agreements have the power of the court	Parties reaching agreement can submit the agreement outcome to be strengthened in court by submitting a 'mock suit'

Source: the author

Note that PERMA No. 1/2008 was designed to accommodate cases of civil conflict, but laws for its application remain to be issued. It also states that mediation can only be applied in civil cases, either in or out of court, whereas criminal cases cannot be resolved through mediation (Supreme Court of the Republic of Indonesia 2008).

Civil dispute processes oblige conflicting stakeholders to carry out mediation with facilitation from mediators certified by the Supreme Court. The voluntary nature of mediation processes, though, must also apply to mediation in court, where despite a court imposing the obligation to mediate, agreements in the process toward achieving consensus cannot be 'forced.' The obligation to undertake mediation should thus be understood in procedural terms.

### Conflict mediation efforts in Indonesia and the key role of mediators

The absence of special regulations governing mediation out of court can be a plus for the mediation process itself allowing it to be more flexible and adapted to conditions on the ground (Rahmadi 2010). Nevertheless, this also makes it difficult for stakeholders, especially mediators, as there are no points of reference regarding a code of ethics or defined mediation processes (personal communication, Ahmad Zazali, 3 June 2014).

Misunderstanding of the functions of mediators and facilitators frequently means the norms of being a mediator are misconstrued. A mediator must be completely neutral, whereas facilitation, which is frequently misunderstood by some parties, particularly non-governmental organizations (NGOs), leans more toward a community assistance process (personal communication, Ahmad Zazali, 3 June 2014).

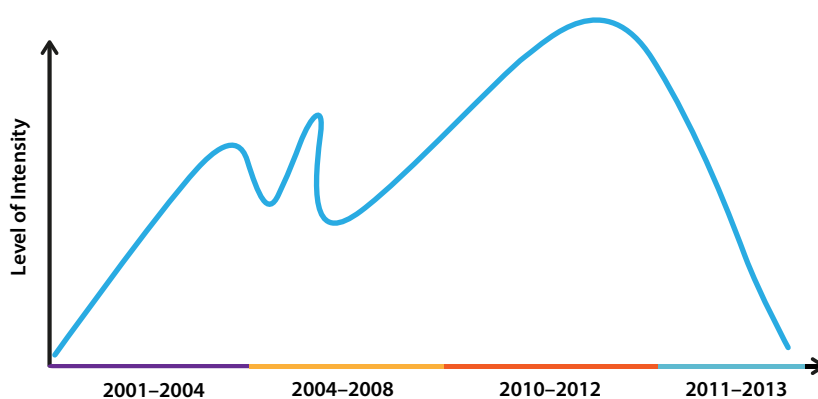
Unlike a facilitator, a mediator must be appointed or obtain a mandate, agreed by the conflicting parties as a bridge between the two (or more) parties involved as the main actors in the dispute. The furthering of mediation has given rise to several umbrella organizations in Indonesia, for instance, the Impartial Mediator Network (IMN).

### Case study in Jambi, Sumatra<sup>3</sup>

An analysis of the status and direction of mediation in Indonesia was prepared based on a case study from Jambi province in Sumatra, where mediation has been applied over the past decade. Although this case has been hailed as a success in reaching a consensus between the parties involved, a tense atmosphere remains and is quite apparent. Interviews on the ground still felt quite awkward and, consequently, were directed towards the organizer of the Senyerang Bertuah cooperative, the head of Senyerang ward, and several willing members of the community.

### Background to the conflict

The conflict in Senyerang took the form of a claim by the Senyerang community over customary land in the HTI concession issued to PT Wira Karya Sakti (WKS) under Sinarmas Forestry (SMF). The concession had been planted with acacias that were entering their third cycle when the conflict flared up. The community claim began in 2001 when it submitted a protest to the local government. The conflict escalated a number of times, reached its peak after 2008, and was settled in 2013 (Figure 3).



Latent phase	Conflict escalates	Conflict peaks	Settlement stages
<ul style="list-style-type: none"> <li>Perda No. 52/2001 and SK Menhut No. 64/Kpts-II/2001 issued HTI permit to PT WKS</li> <li>In rejection, the community protests to the regional government</li> </ul>	<ul style="list-style-type: none"> <li>Protest and rejection from the community continues</li> <li>Conflict eases in 2004 and 2008, but agreement fails</li> </ul>	<ul style="list-style-type: none"> <li>Community blocks the road</li> <li>Community occupies the land</li> <li>The company's river transport route is blocked</li> <li>Community member Ahmad Adam shot dead</li> </ul>	<ul style="list-style-type: none"> <li>Tension often still remains</li> <li>All parties ask DKN to become mediator until 2013</li> <li>TFT continues to mediate until consensus is reached</li> </ul>

**Figure 3. Timeframe and occurrences in the conflict in Senyerang ward, West Tanjung Jabung district, Jambi province.**

Sources: Sirait 2012; Kompas 31 March 2012; Metro Jambi 1 June 2012; Usman 2012

<sup>3</sup> The case study reported in this infobrief can be compared with another one in Riau Province, Sumatra (Dhialulhaq et al. 2014)

The background to the conflict was a recommendation from the West Tanjung Jabung district government in 2001 to convert agricultural land (*Areal Penggunaan Lain*, APL) into a new status of production forest. In response to the recommendation, the Minister of Forestry issued decree No. 64/Kpts-II/2001 for a 191,130-hectare industrial timber plantation concession (HPHTI). The first amendment following the definitive decree was Ministry of Forestry Decree No. 774/Kpts-II/1996 dated 25 November 1996 for an area of 78,240 ha.<sup>4</sup> The area mentioned in this decree was also subject to a customary land claim by the Senyerang community over canal 1-19. The claim was based on Senyerang Headman Letter of Statement 1927 and Kuala Tungkal Village Head Letter of Statement 1928 (Sirait et al. 2012).

### The conflict management process

The conflict management process in Senyerang ward began in 2001 when the community sent a protest to the regional government. The community was dissatisfied with the response. Settlement efforts through negotiations were recorded a number of times (Kompas 31 March 2012; Sirait et al. 2012). The waves of protest from the community eased a little in 2004 when the company fulfilled the community's request to build a place of worship, and recruited Senyerang community members as PT WKS employees (Kompas 31 March 2012). An agreement between PT WKS and the Jambi Farmers' Union (*Persatuan Petani Jambi*, PPJ) representing the Senyerang community was reached in 2008. However, the agreement was subsequently annulled by PPJ, which felt it was not providing equal wellbeing for all PPJ members (Sirait et al. 2012).

Records show that following requests from the community, the Ministry of Forestry and the company, the National Forestry Council (DKN) played a role in encouraging mediation in Senyerang ward in the 2011–2013 period. The final outcome of mediation was a recommendation being submitted to the Ministry of Forestry giving rise to the initial idea for a solution to the conflict. A provincial government role also emerged with a Governor of Jambi decree as the legal basis for establishing an integrated conflict settlement team in Senyerang, which generated a recommendation to the Ministry of Forestry to issue a partnership policy with a crop composition of 90% rubber and 10% acacia (Sirait et al. 2012).

Some people remained dissatisfied with the recommendations from earlier mediation, which resulted in the Ministry of Forestry issuing a mandate to The Forest Trust (TFT) to continue the mediation process. The community was initially reluctant when TFT carried out a preliminary study, but in a decision at the next mass meeting, the community asked TFT to facilitate mediation. DKN took a position as an independent team to monitor the process and commitment to mediation (personal communication, Martua Sirait, 23 May 2014).

<sup>4</sup> At the time SK No. 64/Kpts-II/2001 was issued, the Senyerang community recognized the disputed area to still have Other Use Area (*Areal Penggunaan Lain* (APL) status and the change to production forest (HP) status would only be issued in 2004. In 2004 there were two addenda after the 2001 decree, where Minister of Forestry Decree No. 228/Menhut-II/2004 expanded the concession area to 233,251 ha, and in the next addendum Minister of Forestry Decree No. 346/Menhut-II/2004 extended the area further to 293,812 ha.

### Dynamics of the final stage of settlement by mediation

The actors playing a role in the mediation process in this case were the Jambi Provincial Forestry Office, the West Tanjung Jabung District Forestry Office, PPJ, DKN, TFT and Walhi, with the main actors being communities and the company. Mediation was used as a step toward conflict settlement after other mechanisms, such as negotiation, had been unsuccessful.

When the conflict was ongoing, the community held regular internal meetings once every 2–3 days to ascertain the aspirations of its members, which were later taken to the negotiation table, either for negotiation or mediation. The decision to mediate arose from stakeholders being fed up with the conflict and from a community initiative to bring it to an end.

The mediation process by TFT began with a TFT team going to the field to ascertain the wishes of each party involved in the dispute (personal communication, Berdy Stevens, 12 July 2014). The community relayed its desire to talk directly with the family of Eka Tjipta, the owner of the company, as part of the process to reach a consensus, which Eka Tjipta agreed to. Up until this stage the community had acted alone without representation from PPJ by sending delegations of 2–5 people from Senyerang to Jakarta to hold a number of meetings with the Ministry of Forestry and SMF bridged by TFT.

Meetings held in Jakarta were always facilitated and overseen by the West Tanjung Jabung District Forestry Office and Jambi Provincial Forestry Office. The final outcome of mediation efforts was the issuing of an memorandum of understanding agreed on 5 July 2013 at the Ministry of Forestry. Signatures led by the Director General of the Forest Business Development department (BUK), and other parties such as the district and provincial governments were affixed below the signatures of 2,002 households.

### Final consensus resulting from mediation

An agreement was reached whereby the disputed 4,000 hectare area could be used for planting rubber and acacia. Rubber seedlings were to be provided by the rubber seed propagation center in Medan and accommodated by the West Tanjung Jabung District Estate Crops Office. Farmers would also be given training on planting rubber trees, and management of the plantations would be carried out through a community cooperative under the supervision of the district cooperatives office.

Another point of agreement was the disbursement of assistance funds from PT WKS through the community cooperative to cover operational costs for the rubber estate. Shared profits would also be disbursed to the cooperative every year throughout the 2014–2035 period. TFT would carry out regular monitoring to control implementation of the consensus in addition to external monitoring from DKN with seven members chaired by Martua Sirait.

All the parties interviewed and directly involved in the mediation process — community members, the company, TFT and regional government — said the key to successful mediation was the desire of the stakeholders to mediate and to end the conflict. In addition, the leadership role of the community was also a determining factor in a consensus being reached. Community representatives being able to accommodate members' aspirations, to remain consistent,

and at the same time have a strong desire to resolve the issue were strong influences on the conflict resolution process.

The company openly stating its wishes was also essential to a consensus being reached and the conflict being resolved, as is apparent from the company and its owners, the Eka Tjipta Wijaya family, being open to meeting the Senyerang community with mediation from TFT to formulate points in the consensus.<sup>5</sup> A win-win solution was also achieved in the consensus, with stakeholders agreeing to the points formulated in the consensus paper, which was signed not only by community representatives, but by all the families in Senyerang ward.

## Conclusion

Mediation constitutes a conflict management process aimed not only at ending violence, as laid out in the definitions of conflict resolution, but is also a long-term solution that strives to change social relations paradigms so that harmony and trust in stakeholders can appear.

Mediation offers good prospects on paper at least, with increased involvement of the authorities, certified mediators, and mediation in court cases. Syukur and Bagshaw (2013) also state: "the introduction of court-annexed mediation in 2003 was an attempt to revitalize the spirit of *musyawarah* in procedural law." The involvement of the authorities in mediation appeared in the case we studied, which even provided a source of inspiration for the establishment of ministerial regulation P.39/Menhut-II/2013, that encourages the reaching of agreements in the form of HTI concession partnerships.

Although the case we studied could be deemed an example of mediation being applied successfully, there were some limitations. These include the high costs involved, the necessity to change and adapt to conditions on the ground, sometimes with successive mediators and over several years. Hence, mediation is not a guarantee of success in conflict resolution. Nevertheless, it should be encouraged considering its capacity to offer participatory and transparent solutions based on the skill and experience of mediators.

This infobrief presented an overview of the status of mediation in Indonesia with an illustration from a case study describing the prospects of mediation as an effective tool in conflict resolution. Further research with a larger scale of samples will be important for identifying conditions in a variety of mediation cases. This is closely related to the context of an increase in conflicts in industrial timber estate concessions, which the Ministry for Environment and Forestry sees as the main obstacle to future development of the plantation forest sector.

<sup>5</sup> The mediator, TFT, held numerous separate meetings with the conflicting parties before and after the meetings between the community and SMF/Eka Tjipta Wijaya to formulate the consensus.

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