

Construction of Indigenous Community Gardens by the Company as Land Conflict Resolution

Rahmad Hendra, Firdaus, Samariadi

Faculty of law, University of Riau, Indonesia

E-mail: rahmad.hendra@lecturer.unri.ac.id



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ABSTRACT

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The study was conducted in the villages, Bencah Kelubi and Subarak. Both villages have oil palm plantation companies. The study aims to scrutinize the influence of oil palm plantations, particularly the development and efforts in resolving land disputes—the indigenous people and the so-called company in Kampar Regency. This study employed descriptive analysis involving qualitative patterns. The study revealed some points. In Subarak village, the investor of an oil palm plantation built a garden for indigenous people. In addition, prior to the investment, they apply the principle of Free, Prior, and Informed Consent (known as PADIATAPA). On the other hand, the investors (oil palm plantation companies) did not fulfill the commitment to build gardens for the community. Also, they disregarded the principle of PADIATAPA. In conclusion, employing the PADIATAPA principle at the initial stage could significantly lessen the conflicts between oil palm plantation companies and indigenous people.

Introduction

One of the objectives of the development¹ of the Indonesian nation, as stated in the preamble to the 1945 Constitution, is to promote public welfare². According to development organizers, the development objectives are basically good, appropriate, and/or should exist. In other words, the goal of development is positive according to the organizer perspective. On the other hand, this development does not always have positive results for others. It means the development also has negative consequences for a community or community segment. The negative impacts are not always noticed and/or visible on the surface.³

In Kampar Regency, Riau Province, the development of oil palm plantations has had a negative impact. For instance, the various conflicts between local residents and oil palm plantation companies, which are ubiquitous.⁴ In Kampar, indigenous peoples are actively against business and the state. This resistance peaked in the reformation era, in the mid-1998. Customary land conflicts within the country justify the fact that the law has been unable to accommodate the existing conflict in economic and social interests. Philosophically, Law Number 5 of 1960, Agrarian Principles (UUPA), is a law that serves as a tool to build a just and

¹ In general, development changes things for the better, as Hugo Slim argues in *Development in Practice*, Vol. 5, No. 2 (May, 1995), Taylor & Francis, Ltd. on behalf of Oxfam GB, pp. 143-148, p. 143;

² The preamble to the 1945 Constitution of the Republic of Indonesia in the fourth paragraph reads "Subsequent thereto, to form a Government of the State of Indonesia which shall protect the whole Indonesian nation and the entire native land of Indonesia and to advance the public welfare, to educate the life of the nation, and to participate in the execution of world order which is by virtue of freedom, perpetual peace and social justice..."

³ Afrizal, *Menganalisis Dampak Sosial Pembangunan*, p. 1, at http://repository.unand.ac.id/2225/1/artikel_2.doc.

⁴ Hereinafter abbreviated PPKS

flourishing society by delivering prosperity, happiness, and justice to the state and its citizens.⁵

In fact, conflict is a social reality that is unavoidable in human life. According to Coser, some conflicts have a clear ending while others have ambiguity. The conflict must be resolved immediately, or else it will result in the "death" of one or both parties.⁶ In line with Coser's opinion, the conflict between Indigenous people and the PPKS (Palm Oil Research Institute) must be resolved. The state's goal of prospering the community through oil palm plantation-based development will be hampered unless conflicts are resolved. The so-called conflict exemplifies the conflict of interest between customs in Kampar district and PPKS, as Burton claimed that the existing conflict was due to the non-fulfillment of basic needs.⁷ The right infringement of local indigenous people's land use contributes to the inability to meet basic necessities.⁸ The annexation of indigenous people's customary lands, human rights violations against local indigenous peoples, destruction of customary order, demolition of mother earth, dismantlement of the environment, extermination of the foundations of the people's economy, and existence denial of the indigenous peoples, are facts that are felt.⁹

Agrarian conflicts between indigenous people and PPKS can stymie development while also improving welfare, benefiting the community, particularly indigenous people. As a result, a resolution is required. Thus, palm oil-based development can benefit both companies and indigenous people. In 2020, there were 73 plantation conflicts listed at the Riau Province Plantation Office. The majority of these conflicts are facilitated by the Riau Provincial Government.¹⁰ One of the plantation conflicts is the community's demand for the development of plasma plantations covering at least 20% of the company's cultivated area.¹¹ This demand is based on the mandate of Plantations Article 58 paragraph (1) of Law No. 39 of 2014, which requires Plantation Companies with a Plantation Business license to facilitate the development of community gardens within 20 percent (twenty percent) of the total area of the plantation cultivated by the Plantation Company. The implementation of indigenous people's plantation development is expected to be one of the solutions to existing conflicts between indigenous people and PPKS. Referring to the aforementioned descriptions, the research questions are formulated as follows: How does the development of indigenous peoples' oil palm plantations resolve land disputes between indigenous peoples and oil palm plantation companies in Kampar Regency?

⁵ Peralihan Hak Tanah Ulayat Di Kabupaten Dharmasraya Februari Andiki, Notarius, Volume 12 Nomor 2 (2019), p., 856

⁶Coser stated, "If no mutual agreements are made at some time during the struggle, it "ceaseth only in death" or in total destruction of at least one of the antagonists. The termination of conflict hence presents problems that do not arise in finite processes", dalam Lewis A. Coser, *The Termination of Conflict*, The Journal of Conflict Resolution, Vol. 5, No. 4 (Sage Publications, Dec: 1961), p. 347

⁷He argues that conflict involves 'basic needs' or 'values' that can't be simply traded off against one another, but have to be respected in any negotiation process. This contrasts with 'interests' which are 'transitory, altering with circumstances', and which Burton argues can be traded in a negotiation process. (Burton, 1996, p. 38), dalam Michael E. Salla, *Creating the 'Ripe Moment' in the East Timor Conflict*, Journal of Peace Research, Vol. 34, No. 4 (Nov., 1997), hlm. 458

⁸ Hayatul Ismi, *Penggunaan Tanah Hak Ulayat Dalam Pengelolaan Sumber Daya Alam Mineral Dikaitkan Dengan Hak Masyarakat Adat Setempat Dalam Rangka Pengembangan Hukum Pertanahan Indonesia*, Disertasi, Universitas Padjadjaran, Bandung, 2015, p. 6

⁹ Hayatul Ismi, *Pengakuan dan perlindungan Hukum Hak Masyarakat Adat Atas Tanah Ulayat Dalam Upaya Pembaharuan Hukum Nasional*, 2012, p. 4 (published in Jurnal Ilmu Hukum Vol. 3 No. 1 year 2012, 2087-8591)

¹⁰ <https://www.riau1.com/berita/riau/1606891765-ternyata-ada-73-konflik-perkebunan-yang-ada-di-riau>

¹¹ Dinas Perkebunan Pemerintah Provinsi Riau, *Rencana Strategis Dinas Perkebunan Provinsi Riau Tahun 2020 -2024*, (Pekanbaru: Dinas Perkebunan Pemerintah Provinsi Riau, 2019), p. 30

Research Methods

This study was normative legal research utilizing statute approach. The statutory approach was conducted by examining the laws and regulations pertaining to the legal issues under study. This study employed both primary and secondary legal materials. The former covered the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 on Agrarian Principles, and Law Number 39 of 2014 on Plantations. Meanwhile, the latter included scientific works written by scholars or discovered on the internet that supported and related to this research. Then, the data were analyzed prescriptively to generate arguments on the legal issues under study.

Results and Discussion

The Principle of Free, Prior, and Informed Consent (PADIATAPA/FPIC) as a Conflict Resolution

In social interactions (meeting the needs of life), humans will always be confronted with a plethora of rights and obligations. Kriekhoff stated, "The demands for their rights will be more prominent if their fulfillment is directly related to basic needs, such as clothing, food, shelter, and land."¹² Furthermore, Kriekhoff added that the realization of various efforts to fulfill these basic needs cannot be separated from the extent and form of the rights a person has. If a person's rights are part of a group or communal right, or if the rights are recognized by others, conflicts may arise in exercising these rights.¹³

Some social processes have clear ending, but some are ambiguous. Conflict is a social process that has unclear ending. Therefore, Coser said, conflict must be resolved immediately, otherwise it will result in the 'death' of one or both parties. Coser says,

If no mutual agreements are made at some time during the struggle, it "ceaseth only in death" or in total destruction of at least one of the antagonists. The termination of conflict hence presents problems that do not arise in finite processes."¹⁴ Agreements as to goals and determination of outcome shorten the conflict. Once a goal has been reached by one of the parties and this accepted as a clue to the acceptance of defeat by the other, the conflict is ended. The termination of conflict is a social process dependent upon, but not directly deducible from its pursuits.¹⁵

Conflict-resolution process is a multi-step or multi-layered activity. On the surface, these processes require a set of skills and steps that combine to form a unique design for a specific purpose. The following layer contains mentalities and perceptions that shape the selection of skills and steps. This includes their integration and application as well. The attitudes toward the structure of reality, the purpose of life and existence, and the appropriate forms of activity design all contribute to shaping the process. The reality of the context is more profound; conflict resolution is born within and arise out of specific historical, cultural, and social contexts. Often, in fact, they are the product of multiple contexts and traditions.¹⁶

¹² Kriekhoff. Valerine. J.L, Mediasi : Tinjauan dari Segi Antropologi Hukum, dalam Antropologi Hukum Sebuah Bunga Rampai, Edisi Ke 3, Obor, Jakarta, 2003, p. 233

¹³ Ibid,

¹⁴ Lewis A. Coser, *The Termination of Conflict*, The Journal of Conflict Resolution, Vol. 5, No. 4 (Sage Publications, Dec: 1961), hlm. 347

¹⁵Ibid., p. 349

¹⁶"Conflict-resolution processes are multilayered. On the surface these processes comprise of a set of skills and steps that combine to form a particular design toward a particular end. When we speak of mediation, for example, we typically talk in terms of the skills of intervening, listening, and being neutral, and of steps including opening statements, brainstorming, and caucusing. Below this

In this study, the researchers employ John W. Burton's conflict resolution theory because he sees conflict as the process of fulfilling basic human needs.¹⁷ According to researchers, the current conflict stems from the disruption of indigenous peoples' economic and cultural rights. Burton (1915-2010) was described as "*a man ahead of his time.*" Burton is a pioneer in the field of conflict resolution known as "*problem-solving workshop conflict resolution.*"¹⁸ His theory of the relationship between basic human needs and the development of ongoing conflict raises new issues for conflict analysts and justice seekers to debate.¹⁹

Conflict resolution theory, in short, proposes the following principles, according to Burton:²⁰

1. Conflict cannot be seen as a political-militaristic phenomenon but must also be seen as a social phenomenon.
2. Conflict has a non-linear life cycle, depending on the dynamics of the conflict environment.
3. Conflict cannot be reduced to a single variable in the form of a bivariate causality proposition, but must be viewed as a phenomenon caused by the multilevel interaction of various factors.
4. Conflict resolution is only effective when combined with other relevant conflict resolution mechanisms.

Nader dan Todd mengemukakan tiga fase dalam suatu proses sengketa yakni: 1) *grievance preconflict*; 2) *conflict period*; dan 3) *dispute period*.²¹ A grievance preconflict is a situation or condition in which an individual or group feels wronged. This stage, which can be muted, can escalate into confrontation or conflict.²²

The degree of escalation will influence both conflict and peace.²³ If the conflict escalation increases tension and widespread mass mobilization, it is followed by a crisis for all parties involved to resolve the conflict. Then, this continues to falling victim due to limited violence or mass violence. The increasing escalation will then have an effect on the development of the conflict.²⁴

surface level there exists a realm of mental constructs and perceptions that shape the choice of skills and steps, as well as their integration and application. The attitude toward the structure of reality, the purpose of life and existence, and the appropriate forms of action frame and help to shape the process. Even deeper under the surface is the realm of context; conflict-resolution processes are born within and arise out of specific historical, cultural, and social contexts. Often, in fact, they are the product of multiple contexts and traditions," lihat Hossain B. Danesh and Roshan Danesh,A Consultative Conflict-Resolution Model: Beyond Alternative Disputeresolution, International Journal of Peace Studies, Vol. 7, No. 2 (Autumn/Winter 2002), p. 1

¹⁷He argues that conflict involves 'basicneeds' or 'values' that can't be simply tradedoff against one another, but have to be respected in any negotiation process. This contrasts with 'interests' which are 'transitory,altering with circumstances', and which Burtonargues can be traded in a negotiation process.(Burton, 1996, p. 38), dalam Michael E. Salla, Creating the 'Ripe Moment' in the East Timor Conflict, Journal of Peace Research, Vol. 34, No. 4 (Nov., 1997), hlm. 458, Burton mengatakan, "Conflictual relations are a part of all social relationships. As Galtung has argued, like sex they are important, and like sex they can be institutionalized and suppressed, or they can be brought out into the open, understood, managed, and directed. "They (sex and conflict) enrich our existence-if we have the courage and maturity to meet the challenge fully-and even joyfully"(Galtung, forthcoming)", dalam John W. Burton, Resolution of Conflict, International Studies Quarterly, Vol. 16, No. 1 (Mar., 1972), hlm. 26

¹⁸Tarja Väyrynen,Medical Metaphors In Peace Research:John Burton's Conflict Resolution Theorysd A Social Constructionist Alternative,International Journal of Peace Studies, Vol. 3, No. 2 (July 1998), p. 5

¹⁹Furthermore, his theory of the relationship between basic human needs and the development of protracted conflict has brought in a set of new issues and evoked a lively theoretical debate among conflict analysts and peace researchers,Tarja Väyrynen, *ibid*.

²⁰John W. Burton dan Dennis JD Sandole, Teori Generic: Dasar Resolusi Konflik, (Jakarta: PT. Gramedia Widia Sarana, 1990) p. 187.

²¹T.O. Ihromi (ed.), "Beberapa Catatan Mengenai Metode Sengketa yang Digunakan dalam Antropologi Hukum", dalam Antropologi Hukum: Sebuah Bunga Rampai (Jakarta: Yayasan Obor Indonesia, 1993), p. 210-211.

²²*Ibid*

²³Ichsan Malik, *Resolusi Konflik Jembatan Perdamaian*, (Jakarta, PT Kompas Media Nusantara, 2017), p. 233

²⁴*Ibid*

Inversely, if the escalation can be detected and controlled, deliberation or meetings are held to resolve the conflict. Thus, the crisis begins to be resolved, tensions and mobilization can be managed. This condition is called conflict de-escalation which will encourage peace building.²⁵ Conflicts in society, according to I Nyoman, are generally caused by the following issues:

1. Control, use, and natural resources distribution that support human life (natural resource control and distribution);
2. Territoriality expansion
3. Economic activities; and
4. Density of population ²⁶

Wiyono (1993: 37) defines conflict with the following characteristics:

1. A conflicting interaction involves at least two parties, either individually or in groups.
2. At least one conflict arises between two parties, either individually or in groups, in the course of achieving goals, playing a role, and being ambiguous or having conflicting values or norms.
3. The emergence of interactions is frequently marked by behavioral symptoms intended to eliminate, reduce, or suppress other parties. It is done to obtain benefits such as status, position, responsibility, fulfillment of various types of physical needs (clothing, food, material, and welfare), specific benefits (a car, a house, a bonus), or socio-psychological needs (security, self-confidence, love, respect, and self-actualization).
4. The emergence of direct confrontational actions as a result of a protracted conflict.
5. The emergence of imbalances as a result of each party's efforts in terms of position, social status, rank, class, authority, power, self-esteem, prestige, and so on.

Indigenous peoples frequently complain about development activities and the utilization of natural resources in customary areas and forests. In addition, the lack of information at the initial stage of the investment process, the use of force to acquire customary lands, and unfulfilled promises created friction between investors and local residents.²⁷ This friction can be avoided by applying the principle of Free, Prior and Informed Consent.²⁸ In short, FPIC, also known as Free, Prior, and Informed Consent (PADIATAPA), is the right acknowledgement to self-determination. The FPIC principle encompasses not only the must-elaborated procedures, but also indigenous peoples' rights to self-determination, agreements, land, territories, and natural resources. Customary law must be recognized in FPIC procedures because it is relevant and can resolve the issue of who has the right to represent indigenous peoples.²⁹

Article 32 of the United Nations Declaration on the Rights of Indigenous Peoples states as follows:

1. Indigenous peoples have the right to set priorities and develop strategies for the development or use of land, territories, and resources.

²⁵Ibid., p. 234

²⁶I Nyoman Nurjaya, *Pengelolaan Sumber Daya Alam Dalam Perspektif Antropologi Hukum*, (Jakarta: Prestasi Pustaka Publisher, 2008), p. 74

²⁷ Lihat <https://www.cnnindonesia.com/nasional/2019108175057-20-446737/warga-adat-papua-keluhkan-aktivitas-investasi-perkebunan>, accessed on December 24, 2019, see also <https://regional.kompas.com/read/2016/10/04/13000061/konflik.tanah.warga.adat.bakar.pondokan.preman.perusahaan.sawit>, accessed on February 13, 2018.

²⁸ Hereinafter referred to as FPIC

²⁹ United Nations: Economic and Social Council, *Report of the International Workshop on Methodologies Regarding Free Prior and Informed Consent*, (New York: Permanent Forum on Indigenous Issues, 2005), p. 5

2. States should consult and cooperate with these indigenous peoples in good faith through their own representative institutions. This is to obtain free, prior, and informed consent before approving any project that affects their lands or territories or other resources, particularly those relating to development, use, or exploitation of mineral, water, or other resources.
3. For such activity, states must establish effective and equitable redress mechanisms. Furthermore, appropriate steps should be taken to mitigate negative environmental, economic, social, cultural, or spiritual consequences.

Essentially, all agrarian conflicts/disputes arise from incompatibility/gaps in agrarian resources, specifically gaps in control, allocation, perception, and conception, as well as conflicting laws and policies.³⁰ Conflicts can arise from indigenous peoples' land expropriation based on state claims. According to Komnas HAM (The National Commission on Human Rights) ³¹ Since the Dutch East Indies colonial government, the state has made unilateral claims to land and forest resources. Since the colonial period, many individual lands and customary territories have been designated as state forest areas, particularly in Java and Sumatra.

State Forest areas are the process of taking over indigenous people's customary territories, such as changing their territory into an Indonesian forest area. It happens in three stages as follows, which can be seen in how the government claims and controls the area. First, all land whose ownership cannot be proven becomes state-controlled land. Second, establishing state land and/or forest boundaries. This is done to emphasize the government's control over natural resources. This stage disregards the holder's claim to the land, as well as the communities' customary law. Third, after determining the boundaries of an area, the government issues utilization permits and prohibits anyone from accessing the area and its natural resources unless the government permits it.³² Unfortunately, this method creates conflict between indigenous peoples and companies. Conflicts can be avoided by implementing Free, Prior, and Informed Consent (PADIATAPA/FPIC). According to the FPIC principle, indigenous peoples have the right to give or withhold consent to actions that will affect them, particularly actions that will affect their traditional lands, territories, and natural resources.³³

The conflict resolution under study is the conflict between Bencah Kelubi Village and Subarak Village, both of which are located in Kampar Regency. The locals in Bencah Kelubi are subsistence farmers. Therefore, The company existence in the plantation industry (PTPN V) and in the forest industry (PT. Arara Abadi) disrupts their livelihoods. This disruption resulted in a conflict with PTPN V Sei Galuh.³⁴ It began in 1983, formerly, Bencah Kelubi was a sub-village and a part of Pantai Cermin Village. The conflict arose when PTPN V built a PIR-Trans plantation for transmigrants imported outside the region. The garden's development consumes the community's cultivation area. As a result, the community loses its land.

³⁰ Baca Gunawan Wiradi, *Seluk Beluk Masalah Agraria, Reforma Agraria dan Penelitian Agraria*, (Yogyakarta: STPN Press bekerjasama dengan Sajogyo Institute, 2009), p. 56

³¹ Tim Inkuiiri Nasional Komnas HAM, *Inkuiiri Nasional Komisi Nasional Hak Asasi Manusia: Hak Masyarakat Hukum Adat Atas Wilayahnya di Kawasan Hutan*, (Jakarta: Komisi Nasional Hak Asasi Manusia Republik Indonesia, 2016), p. 29

³² *Ibid.*

³³ Jenny Springer dan Vanessa Retana, *Persetujuan Atas Dasar Informasi di Awal Tanpa Paksaan dan REDD+: Pedoman dan Sumber Daya*, (WWF, 2014), p. 4

³⁴ PTPN V Sei Galuh Plantation Business Permit covering an area of 10,000 hectares, source from the Riau Province Plantation Service, 2018 Plantation Permit Recapitulation.

Meanwhile, the migrants living in their village are receiving assistance from the government. Thus, the local community feels wronged.³⁵ The community demands that PTPN V build a 3,000 hectare garden in the KKPA pattern. In 2000, an agreement was reached with PTPN V Sei Galuh. They built a garden under the KKPA pattern for 125 families. Although the agreement area is 250 hectares, only about 150 hectares have been planted.³⁶

Indigenous peoples are also at odds with PT. Arara Abadi. This begins around 1998. To resolve the conflict, deliberation was made, and an agreement was reached in 2000, stating that a 1000 hectare plantation would be built in Dusun I, the land for which would be sought elsewhere. In Sub-village II Bencah Kelubi, a 500 hectare oil palm plantation will be built. However, only 25 hectares were planted. It was eventually neglected and harmed by animals.³⁷ The community continually demands PT. Arara Abadi to fulfill his promise. In 2020, PT. Arara Abadi handed over a 500-hectare area through Kampar Regency Government. In fact, only 371 hectares have been realized, an additional 129 hectares are required. However, PT Arara Abadi did not realize it. The community plants the 371 hectares of land on its own with living plants.³⁸ apart from palm oil. Conflict resolution in Subarak Village, PT Ganda Buanindo company entry³⁹ To start a business, they are accompanied by the Regional Government. It all began with a meeting with the residents of Subarak Village. They discuss the exact location of the business held in the village. The purpose of the first meeting was to inform the community and obtain their approval.⁴⁰ This step was taken to enact free, prior, informed consent principles (FPIC/PADIATAPA). It was seen as a strength base because their approval and disapproval will influence the laws, policies, and their acceptance of their own decision-making.⁴¹

Originally, the KKPA scheme would be accomplished after the company's plantations were completed in 1997. However, the company's commitment was delayed, resulting in pressure from the community. The realization of plantation development was represented by Ninik Mamak and the community leaders. The conflict, however, did not last long. The company builds 300 hectares in a partnership model. Profit-sharing is conducted once a month, with 30% going to the company and 70% going to the community. This pattern lasts as long as the community still in debt to the company. After the debt is paid off, the community continues to hand over the plantation management to the company with an administration of 4 percent. To this date, the followed pattern has benefited both parties and there has never been a conflict.⁴²

Referring to the aforementioned data, the KKPA pattern can help to resolve conflicts between indigenous peoples and companies. The government can carry out the mandate of the Constitution by promoting community welfare, while businesses can invest and operate

³⁵ Based on an interview with Mr. Yusmar, Village Head, Bencah Kelubi Village, August 9, 2021.

³⁶ *Ibid.*

³⁷ Elephants and pigs frequently destroy young oil palm plantations. This oil palm plantation's failure is also due to PT. Arara Abadi's involvement in the industrial forest business.

³⁸ Living Plants are planted plants to benefit the community. It can be in the form of staple plants that produce timber forest and/or non-timber forest products, as well as products that benefit the community (food security). These are managed through a partnership between the community and the relevant IUPHHK-HTI holder. This is based on the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number: P. 12/Menlhk-II/2015 concerning Development of Industrial Plantation Forests

³⁹ PT Buanindo's location permit covering an area of 2,635 hectares and a plantation business permit covering an area of 2,552.84 hectares, sourced from the Riau Province Plantation Office, Recapitulation of Plantation Permits in 2018.

⁴⁰ Interview with Mr. Hasber, the indigenous community of Subarak Village on August 10, 2021

⁴¹ Marcus Colchester dan Maurizio Farhan Ferrari, *Menjadikan FPIC Berjalan: Tantangan dan Peluang bagi Masyarakat Adat*, (Moreton-in-Marsh: Forest Peoples Programme, 2007), p. 6

⁴² Interview with Mr Hasber, *ibid.*

quietly without causing any disruption to the community. The KKPA pattern can aid in the resolution of conflicts between indigenous peoples and corporations. It is also critical to hold an initial meeting with the indigenous peoples, who own the land. The meeting is held to announce an investment that requires their approval and to discuss land-use.

Conclusion

Finally, the use of the KKPA pattern in the development of oil palm plantations is highly influential and effective for conflict resolution. Furthermore, implementing the FPIC principle prior to development can strengthen indigenous peoples' positions. As a result, they have a strong bargaining position with the company. Finally, it has the potential to reduce conflicts.

Suggestion

The authors suggest that the parties' consistency must be maintained. Thus, the community feels responsible for the investments made in their village.

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