UNIVERSITY OF AMSTERDAM

UvA-DARE (Digital Academic Repository)

The Perils of Legal Formalism

Litigating Land Conflicts in Indonesia

Peterson, D.; Bedner, A.; Berenschot, W.

DOI
10.1080/00472336.2024.2440855

Publication date
2025

Document Version
Final published version

Published in
Journal of Contemporary Asia

License
Article 25fa Dutch Copyright Act (https://www.openaccess.nl/en/policies/open-access-in-dutch-copyright-law-taverne-amendment)

Link to publication

Citation for published version (APA):
Peterson, D., Bedner, A., & Berenschot, W. (2025). The Perils of Legal Formalism: Litigating Land Conflicts in Indonesia. *Journal of Contemporary Asia*, *55*(3), 430-451. https://doi.org/10.1080/00472336.2024.2440855

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: https://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, P.O. Box 19185, 1000 GD Amsterdam, The Netherlands. You will be contacted as soon as possible.

UvA-DARE is a service provided by the library of the University of Amsterdam (https://dare.uva.nl)

Download date:08 Feb 2026

JOURNAL OF CONTEMPORARY ASIA
2025, VOL. 55, NO. 3, 430–451
https://doi.org/10.1080/00472336.2024.2440855

Routledge
Taylor & Francis Group

Check for updates

The Perils of Legal Formalism: Litigating Land Conflicts in Indonesia

Daniel Peterson[a], Adriaan Bedner[b] and Ward Berenschot[c]

[a]School of Politics and International Relations, Queen Mary University of London, London, UK; [b]Van Vollenhoven Institute for Law and Society, Faculty of Law, Leiden University, the Netherlands; [c]Department of Anthropology, Royal Netherlands Institute of Southeast Asian and Caribbean Studies (KITLV), Leiden; Political Science, Faculty of Social and Behavioural Sciences, University of Amsterdam, the Netherlands

ABSTRACT

Under what conditions can courts function as a bulwark against land grabbing? In light of ongoing concerns about corporate land grabbing, studies disagree about how and whether courts can resolve resulting land conflicts. This article addresses this debate, examining how Indonesia's legal system deals with conflicts between rural communities and palm oil companies. Relying on 18 court judgments, it explores the legal strategies of those communities and individuals threatened by dispossession that have opted to litigate, as well as the protracted nature of the appeals process and the typically formalistic nature of the courts' verdicts. It is found that judges rarely rule on the merits of a case; rather, they adopt a formalist approach to the law, which prioritises strict procedural correctness. This prompts an argument that the primary obstacle to substantive judicial outcomes and resolutions where land disputes are litigated is not Indonesia's uncertain land law regime, but the disconnect between the competencies of lawyers representing communities in court and the excessively formalist approach of the judiciary. A vicious cycle has emerged: as legal formalism and an ambiguous legal framework have encouraged judges to rule on procedural grounds, Indonesian land law is being denied a substantive body of jurisprudence.

KEY WORDS

courts; dispute resolution; Indonesia; land conflict; litigation; palm oil

In March 2014, when Sutarjo went to harvest the oil palms planted on a plot of land that his wife had inherited, he might not have imagined that this harvest would land him in Indonesia's Supreme Court (*Mahkamah Agung*). In 2006, the palm oil company PT Karya Makmur Abadi (PT KMA) planted oil palms on land that Sutarjo and his wife Sri Hayati had been cultivating. Demanding that the company return the land, Sri Hayati produced *adat*-based documentation – a customary deed of title or *surat keterangan tanah adat* – and the testament of her late father to prove that the land was hers. PT KMA, however, rejected the claim, moving Sutarjo and Sri Hayati to file a land ownership claim in the Sampit State Court (*Pengadilan Negeri Sampit*). Both this district court and the appellate

CONTACT Ward Berenschot w.j.berenschot@uva.nl Royal Netherlands Institute of Southeast Asian and Caribbean Studies (KITLV), Reuvensplaats 2, 2300, RA Leiden, the Netherlands

© 2025 Journal of Contemporary Asia

court dismissed the *adat*-based land claim and upheld the lease right of PT KMA. Sutarjo and Sri Hayati then appealed to the Supreme Court, where they were slightly more successful. The Supreme Court agreed that PT KMA had unlawfully acquired the disputed land but, crucially, also found that Sutarjo did not have the necessary legal standing. As Sri Hayati was the only rightful heir to the previous owner of the land, the court ruled that Sri Hayati should have brought the claim on her own, without her husband. The fact that Sutarjo was a joint claimant without legal standing was grounds, the court found, to dismiss the case. Notwithstanding that the company had no legal right to the land, the court's pre-occupation with the legal standing of her husband ultimately denied Sri Hayati a just outcome.[1]

The case of Sri Hayati against PT KMA is one of many examples where an excessively formalist interpretation of legal rules precluded an Indonesian court from resolving a land conflict. Over the last few decades, concerns have grown about the ways by which large corporations – not only agro-business, but also natural resource and real estate companies – have successfully dispossessed communities of their land, often with active support from state authorities (see, for example, GRAIN 2008; Pearce 2012). This literature has documented how weak land tenure, particularly in developing countries, has rendered communities relatively powerless to defend their land against incoming companies (see Borras and Franco 2013). As state authorities grant companies ownership of, or concessions for, community land, affected communities are turning to demonstrations, political lobbying, occasional violence, and sometimes litigation, to defend or reclaim their land (see, for example, Colchester, Jiwan, and Chao 2013).

In the discussion of such conflicts generated by palm oil expansion in Indonesia in this article, the obstacles that prevent courts from addressing the grievances caused by this expansion are identified. Frequently, rural communities, local authorities, and also international donors, pin their hopes to the formal legal system as a line of defence against land dispossession. In this vein, the United Nations, for example, has made access to justice one of its sustainable development goals, with the hope of "making the law work for everyone" (Commission on Legal Empowerment of the Poor 2008). Similarly, a range of legal aid programmes have been set up around the world with the aim of providing people with the necessary advice and skills to take their grievances to court.[2]

In that light, this study explores the feasibility of, as well as the obstacles to, litigation to address land conflicts. For this purpose, particularly intractable land conflicts are examined – those between palm oil companies and rural communities – as they are addressed in Indonesia's legal system. The rapid expansion of Indonesia's oil palm plantations – which are doubling in size almost every decade – has sparked hundreds of conflicts between palm oil companies and rural communities that feel they are being cheated out of their land while receiving very little compensation. These conflicts unfold in the context of a distrusted, corruptible judiciary and a contradictory, complex legal framework that restricts individual and communal land tenure security and provides the state with pervasive control over land (see, for example, Bedner 2016). The main questions are whether Indonesian courts in such conditions can still offer any recourse in cases related to land grabbing and what are the main factors that determine their performance.

This examination of the context and aftermath of such court cases was made possible by a broader, longitudinal study of land disputes across four Indonesian provinces. Through a collaboration of different research institutions involving 19 local researchers, 150 disputes were documented between rural communities and palm oil companies in Riau, West Sumatra, West Kalimantan, and Central Kalimantan (see Berenschot et al. 2022 and Berenschot et al. n.d.). In this article, the focus is on a smaller sub-set of 37

cases where community actors opted to litigate. To examine the judgments, this selection was further narrowed to those cases of which court judgments are publicly available on either Indonesia's Supreme Court website or the websites of lower courts. This provided 18 cases filed by rural communities against palm oil companies; these cases involved either direct land claims or related to the implementation of profit-sharing palm oil partnerships.

In the next section of the article the available literature on land conflicts and litigation is reviewed and the study's approach is explained. After providing some background on Indonesia's land law regime, the legal strategies of the rural communities involved are analysed. In subsequent sections, the judgments are assessed, and the reasons for non-implementation of those judgments that found in favour of certain communities. This is followed by an assessment of the implications of the study for understanding the obstacles to effective litigation as a means for communities and individuals to address land conflicts with corporations and the state.

Land Conflicts in Court: An Overview

To what extent and under what circumstances can courts function as a bulwark against land grabbing? A limited but growing number of studies have enquired into how courts in the developing world might resolve such resulting land conflicts – sometimes in the context of a broader literature on "legal mobilisation" (see, for example, Epp 1998; McCann 2006; Bedner and Berenschot 2023). On the optimistic side of this debate, one finds authors such as de Soto (2000, 60–68), who famously argued for the registration of individual property rights on the assumption that courts would generally uphold the property rights of victims of corporate land grabbing. Along these lines, a review of the literature even argued that "[l]itigation is a necessary step in reclaiming land" (Odendaal and Hebinck 2021, 14). Furthermore, there is a sizable, more general literature on legal mobilisation and judicial activism (see, for example, Gauri and Brinks 2008; Gargarella, Domingo and Roux 2016). This literature suggests that litigation can yield important results and strengthen citizen rights. It includes studies on judicial activism in Indonesia, by Susanti (2008) on health care and Rosser and Curnow (2014) on education.

Other scholars are more pessimistic regarding the potential benefits of litigation. Critical legal studies scholars argue that the law is an instrument of dominant social forces, and that legal proceedings are therefore unlikely to disrupt the processes through which these forces dispossess rural communities of their land (see, for example, Kouwagam 2020). In this vein, Mattei and Nader (2008, 6) have argued that "[w]hen large corporate actors dominate states or become knitted with them, law becomes a product of the economy," thus undermining the likelihood that marginalised communities might successfully employ the law to defend their interests. Indeed, non-governmental organisation (NGO) practitioners supporting communities involved in land conflicts often express scepticism about the effectiveness of litigation, pointing not just to high costs and lengthy procedures, but also to how the law is skewed against them and to the likelihood that judicial outcomes are swayed by corruption. As Wehrmann (2008, 66) writes, "it is not uncommon that judges are corrupt and allow the richer party to win the case. Even if this is not the case, the more affluent will always be able to hire the better lawyers." For such reasons, NGO activists assisting communities facing dispossession often explicitly discourage people from taking their land conflicts to court (see Berenschot et al. 2022).

To what extent is this pessimism supported by empirical studies on actual court cases related to land grabbing? Those few studies conducted on the adjudication of land

conflicts offer a mixed assessment. On the positive side, several studies have highlighted how communities could successfully assert their land claims in courts in Kenya (Claridge 2018), Colombia (Grajales 2015), Ghana (Crook 2004), and South Africa (Brink 2005; Beyers and Fay 2015) and achieve recognition of the "cultural rights" of indigenous peoples (Gilbert and Sena 2018). Yet other scholars find that, from a social justice perspective, courts have important limitations in dealing with land conflicts. Scholars working in authoritarian states such as China have shown how the judiciary serves as a smokescreen, rather than as an actual dispute resolution mechanism for aggrieved citizens (Zhou and Banik 2014). Gillespie (2014) reports a similar situation in Vietnam, while in Zimbabwe, Section 72(3)(b) of the Constitution of 2013 prevents the courts – except in very limited circumstances – from even adjudicating such cases (Moyo 2018, 290–291).

Studies conducted in democratic contexts are not necessarily more positive. Some have emphasised that a major obstacle to substantive justice is the tendency of the courts to require formal documentary evidence of land titles in contexts where citizens are unlikely to possess such titles. For example, a study of certain Tanzanian higher courts by Massay (2017) concluded that these courts used an overly strict and technical application of the law to deny the customary claims of pastoralists to their land, despite lower courts recognising these pastoralists as traditional custodians of that land. Some scholars have attributed this denial to the limited recognition and integration of customary or semi-formal land rights in formal land tenure regimes, as this undermines the effectiveness of the formal legal system as an avenue to address land claims of victims of dispossession (see Von Benda-Beckmann and Von Benda-Beckmann 2013; Gilbert and Begbie-Clench 2018).

Other studies have highlighted non-legal obstacles. For example, analysing land conflicts in Indonesia, Kouwagam (2020) similarly found that in 17 of the 24 cases she examined, judges decided in favour of corporations, disregarding the plaintiffs' argument that the land leases granted to these corporations had been unlawful because they ignored older rights of local inhabitants. Studies on Indonesia's political economy offer several important insights into why the legal system so often seems to favour the interests of companies, pointing out that the state is heavily involved in freeing up land for corporate investors (Lucas and Warren 2013; Berenschot and Dhiaulhaq 2023; Meckelburg and Wardana 2024). Others have emphasised that informal exchanges of favours between business actors, politicians, and state officials (including judges) tends to skew state governance towards the interests of economic elites (Aspinall and Berenschot 2019, 203–228). In this vein, observers of Indonesia's legal system have noted that wealthy corporate actors have considerable opportunities to bribe judges to obtain favourable judicial outcomes (Pompe 2005: Chs 6–10; Butt and Lindsey 2010; Bachriadi and Aspinall 2023). These studies reveal that citizens who take corporations to court face a highly unfavourable power imbalance, and that this inequality stems not just from laws and regulations, but also from the character of Indonesia's political economy (see also Gellert and Andiko 2015).

Building on these insights, the analysis of court judgments below focuses on how communities, companies, and judges deal with legal provisions related to land rights. While the majority of studies examine high-profile and exceptional cases, thus casting doubt on the generalisability of their findings, this analysis focuses on a broader set of 18 court cases, making the findings more likely to be representative of broader patterns. The aim is to analyse how plaintiffs and their lawyers, as well as judges, interpret and cite legislative provisions in order to better understand the legal obstacles that render courts often ineffective at dealing with land conflicts, in general. By doing so, this study provides insights into how a legal system can be made to work in the interest of economic elites.

The benefit of examining the legal reasoning of courts concerning a relatively large number of cases is that it allows for an assessment of the considerations and conditions that shape the judicial process and the resulting outcomes.

Indonesia's Land Law Regime

Before examining how palm oil conflicts fare in court, a few introductory remarks about the nature of Indonesia's land law regime are appropriate. First, a primary feature of land law is the central position the state assumes in assigning land rights and determining land use, while a second feature is a lack of correspondence between legal rules and the situation on the ground.

The origins of the central position of the state in land management lie in the colonial land law system Indonesia perpetuated and intensified after independence. Article 33 of Indonesia's 1945 Constitution declares that the state is the owner of all land and the appropriate actor to determine how land may be used. This prerogative can be used for various purposes, but most Indonesian governments have deployed it to continue the exploitative capitalism of their colonial predecessors. The legal system has thus enabled a collusive system of land appropriation by government and corporations that is even less inhibited by legal constraints than was the colonial system itself.

Thus, pursuant to Law No. 41 of 1999 on Forestry (Forestry Law), the state claims that all land classified as forest is state land.[3] Once demarcated, parcels of land no longer covered by forest remain designated forested areas and continue to be claimed by the state as such. Legally, these lands can only be used for forestry or nature conservation and not for other purposes, such as agriculture or housing. While the process of demarcating forested land still has not been completed in many parts of the country, and although it has led to many disputes, the state's claim is clear and places forest dwellers and others using "forested" land at a disadvantage.

Under Government Regulation No. 27 (2014) on the Management of State/Regional Property, articles 4(1) and (2), the state has the right to "release" forested land. This is significant in the case of oil palm because most plantations are established on released forested lands. In practice, however, these areas have often been used for many years by local communities for agriculture and other purposes. Palm oil companies, however, typically claim that this use is illegal because it concerns a forested area (Gellert and Andiko 2015, 652–658).

Second, the rights to non-forested land are governed by the Basic Agrarian Law, Law No. 5 of 1960 (hereafter, BAL). Officially, the BAL was enacted to reconcile *adat* (customary) land tenure with the registrable land rights introduced to the archipelago by the Dutch colonial government. The overall effect of the BAL, however, was to subordinate *adat* to the state's authority: the state determines whether *adat* rights still exist and, in line with article 5 of the BAL, the state can override them for reasons of "national and state interest." This has reduced the strength of an *adat* defence against state appropriation of land compared with the colonial system (Arizona 2022, 91). Moreover, the BAL introduced the concept of "state land" (*tanah negara*), claiming that, in principle, all land belongs to the state and that all rights mentioned in the BAL are derivative from those of the state.[4]

The BAL also fails to recognise adverse possession. Individuals who have used plots of land for decades do not gain any rights from this use. To further complicate matters, local governments have often provided documentation to individuals who cannot obtain an official right to prove their "ownership." Many also use tax receipts for this purpose

(Reerink 2011: 32–40). This means that there is a serious disconnect between the rules of the BAL and the situation and practices on the ground (see Fitzpatrick 1997). As Lund (2020, 17) writes, these "competing restrictions and overlapping jurisdictions" have led to a situation of legal pluralism where "many land rights seem equivocal."

As mentioned, Article 5 of the BAL recognises communities' *adat* rights as long as they "do not contradict the national interests and the interest of the state," while Article 3 holds that they are only valid as long as these communities "still exist." This has created two problems. First, Indonesia's laws provide few indications as to what qualifies as national or state interest. In the case of palm oil conflicts, the vagueness of the term "national interest" has allowed courts to consider the development of palm oil plantations to be a "state interest," which offers a justification for siding with palm oil companies against communities. And second, as Bedner and Arizona (2019: 9–10) note, the state has been less than generous in recognising communities as "still existing" – in particular communities which claim land rights. This has also made it difficult for communities to make an *adat*-based land claim in court. In practice, *adat* communities have to navigate considerable procedural obstacles to acquire this recognition and status as an *adat* community, and few have been successful in doing so (see also Arizona 2022). As communities typically struggle to fulfil all the requirements,[5] there are currently only a few officially recognised *adat* communities. This means that the oft-repeated claim that the state recognises *adat* land rights is, in practice, limited to a very small number of communities.

The BAL does not make clear what national and state interests are, and with which requirements *adat* communities need to comply to be recognised. Other legal sources do not offer much recourse either. One explanation for this is the underdeveloped nature of land law doctrine and jurisprudence in Indonesia, which accords with Butt and Lindsey's (2018, 78) observation that "[d]octrine in Indonesia is notoriously undeveloped for most areas of law" (see also Bedner 2016). The use of precedents (*yurisprudensi*) currently plays an extremely limited role in legal interpretation (see Pompe 2005). Broadly speaking, this lack of attention to *yurisprudensi* reflects the prominence of a strictly formalist (or "legalist") approach referred to as "pure law" (*hukum murni*), which is quite influential among Indonesian jurists (Wiratraman 2019, 242). Judges are unaccustomed to reading previous judgments and rely almost entirely on legislation, supplemented by circular letters and regulations from the Supreme Court (Bedner 2013, 256–257, 263).

These key issues – the ambiguity inherent in Indonesia's land law framework, the limited recognition of *adat* and other local land rights, and the limited use of jurisprudence – are salient considerations directly relevant to the assessment of these 18 cases.

The Legal Strategies of Communities

In this section, the first focus is on the legal strategies rural Indonesians employ when litigating their grievances against palm oil companies. It is found that communities involved in palm oil conflicts employ a remarkably varied range of legal strategies while pursuing largely similar issues. The 18 case studies revolved around two main issues sparked by palm oil expansion, namely grievances stemming from how companies appropriated communities' land without consent and without adequate compensation, and grievances relating to the implementation of profit-sharing (*inti-plasma*) schemes. While the communities concerned employed various strategies to support their cases, they all relied on the Civil Code, the *Kitab Undang-Undang Hukum Perdata* (KUHPer). Only two made specific references to the abovementioned BAL.

Land Grabbing

Of the 11 cases related to land grabbing, 10 were civil liability claims for damages resulting from alleged misappropriation of, or denial of access to, land, while one sought restitution for unjust enrichment. In seven of those 10 instances, communities specifically based their claims on Article 1365 of the KUHPer, which provides the basis for a tort action. The remaining three cases for which damages were sought made no reference to Article 1365: two related to claims regarding faulty licensing processes and one dealt with the issue of "limited protection forest." In the latter case, the company cleared the land, notwithstanding that the surrounding villages had already expressed their objections to that proposed clearing and despite the Minister of Forestry's refusal to grant the company a clearing permit. Meanwhile, another case focused on the refusal of Indonesia's National Land Agency (*Badan Pertanahan Nasional* or BPN) to provide documents that, according to the company, substantiated the company's land claims.

Profit-sharing Schemes

The six cases involving profit-sharing (*inti-plasma*) schemes also exhibited slightly divergent legal strategies. Two claims sought damages for alleged breach of contract for non-performance, invoking Article 1338 of the KUHPer on the binding nature of agreements, while two other cases concerned class actions seeking damages for breach of contract. In both cases, the plaintiffs only cited standard legislative provisions. The first was a standard civil liability claim for damages (filed pursuant to Article 1365 of the KUHPer); the second sought damages by alleging negligence on the part of the debtor, which would render the agreement null and void, referring to Article 1266 of the KUHPer (which deals with rights around non-performance of contract), as well as Articles 1320 (the elements necessary to form a valid contract) and 1365 of the KUHPer.

Basis of Locals' Claims to Land: BAL, Adat, Contract, and Human Rights

The 18 cases also differed considerably in terms of the bases of the locals' claims to land. In two cases, the claimants were official transmigrants who had been granted land and the corresponding land ownership titles, thus holding the strongest legal claims to the land in dispute, based on the BAL.

In most cases, however, communities did not possess such formal proof of ownership. In seven of these cases, the plaintiffs put forward some form of *adat*-based land claim and submitted – like Sutarjo and Sri Hayati in their claim against PT KMA – proof of ownership as issued by local *adat* authorities, such as the customary deed of title (*surat keterangan tanah adat*). They therefore relied on a much weaker basis of land ownership, at least according to the BAL, that requires that such *adat* rights be transformed into BAL rights. In two other cases, communities provided land ownership titles to substantiate their claims. And similarly, one plaintiff produced a sale-purchase agreement (*Akta Pengikatan Jual Beli*), as well as a receipt confirming payment between the plaintiff and the owner of the plot of land that bordered the eastern side of the land in dispute.

It is therefore unsurprising that most of these claims refrained from referencing the BAL. As mentioned, in only two of the 18 cases – both of which were *adat* land cases – did the plaintiffs explicitly cite provisions from the BAL. In *Minsor v Katingan Indah Utama et al*, the plaintiff complemented his claim based on tort by providing legislative definitions of key terms and conditions contained in the BAL (Sampit State Court

Decision No. 6/Pdt.G/2018/PN SPT, 7 and 28-29). These included Articles 16(1)(b) (the right to cultivate), 19 (the national land register), 26(2) (on the prohibition on the transfer of land to foreigners and legal entities), 28 (particulars regarding the right to cultivate), 35 (the right to build), and 41 (the right to use). The plaintiff also cited provincial regulations from Central Kalimantan concerning recognition of *adat* land to support his claim that the land in dispute was, in fact, *adat* land (Sampit State Court Decision No. 6/Pdt.G/2018/PN SPT, 7–8.).[6] In *Nurjaya Suka v PT Karya Dewi Putra*, the plaintiff supported her claim to *adat* land by referencing Articles 9(1) (prohibition on foreign ownership of land), 16(1)(b) (the right to cultivate), 28 (particulars regarding the right to cultivate), 35 (the right to build), and 41 (the right to use) of the BAL (Kasongan State Court Decision No. 4/Pdt.G/2016/PN Ksn, 11-13).

In one case – *Nurjaya Suka v PT Karya Dewi Putra* – the plaintiffs made reference to Article 1(3) of the 1945 Constitution, which states that "Indonesia is a state based on the rule of law (*negara hukum*)." Given that *adat* land claims typically fail, it is speculated that the parties included this constitutional reference as an additional legislative provision to strengthen their claim. Similarly, in the case of *Sri Hayati and Sutarjo Midel M. v PT Karya Makmur Abadi et al*, the plaintiffs claimed that their human rights had been violated, citing provisions from the 1945 Constitution and Law No. 39 of 1999 on Basic Human Rights (Sampit State Court Decision No. 27/Pdt.G/2014/PN.Spt; Palangka Raya High Court Decision No. 68/PDT/2015/PT.PLK; Supreme Court Decision No. 1700 K/Pdt/2016, 4–9). Technically, such human rights provisions have little relevance to the case, as the claims do not specify how they would be applicable. Again, this seems a rhetorical rather than a well-argued legal strategy, aimed at appealing to a sense of injustice about how Indonesian citizens have been dispossessed of their land by a nefarious foreign company (PT KMA is owned by a Malaysian company).

It is particularly noteworthy that in 15 of the 18 cases examined, communities claimed damages rather than seeking to have the land in question returned to them, thereby combining a claim to ownership with one based in tort. This seems a pragmatic choice – indeed, plaintiffs are likely aware that the chance of regaining their land is small, whereas a court would far more likely award them compensatory damages. The following section considers how the courts adjudicated these cases.

Court Judgments

This analysis of the judgments reveals a relatively bleak picture for communities and individuals, despite their pragmatic choice to seek damages rather than the return of their land. As Table 1 shows, in eight of these 18 cases, their claims were ruled inadmissible for faulty documentation and/or because the claimants were deemed not to have the requisite legal standing. In most – if not all – of these eight cases, the plaintiffs' legal teams could have pre-empted the reasons for which the courts declared the cases inadmissible, either by identifying and nominating community members who had the requisite legal standing or by submitting sound legal claims that a court could not summarily dismiss on procedural grounds.

In five other cases, in which communities' claims were unsuccessful, the courts' decisions turned on the fact that the evidence communities produced did not support their claims. These claims contained no formulaic defects and were therefore "accepted" (*diterima*) by the courts, but then "dismissed" (*ditolak*) for failing on the evidence. In some of these cases it is again surprising that the communities' lawyers failed to marshal compelling documentary evidence. It also begs the question why lawyers advised their clients to

litigate – requiring a considerable investment of time and money – when the available documentary evidence was so weak.

Cases Ruled Inadmissible

In six of the eight cases that courts immediately dismissed., community claims were declared "*niet ontvankelijk*," a Dutch term still used by judges for claims they deem "inadmissible" (*tidak dapat diterima*). In all six cases, the courts relied on procedural reasons that, as mentioned, could have been pre-empted by the plaintiffs' lawyers. A seventh case – that of Sri Hayati – was also adjudicated by the Supreme Court in such a way that it had the same effect as declaring the case inadmissible, for reasons discussed later, while an eighth case turned on the inauthenticity of documents on which the plaintiffs relied to establish their legal standing. In Table 1 these two cases are listed as having been deemed "inadmissible (effectively)" by the courts.

In *Minsor v PT Katingan Indah Utama et al*, the judges (accompanied by the parties to the dispute and their lawyers) inspected the land in dispute to confirm the accuracy of a land survey report. Their inspection revealed that 17 hectares of community land had been appropriated by another palm oil company, PT Darisa Surya Nusantara. The plaintiff had already received monetary compensation from that company but filed the case against PT Katingan Indah Utama because the latter had not provided compensation. And yet, as PT Darista Surya Nusantara's 17 hectares of land also fell under the *adat* land title, the court found that by failing to include PT Darista Surya Nusantara as a party to its claim, the plaintiff's claim failed for ambiguity or *obscuur libel* (another old-fashioned Dutch legal term). The court supported its argument by referring to several Supreme Court rulings that required plaintiffs to include other parties to their claim, notwithstanding that these rulings all concerned unincluded parties that sided with the main defendant. This was obviously not the case in this instance because PT Darisa Surya had already paid compensation, rendering this argument nonsensical. This decision of the lower court is even more remarkable because the court could have easily dismissed the claim for inconsistencies concerning the exact scope of the land, or the fact that the plaintiff was only one of seven heirs, bringing the claim on their behalf without special authorisation (Sampit State Court Decision No. 6/Pdt.G/2018/PN SPT, 84–86).

Both the Palangka Raya High Court (Court of Appeal) and the Supreme Court confirmed this judgment. The Supreme Court noted that the lower courts had not erred in applying the law because there was indeed a third party, namely PT Darista Surya Nusantara, which controlled some of the relevant land. The Supreme Court did not, however, scrutinise the jurisprudential arguments the court of first instance used to sustain its argument. While the plaintiff noted that it had not sued PT Darista Surya Nusantara because it had already paid him financial compensation, the Supreme Court nevertheless ruled that the plaintiff was bound to name the company as a defendant to his claim. The claim therefore failed for lack of parties (*kurang pihak*) (Supreme Court Decision No. 3368 K/Pdt/2019, 11).

In short, this case is broadly illustrative of the strict formalist approach of the courts, insofar as they appear to have a clear preference for prioritising procedural considerations over substantive justice. Knowing that the plaintiff had resolved his grievance with PT Darista Surya Nusantara, why did all three courts – the court of first instance, high court, and Supreme Court – insist on such a strict application of one rule, the practical effect of which was to deny the plaintiff access to justice? The case also raises questions about the advice with which lawyers provide their clients. It seems counterintuitive that the

Table 1. Outcomes of 18 palm oil conflicts in court

Case	Company	Province	In court	Case type	Highest court	Outcome	Reason (as contained in the judgment)
1	PT Sintang Raya	West Kalimantan	2011–2016	Land grab	Supreme Court (final review)	Partly successful	Part of the disputed land was community land; local government ignored licence-issuing procedures
2	PT Bangun Agam Permai	West Sumatra	2013–2014	Document access	Supreme Court	Successful	Freedom of information
3	PT Perkebunan Nusantara V	Riau	2013–2015	Land grab	Supreme Court (final review)	Successful	Company had unlawfully appropriated and repurposed limited production forest
4	PT Palmdale Agroasia Lestari Makmur	West Kalimantan	2013–2017	Plasma	Supreme Court	Successful	Company had defaulted on the terms of the agreement
5	PT Gemareksa Mekarsari	Central Kalimantan	2014–2018	Land grab	Supreme Court (final review)	Successful	Pivotal judgment not available online
6	PT Graha Inti Jaya	Central Kalimantan	2009–2012	Land access	Supreme Court	Unsuccessful	Term of permit had expired
7	PT Serikat Putra	Riau	2013–2017	Land grab	Supreme Court	Unsuccessful	Land in dispute not described by plaintiff in sufficient detail
8	PT Karya Dewi Putra	Central Kalimantan	2016–2017	Land grab	Supreme Court	Unsuccessful	No local regulation recognising *adat* land when company acquired land
9	PT Rigunas Agri Utama	Riau	2018–2019	Plasma	Court of first instance	Unsuccessful	Unable to establish entitled recipients
10	PT Marita Makmur Jaya	Riau	2018–2019	Plasma	Supreme Court	Unsuccessful	Insufficient evidence of an agreement
11	PT Inti Indosawit Subur	Riau	2005–2009; 2013–2014	Plasma	High Court (2014)	Inadmissible (effectively)	Signature on document/no legal standing
12	PT Karya Makmur Abadi	Central Kalimantan	2014–2016	Land grab	Supreme Court	Inadmissible (effectively)	No legal standing
13	PT Ledo Lestari	West Kalimantan	2014–2017	Land grab	Supreme Court	Inadmissible	Insufficient evidence of ownership; defective power of attorney; no legal standing; lacking parties
14	PT Katingan Indah Utama	Central Kalimantan	2018–2019	Land grab	Supreme Court	Inadmissible	Lacking parties (*kurang pihak*)
15	PT Kebun Ganda Prima	West Kalimantan	2017–2019	Plasma	Supreme Court	Inadmissible	No legal standing
16	PT Gersindo Minang Plantation	West Sumatra	2013–2014	Land grab	Court of first instance	Inadmissible	Lacking parties
17	PT Prima Mulya Jaya	West Sumatra	2015	Land grab	Court of first instance	Inadmissible	No legal standing
18	PT Laras Internusa	West Sumatra	2017–2018	JV scheme	High Court	Inadmissible	Uncertain which organisation the appellant was representing

plaintiff's lawyers advised their client to appeal all the way to the Supreme Court, rather than to simply lodge a new claim with the lower court in which it named PT Darisa Surya Nusantara as a defendant or in which it excluded the part of the land under the company's administration.

In *Petrus Juhen et al v PT Kebun Ganda Prima*, 384 plaintiffs launched a class action, alleging that they had, pursuant to a Joint Statement (*Pernyataan Bersama*) dated April 28, 1997, collectively transferred 1,255.053 hectares of land to the defendant company. In return for this land, the agreement stipulated that PT Kebun Ganda Prima would transfer two hectares of oil palm plantation to each community member who had provided land. In support of their claim, these 384 community members submitted 45 items of documentary evidence and produced five witnesses. The court's decision ultimately turned on the first item of documentary evidence, namely the Joint Statement (Pontianak High Court Decision No. 21/PDT/2018/PT PTK, 76). The company did not dispute the authenticity of the statement, but the court found that the plaintiffs were not the parties referred to in the agreement. The signatory of this agreement, on behalf of the community, was Suparman, the head of Sebuduh village. As the plaintiffs did not live in Sebuduh – they primarily lived in surrounding villages – they could not be, the court reasoned, parties to the original agreement and hence lacked legal standing (Pontianak High Court Decision No. 21/PDT/2018/PT PTK, 77-78). The plaintiffs appealed the decision to the Pontianak High Court and Supreme Court but were unsuccessful on both occasions. Again, assuming the plaintiffs were acting on advice provided by their lawyers, it is confounding as to why they chose to appeal the decision – on two occasions, no less – rather than marshal either documentary or witness evidence that supported their claim to legal standing and file again with the lower court.

In *Modar Baini et al v PT Gersindo Minang Plantation, Bupati Pasaman Barat et al*, the plaintiffs' claim failed for lack of parties, for lack of legal standing, and for ambiguity. Specifically, the court found that a group called *Kelompok 16* should have been named as a party to the case because it had controlled 400 of the 600 hectares of land in dispute since 2007, as should the 100 private persons who controlled the remaining 200 hectares in dispute (Pasaman Barat State Court Decision No. 11/PDT.G/2013/PN.PSB, 122). Furthermore, the court found that if the land in dispute was the land of the Maligi *adat* law community, then key people, namely the customary heads of the land, needed to be named as plaintiffs.

Compounding matters, the court also found that the plaintiffs' claim (*posita gugatan*) referred to the first defendant's transfer of the 200 hectares to defendant B (the Regent of Pasaman Barat) as being unlawful, whereas its request to the court (*petitum*) stated that the first defendant's transfer of the 200 hectares to defendant C (representatives of Tanjung Pangkal Plasma Farming Group) was unlawful.

For these reasons, the plaintiffs' claim was as confounding as it was incompetently drafted. Aside from bizarrely failing to cross check their claim (*posita gugatan*) with their requests of the court (*petitum*), the wrong plaintiffs managed to sue the wrong defendants. Indeed, based on the court's appraisal of their submissions, and in the absence of information to the contrary, such was the sub-standard nature of the drafting contained in this claim that it would most likely have been declared inadmissible by any judiciary, regardless of whether that judiciary adopted a formalist approach or not.

In *Slamet v PT Prima Mulya Jaya*, the court ruled that the plaintiff did not have legal standing to file a claim for *adat* land because he was not a community leader. The case concerned communal land of which the plaintiff claimed to have the right to use, as several witnesses to the case confirmed. In support of its ruling, the court cited Supreme

Court Decision No. 1720 K/SIP/1975 of June 22, 1977, wherein the court ruled that "according to Minangkabau customary law, the land subject of the dispute is group property, so the person entitled to submit a claim is the chief heir (*mamak kepala waris*)" (Pasaman Barat State Court Decision No. 09/Pdt.G/2015/PN.Psb, 32-33). Two salient issues emerged with regard to the quality of this ruling: first, the court failed to recognise the individual rights that can be granted vis-à-vis communal land, and which arguably should entitle the right holder to defend it in court against encroachment; and second, the case law the court cited was inapplicable, insofar as that case addressed land owned by a group (*kaum*), rather than communal land. More concerning still was that notwithstanding that the court engaged in pre-trial mediation, at no time during that mediation process did the parties or court acknowledge that the plaintiff lacked standing.

A similar problem concerning representation occurred in *Amat Dt. Manti Manang v PT Laras Internusa.* A group of farmers claimed that the company should provide a part of the plantation in return for incorporating community land into its plantation. After a mass demonstration caused considerable disruption to operations, the company signed two different agreements in 2012 and 2013 to provide compensation, as well as this particular piece of land to the farmers (Padang High Court Decision No. 64/PDT/2018/PT PDG, 9). According to the plaintiff, the defendant had defaulted by failing to hand over the land and therefore requested that the court annul the second agreement. The court of first instance, by contrast, found, on the basis of the evidence provided, that either the defendant had already fulfilled its promise or that the default was no ground for annulment and hence rejected the claim.[7]

On appeal, the Padang High Court noted that the appellant (formerly the plaintiff) had filed the motion for and on behalf of the organisation *Kelompok Tani Cucu Kemanakan Dt. Manti Manang*, but that he had failed to both specify which members of the organisation he was representing and to submit documentary evidence of the organisation (Padang High Court Decision No. 64/PDT/2018/PT PDG, 18–19). In addition, the court found that the plaintiff had asked for confirmation of the validity of the first agreement, which had been replaced by the second one. Both findings are controversial. First, the plaintiff had signed the agreements on behalf of the organisation, so one could argue that in this capacity he was a party to the agreement. Secondly, the plaintiff had made it clear that he wanted the second agreement to be annulled by the court because of a default. While this is somewhat unusual, it is not impossible, and the plaintiff referred to several precedents to support this claim. If the court had gone along with this, the annulment of this agreement would have meant that the original one would have been revived, which the plaintiff had likely hoped for because the company had made more promises in the first agreement than it had in the second. The decision of the high court therefore gives the impression that the judges substantively agreed with the court of first instance, but that they preferred to nit-pick formal points rather than deal with the case substantively.

Similarly, in *Monomus et al v PT Ledo Lestari et al*, the court based its decision on several alleged procedural defects in the plaintiffs' claim. First, the court found that the plaintiffs had no legal standing because they had combined claims concerning three types of land into a single claim for damages. The court found that all the land had been subject to a right of occupation (*bezitsrecht*) – a rather strange finding. Indeed, it suggests that the plaintiffs held no legal title, while it was implicit in the claim that the underlying title was communal ownership. The judges likely used this argument as a subterfuge to reject the claim because they could then refer to a Supreme Court precedent ruling out the possibility of combining the right to occupy and of ownership in a single claim.

Rather than stopping here, which procedurally speaking would have been standard practice, the court then considered the claim of the 24 plaintiffs to the part of the land subject to private ownership. Of these 24 plaintiffs, six could not produce proof of ownership, which, according to the court, invalidated the entire claim for lack of clarity. Here, the court used the Dutch term *obscuur libel*. It also found that the plaintiffs' lawyers could not represent the plaintiffs because their letter of attorney was invalid. In addition, relying on an expert opinion, the court found that the plaintiffs had not been recognised as an *adat* community and should therefore be represented in court by their village head. The first plaintiff was, however, the village head, but he did not submit the claim on the village's behalf, which gave the court another reason to deny the plaintiffs standing (Bengkayang State Court Decision No. 16/Pdt.G/2014/PN.Bky, 145). Finally, the court found that the plaintiffs' claim lacked for parties (*kurang pihak*) because they had failed to include the parties that had sold the land to the company as co-defendants (*turut tergugat*) in their claim (Bengkayang State Court Decision No. 16/Pdt.G/2014/PN.Bky, 149).

Legally speaking, most of these findings make little sense. Furthermore, the court would not have needed them to reject the plaintiffs' claim because it could have simply ruled that the plaintiffs had no title to the land. The court, however, enumerated as many reasons as possible to rule that the plaintiffs' claim was unfounded. The judgment was confirmed on appeal but whether the appellate court approved of all of its aspects is unclear because the judgment is not available on the Supreme Court website.

Distinct from the six cases just discussed, the case of *Sri Hayati and Sutarjo v PT KMA* was not declared inadmissible by the lower courts. Rather, the Supreme Court ruled that the second plaintiff (Sutarjo) lacked legal standing. As mentioned, the dispute arose after a plot of land, left by the deceased to his daughter, had been misappropriated by the company and repurposed as an oil palm plantation. While the Supreme Court acceded to the appellants' appeal, insofar as it agreed that the lower courts had incorrectly ruled in favour of the company, it also acceded to the company's submission that Sutarjo, being Sri Hayati's husband, was not a beneficiary of the land and did not, therefore, have legal standing. In other words, while the Supreme Court agreed that the land belonged to Sri Hayati and that the company had acted unlawfully, it nevertheless abstained from ruling on the merits of the case on, yet again, procedural grounds (Supreme Court Decision No. 1700 K/Pdt/2016, 29). The Supreme Court did not clarify why it would not advance the case, notwithstanding that Sri Hayati did have standing. Thus, the Supreme Court's strict but unexplained adherence to legal formalism had the effect of denying Sri Hayati, as the rightful owner of the land, access to, and control over, her land.

The case of *Eko Bambang et al v PT Inti Indo Sawit Subur et al* was a protracted affair that spanned almost nine years. In its first incarnation, between 2005 and 2009, the prevailing point of law in dispute was whether the Bangkinang State Court had the authority and jurisdiction to adjudicate the case. The case went all the way to the Supreme Court, which ruled that the Bangkinang State Court did, in fact, have the jurisdiction. The court subsequently found, however, that witness evidence disproved the authenticity of the documentary evidence on which the plaintiffs had relied to establish their legal standing. In fact, that particular witness – the Kerinci Kanan village head – acknowledged that while he recognised the content of the documents on which the plaintiffs relied, it was not his signature attached to the documents. The court therefore ruled that the documents were inauthentic and that the plaintiffs lacked the required legal standing (Pekanbaru High Court Decision No. 32/PDT/2014/PTR, 85–86). The extent to which the plaintiffs and their lawyers could have pre-empted this outcome is difficult to discern.

Assuming, however, that the content of the documents was relevant to the plaintiffs' case, the plaintiffs' lawyers should have ascertained whose signature was on the documents.

These eight cases illustrate how a combination of incompetent lawyering and formalistic courts undermines ordinary Indonesians' access to justice. Given that some of these dismissals hinged on minor procedural issues, it is alarming that the courts do not rely more on article 4(2) of Law No. 48 of 2009 on Judicial Authority, which states, "The court is to assist those in search of justice and to endeavour to overcome all barriers and obstacles for the achievement of justice." Indeed, if mistakes are made as result of substandard legal advice and legal drafting, it is arguably incumbent on the courts to recognise that it is not the fault of the plaintiffs, but of their lawyers, and to adjudicate the cases on the merits, to ensure a substantive outcome.

In the remaining cases that were deemed admissible, the courts also preferred a strictly formalist interpretation of the law, albeit at the expense of substantive judicial outcomes and justice. The cases found in favour of the companies are discussed first, before addressing those found in favour of the communities.

Cases Ruled in Favour of Companies

In *Atanudin v PT Graha Inti Jaya et al*, the plaintiff claimed that he had held three logging permits, but that after the first defendant had obtained a permit from the second and the third defendant to start an oil palm plantation, he had not been able to source timber from the land. He therefore sought damages for lack of access to the land. Pursuing his claim all the way to the Supreme Court, that court ultimately affirmed the findings of the lower courts, confirming that they had not erred in their application of the law and that the term of the plaintiff's permit had, in fact, concluded in October 2005 and was not extended thereafter (Supreme Court Decision No. 1222 K/PDT/2011, 22). The plaintiff appeared to assume that his permit should have been extended, but the plaintiff's lawyers, somewhat bizarrely, failed to submit any arguments in support of their client's position.

In *Hasbun and Rifai v PT Rigunas Agri Utama*, the plaintiffs claimed to have signed up to a profit-sharing plasma scheme that went awry. Their claim was dismissed, however, after they failed to establish that the names included in a document containing the names of those entitled to receive a piece of land in the scheme were, in fact, entitled to benefit from the plasma-sharing agreement, as signed between the company and the plasma scheme participants (Rengat State Court Decision No. 30/Pdt.G/2018/PN Rgt, 68–69). The case was complicated and included contradictory documents, which made it difficult for the plaintiffs to establish that they were entitled to a piece of land. The same applied in the case of *Johari et al v PT Marita Makmur Jaya et al,* wherein the plaintiffs' claim for breach of contract failed because the court found that they had not upheld their end of the bargain.

In *Rahman v PT Serikat Putra et al*, the plaintiff's claim failed because he failed to identify the location of the land in dispute. Whether the court was correct here is difficult to discern because the judgment of the court of first instance was not available online (Supreme Court Decision No. 2166 K/Pdt/2017, 32). What the case again reflects, however, is the court's dispassionate and formalist response to a claim it deemed insufficiently detailed. Indeed, rather than working with the plaintiff and his legal team to better understand the dimensions and location of the land, as the Sampit State Court did in the case against PT Katingan Indah Utama, the court again erred on the side of strict formalism.

In the case of *Nurjaya Suka v PT Karya Dewi Putra*, the plaintiff's *adat*-based claim failed because the land in question was deemed to have still been "state land" (*tanah negara*) at the time it was acquired by the company. The plaintiff had bought the land from a local owner and obtained a title of ownership provided by the local government. The land was later disputed because the defendant cleared the area and planted oil palm, without consent and without offering compensation. The case went all the way to the Supreme Court, which ruled that the company was the lawful owner of the land in dispute because there was no local regulation (*peraturan daerah*) that recognised the land in dispute as *Adat Dayak* land when the company first gained control of the land in 2002. Rather, at the time the company acquired the land it was, in fact, "state land" (Supreme Court Decision No. 1797 K/Pdt/2017, 55). This case thus illustrates how Indonesia's legal system prioritises ownership rights under the national legal system over those based on local rights and land use. The plaintiff's *adat*-based claim was doomed to fail because the court found that when the company acquired the land it was, in fact, "state land," rather than *adat* land.

Cases Ruled in Favour of Communities

In *Maurus Rita Dihales et al v PT Palmdale Agroasia Lestari*, the court acceded to part of the plaintiffs' claim. The court agreed that the company had failed to uphold its end of a profit-sharing agreement between the parties for a 70%–30% split of profits from a profit-sharing plasma scheme. In that case, the company conceded that it had not provided the plaintiffs with their 30% share of the profits, and only in 2017 did the company provide community members with a loan, rather than provide them with the promised profit share. The agreement did not specify when the plaintiffs would receive their share, but the company did concede that it had failed to provide the plaintiffs with their share since it began harvesting the palm oil in 2014, which constituted a default on the agreement (Mempawah State Court Decision No. 42/PDT.G/2017/PN Mpw, 44–45).

The ruling, however, only benefited the community in part because while the plaintiffs requested that the court invalidate the agreement, they failed to specify, in their claim, the quantum of damages sought. The court did rule that the parties needed to ensure that if either party had derived any benefit from the other – whether financial or material – that that benefit was to be returned, as if the agreement had never been reached in the first place (Mempawah State Court Decision No. 42/PDT.G/2017/PN Mpw, 46). In this way, the court was indeed proactive in its response to a confounding omission on the part of the plaintiffs' lawyers, who failed to include in their clients' *petitum* the nature of the damage suffered and, therefore, the quantum of financial damages sought.

The case of *Yayasan Riau Madani v PT Perkebunan Nusantara V et al* concerned a palm oil plantation called *Kebun Sei Batu Langkah*, which the defendant, PT Perkebunan Nusantara V (PTPN V), had developed between 2004 and 2005. On June 10, 2004, the Minister of Forestry rejected PTPN V's application for a permit to use the land to plant oil palm. PTPN V nevertheless went ahead and felled trees, cleared the land, planted oil palm, and paved roads (Bangkinang State Court Decision No. 38/Pdt.G/2013/PN.BKN, 6). Yayasan Riau Madani, the NGO representing the inhabitants of surrounding villages, submitted that by engaging in these actions without an official permit, PTPN V had violated the 1999 Forestry Law. Yayasan Riau Madani also submitted that of the 2,823.52 hectares of plantation land, 2,500 was *adat* land and important to the village unit co-operative (Bangkinang State Court Decision No. 38/Pdt.G/2013/PN.BKN, 6). Riau Madani ultimately convinced the court that the land in dispute was limited production forest and that

PTPN V had therefore misappropriated it. In 2013, the court made an order for restitution, directing the company to return the land to its original state by felling the oil palm it had planted and then rejuvenating the area by planting acacia trees in their place, as well as tending to and fertilising the trees until they were fully grown (Bangkinang State Court Decision No. 38/Pdt.G/2013/PN.BKN, 73–74). However, by 2019, this court order had not been executed (*Metroterkini*, February 15, 2019).

In *Head of the West Sumatran BPN Branch v H. Syafrial Dt. Garang*, the community submitted that PT Bangun Agam Permai (PT BAP) had appropriated more than 500 hectares of its customary land. PT BAP obtained a permit to cultivate (*Hak Guna Usaha*, HGU) from the West Sumatran branch of the BPN in 1987. BPN had issued the permit on the ground that the land was state land and not, as the plaintiffs claimed, land belonging to community members. BPN argued that the land was originally part of an area subject to an *Erfpacht Verponding Afdeling* licence, which the Dutch colonial administration had issued in 1931, but it refused to produce the *Erfpacht* document to support its claim. The community then brought the case to the Information Commission of the Republic of Indonesia as a public information dispute against the West Sumatran BPN branch. The Information Commission's order, which was later affirmed by a ruling of the state administrative court, ordered BPN to produce the *Erfpacht* document to the local community within 14 days. While this case is counted as a victory for the community, it does not directly address the land dispute with PT BAP.

In *Junedi et al v BPN Kubu Raya and PT Sintang Raya*, the high administrative court upheld the judgment of the court of first instance to annul PT Sintang Raya's right to cultivate the land (HGU). The decision to annul was based on the finding that part of the area granted to PT Sintang Raya was, in fact, owned by members of the local community, which they could prove by producing ownership titles granted by the same BPN branch office that granted the HGU. The BPN thus issued the HGU without any legal basis, thereby violating the principle of carefulness. In cassation, that is, the process by which the Supreme Court hears appeals from the lower courts, the Supreme Court confirmed this judgment but added that the BPN should not only revoke the title but also issue a new one, without the land under the ownership of the plaintiffs (Administrative Court Pontianak Decision No. 36/G/2011; High Administrative Court Jakarta Decision No. 22/B/2013; Supreme Court Decision No. 550K/TUN/2013).

In *Rohanshyah v PT Gemareksa Mekarsari*, the Supreme Court, in 2018, ordered the company to return 24.8 hectares of land to the plaintiff. In doing so, the Supreme Court supported the ruling of the provincial court, which had earlier overturned the ruling of the court of first instance, finding that the plaintiff was the legitimate owner of the land. Remarkably, the plaintiff's claim to the land was not based on a formal land title, but on the notarised land sale deed that was made when Rohansyah purchased the land in 2011. At that time, PT Gemareksa had already started to develop an oil palm plantation on the land. This remarkable court victory, pursued by a single individual, resulted, at least in part, from the plaintiff's Herculean efforts and at the plaintiff's own personal expense. Indeed, during an interview with one of the authors, the plaintiff acknowledged having spent IDR 3 billion (almost US$184,000) in legal fees.

Non-implementation of Court Rulings

Of the five cases found in favour of communities, newspaper reports and interviews with community members revealed that in only one instance, namely *Rohanshyah v PT Gemareksa Mekarsari*, was the court's ruling implemented (see Table 2). This lack of

Table 2. Implementation of court rulings where community wins

No.	Company	Province	Outcome	Implementation	Reason for non-implementation
1	PT Palmdale Agroasia Lestari Makmur (2019)	West Kalimantan	Successful	N/A	A Supreme Court appeal was still pending at the time of writing
2	PT Gemareksa (2018)	Central Kalimantan	Successful	Yes	Implemented
3	PT Perkebunan Nusantara V (Ganting) (2015)	Riau	Successful	No	Ruling is unclear in terms of who is to receive the land upon completion of restitution (overlapping rights with *adat* land)
4	PT Sintang Raya (2015)	West Kalimantan	Partly successful	No	Supreme Court ruling open to multiple interpretations
5	PT Bangun Agam Permai (2013)	West Sumatra	Successful	No	BPN was unable to produce the requested document for land proof

judicial enforcement deserves serious attention, as such outcomes are not only unjust but also undermine confidence in Indonesia's legal system (see, for example, Bedner 2010 and Pompe 2005).

If an unsuccessful party fails to comply with a court's decision, Articles 195 and 196 of the amended *Herziene Indonesisch Reglement* require the successful party to reapply to the court of first instance for an order compelling the unsuccessful party to comply with the most recent relevant judicial decision.[8] The court is then permitted to seize and auction property to finance damages awarded to the successful party, or to place a monetary value on an act or service that the unsuccessful party has refused to carry out (Butt and Lindsey 2018, 97–98). Yet this need to obtain a separate order from the court of first instance adds an additional and unnecessary delay, particularly because the court is not compelled to respond within a particular time. These protracted processes are easily exploited by corrupt officials, "[providing] additional leverage to some judges and court officials to extort more bribes in return for enforcement, or even just to avoid delays" (Butt and Lindsey 2018, 301).

To better understand the obstacles to judicial enforcement, three cases of non-implementation that we studied in detail (a Supreme Court review is pending for the fourth case). In the case of *Junedi et al v BPN Kubu Raya and PT Sintang Raya*, the Supreme Court ordered the BPN to do something it never does, namely to revoke PT Sintang Raya's HGU, and then re-issue it after excising the land that the court awarded to the plaintiffs. To this day, BPN has refused to do so because it claims that it cannot award a new HGU without a company going through the full licensing process, which the company refuses to do. BPN apparently has no procedure for excising community land out of an HGU. While BPN could have opted to develop such a procedure, it could also have commenced by implementing the first part of the court's order, that is, by revoking PT Sintang Raya's HGU. PT Sintang Raya, however, still holds that HGU today.[9]

In *Yayasan Riau Madani v PTPN V et al*, the Bangkinang State Court ordered restitution, a verdict that the Supreme Court upheld in 2018. This meant that PTPN V was ordered to convert 2,800 hectares of land back to its original state by, in this case, planting acacia trees and returning the land to Ganting village (*Sawit Indonesia*, February 5, 2018). This has never happened. According to community sources, the court order has

not been implemented because it was insufficiently specific in terms of determining to whom the land should be distributed. In this instance, however (and similar to the case of PT Mutaria Agam), the company also managed to prevent judicial enforcement by inciting tensions between neighbouring *adat* communities. In this case, the neighbouring Kabun *adat* community did not accept the implementation process, as stipulated by the Bangkinang State Court, because it deemed the land to be part of its customary territory. These tensions provided the company with another reason to refuse to implement the court's verdict.

In *Head of the West Sumatran BPN Branch v H. Syafrial Dt. Garang*, the court ordered the local BPN office to provide the community with the Dutch *Erfpacht* document, which BPN refused to do, notwithstanding that it supposedly supported BPN's reasoning. The BPN office is still yet to comply and maintains that it could not locate the document that was apparently the basis for granting PT BAP an HGU. Therefore, notwithstanding a lengthy court battle, the documents that could establish whether the community was, in fact, dispossessed of its land remain undisclosed. The practical implication of this refusal – that without supporting documents the plantation licence has no legal basis – remains unresolved. Indeed, after the community sent a letter to the Ministry of Agrarian Affairs and Spatial Planning in 2019 requesting that the HGU permit be invalidated, the community is still yet to receive a response and is therefore still yet to regain its customary land; moreover, the HGU permit is, *de jure*, still valid.

One reason for a lack of judicial enforcement of these court rulings is that they were susceptible to multiple interpretations. Furthermore, the Ministry of Agrarian Affairs and Spatial Planning seems either unwilling or unable to implement court rulings, particularly when a court has ordered it to revoke the HGU granting the right to cultivate. Other problems include a lack of monitoring of the implementation of court rulings, as well as the fact that it is not always apparent who is responsible for judicial enforcement. Not all causes of this non-enforcement are legal, however. Another important obstacle lies in the informal pressures that well-endowed corporate actors can exert on state institutions. In this sense, this non-enforcement is a symptom of the abovementioned outsized influence of economic elites over governance.

In short, an important finding of this study is that even when communities score a rare court victory – often after lengthy processes, including various company appeals – such victories are typically hollow, as companies are adept at avoiding court orders and judicial enforcement mechanisms remain weak and ineffective.

Conclusion

This article has examined how Indonesia's court system deals with land conflicts between palm oil companies and local communities or individuals. Of the 37 cases that were litigated, the focus was on the 18 cases for which court judgments could be located on the Supreme Court website or other affiliated websites. It was found that Indonesian courts are typically ineffective at resolving these conflicts, even if they provide a final and binding judgment. This is not so much a result of the courts' tendency to rule in favour of companies but rather the result of a lack of judicial enforcement, as well as the tendency of courts to rely on formalist interpretations of the procedural aspects of a claim, rather than ruling on the merits and substance of the cases. As has been demonstrated, courts typically declare a case, or documentary evidence for that matter, inadmissible for procedural reasons, which reflects a strict and formalistic approach to the law (see also Kouwagam 2020, 32–33). The legal formalism identified in this article invariably worked

to the benefit of companies and corporate elites. Due to a vicious combination of an ambiguous legal framework, weak lawyering, and formalist judges, the courts do not offer citizens effective protection against corporate land grabbing. Indonesians facing land conflicts cannot rely solely on the court system.

These findings caution against optimistic assessments of the potential of legal mobilisation, while being supportive of approaches to legal development that emphasise the importance of a country's political economy and the associated entrenched economic inequalities (see, for example, Mattei and Nader 2008; Tamanaha 2011). It is possible that some judges, after having received a bribe from a palm oil company, search for a minor procedural error to justify ruling in favour of the company. Indeed, as Butt (2019, 91) writes, "the influence of corruption, which is said to be rampant in [Indonesia's Supreme] Court, … may account for decisions that appear primarily concerned with reaching a result rather than explaining how that result was reached." Even without bribes, however, the formalist attitude of judges would ensure that in most cases the economically stronger parties win. In that light, these verdicts, as well as their regular lack of enforcement, should be seen as a symptom of the oligarchic character of Indonesia's political economy and the capacity of economic elites to leverage their wealth and informal connections to shape both the drafting and the implementation of laws.

The impact of this judicial formalism, as well as oligarchic dominance, is made worse, we have found, by a lack of competence on the part of the lawyers representing communities. Indeed, community lawyers often failed to meet relatively basic legal drafting requirements and evidentiary burdens. In other words, there appears to be a disconnect between the expectations of an overly formalist judiciary and the limited capacity of community lawyers to meet these expectations. The result is that claimants' cases are being dismissed without the merits of their cases even being considered, which arguably constitutes an egregious denial of access to justice.

Another more structural effect of this tendency of Indonesian courts to avoid ruling on the substance of land claims, combined with the lack of legal reasoning contained in most judgments, is that land law is being denied a substantive body of jurisprudence that could gradually serve to clarify and fortify Indonesia's land-related legal framework (see Kouwagam 2020, 43). A vicious cycle, therefore, appears to be hampering legal development in this field: as strict legal formalism and the uncertainty of Indonesia's legal framework (and, sometimes, the temptation of bribes) encourage judges to rule on procedural grounds, and as lawyers' professional skills fail to meet the meticulous standards set by the courts, Indonesia's legal system is sabotaging its own ability, in multiple ways, to deal with the uncertainty and ambiguities inherent in Indonesia's land law framework.

Notes

1. Note that, normally speaking, the court should have decided the matter of standing first and not have addressed the question of ownership.
2. See, for example, the range of legal aid organisations co-operating with the Community Land Protection Program by Namati (2024).
3. The Constitutional Court has declared this claim unconstitutional, recognising the original rights of *adat* communities over forests, but in practice this makes little difference. For a thorough analysis, see Arizona (2022).
4. This interpretation has been dismissed by the Constitutional Court, but only insofar as *adat* rights are concerned (see Van der Muur 2018).
5. See Van der Muur (2018) for an account of the complexities involved.
6. These were Article 1(19) of Central Kalimantan Regional Regulation No. 1 of 2010 on Amendments to Central Kalimantan Regional Regulation No. 16 of 2008 on Dayak Adat Institutions in Central

Kalimantan and art 1(12) of Central Kalimantan Gubernatorial Regulation No. 4 of 2012 on Amendments to Gubernatorial Regulation No. 13 of 2009 on Adat Land and Adat Rights in Central Kalimantan.

7. The judgment of the court of first instance is only contained in part in the judgment of the High Court (Padang High Court Decision No. 64/PDT/2018/PT PDG).
8. The *Herziene Indonesich Reglement* is one of two civil procedural codes that were enacted in Indonesia prior to it achieving independence in 1945. The provisions therein provide the basis for the enforcement of judicial decisions in civil cases.
9. According to law, the disputed title will automatically become void after 90 days, but apparently the BPN refuses to accept this. The reality on the ground then determines what happens.

Disclosure Statement

No potential conflict of interest was reported by the author(s).

ORCID

Daniel Peterson http://orcid.org/0000-0002-7119-3941
Adriaan Bedner http://orcid.org/0000-0002-7282-1620
Ward Berenschot http://orcid.org/0000-0002-5459-0785

References

Arizona, Y. 2022. "Rethinking Adat Strategies: The Politics of State Recognition of Customary Land Rights in Indonesia." Unpublished PhD diss., Universiteit Leiden.

Aspinall, E., and W. Berenschot. 2019. *Democracy for Sale: Elections, Clientelism, and the State in Indonesia*. Ithaca: Cornell University Press.

Bachriadi, D., and E. Aspinall. 2023. "Land Mafias in Indonesia." *Critical Asian Studies* 55 (3): 331–353.

Bedner, A. 2010. "'Shopping Forums': Indonesia's Administrative Courts." In *New Courts in Asia*, edited by A. Harding and P. Nicholson, 225–246. London: Routledge.

Bedner, A. 2013. "Indonesian Legal Scholarship and Jurisprudence as an Obstacle for Transplanting Legal Institutions." *Hague Journal on the Rule of Law* 5 (2): 253–273.

Bedner, A. 2016. "Autonomy of Law in Indonesia." *Recht der Werkelijkheid* 37 (3): 10–36.

Bedner, A., and Y. Arizona. 2019. "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?" *The Asia Pacific Journal of Anthropology* 20 (5): 416–434.

Bedner, A., and W. Berenschot. 2023. "Legal Mobilisation and Civil Society: On the Use and Usefulness of Strategic Litigation in Southeast Asia." In *Routledge Handbook of Civil and Uncivil Society in Southeast Asia*, edited by E. Hansson and M. Weiss, 81–97. Abingdon: Routledge.

Berenschot, W., and A. Dhiaulhaq. 2023. "The Production of Rightlessness: Palm Oil Companies and Land Dispossession in Indonesia." *Globalizations*. doi:10.1080/14747731.2023.2253657.

Berenschot, W., A. Dhiaulhaq, Afrizal, O. Hospes, P. Erysa, and A. Rebekha 2022. "Anti-Corporate Activism and Collusion: The Contentious Politics of Palm Oil Expansion in Indonesia." *Geoforum* 131: 39–49.

Berenschot, W., A. Dhiaulhaq, Afrizal, and O. Hospes. n.d. *Rightless Resistance: Palm Oil and the Struggle for Land and Citizenship in Indonesia*. Unpublished book manuscript.

Beyers, C., and D. Fay. 2015. "After Restitution: Community, Litigation and Governance in South African Land Reform." *African Affairs* 114 (456): 432–454.

Borras Jr S., and J. Franco. 2013. "Global Land Grabbing and Political Reactions 'From Below'." *Third World Quarterly* 34 (9): 1723–1747.

Brink, S. 2005. "Legal Pluralism in South Africa in View of the Richtersveld Case." *Stellenbosch Law Review* 16 (2): 175–193.

Butt, S. 2019. "Judicial Reasoning and Review in the Indonesian Supreme Court." *Asian Journal of Law and Society* 6 (1): 67–97.

Butt, S. and T. Lindsey. 2010. "Judicial Mafia: The Courts and State Illegality in Indonesia." In *The State and Illegality in Indonesia*, edited by E. Aspinall and G. van Klinken, 189–213. Leiden: KITLV Press.

Butt, S. and T. Lindsey. 2018. *Indonesian Law*. Oxford: Oxford University Press.

Claridge, L. 2018. "Litigation as a Tool for Community Empowerment: The Case of Kenya's Ogiek." *Erasmus Law Review* 11: 57–66.
Colchester, M., N. Jiwan, and S. Chao. 2013. "Conflict and Consent? Oil Palm Expansion and Community Rights." *Paper, Annual World Bank Conference on Land and Poverty 2013*, Washington DC, April 8–11.
Commission on Legal Empowerment of the Poor. 2008. *Making the Law Work for Everyone*, Vol. 1. New York: Commission on Legal Empowerment of the Poor and United Nations Development Programme.
Crook, R. 2004. "Access to Justice and Land Disputes in Ghana's State Courts: The Litigants' Perspective." *The Journal of Legal Pluralism and Unofficial Law* 36 (50): 1–28.
De Soto, H. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books.
Epp, C. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: University of Chicago Press.
Fitzpatrick, D. 1997. "Disputes and Pluralism in Modem Indonesian Land Law." *Yale Journal of International Law* 22 (1): 171–253.
Gargarella, R., P. Domingo, and T. Roux, eds. 2016. *New Democracies: An Institutional Voice for the Poor?* London: Routledge.
Gauri, V. and D. Brinks. 2008. *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*. Cambridge: Cambridge University Press.
Gellert, P. and Andiko. 2015. "The Quest for Legal Certainty and the Reorganization of Power: Struggles over Forest Law, Permits, and Rights in Indonesia." *The Journal of Asian Studies* 74 (3): 639–666.
Gilbert, J., and B. Begbie-Clench. 2018. "'Mapping for Rights': Indigenous Peoples, Litigation and Legal Empowerment." *Erasmus Law Review* 11 (1): 6–13.
Gilbert, J., and K. Sena. 2018. "Litigating Indigenous Peoples' Cultural Rights: Comparative Analysis of Kenya and Uganda." *African Studies* 77 (2): 204–222.
Gillespie, J. 2014. "Social Consensus and the Meta-Regulation of Land-Taking Disputes in Vietnam." *Journal of Vietnamese Studies* 9 (3): 91–124.
GRAIN. 2008. *Seized: The 2008 Land Grab for Food and Financial Security*. Barcelona: GRAIN.
Grajales, J. 2015. "Land Grabbing, Legal Contention and Institutional Change in Colombia." *The Journal of Peasant Studies* 42 (3–4): 541–560.
Kouwagam, S. 2020. "How Lawyers Win Land Conflicts for Corporations: Legal Strategy and its Influence on the Rule of Law in Indonesia." Unpublished PhD diss., Universiteit Leiden.
Lucas, A., and C. Warren, eds. 2013. *Land for the People: The State and Agrarian Conflict in Indonesia*. Athens: Ohio University Press.
Lund, C. 2020. *Nine-Tenths of the Law: Enduring Dispossession in Indonesia*. New Haven: Yale University Press.
Massay, G. 2017. "In Search of the Solution to Farmer–Pastoralist Conflicts in Tanzania." Johannesburg: South African Institute of International Affairs, Occasional Paper 257.
Mattei, U. and L. Nader. 2008. *Plunder: When the Rule of Law is Illegal*. Malden: Blackwell.
McCann, M. 2006. "Law and Social Movements: Contemporary Perspectives." *Annual Review of Law and Social Science* 2: 17–38.
Meckelburg, R. and A. Wardana. 2024. "The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia." *Land Use Policy* 137: 107017. doi:10.1016/j.landusepol.2023.107017.
Moyo, A. 2018. "Standing, Access to Justice and the Rule of Law in Zimbabwe." *African Human Rights Law Journal* 18: 266–292.
Namati. 2024. "Negotiating Land Rights." Namati website. Accessed November 13, 2024. https://namati.org/ourwork/landrights/.
Odendaal, W., and P. Hebinck. 2021. "A Socio-Legal Analysis of the Complexity of Litigating Ancestral Land Rights." In *Land Tenure Challenges in Africa: Confronting the Land Governance Deficit*, edited by H. Chitonge and R. Harvey, 247–265. Cham: Springer.
Pearce, F. 2012. *The Land Grabbers: The New Fight Over Who Owns the Earth*. Boston: Beacon Press.
Pompe, S. 2005. *The Indonesian Supreme Court: A Study of Institutional Collapse*. Ithaca: Cornell University Press.
Reerink, G. 2011. *Tenure Security for Indonesia's Urban Poor: A Socio-legal Study on Land, Decentralisation, and the Rule of Law in Bandung*. Leiden: Leiden University Press.
Rosser, A., and J. Curnow. 2014. "Legal Mobilisation and Justice: Insights from the Constitutional Court Case on International Standard Schools in Indonesia." *The Asia Pacific Journal of Anthropology* 15 (4): 302–318.

Susanti, B. 2008. "The Implementation of the Rights to Health Care and Education in Indonesia." In *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, edited by V. Gauri and D. Brinks, 224–267. Cambridge: Cambridge University Press.

Tamanaha, B. 2011. "The Primacy of Society and the Failures of Law and Development." *Cornell International Law Journal* 44 (2): 209–247.

Van der Muur, W. 2018. "Forest Conflicts and the Informal Nature of Realizing Indigenous Land Rights in Indonesia." *Citizenship Studies* 22 (2): 160–174.

Von Benda-Beckmann, F., and K. von Benda-Beckmann. 2013. *Political and Legal Transformations of an Indonesian Polity: The Nagari from Colonisation to Decolonisation*. Cambridge: Cambridge University Press.

Wehrmann, B. 2008. *Land Conflicts: A Practical Guide to Dealing with Land Disputes*. Eschborn: Deutsche Gesellschaft für Technische Zusammenarbeit.

Wiratraman, H. 2019. "The Challenges of Teaching Comparative Law and Socio-legal Studies at Indonesia's Law Schools." *Asian Journal of Comparative Law* 14 (1): 229–244.

Zhou, C., and D. Banik. 2014. "Access to Justice and Social Unrest in China's Countryside: Disputes on Land Acquisition and Compensation." *Hague Journal on the Rule of Law* 6: 254–275.