Environmental Dispute Resolution in Indonesia

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4 Environmental Mediation in Indonesia

According to article 30 of the EMA 1997, a person aggrieved by environmental damage or pollution may choose to pursue environmental dispute resolution in court, through litigation, or outside of court through "informal" methods of dispute resolution such as mediation or negotiation. In this chapter, we provide an overview of the practice of environmental mediation in Indonesia, considering its cultural basis, legal and institutional framework and its reported success to date.

4.1 Cultural Basis for Mediation

Mediation can hardly be described as a new practice in Indonesia, where a range of approaches to consensus based decision-making and dispute resolution, referred to loosely as *musyawarah,* have been utilised widely by a diversity of ethnic groups.[1] Indeed *musyawarah untuk mufakat* (group deliberation toward consensus) is enshrined as one of the five basic principles (*Pancasila*) of the Indonesian Republic, reflecting the high priority afforded to values of compromise, consensus and harmony within Indonesian culture.[2] In contrast, litigation, appropriate to its Western origins, is predicated upon individuality and emphasises rights rather than obligation, competition rather than compromise. The widespread practice of *musyawarah*, and the broader value base upon which such practices are based, have been regarded by some commentators and policy makers as a favourable precedent for the introduction of modern forms of mediation to environmental and other disputes.[3] Certainly, the process of *musyawarah* as it is

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[1] See for instance the study of traditional mediation practices in Achmad Romsan, "Mediasi Tradisional Dalam Masyarakat Adat Di Dataran Tinggi Sumatera Selatan," (Jakarta: Indonesian Centre for Environmental Law, 1998).(South Sumatra) and Takdir Rahmadi, "Teknik Perundingan Tradisional Dalam Masyarakat Adat Mingan Kabau Sumatra Barat," (Jakarta: Indonesian Centre for Environmental Law, 1998).(West Sumatra).

[2] The high cultural value attached to compromise and consensus is particularly evident in Javanese culture but is not necessarily found throughout the archipalego. In contrast, the Batak people in North Sumatra demonstrate a more combative and argumentative tendency in their culture. Daniel S Lev, *Hukum Dan Politik Di Indonesia* (Jakarta: 1990).cited in Mas Achmad Santosa and Antony L.P. Hutapea, "Mendayagunakan Mekanisme Alternatif Penyesesaian Sengketa (Maps) Di Indonesia: Sebuah Pengalaman" (ICEL, 1992), p8.

[3] ;Romsan, "Mediasi Tradisional Dalam Masyarakat Adat Di Dataran Tinggi Sumatera Selatan," p43.;Rahmadi, "Teknik Perundingan Tradisional Dalam Masyarakat Adat Mingan Kabau Sumatra Barat," p34.;W Hamacher, "Environmental Conflict Management: An Environmental Policy Instrument in Developing Countries," (Eschborn: Deutsche Gesellschaft fur Technische Zusammenarbeit (GTZ) GmbH, 1996), p25. Moore and Santosa, "Developing Appropriate Environmental Conflict Management Procedures in Indonesia: Integrating Traditional and New Approaches," p29.

usually practiced at a village level, bears at least some resemblance to modern mediation. The m*usyawarah* process is premised upon compromise, whether it is used to resolve an individual dispute or make a decision affecting the whole community. The process aims to restore social harmony, rather than declaring one party right and another party wrong.[4] As in modern mediation consensus can only be achieved and social harmony restored if individuals are prepared to be flexible and accommodating. As in modern mediation, a third party, usually a respected community elder, facilitates the dispute resolution or decision making process. The specific form of the group dialogue varies according to the particular culture, although is most often relatively unstructured. A key function of the 'mediator' or community leader is usually to identify common interests that may encourage compromise and consensus. Consensus may emerge from a solution proposed by one or several participants, which is then commonly endorsed.[5]

The practice of *musyawarah untuk mufakat* thus shares some important similarities with modern approaches to mediation as practiced in Western countries. Nonetheless, important differences between *musyawarah* in its traditional form and modern approaches to mediation also exist. For example, the community leader who facilitates the *musyawarah* process is not necessarily neutral in the dispute. Depending on the social position of the facilitator, he or she may play a more directive or interventionist role than would usually or ideally be the case in a modern mediation process.[6] Furthermore, the political context and dynamics of modern environmental disputes differ significantly from the more circumscribed social context of the village community within which *musyawarah* has traditionally occurred. In the traditional context of *musyawarah*, disputants were closely related by social ties and thus had a strong mutual incentive to resolve their dispute and so preserve the cohesion of their community. In modern environmental disputes, however, disputants are more typically strangers with no social bonds and may consequently have much less social or cultural incentive to compromise and preserve their relationship.[7] In the traditional context, *musyawarah* was carried out "horizontally", between disputants with a common social context and comparable economic and political resources. In contrast, modern environmental disputes usually involve "vertical" conflict

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[4] Santosa and Hutapea, "Mendayagunakan Mekanisme Alternatif Penyesesaian Sengketa (Maps) Di Indonesia: Sebuah Pengalaman", p9.
[5] Moore and Santosa, "Developing Appropriate Environmental Conflict Management Procedures in Indonesia: Integrating Traditional and New Approaches," p24.
[6] Ibid.: p25.
[7] Rahmadi, "Teknik Perundingan Tradisional Dalam Masyarakat Adat Mingan Kabau Sumatra Barat," p34.

between disputants from different social contexts and with vastly disparate economic and political resources. The disparity between disputants in "vertical" conflicts tends to be exacerbated by both political and cultural factors in Indonesia. Indonesia has largely retained a patrimonial and elitist political culture since pre-colonial times, in which political power is exercised by competing factions of an economically privileged elite over the politically passive and quiescent masses.[8] During the New Order era particularly, the political quiescence of the masses was ensured by the violent elimination of popular support for the Indonesian communist party and the banning of political activity at a grassroots level.[9] The political disparity between the political elite and the more disenfranchised sections of the population has been further accentuated in Indonesia by the hierarchical character of Indonesian, and notably Javanese, culture. In this highly stratified culture gradations of social status are of great import, with the accompanying deference ensuring that "…leaders are reluctant to give citizens equal standing in a deliberatory process because of their subordinate position."[10] People from a village environment are usually equally reluctant to assert their rights or interests when confronted with their cultural 'superiors'. Political, economic and cultural factors may thus accentuate disparities in the balance of power between disputing parties and so influence the process and outcome of consensually based dispute resolution processes. In this very different social and political context, some commentators have criticised the concept of *musyawarah* as providing a cultural justification for stifling dissent and resolving disputes through power based approaches. For example Hardiyanto claims that

> ...the true cultural meaning of *musyawarah* has been lost due to the intervention of the politics of development...*musyawarah* has become a political arena for strong developers and capitalists, who ultimately oppress communities in a more vulnerable position. [11]

The political context of contemporary environmental disputes thus presents unique challenges to the mediation process, which may differ significantly from the traditional social context of *musyawarah.* The traditions of *musyawarah* are certainly relevant as a cultural precedent for

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[8] see the discussion of patrimonialism in relation to Indonesia in Harold Crouch, "Patrimonialism and Military Rule in Indonesia," *World Politics* 31(4), no. July (1979).
[9] Ibid.: p575-6.
[10] Moore and Santosa, "Developing Appropriate Environmental Conflict Management Procedures in Indonesia: Integrating Traditional and New Approaches," p28.
[11] Andik Hardiyanto, "Kendala Penyelesaian Sengketa Lingkungan Di Luar Pengadilan," (Semarang: LBH Semarang, 1999).

modern forms of mediation. The *musyawarah* model, however, may imply a more directive consensus building process and thus tend to exacerbate rather than mitigate power disparities between disputing parties.

4.2 Legislation

Notwithstanding political or cultural obstacles, alternative dispute resolution was first introduced into the environmental field in legislative form by the Environmental Management Act No. 4 of 1982.[12] As discussed in chapter 2, art. 20 of that Act stated that compensation and rehabilitation in relation to environmental damage could be determined through negotiation by a tripartite team representing the aggrieved parties, polluter/s and relevant government agencies. Whilst the article did not explicitly state negotiation to be compulsory, it was interpreted as such in several cases.[13] The provision produced a catch-22 situation, with, on the one hand, mediation of environmental disputes seldom undertaken due to a lack of procedure or a lack of initiative on the part of government agencies. Yet, on the other hand, article 20 also barred the path of litigation as courts deemed mediation to be a compulsory precondition to a legal suit for compensation of environmental damage.

Fortunately, this legal stalemate was resolved at the legislative level by the revised article 30 of the EMA 1997, which states that environmental dispute settlement may occur within the court or outside of the court. The choice in this respect is voluntary and thus made by the parties to the dispute. The new Act emphasised this point to ensure that mediation would constitute an alternative, rather than an obstacle, to litigation as became the case under the old law and that the civil rights of parties to litigate would remain intact. Nonetheless, some ambiguity remains, as it is unclear from the terms of the article what course parties should take where they do not agree on the choice between litigation and mediation. Presumably, if the parties were divided as to whether

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[12] Other legislation has also recognised or prescribed ADR in other fields including labor (Act No. 22 of 1957), marriage counselling, commercial arbitration and court procedure. In relation to the latter, art. 130 of the Indonesian Civil Procedure Law requires a judge to attempt to reconcile the disputants before legal proceedings commence. Mas Achmad Santosa, "Internalization of Environmental Adr into a National Institution: An Indonesian Case Study" (paper presented at the Environmental Mediation and Negotiation Workshop - Sharing Experiences through Case Studies, International Academy of the Environment, Geneva, 13-15 November 1995), p3.

[13] In these cases legal claims for compensation for environmental damage were barred on the grounds that they had not been preceded by negotiation/mediation as stipulated in article 20. See the previous discussion page 81.

to pursue dispute settlement inside or outside of court, then the matter would proceed to court by default. This view is supported by art.30(3), which stipulates that where the parties have chosen out of court settlement, then a legal action may only be commenced if one or more parties declare such settlement to have failed. Thus, where a party declares out of court settlement has failed the matter may proceed by legal action to court. The fact that legal proceedings may only be undertaken where mediation has failed also prevents the possibility of judicial and non-judicial settlement proceedings running concurrently and causing unnecessary expense in time and money, as was the case in the PT SSS case.[14]

Further provisions within Chapter VII of the EMA 1997 stipulate the objectives of out of court settlement proceedings, being agreement on the form and size of compensation and/or certain actions to ensure that negative impacts on the environment will not occur or be repeated.[15] Article 32 also explicitly sanctions intervention of a third party, in the form of a mediator (whose decisions are not binding) or an arbitrator (whose decisions are binding). Notably, the elucidation to this article stipulates a number of conditions which a mediator or arbitrator must comply with as a "neutral third party". The article states that the neutral third party must:

1. be agreed to by the parties in dispute;
2. not have familial relations and/or work relations with one of the parties in dispute;
3. possess skills to carry out discussion or mediation;
4. not have an interest in the process of discussion or its outcome.

This provision is of considerable significance as, if enforced, it may serve to mitigate the tendency evident in *musyawarah* where the dispute resolution process becomes dominated by an influential figure(s) who may have some stake in the dispute at hand. Yet, the practical obstacles of finding a "neutral third party" who does "not have an interest in the process of discussion or its outcome" may prove an obstacle to implementation of this article. Article 33, which authorizes the creation of an environmental dispute settlement service by the government or community, is designed to overcome this problem. Government Regulation No 54 of 2000 concerning Service Providers of Environmental Dispute Resolution outside of Court has provided for the further implementation of article 33. Environmental dispute resolution service providers may be formed by the central (Environmental Minister) or regional governments (Governor; Regent or Mayor)

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[14] Hardiyanto, "Kendala Penyelesaian Sengketa Lingkungan Di Luar Pengadilan," p3.
[15] article 31

by the appropriate authority or by the community via a notary. Those appointed as mediators or arbitrators must fulfil certain criteria, and be acceptable to the community.[16] Payment for the services of a mediator or arbitrator may be borne by both or one of the parties or in some cases a third party or the government.

Implementation and institutionalisation of mediation is likely to be further facilitated by proposed judicial regulations implementing court connected alternative dispute resolution. The draft Supreme Court regulations are intended to integrate mediation into the court system and help overcome long delays in case processing.[17] Pursuant to the proposed regulations, litigants would be required to attempt mediation for a specified period of approximately 3 weeks. If the parties are successful in resolving the dispute, the resultant agreement may be registered with the court. If mediation fails, the court is notified and the parties resume the process of litigation.[18]

4.3 Institutionalisation of Environmental Mediation

Besides an adequate legal framework, the successful implementation of environmental mediation in Indonesia will require sufficient institutional backing from both government agencies and non-government organisations. Institutional support to date has included the creation of national policy relating to ADR by a number of government agencies. Policy initiatives have included the formulation of a national policy paper on ADR by the National Development Planning Agency (BAPPENAS); formulation of draft legislation for the general use of ADR in Indonesia by the Cabinet Secretary's Office; development of court annexed ADR by the Supreme Court and the integration of ADR into the training of public prosecutors by the Attorney General's Office.[19] More specific to the environmental field, the Ministry of the Environment was involved in the drafting of the ADR provisions contained within the EMA 1997 discussed above. Yet, most of these initiatives have taken place at policy level only, with few reaching the level of implementation.

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[16] A mediator must be at least 30 years of age and possess experience in the environmental field of at least 5 years. An arbitrator must be at least 35 years of age and hold experience in the environmental field of 15 years or more. Both must also possess the skills necessary to carry out mediation or arbitration.

[17] Siti Megadianty Adam, 6 June 2003.

[18] *Draft Supreme Court Regulations on Mediation Procedure in Court 2003*

[19] Santosa, "Internalization of Environmental Adr into a National Institution: An Indonesian Case Study", p1.

The government agency most actively involved in the application of mediation to environmental disputes has been the national Environmental Impact Agency (*Bapedal*), which received a mandate in 1993 from the Environment Minister to begin using voluntary compliance procedures, including mediation, in conjunction with command and control enforcement of environmental law.[20] Mediation was adopted by the agency as it was seen as culturally compatible with traditional decision-making practices; because of its effectiveness in resolving environmental disputes in other countries and because it provided an alternative path to the command and control approach to enforcement with which the agency had experienced some difficulty.[21] The creation of decentralized Environmental Impact Agencies (*Bapedalda*) at the regional levels of government has resulted in some cases in a wider application of environmental mediation, although the role of some regional agencies has been more limited due to a lack of political and economic resources.[22]

At the local or regional level, other government authorities may play an active role in out of court environmental dispute settlement. Influential local figures, typically governmental authorities, often take on a facilitating or mediating role in environmental disputes where a mediation process is initiated. Depending on the scale and profile of the dispute, this may be a local sub-district head (*camat*), the head of a government agency, a mayor, regent or even a governor. The problematic aspect of government facilitation or mediation of environmental mediation is that the government itself is usually a stakeholder in the dispute and thus not a neutral party.[23]

Besides government agencies, non-government organisations have also played a very active role in the socialization and implementation of ADR approaches to environmental disputes. Well-resourced organisations such as the Indonesian National Forum for the Environment (WALHI), the Indonesian Centre for Environmental Law (ICEL) and the Legal Aid Foundation have actively sought to promote mediation as an alternative path to justice in environmental disputes. In particular, ICEL, in conjunction with its foreign donors, has concentrated its efforts

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[20] Moore and Santosa, "Developing Appropriate Environmental Conflict Management Procedures in Indonesia: Integrating Traditional and New Approaches," p27.
[21] Ibid.
[22] See, for example, the more discussion concerning the role of the district environmental agency in the *Palur Raya* dispute, chapter 5.
[23] The importance of an impartial or neutral mediator is discussed in Chapter 1, page 52

on promoting ADR in environmental conflicts.[24] ICEL's initiatives have included research into environmental disputes where ADR approaches were utilized, socialization of ADR approaches to environmental disputes to government officials (including prosecutors, judges, and legal drafters), publication of literature on environmental mediation in Indonesia, participation in drafting regulatory frameworks to support the implementation of environmental mediation, conducting training and skill building workshops for potential mediators, and actual participation in mediating a wide range of environmental disputes.[25] Besides the national NGOs discussed above, a plethora of local and regional environmental organisations have played an important role in advocacy associated with environmental dispute resolution. In nearly all of the case studies reviewed below, NGOs played a significant role in facilitating community organisation before mediation and in some case participating directly in the mediation process.

4.4 Review of Environmental Mediation Cases

This section provides an overview and analysis of a selection of environmental mediation cases to date in Indonesia. The selection of cases is intended as a representative rather than comprehensive summary and was drawn from the available (predominantly Indonesian language) literature on environmental mediation in Indonesia and the author's own research in the field.[26] The cases are predominantly industry related and Java based, although a mining dispute from Kalimantan has also been included. Each case study presented below provides a summary of the factual background of the case and mediation process together with an analysis of the variables that influenced the eventual outcome of mediation.

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[24] In relation to its programmes to promote environmental mediation, ICEL has worked in conjunction with GTZ, a German aid agency, USAID, the Asia Foundation and the Ford Foundation. Santosa, Rahmadi, and Adam, *Mediasi Lingkungan Di Indonesia: Sebuah Pengalaman*.

[25] see for instance Ibid.

[26] The most useful written source in this respect was Ibid.to which frequent reference is made in the case studies that follow. Other written sources were drawn from a compilation of newspaper clippings, seminar papers, unpublished articles and newspaper clippings on particular mediation cases and environmental mediation in general.

4.4.1 Tapak River (Semarang, 1991)[27]

The *Tapak River* case is an often-cited example of successful environmental mediation in Indonesia in the period since the enactment of the first Environmental Management Act. In that dispute, a number of factories were disposing of untreated effluent into the Tapak River, the main water source for at least two hundred families living nearby.[28] The resulting damage to the surrounding land, agricultural yields and local residents health was considerable.[29] Research from a number of sources including the Semarang Environmental Impact Agency, the Research Institute of Diponegoro University, and the Office of Industry Research and Development vindicated the resident's claims of pollution.[30] Samples taken from the river displayed Biological Oxygen Demand (BOD) levels nearly twenty times the Indonesian legal limit.[31]

Members of the Dukuh Tapak community had, since the late 1970s, conveyed complaints concerning the pollution to the village chief, sub-district head, officials of the Semarang district government and also to the respective industries themselves. In 1978, following protests by farmers and fishpond owners over pollution from the PT SDC factory, some compensation was

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[27] The account of the Tapak River case is based on the following sources: Santosa and Hutapea, "Mendayagunakan Mekanisme Alternatif Penyesesaian Sengketa (Maps) Di Indonesia: Sebuah Pengalaman".;;G Aditjondro, "Industriawan Dan Petani Tambak: Kisah Polusi Di Dukuh Tapak," *Prisma* 7 (1979).;Joko Hadi Satyoga, "Kali Tapak: Sebuah Perjalan Advokasi Kasus Pencemaran Lingkungan Hidup" (paper presented at the Lokakarya Pengetahuan Hukum dan Advokasi Lingkungan Hidup bagi Pekerjaan Bantuan Hukum dan Pola Penganganan Kasus-Kasus Lingkungan, Surabaya, 18-22 June 1992).;Craig C Thorburn, "Consumer Boycott of Polluting Industries in Central Java: A Case Study in the Development of a Modern Environmental Conciousness," *Unpublished Paper* (1992).;Adam.;Takdir Rahmadi, "Kasus Kali Tapak," in *Mediasi Lingkungan Di Indonesia: Sebuah Pengalaman*, ed. Mas Achmad Santosa, Takdir Rahmadi, and Siti Megadianty Adam (Jakarta: ICEL, 1997).;Lucas, "River Pollution and Political Action in Indonesia.".Arimbi Heroepoetri, "Penggunaan Mediasi Dalam Sengketa Lingkungan Di Indonesia" (paper presented at the Alternatif Penyelesaian Sengketa dalam Kasus-Kasus Tanah, Perburuhan, dan Lingkungan, Jakarta, 11 August 1994).

[28] The first industry to be established in the area was PT Semarang Diamond Chemical (SDC), which produced calcium citrate, a substance used in softdrinks. Other factories established in the early 1980s included PT Sukasari (soy sauce), PT Bukit Perak (soap), PT Kemas Tugu Industri (paper), Pt Agung Perdana Tuguh Indah (clothes printing) and PT Makara Dewa Wisesa (cold storage). Satyoga, "Kali Tapak: Sebuah Perjalan Advokasi Kasus Pencemaran Lingkungan Hidup".

[29] The devastating environmental, social and economic impact of the pollution on the residents of Dukuh Tapak is well documented in Aditjondro, "Industriawan Dan Petani Tambak: Kisah Polusi Di Dukuh Tapak."and.Lucas, "River Pollution and Political Action in Indonesia."

[30] Satyoga, "Kali Tapak: Sebuah Perjalan Advokasi Kasus Pencemaran Lingkungan Hidup", p5.

[31] Thorburn, "Consumer Boycott of Polluting Industries in Central Java: A Case Study in the Development of a Modern Environmental Conciousness," p3.

paid by the industry to the farmers whose harvest or catch had been affected by pollution.[32] There was, however, no action taken to address the problem of pollution which increased as the district government continued to issue permits for the establishment of new industries and a public garbage dump in the area. The general view of industry and district government officials was that the area had been stipulated as an industrial estate and therefore pollution was to be expected.[33]

By the mid-1980s the Dukuh Tapak community had sought the assistance of several NGOs, including WALHI and the Semarang Legal Aid Institute in resolving their dispute over the problem of pollution. The case began to attract increasing publicity in regional, national and even international media.[34] Advocacy efforts were continued with complaints over pollution conveyed to the national Industry and Environmental Ministers. The community's complaint to the Minister for Industry attracted the ire of regional military and police, who warned community representatives to stay out of politics. However, the Environment Minister, then Emil Salim, urged the Semarang District government to resolve the dispute, which was receiving increasing publicity in national newspapers.[35]

In January 1991, at the request of the Semarang Legal Aid Institute the Semarang legislature arranged an initial meeting between community and industry representatives to negotiate a solution to the dispute. The Tapak residents wanted compensation (Rp 1.9 billion), an end to further pollution and rehabilitation of the Tapak River. Industry representatives, however, denied their operations caused pollution and were only willing to undertake limited community development measures.[36] Furthermore, despite promises of further meetings, the Semarang mayor appeared unwilling to take concrete steps toward resolving the dispute.[37]

Following the failed attempt at negotiation, the Tapak residents, together with a coalition of 15 NGOs involved in the case, undertook in April 1991 to organise a consumer boycott of products

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[32] A special committee appointed to address the issue of compensation recommended payment of Rp 119 million to residents. PT SDC, however, was only prepared to pay Rp 5.4 million. Satyoga, "Kali Tapak: Sebuah Perjalan Advokasi Kasus Pencemaran Lingkungan Hidup", p7.
[33] Ibid., p3.
[34] The dispute received coverage in the national Japanese newspaper *Yomiuri Shimbun* as PT Semarang Diamond Chemical was a subsidiary of the Japanese company Mitsubishi and Showa Chemical. Ibid., p12.
[35] Rahmadi, "Kasus Kali Tapak," p6.
[36] Satyoga, "Kali Tapak: Sebuah Perjalan Advokasi Kasus Pencemaran Lingkungan Hidup", p11.
[37] Rahmadi, "Kasus Kali Tapak," p7.

of the seven industries responsible for the pollution.[38] The boycott was intended to increase pressure on industry and the regional government to consider the demands of the Tapak residents.[39] The boycott action received widespread publicity and a sympathetic reception from senior *Bapedal* officials and the Environment Minister who sent a suggestion to the Minister for Industry that a tri-partite team be formed to resolve the dispute.[40] The boycott was successful in increasing pressure on industry and regional government to enter a mediation process, which was ultimately commenced in May 1991.

The dispute resolution process was mediated by an official of the Semarang regional government, who tended to lend greatest support to the industries' position during the negotiations that followed.[41] Participants in mediation included representatives of *Bapedal*, the Deputy Governor of Central Java, Semarang Mayor, Head of the Central Java legislature, the Semarang Legal Aid Institute, two NGOs (WALHI and YLKI)[42] and industry. The mediation process ultimately resulted in an undertaking by the polluting companies to install waste treatment equipment, comply with government regulations and stop the disposal of untreated effluent into Tapak River. The companies also agreed to pay Rp 225 million compensation to local farmers and, together with the provincial government, set up a Rp185 million fund for the rehabilitation of the Tapak village area.[43] In return, Tapak residents agreed to withdraw their threat of legal action and NGO representatives undertook to discontinue the boycott action.

Implementation of the agreement has been only partially successful. Compensation as stipulated was paid and community members were provided with a source of clean water for their daily needs. However, the agreed program of environmental rehabilitation and community development was only partially implemented. Ongoing monitoring of water quality did not occur

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[38] The boycott was inspired by the American NGO boycott of Scott Paper, which had planned to establish a branch in Indonesia. Satyoga, "Kali Tapak: Sebuah Perjalan Advokasi Kasus Pencemaran Lingkungan Hidup", p12.

[39] Litigation was considered as an alternative strategy but it was thought this would not have sufficient impact or pressure on industry and government and also would face considerable technical and legal obstacles. Rahmadi, "Kasus Kali Tapak," p7. cf. Lucas who considered threats of legal action by WALHI against PT SDC to be a factor contributing to the negotiating compensation agreement. Lucas, "River Pollution and Political Action in Indonesia," p195.

[40] In contrast the boycott action was opposed by industry and the Semarang mayor. Rahmadi, "Kasus Kali Tapak," p7.

[41] see Ibid., p8-9.

[42] *Yayasan Lembaga Konsumer Indonesia* or the Indonesia Consumer Foundation.

[43] Santosa and Hutapea, "Mendayagunakan Mekanisme Alternatif Penyesesaian Sengketa (Maps) Di Indonesia: Sebuah Pengalaman", p37.

and pollution continued to pollute the fields and fishponds of Tapak residents.[44] Promised social and economic development were not initiated and the social effects of the pollution continued to be felt in Tapak village where around 60% of residents had lost their livelihood due to pollution.[45]

The outcome of mediation in the *Tapak River* dispute was at least partially successful. Compensation (actually termed "contribution") was paid to residents of Tapak who had suffered pollution, although it is unlikely the amount paid even approached the loss actually suffered by the villagers.[46] Some limited environmental and community development measures were undertaken yet for the most part environmental management has not improved and pollution has continued. Despite these failings the *Tapak River* case was regarded by many as a milestone for environmental mediation in Indonesia. The dispute was the first high profile environmental dispute where an agreement was reached through mediation held pursuant to art.20 of the EMA 1982. The substantial compensation sum paid by industry to the Tapak villagers also set a new precedent for the compensation of environmental damage in environmental disputes.

A significant factor that contributed to the partial success of mediation was the initiation of an NGO sponsored boycott of the Tapak industries' products. The boycott threat, widely publicised in regional, national and international media, greatly increased public pressure on the industries and the Semarang regional government to participate in a mediation process. In addition to effective public pressure, the Environment Minister and Environmental Impact Agency *(Bapedal)* provided strong political support for the initiation of a dispute resolution process. National level government support for the community's claims compensated for the resistance of the Semarang regional government, who tended to side with industry in this dispute. The community's success in obtaining compensation may also be attributed to the strong and well-documented evidence of pollution since 1978 that existed in this case. Whilst NGO and national government pressure facilitated the mediation process, this was not maintained after the agreement during the

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[44] The agreement was concluded in August 1991, whilst residents reported during November and December 1991 continued indications of pollution such as dead fish & prawns, discoloured and odourous river water and skin irritation by people coming in contact with the water. Ibid., p39.

[45] Lucas, "River Pollution and Political Action in Indonesia," p195.

[46] A special committee of Tugu sub-district calculated the villagers economic loss due to pollution in *1978* as already at Rp 119 million. - Ibid., p190.

implementation phase. The failure to prevent ongoing pollution demonstrated the need for more effective implementation mechanisms and administrative support for these at the district level.

4.4.2 Tembok Dukuh /PT SSS case (Surabaya, 1991)[47]

In this case, already referred to in Chapter 2, a group of 18 residents from Tembok Dukuh village in East Java claimed zinc and chromium waste from the PT Sarana Surya Sakti (PT SSS) factory, which manufactured bicycle rims, had resulted in pollution of groundwater and village wells.[48] Following complaints by the community to the local district official, government research was carried out which confirmed the pollution. Subsequently, the Surabaya mayor issued an administrative warning requesting the factory comply with waste management regulations.[49] Yet despite the warning the pollution continued, as did the protests of the Tembok Dukuh community, which were gaining increasing exposure in the mass media. Mediation was attempted on two occasions during this period, but was not successful, prompting the residents to appoint the Surabaya Legal Aid Institute as legal representatives.

Frustrated by the failure of the regional government to enforce environmental regulations and take administrative action against PT SSS, the group of 18 Tembok Dukuh residents lodged a civil suit against the factory in the Surabaya District Court.[50] Due in part to the terms of art. 20(2) of the EMA 1982, which required mandatory conciliation to be undertaken prior to a legal suit, the parties agreed to adjourn proceedings while a process of court connected conciliation was undertaken. The mediation process was initially chaired by the Deputy I of the Environmental

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[47] This account is based on the following sources:;*Sarana Surya Sakti*.;Takdir Rahmadi, "Efforts to Resolve a Dispute over Industrial Pollution in Surabaya, Indonesia: The Tembok Dukuh Dispute," (Jakarta: ICEL, 1993).;Mas Achmad Santosa and Christopher Moore, "Kasus Yang Gagal Menghasilkan Kesepakatan: Kasus Tembok Dukuh," in *Mediasi Lingkungan Di Indonesia: Sebuah Pengalaman*, ed. Mas Achmad Santosa, Takdir Rahmadi, and Siti Megadianty Adam (Jakarta: ICEL, 1997).;"Hasil Evaluasi Penuntut Umum Terhadap Berkas Perkara Dari Penyidik Polwitabes Surabaya Dalam Kasus Tindak Pidana Pencemaran Sumur Penduduk Oleh Limbah Dari Pt Sarana Surya Sakti," (Surabaya: Surabaya Public Prosecutor, 1991). Toha, "Sulitnya Menjerat Sang Pencemar."and miscellaneous correspondence and documentation of the dispute resolution process gathered during research carried out in 1993.

[48] The wells of residents in the village of Tembok Dukuh adjoining the factory had noticed the colour of their well water had changed colour (to yellow-red) and started to smell. When used for washing the water caused itching and skin irritation. The suspicions of residents were heightened when a wall between the factory and residences collapsed causing the overflow of liquid waste into the property of two residents. Rahmadi, "Efforts to Resolve a Dispute over Industrial Pollution in Surabaya, Indonesia: The Tembok Dukuh Dispute," p1.

[49] Peringatan Untuk Mencegah, Mengendalikan Dan Menanggulangi Pencemaran, Surabaya.

Impact Agency, Nabiel Makarim, and the parties were successful in concluding an agreement to mediate and an agreement in principle. The latter stages of mediation, however, were chaired by the officials from the Surabaya Mayor's office whose actions, in pressuring the Tembok Dukuh residents to compromise and emphasising the wider contribution the factory made to society by creating employment, displayed a lack of neutrality.[51] The Mayor had also issued a regulation rezoning the area in question to allow both residential and industrial uses, thus quashing one of the community's prior demands that PT SSS be relocated due, in part, to inconsistency with local zoning. Nonetheless, the mediation process progressed to the point where a preliminary agreement was reached on environmental restoration and the range of compensation that would be payable.[52] Subsequently, however, industry representatives retreated from their undertaking to pay in the range of Rp 100 – 150 million compensation offering instead a much lower figure of Rp 12,960,000, which the residents rejected.[53] Ultimately, the preliminary agreement reached by the parties failed and the case returned to court on 28 July 1993.

In this case, the well-publicised campaign of Tembok Dukuh residents against the pollution of PT SSS was successful in prompting some administrative action, including support for a mediation process. The commencement and early stages of the mediation process were facilitated by the national Environmental Impact Agency resulting in both an 'agreement to mediate' and an 'agreement in principle'. In contrast, the failure of the regional Surabaya government to undertake administrative action against PT SSS ensured the company was under little pressure to come to a mediated agreement.[54] The 'soft' attitude of regional government officials toward PT SSS was also evident in the mediation process itself, where the officials of the Mayor's office failed to mediate in a neutral manner thereby contributing to the eventual failure to achieve a final agreement.

4.4.3 Tyfountex (Solo; 1992)[55]

PT Tyfountex is a large textile industry, established in 1974, located near the city of Solo,in the regency of Sukoharjo, Central Java. The factory's premises occupies an area of some 15

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[50] The legal suit has already been discussed in Chapter 3.
[51] Rahmadi, "Efforts to Resolve a Dispute over Industrial Pollution in Surabaya, Indonesia: The Tembok Dukuh Dispute," p5.
[52] Laporan Penyelesaian Kasus Pt. Sarana Surya Sakti Dengan Warga.
[53] Santosa and Moore, "Kasus Yang Gagal Menghasilkan Kesepakatan: Kasus Tembok Dukuh," p84.
[54] Ibid., p87.

hectares and employs over 5000 workers. The environmental impact of the PT Tyfountex's operations has been felt by local residents since the mid 1970s. Residents of 3 villages located close to the factory reported discoloured well water and visible signs of pollution in river water. In the mid 1980s several residents of Gumpang village sent a written complaint regarding the pollution to the industry via the local village head. The complaint was unanswered, however, and the pollution continued. By the 1990s the impact of the factory's pollution had worsened and spread to several other nearby villages in the area. Testing carried out by a local NGO, Gita Pertiwi, confirmed pollution levels in local residents' wells. Whilst local residents were increasingly aware of the industry's pollution, their position in response to the pollution remained passive prior to the involvement of several local NGOs.[56] With NGO assistance, a group of community representatives began to organise protest actions against the pollution from PT Tyfountex. In September 1992 a petition signed by 301 residents objecting to the pollution was sent to PT Tyfountex, the national Environment Minister, the Environmental Impact Agency, the Regent of Sukoharjo and regional press. After the protest was widely reported in the regional press the village head of Makamhaji, one of the villages affected by the pollution, convened a meeting including representatives from PT Tyfountex, sub-district heads, environmental officials from the regency of Sukoharjo and the local community. Around 200 villagers from three villages attended the meeting, at which PT Tyfountex acknowledged the pollution caused by its operations.[57] The industry promised to fulfill within 3-6 months the community's demands that it install a waste management unit, provide piped water to local villages, increase the height of the factory's chimney and reduce the noise levels from the factory's generator.

Later that month community members formed the Tyfountex Pollution Monitoring Group (KPPT) to monitor implementation of the agreement reached with industry representatives. Several months later Tyfountex had still not implemented any of the changes promised to the community and the pollution had continued unabated. Residents who had played a part in organising the protest also came under pressure to sell their land to Tyfountex and leave the area. In protest, community members organised another protest, attended by around 300 people, in front of the factory. As a result of the protest a further process of mediation was initiated between

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55 This account is based on "Rakyat Meradang, Tyfountex Diterjang," (Solo: Gita Pertiwi, 2000).
56 Including environmentalists from the Student Association of Solo (*Ikatan Mahasiswa Solo*), the Foundation for Village Development (*Yayasan Pengembangan Pedesaan*) and Gita Pertiwi.

KPPT and PT Tyfountex, facilitated by sub-district officials. One week after the protest an agreement was signed by both parties pursuant to which an independent team would be formed to investigate and resolve the issue of pollution. Implementation of the agreement was undermined, however, by subsequent events. In November 1992, the Regent (*Bupati*) of Sukoharjo held an emergency meeting with sub-district officials. At the meeting the Regent directed that any future community complaints should be conveyed through "constitutional" or official channels, that is via the local and sub-district government hierachy. Accordingly, the community group KPPT was deemed no longer necessary and was officially disbanded.

In this case community pressure was instrumental in the commencement of a mediation process on two occaisions. The ability of the community to successfully mobilise and convey its demands to industry and government was facilitated by the support of local NGOs and widespread coverage of the dispute in the regional press. The response of the industry Tyfountex in this case seems to have been a deliberate attempt to temporarily appease community sentiment through an apparent concession to community demands. The industry's promise of improved environmental management was, however, on both occasions belied by its subsequent actions, which attempted to undermine the community's efforts at advocacy by resorting to power-based tactics.

4.4.4 Sambong River (Batang; 1993)[58]

This dispute involved three factories housed in a single complex owned by the IMI company located near the mouth of the Sambong River in Central Java.[59] Several villages located nearby the factories relied mostly on fishing for their livelihood, although some residents also worked as factory labourers or farmers.[60] In 1973 PT. IMI began disposing its industrial effluent into the

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[57] The pollution claims were subsequently verified by research conducted by an investigatory team from Sukoharjo district.

[58] This account is based upon the following sources:;Puspo Adjie, "Pencemaran Kali Sambong," in *Beberapa Penanganan Kasus Lingkungan Hidup*, ed. Anthony LP Hutapea (Jakarta: WALHI, 1993)..Takdir Rahmadi, "Kasus Kali Sambong," in *Mediasi Lingkungan Di Indonesia: Sebuah Pengalaman* (Jakarta: ICEL, 1997).

[59] IMI is short for PT Indonesia Miki Industries consisting of PT Sumbertex, established in 1960, producing textile and plastic rope/nets; PT Miki Indo Industri, established in 1970 producing MSG, noodles, coffee and glucose; PT Batang Alun, established in 1974, producing saccharin and cylcamate. Rahmadi, "Kasus Kali Sambong," p55.

[60] Residents subsequently affected by the pollution number around 480 families and were located in four villages (Proyonanggan, Karangasem, Klidang Wetan and Klidang Lor) in the subdistrict of Batang. Adjie, "Pencemaran Kali Sambong," p49.

Sambong River due to a prohibition by the harbour master, which prevented it from disposing the waste directly into the ocean. Whilst some of the factories' waste was processed before disposal, the factories also frequently utilised concealed outlets to dispose of untreated waste during the night.[61] The effects of the pollution were noticeable from 1978 onwards, and included various health complaints amongst local residents and the death of fish in the Sambong River, which undermined the livelihood of many families.[62]

In 1991 the community complained to the regional government of Batang, which appointed an investigation team. The ensuing investigation attributed pollution to a variety of sources, including domestic waste and smaller factories. A subsequent police investigation of pollution following complaints of residents attributed the pollution to pesticide use.[63] The community, however, maintained that the IMIG factories were the primary source of hazardous waste and pollution of the river, and they should as a result bear responsibility for compensation and rehabilitation of the environmental damage that had occurred.

In October 1991 community leaders appointed the Semarang Legal Aid Institute as legal representatives, obtained assistance from the regional Indonesian Forum for the Environment (WALHI) group and continued a variety of advocacy initiatives including demonstrations at the factories' location. The continuing advocacy and involvement of a network of NGOs helped the case assume a national profile in the media by August 1991. In an attempt to increase pressure on regional officials, the case was also formally reported to the national Environmental Impact Agency. Following this report, the Governor of Central Java directed the Regent of Batang to obtain a formal commitment from PT IMI to install a functioning waste management unit. Shortly thereafter, a visit was made by a team from the Environmental Agency, accompanied by officials from the Department of Industry and the Batang District government visited the factory and villages in December 1991. After this visit, the factory reportedly stopped disposing untreated waste directly into the Sambong River.[64]

Following this renewed advocacy, a meeting was convened between the Governor of Central Java, district officials, the Environmental Impact Agency of Central Java and community representatives. Agreement was reached to form a fact-finding team, which subsequently

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[61] Ibid., p51.
[62] Ibid., p52.
[63] Rahmadi, "Kasus Kali Sambong," p58.
[64] Adjie, "Pencemaran Kali Sambong," p53.

identified several sources of pollution including the IMIG factories.[65] Following confirmation of the pollution by the fact finding team, the Environmental Impact Agency and the Governor's office encouraged industry and community representatives to resolve the dispute by mediation. A government appointed mediator presided over the subsequent mediation process, which for the most part consisted of separate discussion with industry and community representatives.[66] Pursuant to the final agreement, dated 13 November 1993, the regional government agreed to supply drinking water to the community and rehabilitate the eroded riverbank. The industry undertook to install a waste management unit, ensure compliance with government stipulations of water quality and pay an amount of Rp 53 million. The company did, however, insist on describing the financial payment to the community as aid (*bantuan*) rather than compensation (*ganti rugi*).[67]

Like the *Tapak River* dispute, the *Sambong River* dispute illustrates the importance of effective community organisation and advocacy in the pre-mediation phase. Effective public pressure on industry and the district government was again in this case facilitated by a network of NGOs and a high level of media exposure in regional and national newspapers. The involvement of the national Environmental Impact Agency also played an important role in facilitating the dispute resolution process and prompting action toward this end from the district and provincial governments. As in the *Tapak River* case, the mediator in this case was a district government official who, according to community reports, tended to favour industry interests. Nonetheless, the government appointed mediator was successful in minimizing animosity between parties through "shuttle diplomacy" and overcoming a deadlock on the matter of compensation. Subsequent reports have indicated a reasonable level of community and industry satisfaction concerning the agreement, although the regional government reportedly did not carry out rehabilitation of the riverbanks as promised.[68]

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[65] Rahmadi, "Kasus Kali Sambong," p58.
[66] The mediator was the Head of Economic Division in the Regency of Batang who community representatives considered to tend to favour industry interests in the course of negotiations. Ibid.
[67] Ibid., p59.
[68] Ibid., p60.

4.4.5 Siak River (Riau, 1992)[69]

The Siak River dispute centred on water pollution originating from a pulp and paper industry, PT Indah Kiat Pulp and Paper (PT IKPP).[70] The factory, established in 1984, caused pollution of the Siak River which was also utilised by local residents, a village of around 150 families, for their fishing, agriculture and daily needs.[71] Initial complaints from the local community to PT IKPP were rejected as the industry considered that it could not be held solely responsible for pollution when other factories were also in operation. However, independent research from several sources confirmed that the pollution of the Siak River was caused primarily by the pulp and paper processing operated by PT IKPP.[72] The community's advocacy efforts were in this case supported by an extensive network of local, regional and national NGOs. Several discussion groups between community representatives and NGO workers were established in area adjoining PT IKPP. The community also appointed the Indonesian Legal Aid Institute (YLBHI) as legal representatives. Advocacy initiatives subsequently undertaken included widely reported demonstrations, threats of an organised boycott of PT IKPP's products and written complaints to a number of government agencies.

A mediation process was subsequently undertaken and facilitated by Deputy I of the Environmental Impact Agency, Nabiel Makarim. The mediation process ultimately resulted in an agreement in principle where the industry agreed to improve waste management, facilitate communication between industry and community and provide funds (Rp 266 million) for community development.[73] Whilst an agreement was reached in this case, its subsequent implementation proved to be unsatisfactory. Pollution from the factory continued, exacerbated by

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[69] This account is based on the following sources:;Dadang Trisasongko, "Sungai Siak Terus Terkoyak," in *Hukum Dan Advokasi Lingkungan*, ed. Sulaiman N Sembiring (Jakarta: ICEL, 1998).;Sunoto and Takdir Rahmadi, "Kasus Pencemaran Sungai Siak," in *Mediasi Lingkungan Di Indonesia: Sebuah Pengalaman*, ed. Mas Achmad Santosa, Takdir Rahmadi, and Siti Megadianty Adam (Jakarta: ICEL, 1997). SKEPHI, *Delapan Perusahaan Perusak Lingkungan*.

[70] At the time of this dispute PT IKPP was a publicly listed paper and pulp industry within the Sinar Mas Group producing between 225,000 to 234,000 ton/year for the domestic and international market. Trisasongko, "Sungai Siak Terus Terkoyak," p28.

[71] Whilst other smaller industries had operated in the area prior to PT IKPP, pollution of the river had only become apparent to residents subsequent to the start of PT IKPP's operations. Sunoto and Rahmadi, "Kasus Pencemaran Sungai Siak," p17.

[72] Research confirming pollution by PT IKPP was carried out by University of Riau, Ministry of the Environment, the provincial Environmental Impact Agency and PT Sucofindo. Trisasongko, "Sungai Siak Terus Terkoyak," p30.

[73] Sunoto and Rahmadi, "Kasus Pencemaran Sungai Siak," p25.

leaks from waste storage facility and a hidden bypass waste outlet discovered by community members.[74] Community development programs were only partially successful and efforts to create a industry-communication forum did not materialize. The implementation failure experienced in this case was the result of several contributing factors. The agreement itself was insufficiently detailed and did not provide adequate mechanisms for implementation. Implementation was also undermined by the failure to involve the Riau provincial government, the level of government responsible for regional implementation of environmental regulations, in the mediation process.[75] Moreover, the Environmental Impact Agency, which had played an important role in facilitating the agreement, devoted little or no attention or resources to its implementation. Similarly, the extensive network of national and regional NGOs that had provided a catalyst for the original mediation process largely dissipated subsequent to the agreement, with local NGOs playing little role in supervising implementation.[76] Ultimately, continued pollution from the factory prompted the local community to initiate legal action against PT IKPP.

The Siak River dispute highlights the difficulty frequently associated with implementing negotiated agreements. Whilst community pressure or high-level government intervention may compel a polluting company to negotiate and even concede an agreement, in cases such as this it appears that such responses are intended more to appease public sentiment in the short term than resolve the dispute in the longer term. The Siak River dispute is one example of how industry and government agencies have viewed

> ... viewed participation in mediation as an end in itself, regardless of outcome…provid[ing] an opportunity for input, but not…a means of direct decision making. This has led some participants to promote the process as a way of procedurally appeasing angry people, but not solving problems."[77]

A manipulative approach to mediation such as this leads inevitably to increased community frustration with the mediation process, prompting in this case subsequent legal action. For, as one

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[74] Trisasongko, "Sungai Siak Terus Terkoyak," p28.
[75] Sunoto and Rahmadi, "Kasus Pencemaran Sungai Siak," p26.
[76] Ibid.
[77] Moore and Santosa, "Developing Appropriate Environmental Conflict Management Procedures in Indonesia: Integrating Traditional and New Approaches," p28.

community member commented in this case, it may seem "better not to use negotiation when agreements are not followed".[78]

4.4.6 Sibalec (Yogyakarta; 1994)[79]

In the Sibalec dispute pollution from a light bulb factory in Yogyakarta had contaminated ground water and the wells of nearby residents. Despite laboratory tests of ground water confirming the residents' claims of pollution, the company denied any culpability on its part. The Health Department, who was approached by local residents, also rejected the residents claims' and dismissed the pollution as the result of domestic waste.[80] Increasing publicity on the matter prompted the district Regent (*Bupati*) to organise a meeting between the company and residents, but no agreement was reached. Subsequently the government at the provincial level (Special District of Yogyakarta) formed an investigative team, which ultimately produced evidence that the pollution had in fact originated from Sibalec factory.[81] Members of the team acted as mediators in subsequent negotiations involving the community and company representatives. However, members of local NGOs that had been involved in the case were not permitted to participate in the negotiations, prompting some to question the impartiality of the mediators in taking such a stance.[82] Ultimately an agreement was reached between the parties which included compensation, repair of waste management facilities and monitoring of water quality. Implementation of the agreement was partially successful, with compensation being paid in full but some dissatisfaction remained within the community relating to implementation of the water monitoring initiatives.[83]

4.4.7 Naga Mas (Central Java; 1994)[84]

In this case, a dispute arose between PT Naga Mas, a textile factory located in the Batang district of Central Java and a community of nearby residents whose wells had allegedly been

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[78] Sunoto and Rahmadi, "Kasus Pencemaran Sungai Siak," p25.
[79] This account is based on:;Siti Megadianty Adam, "Kasus Sibalec 1," in *Mediasi Lingkungan Di Indonesia: Sebuah Pengalaman*, ed. Mas Achmad Santosa, Takdir Rahmadi, and Siti Megadianty Adam (Jakarta: ICEL, 1997).;Endra and Resa, 29 November 2000. Ari Suseta, 14 September 2000.
[80] Adam, "Kasus Sibalec 1," p32.
[81] Endra and Resa.
[82] Adam, "Kasus Sibalec 1," p34.
[83] Ibid., p37.

polluted by liquid waste discharged from the factory.[85] The factory, despite expanding its production in the 1980s, had not installed a waste management unit and dumped untreated liquid and solid waste in the area surrounding the factory. In 1993 pollution levels increased and a community member made a written complaint to the Batang Regent.[86] A subsequent investigation in response to the complaint, by the Batang regional government in 1993, confirmed pollution of ground water and the wells by the factory and recommended that PT Naga Mas install and operate a waste management unit to prevent further pollution.[87] This clear confirmation of pollution vindicated the residents' claims, yet progress in constructing the waste management unit had still not been made by the end of 1993.

Still seeking resolution of the dispute, community representatives took their complaint to the legislative assembly of Batang district. Shortly after this visit an further investigation was carried out, which confirmed 21 wells in Petodanan village were polluted by waste from PT Naga Mas.[88] The pollution from PT Naga Mas received widespread coverage in the mass media, which acted as a further catalyst for government action. District government officials, encouraged by strong support from the Batang Regent, convened a meeting between community and industry representatives and urged both parties to resolve the dispute through negotiation.[89] A mediation process thereby commenced, with various district government officials acting interchangeably as mediators in a manner considered sufficiently neutral by all parties. Negotiations were, nonetheless, protracted, dragging out eventually over a period of one year. At one point the residents, in frustration at the lack of progress, informed the Regent that they had issued their legal authority to the Semarang Legal Aid Institute. This threat of legal action seemingly acted as a catalyst for the eventual agreement achieved by the two parties, following a mediation process

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[84] This account is based on:;"Melawan Naga Mas," (Solo: Gita Pertiwi, 2000). Takdir Rahmadi, "Kasus Pt Naga Mas," in *Mediasi Lingkungan Di Indonesia: Sebuah Pengalaman*, ed. Mas Achmad Santosa, Takdir Rahmadi, and Siti Megadianty Adam (Jakarta: ICEL, 1997).

[85] The community consisted of 21 families located in Petodanan Baru village, Batang, Central Java. Residents reported changes in the smell, taste and colour of the well water which also produced skin irritations when used for washing. Rahmadi, "Kasus Pt Naga Mas," p65.

[86] "Melawan Naga Mas," p2.

[87] Evidence of pollutants above regulatory limits was found in tests carried out by the Semarang Industry Research and Development Bureau. Ibid.

[88] Ibid., p3.

[89] The district government itself had an extra incentive to resolve this dispute as it had been recommended as a recipient for the environmental "Adipura" award and thus wished the case to be swiftly resolved so as not to compromise its chances in this respect. Rahmadi, "Kasus Pt Naga Mas," p68.

lasting one year.[90] Pursuant to the final agreement, PT Naga Mas agreed to pay for installation of piped water to those families affected by the ground water pollution and additionally pledged to reduce its waste discharge in compliance with regulatory limits. Subsequent to the agreement, piped water had indeed been supplied to the community. On the issue of continuing pollution, the community remained apprehensive, however, as the industry's waste management was to be supervised by government agencies without any community input or supervision.[91]

4.4.8 Ciujung River (West Java; 1995)[92]

In the *Ciujung River* case pollution from a group of five factories[93] on the Ciujung River in West Java had severely affected several villages since September 1992, the residents of which (approximately 5000) depended on the river for fishing, irrigation, prawn farming and other daily needs. The residents' claims of pollution had been confirmed by research conducted by the national Environmental Impact Agency and the Centre for Fisheries Research and Development.[94] Local residents, represented by the Organization of Ciujung River Users, in conjunction with the Indonesian Centre for Environmental Law (ICEL) initially approached the five industries directly as well as the Serang district government in an attempt to initiate a cooperative dispute resolution process. Whilst some limited negotiation was carried out with the smaller three of the five industries, the district government did not respond to the community's request and the attempt at initiating a comprehensive dispute resolution process failed.

Community representatives subsequently approached the national Environmental Impact Agency in January 1995, who undertook to prioritise the case and initiate a mediation process

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[90] Ibid., p69.

[91] Ibid., p71.

[92] This account is based on the following sources:;"Menabur Limbah Menuai Tanggung Jawab.";Yazid, "Ciujung River Pollution Case: Some Obstacles to Set up the Adr Mechanism in Indonesia.";Prihartono, "Kendala Dan Peluang Mendayagunakan Hukum Perdata Dan Hukum Acara Perdata Indonesia Dalam Kasus Indonesia".;Santosa and Yazid, "Kasus Pencemaran Sungai Ciujung." Jakarta, *Ciujung River*.and a compilation of newspaper clippings.

[93]The five factories were PT Indah Kiat Pulp and Paper, PT Cipta Paperia, PT Onward Paper Utama, PT Sekawan Maju Pesat and PT Picon Jaya all of which produced paper except the last which produced leather.- Jakarta, *Ciujung River*.

[94];Prihartono, "Kendala Dan Peluang Mendayagunakan Hukum Perdata Dan Hukum Acara Perdata Indonesia Dalam Kasus Indonesia", p4.;Jakarta, *Ciujung River*. "Menabur Limbah Menuai Tanggung Jawab," p7.

within a month.[95] The undertaking from the Environmental Agency also followed written requests by ICEL & LBH on behalf of the community that a mediation process be commenced pursuant to article 20.[96] Yet, despite a reported meeting with industry representatives, a mediation process did not eventuate and the national Environmental Agency appeared either unwilling or unable to take further action to this end. Representations were then undertaken by community and legal representatives to the West Java provincial and Serang District Government. The provincial government failed to answer the community's request whilst the Serang district government firmly refused to initiate a mediation process.[97] The only action undertaken by the Serang local government was to order the closure of PT Sekawan Maju Pesat, the smallest company amongst the suspected polluters. NGOs viewed this as an attempt to scapegoat the smaller company and thus appease public sentiment, whilst avoiding action against the large, politically well-connected companies.[98] Further approaches by community representatives to the five industries were also unsuccessful in initiating a mediation process towards resolution of the dispute. The failure of efforts to mediate the dispute prompted community representatives to initiate a class action suit on 14 August 1995, representing 5000 residents in the Ciujung River area.[99]

The lack of government support in this case appeared to be the most important factor in the failure of mediation efforts.[100] Whilst support for a cooperative dispute resolution process was initially promised by the national Environmental Impact Agency, this did not in fact materialise in any substantive sense. The provincial government (of West Java) also took no action in response to the community's complaints, whilst the Serang district government actively opposed a mediation process and challenged the community's claims of pollution. In the absence of government pressure to enforce environmental regulations or resolve their dispute, there was correspondingly little pressure or incentive on the industries responsible for the pollution to enter a mediation process.

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95 "Perlu Dibentuk Tim Terpadu Untuk Selesaikan Masalah Pencemaran Sungai Ciujung," *Kompas*, 17 January 1995.
96 Yazid, "Ciujung River Pollution Case: Some Obstacles to Set up the Adr Mechanism in Indonesia," p3.
97 "Menabur Limbah Menuai Tanggung Jawab."
98 "Tak Adil Jika Hanya Pt Smp Yang Ditindak," *Kompas*, 23 January 1995.
99 The case is discussed at page 67
100 "Menabur Limbah Menuai Tanggung Jawab," p2.

4.4.9 Samitex (Yogyakarta; 1995)[101]

In this case, Samitex, a large textile industry located on the outskirts of Yogyakarta, had caused noise pollution and contamination of ground water in the nearby village of Panggunghardjo, Bantul.[102] Residents affected by the pollution reported it to local officials and, via legal representatives, contacted the factory but received no reply. The pollution claims were then reported to the Yogyakarta Environmental Bureau Investigation Team and also publicized through a press conference. Research carried out by the Technical Bureau of Environmental Health (BTKL) subsequently confirmed the pollution. Following the failure of early negotiation efforts initiated by district officials the assistance of the provincial Yogyakarta Environmental Bureau Investigation Team was requested by local officials and the legal representatives of the community.[103] The Investigation Team met initially with community representatives separately to discuss the results of research into the pollution. Subsequently a series of meetings involving both industry and community representatives was commenced. Despite early denial of its culpability, the company eventually accepted responsibility for the pollution in the light of the evidence provided by the Environmental Bureau of Health. In the final agreement reached between the community and PT Samitex the company acknowledged the pollution, undertook to repair its waste management unit and moreover agreed to pay compensation, being the cost of installing drinking water facilities for the community. For its part, the community agreed not to take issue with the matter again as long as Samitex were to carry out its obligations.[104]

A noticeable aspect of this case was the effective support and facilitation of the mediation process by the provincial level Yogyakarta Environmental Bureau Investigation Team. Prior to the Team's intervention, PT Samitex had ignored approaches by the community and local district officials to enter a mediation process. The availability of scientific evidence confirming the residents' allegations of pollution was also an influential factor in the company's final decision to acknowledge its responsibility for the pollution and meet the residents' claims.

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[101] This account is based on the following sources:;Siti Megadianty Adam and Takdir Rahmadi, "Kasus Pt. Samitex," in *Mediasi Lingkungan Di Indonesia: Sebuah Pengalaman*, ed. Mas Achmad Santosa, Takdir Rahmadi, and Siti Megadianty Adam (Jakarta: ICEL, 1997).;Endra and Resa.

[102] Complaints by farmers over water pollution from the factory previously had led to the installation of a waste management unit. Adam and Rahmadi, "Kasus Pt. Samitex," p47.

[103] Endra and Resa.

[104] Adam and Rahmadi, "Kasus Pt. Samitex," p50.

4.4.10 Indoacidatama (Central Java; 1997)[105]

The PT Indo Acidatama Chemical Industry (PT IACI) was established in 1988 and located in Kemiri village, Karanganyar near the city of Solo (Surakarta) in Central Java. PT IACI is one of the five largest industries in Central Java known colloquially as the five "gods" (*dewa*) of industry due to their political and economic influence.[106] The PT IACI factory produces a number of base chemicals including ethanol, methylated spirits, *asam asetat, ethyl asetat*.[107] Waste products produced daily by the factory included solid waste from the fermentation process (2.5 ton), distilled liquid waste (500m3), waste water (40 ton), liquid condensate and CO2 (40 ton). Whilst a waste management unit was operated by the PT IACI factory, the capacity of the unit was insufficient to process all waste produced by the factory.[108] Data compiled by the Environmental Impact Agency of Central Java during 1998 indicated that waste discharged from the factory was well in excess of stipulated standards. Liquid waste was often disposed into the Sroyo River, which the residents of the nearby village of Kanten also utilised as a source of water for agriculture and their daily needs.[109] In 1991 PT IACI also offered waste water from its factory to the farmers of nearby Kanten, Ngelom and Ngeldok village for use on their fields as "liquid fertilizer". The 'liquid fertilizer' was piped from the factory to the fields where it was used for a period of 6 ½ years. Initially, agricultural output from the land increased, apparently due to the high nitrogen content of the effluent. However, after only three harvests the rice crop declined until it repeatedly failed. The soil hardened to the point where other crops could also no longer be successfully planted.[110]

In 1997 the pipe which distributed the liquid effluent to the fields was cut and blocked by a group of farmers. As a result of wider community concern over the environmental impact of the PT IACI factory, an environmental community organization was also formed (*Aksi Rakyat Peduli Lingkungan*) around this time. Other environmental issues besides the impact of the waste

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[105] This account is based on interviews and written materials gathered during fieldwork in 2001.
[106] Team Kritis, "Menggugat (Dewa) Perusak," *Kritis* I, no. 05 (1999).
[107] Approximately 18,000,000 L of ethanol, 12 million L of *asam asetat*, 4.5 million L of *ethyl asetat* and 1,26 million L of methylated spirits are produced annually from the factory. LBH-Semarang, "Diskripsi Kasus Pencemaran Limbah Pt Indo Acidatama," (Semarang: LBH Semarang, 1999).
[108] This fact was acknowledged by the factory itself in one of its environmental evaluations (PEL). Ibid.
[109] Farmers from Kanten village pumped water from the Sroyo River to irrigate two crops (usually rice and peanuts) in the year. Ibid.
[110] Bayan, 19 April 2001.

fertilizer included the offensive odour from the factory, the disposal of liquid waste into the Sroyo River and the dumping of solid waste in the area surrounding the factory. Due to increased community pressure a "team of 9" was formed to resolve environmental issues connected with the factory's operation. The team initially consisted of 3 industry representatives, 3 community representatives and 3 government (civil and military) representatives. However, due to considerable community opposition to the composition of the team this was changed to 3 industry representatives, 4 community representatives and 2 additional members considered neutral by both parties. The team's mandate included resolving the problem of odour from the factory and the payment of compensation to farmers whose land had been polluted by the use of the liquid waste fertilizer. The team of 9, however, failed to make satisfactory progress in resolving these issues. Undertakings by PT IACI to the team to reduce the odour were not met resulting in community demonstrations and threats to blockade the factory. The team of 9 also made little headway on the issue of compensation, prompting the farmers to pursue the matter independently.

The group of Kanten farmers subsequently decided to negotiate directly with PT IACI on the issue of compensation and requested the assistance of the Semarang Legal Aid Institute in doing so. In response the Semarang Institute together with the Indonesian Centre for Environmental Law (ICEL) facilitated a training in negotiation and advocacy for the farmers.[111] Following the training the Kanten farmers sent a letter to PT IACI and various government agencies, criticizing the industry's failure to resolve the issue of compensation for the environmental damage caused to the famers' land. A meeting between stakeholders including PT IACI, the farmers and the mediation 'team of 9' was held, but ended in the farmers staging a walkout due to the absence of PT IACI's director. Finally, following a further meeting and several demonstrations by community members, an agreement was reached providing for the payment of Rp 751 641 595 compensation (US$100,000) to the farmers.[112]

Whilst the final agreement was not intended to address all issues connected with the factory's operation, one visible shortcoming was its exclusive focus on the pecuniary matter of compensation and its failure to incorporate issues of environmental management or restoration. Although the agreement compensated farmers on their lost income due to failed crops, no provision was made for environmental restoration of the land. Other environmental issues

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[111] LBH-Semarang, "Diskripsi Kasus Pencemaran Limbah Pt Indo Acidatama."
[112] "Kesepakatan Bersama, Antara Kelompok Petani Dengan Pihak Management Pt Indo Acidatama," (1999).

connected with the factory's operation, such as air and water pollution were also not addressed and were reported to have continued following the agreement.[113] Nonetheless, the agreement still purported to be a "…final, comprehensive resolution" and thus a potential obstacle to further claims related to unresolved environmental issues.

4.4.11 PT Sumber Sehat (Kudus; 1999)[114]

This dispute involved a milk processing industry named "Sumber Sehat" (source of health) located in Kudus, Central Java. The factory was first established in 1948, at which time the area surrounding the factory was only sparsely populated. Over time, however, the factory was enveloped by the expanding city of Kudus, until it was eventually surrounded by a densely populated residential area. The dispute between the industry and residents adjoining the factory concerned waste from the industry's livestock, which had caused air and ground water pollution.[115] In 1994 negotiations were held between residents adjoining the factory and the industry. Whilst the negotiations failed to resolve the pollution issue, the industry management did undertake to install piped water to a local mosque. Yet when, due to the pollution of ground water, residents attempted to utilise this water for their personal needs the industry management insisted they pay for the service themselves.[116]

In 1999 legal representatives for the aggrieved neighbours of Sumber Sehat sent a written complaint to the Regent of Kudus requesting a mediation process be commenced to try and resolve the dispute.[117] In response, officials from the regional government's environmental agency agreed to facilitate a mediation process between the disputing parties. After several meetings, the parties were successful in finalising a written agreement, which was signed on 21 May 1999.[118] The agreement provided for the relocation of Sumber Sehat's factory within a period of 6 months. Before its relocation the industry was obliged to properly manage its waste to

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[113] Asianto and Waluyo, 27 February 2001.see also;"Dewan Desak Pt Iaci Segera Menangani Polusi Limbah," *Wawasan*, 3 February 2000.
[114] This account is based on fieldwork carried out in November 2000 including interviews and compilation of written materials.
[115] YAPHI et al.
[116] [, 1999 #795]
[117] [, 1999 #795]
[118] "Agreement to Resolve an Environmental Dispute between Residents of Demaan Village, Kudus and Cattle and Milk Processing Factory Pt Sumber Sehat," (1999).

avoid further pollution and to rehabilitate the factory site. The industry also undertook to provide two piped water outlets for local residents until the relocation had been carried out.[119]

This small scale dispute presents as a successful example of environmental mediation. The residents in this case were assisted by representation by a legal aid office, who conveyed the initial complaints to the Regent of Kudus. The amenability of the small industry to relocation appears to also have been critical to the success of dispute resolution. The terms of the agreement were subsequently implemented with residents being provided with piped water outlets as agreed. Ultimately, the factory closed its business and thus relocation was not necessary.[120]

4.4.12 PT Pura (Kudus; 1999)[121]

This dispute concerned pollution from PT Pura, the largest paper and printing factory in Southeast Asia, located near Kudus, Central Java. Waste discharged from the factory, which commenced operations in 1990, caused pollution and environmental damage in the nearby village of Pladen from 1992-1999.[122] Liquid waste from the factory damaged large areas of rice paddies, killed both fish in local waterways and livestock, contaminated residents' wells and resulted in a range of health complaints.[123] A statement by an official from the regional Environmental Agency confirmed that PT Pura's waste management had been inadequate during that period, and that untreated waste was frequently discharged particularly at night.[124] Residents' protests were stifled by intimidation prior to 1998 and were first openly voiced in demonstrations in July 1998.[125] On 10 June 1999 a claim for compensation of environmental damage and environmental rehabilitation was conveyed to PT Pura on behalf of 77 residents of Pladen village.[126] Residents claimed Rp 275,625,376 for damage caused by pollution occuring between 1992 and 1999 and, additionally, improved environmental management. An initial meeting with industry representatives in June 1999 resulted in assurances from PT Pura that its discharged

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[119] Kudus Warga RT 02/VII Desa Demaan and PT Sumber Sehat, "Perjanjian Kesepakatan Dalam Penyelesaian Sengketa Lingkungan," (1999).
[120] Bodroani.
[121] This account is based on fieldwork, including interviews and compilation of written materials, carried out in November 2000.
[122] YAPHI et al.
[123];"Korban Pencemaran Tuntut Rp 275,6 Juta," *Suara Merdeka*, 10 July 1999. "'Pabrik Uang' Dituntut Rp 1,48m," *Wawasan*, 29 July 1999.
[124] "Tak Mungkin 24 Jam Awasi Pencemaran," *Suara Merdeka*, 18 June 1999.
[125] "Gugat Pt Pnp Warga "Ancam"," *Jateng Pos*, 10 August 1999.
[126] "77 Warga Tuntut Pura Group," *Suara Merdeka*, 17 June 1999.

waste would satisfy regulatory standards within 2 months. Industry representatives also requested evidence of the pollution and resulting damage before considering the residents' claims for compensation.[127] In July 1999 the claim was extended to encompass a further 159 claimants, whilst the compensation claimed was increased to Rp 1.4 billion, an amount criticised by PT Pura as excessive and unsubstantiated.[128] After a stalemate of several months, negotiations recommenced between PT Pura and the Pladen claimants at the industry's instigation. A series of 10 meetings were held, chaired by the legal representatives for the Pladen residents.[129] Finally, in January 2000 an agreement was reached and signed by representatives of both parties. The agreement provided for payment of Rp 78 million compensation by PT Pura to the residents of Pladen village who had suffered environmental damage as a result of the pollution. The agreement also provided for a cooperative approach to environmental management, allowing for ongoing community monitoring of industry waste management practices.[130] According to subsequent accounts, environmental management remained adequate and no further conflict between the local community and PT Pura was reported.[131]

4.4.13 Kanasritex (Semarang; 1999)[132]

The dispute in this case centred on the disposal of liquid effluent from a textile factory, PT Kanasritex, located in Pringapus village near Semarang in Central Java. The PT Kanasritex factory, established in 1993, produced towels for export to over 50 different countries. The estimated liquid waste produced by the factory was approximately 800/m^3 per day.[133] Whilst the factory owned and claimed to operate a waste management unit[134], conflict arose in March 1999 over the lack of a permanent waste channel through which the high volumes of treated waste water could be disposed. According to the farmers, the factory's effluent had caused pollution in the surrounding fields and the consequent failure of rice harvests, in addition to damaging

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127 "Pt Pura Jamin Limbah Bebas Pencemaran," *Suara Merdeka*, 26 June 1999.
128 "'Pabrik Uang' Dituntut Rp 1,48m."
129 YAPHI et al.
130 "Perjanjian Bersama Tentang Upaya Bersama Pengelolaan Lingkungan Antara Pt. Pura Nusapersada Dan Warga Masyarakat Desa Pladen," (2000).
131 Bodroani.
132 Account based on "Kasus Kanasritex: "Catatan Perjuangan Petani"," (Semarang: Legal Aid Institute of Semarang, 2000).; Eddy Gunawan, "Persepsi Perusahaan Terhadap Masyarakat Lingkungan" (paper presented at the Seminar Nasional Yayasan Alumni Universitas Diponegoro, Universitas Semarang, 1999).
133 "Kasus Kanasritex: "Catatan Perjuangan Petani"."
134 Gunawan, "Persepsi Perusahaan Terhadap Masyarakat Lingkungan", p1.

adjoining roads. Eddy Gunawan, the manager of PT Kanasritex, denied the factory had caused pollution and emphasised that the factory had, since its inception, operated a state-of-the-art waste management unit and complied with regulatory waste standards. He did acknowledge, however, that the channel utilised by PT Kanasritex and other factories for the disposal of waste water tended to flood into adjoining rice paddies in periods of heavy rain.[135] Mr Gunawan attributed this to the regional government's failure to provide a permanent waste channel as was required in an industrial area.[136]

Some farmers had attempted to remedy the situation by building a wall blocking the factory's waste disposal into the adjoining rice paddies. However, this attempt failed, as the effluent was then disposed into a roadside ditch, and still entered the paddy fields when it rained. The group of farmers, assisted by one of their number who had followed a environmental para-legal training course and by the Legal Aid Institute of Semarang, then attempted to resolve the matter through a mediation process. The key demands of the farmers were that PT Kanasritex construct a permanent waste disposal channel, pay compensation for lost harvests, restore irrigation channels closed since the factory's construction and allow community monitoring of the factory's waste management.[137]

In an initial meeting between the industry, farmers and several government agencies, PT Kanasritex attributed the environmental damage to heavy rains and effluent discharged from other factories and refused the farmers' demands. The profile of the dispute was then raised by the farmers who appointed the Legal Aid Institute of Semarang as legal representatives and publicized the issue in the mass media. Reports of the pollution and related conflict in two national newspapers prompted responses from several government agencies. The National Environmental Impact Agency directed its provincial counterpart in Semarang to manage the dispute. The regional police contacted the farmers and Legal Aid Institute advising that the matter would be most appropriately managed through a process of investigation and, if necessary, prosecution.[138] The farmers subsequently met with the national Environmental Impact Agency, which agreed to support the request for construction of a permanent waste channel. Subsequently, on 12 April 1999, a meeting was convened between local and district government

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[135] Ibid., p3.
[136] Ibid., p4.
[137] "Kasus Kanasritex: "Catatan Perjuangan Petani"," p9.
[138] Ibid., p10.

officials, industry and community representatives to discuss the problem.[139] Somewhat unusually, the government officials present tended to support the community rather than industry position. The regional military representative stated that he had been instructed to resolve the dispute to prevent any further conflict in the volatile pre-election period. In principle, the industry then agreed to fulfil the community's demands, with the condition that compensation would only be paid if the community withdrew legal authority from the Semarang Legal Aid Institute. Ultimately compensation was not paid, but the community were satisfied that their other conditions, including the construction of a permanent waste channel, had been met at the factory's expense.[140]

The successful outcome of mediation in this case may be attributed to several factors. Effective community organisation, legal representation and widespread publicity of the dispute in the mass media appeared to influence the industry's response and strengthen the community's bargaining position. The community's demands for construction of a waste disposal channel were also supported in this case by government officials at both a national and regional level. The relatively limited scope of the dispute, which centred on the construction of a permanent channel for the disposal of waste water, also made it ultimately more amenable to a mediated solution.

4.4.14 Tawang Mas (Semarang; 2000)[141]

Tawang Mas is a village located in West Semarang, Central Java. The village economy was, before 1987 at least, largely based on fishing and traditional fishpond farming.[142] In 1985, the Central Java government announced the development of a large tourist park and conference centre. The project, which was to be located near Tawang Mas, was estimated to require some 108ha of land.[143] The land designated as a site for the project was home to a number of fishponds operated by residents of Tawang Mas. In 1985 the farmers were pressured into surrendering their land for rates well below the market value of the land. Opposition to the

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[139] Ibid., p14.
[140] Ibid., p15.
[141] This account is based on fieldwork, including interviews and compilation of written materials, carried out in November 2000
[142] The area was reknown in Central Java for its production of high quality *terasi*, a condiment made from pounded and fermented shrimp or small fish.
[143] In fact only 10ha of land were used for the development. The remainder of the land was sold to private developers who constructed two exclusive housing estates and a cinema complex. - kritis

development resulted in physical intimidation and threats.[144] A village cemetery of 2ha was also resumed by the developer on the pretext of construction of a road, yet the area was in fact utilised for a private housing estate. As development of the site commenced in 1985 all fishponds in the area were excavated regardless of whether the respective owners had in fact been compensated or not. The development works also resulted, without prior consultation with community, in the closure of the Tawang Mas River. Community leaders conveyed their complaints to the Interior Minister and the river was opened again subsequently. However, in 1987 the Tawang Mas River was again blocked off. This was justified as a temporary closure that was to last only 3 months. Access of fishermen during this time to the sea was cut off and compensation of only Rp 7000 was given to those fishermen whose vessels were stranded at sea for this three month period.[145] The Tawang Mas river was never in fact reopened in its original course but rather redirected to a western flood canal. Redirection of the river to the canal contributed to periodic, severe flooding in the area of Tawang Mas and the PRPP development itself. Local fishermen, numbering around 300, also lost their access to the ocean and, as a result, their livelihood.[146] Whilst opposition to the project had been voiced by residents of Tawang Mas, it was suppressed by physical intimidation and threats. The project enjoyed high level political support as the developer, PT Puri Sakti and PT Into Perkasa Usahatama (PT IPU), were both companies owned by Ganang Ismail, the son of the then Governor of Central Java HM Ismail.[147]

Yet, whilst intimidation had suppressed the dispute temporarily, it soon resurfaced following the fall of the New Order and the advent of *reformasi.* The more permissive political context had served to strengthen the aspirations of the villagers to resolve the dispute. In February 2000 the residents of Tawang Mas formed a community organisation – the Tawang Mas Communication Forum. This group, together with other community representatives, resolved to convey its complaints to the Semarang legislature. On 21 February 2000 a group 800 Tawang Mas residents, led by representatives of the Tawang Mas Communication Forum, presented a number

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[144] In 1986 one community leader was jailed without trial for a period of one year. Bagyo Nurchayo, "Dituduh Antek Pki, Penghasut, Dijebloskan Penjara," *Jateng Pos*, 29 March 2000.

[145] The vessels stranded at sea as a result of the river's temporary closure were subsequently damaged beyond repair as a result.

[146] *Hak Nelayan Tercabut* 25 March

[147] Bagyo Nurchayo, "Ganang Ismail Sumber Masalahnya," *Jateng Pos*, 28 March 2000. The project itself turned out to be something of a failure. The tourist park cum exhibition centre was constructed but rarely used. Over time it fell into disrepair due to its failure to generate sufficient income to cover maintenance costs – Nurcahyo, "Pemasukan Minim, Biaya Perawatan Tinggi," *Jateng Pos*, 8 February 2000.

of demands to the Semarang legislature.[148] Foremost amongst these was that the Tawang Mas River be returned to its original course to the sea. A group of fishermen also demanded compensation for damage to their vessels caused by closure of the river and lost income.[149] A representative member of the legislature promised to facilitate negotiations between the Tawang Mas residents and PT Indo Perkasa Usahatama (PT IPU) within three weeks.[150]

In the period April – June 2000 a legislative hearing and negotiation process was facilitated by members of the Commission A, Semarang legislature. The initial meeting was held on 13 April 2000 between representatives of the Tawang Mas Communication Forum, Semarang municipality officials, members of the legislature and industry representatives. Representatives of the Tawang Mas Communication Forum were not invited to a subsequent meeting held on 4 May, at which Tawang Mas residents were formally represented by the village head. After learning of this exclusion, Forum representatives protested to the legislature and were promised a meeting with legislative members on 16 May.[151] When this meeting did not eventuate a group of angry residents protested outside a cinema in Semarang, which had been built in the previous course of the Tawang Mas River. Protestors tore up paving outside the cinema and fought with police, resulting in the arrest of several protestors.[152] The incident was widely reported in regional newspapers, with several commentators empathising with the plight of the Tawang Mas residents, many of whom had suffered flooding and/or been deprived of a livelihood since the redirection of the river in 1987.[153] Shortly after the protests, following heavy rains, severe flooding was again experienced in the Tawang Mas and recreation park vicinity. Negotiations facilitated by Commission A of the Semarang legislature recommenced following the protests and renewed flooding. Industry representatives and legislative members subsequently acceded to community demands that the Tawang Mas River be returned to its original course, although this was made

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[148] "Tawang Mas: Tragedi Salah Urus Tata Ruang Kota," in *Kritis* (Legal Aid Institute of Semarang, 2000).

[149] The compensation amounts claimed were Rp 1 million for each vessel and lost income of Rp 10,000/day/person or a total of Rp 13,746 billion (US$1.8 billion). "Buntu Kaliku, Banjir Kampungku," *Suara Merdeka*, 22 February 2000.

[150] Ibid.

[151] H A Nasoha Makmun, "Komisi a Dprd Ii Melanjutkan Rapat Tuntutan Warga Tawang Mas Tanpa Menghadirkan Warga," (Forum Komunikasi Masyarakat Tawang Mas, 2000).

[152] "Warga Tawang Mas Ngamuk: Bioskop Dirusak, Polisi Babak Belur," *Kedaulatan Rakyat*, 17 May 2000.

[153] see;"Mengapa Mereka Marah," *Radar Semarang*, 18 May 2000. Eko Edi, "Kasus Tawang Mas, Luka Yang Lama Terpendam," *Wawasan*, 17 May 2000.

contingent upon a feasibility study by the Semarang Department of Public Works. Following its study, the Department recommended the installation of several pumping stations to temporarily alleviate flooding in the Tawang Mas area. It stated that redirection of the river would require further feasibility studies, considerable expense and would not necessarily solve the problems of flooding and erosion.[154] Community representatives, however, argued that the suggested measures would not solve the problem of flooding and insisted on the redirection of the Tawang Mas River to its original course. The lengthy and often volatile negotiations continued until on 14 June 2000 an agreement was finally reached between the parties.[155] According to the negotiated agreement, the Tawang Mas River would be returned to its original course. Implementation would be carried out by an integrated team of expert comprising including community, government and industry representatives. The team would address the various technical, financial, legal and social issues necessary for implementation of this task.[156] Whilst the agreement was a breakthrough in negotiations, doubt was cast on its implementation when PT IPU, the developer originally responsible for the river's redirection, reneged on its undertaking to return the river to its original course, refusing to join the expert team as agreed. A legislative member who had participated in the negotiations accused PT IPU of undermining the legislature's authority and threatened to report the company to the police.[157] Community representatives reacted with anger at the industry's refusal to implement the agreement, even threatening holy war (*jihad*) against the company should it fail to comply.[158] Finally, in the face of community and administrative pressure from the Mayor of Semarang, PT IPU acceded to joining the expert team in accordance with the agreement, although it indicated it should not be responsible for financing the project.[159] By mid-July a coordinator of the expert team, from the university Unika Soegijopranoto, had been appointed and discussions on the team's work commenced. Yet, by October 2000 no substantive progress toward implementing the proposed solution had been made. Frustrated with the lack of progress, community representatives reported the case to the Commission for Human Rights in November 2000 and in January 2001 the case was also reported to the President.

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154 "Dpu Akan Pasang Tiga Pompa," *Suara Merdeka*, 20 May 2000.
155 "Tawang Mas Akan Diluruskan," *Solopos*, 16 June 2000.
156 "Berita Acara Hasil Rapat Komisi "a" Dprd Kota Semarang," (2000).
157 "Dewan Merasa Dilecehkan Pt Ipu," *Solopos*, 23 June 2000.
158 "Meski Alot, Tim Terpadu Kasus Tawang Mas Terbentuk," *Wawasan*, 1 July 2000.

The Tawang Mas case is a complex dispute that probably could have been avoided if the original development had complied with environmental, spatial planning and consultation requirements in the first place. The mediation process in this case was unique in that it was conducted and facilitated by a commission of the regional (Semarang) legislature. The strong community pressure, large demonstrations and high media profile of this dispute certainly played an important role in initiating and expediting a mediation based dispute resolution process. However, the tangible threat of community violence also seemingly played a role in escalating the conflict, prompting criticism from some local legal commentators who feared threats of "mass action" could undermine the legal process.[160] The refusal of community representatives to consider any options other than redirection of the river also narrowed the potential scope of compromise in this case. Ultimately, however, agreement was reached on redirection of the river, an outcome apparently facilitated by support from the Semarang Mayor for this solution. The apparently successful outcome of mediation in this case, however, has not yet been realised through implementation, illustrating a common problem in environmental mediation cases in Indonesia.

4.4.15 Kelian Equatorial Mining (2001)[161]

The Kelian Equatorial Mine, located in Kalimantan, is 90% owned by Rio Tinto, the world's largest mining company. The mine, which commenced operations in 1992, is estimated to produce 14 ton of gold annually. The main waste product from the 'cyanide heap-leaching' mining process is contaminated tailings, which are held in a dam before being treated in a 'polishing pond' and then discharged into the Kelian River.[162] Whilst the company claims the discharged water complies with environmental regulations, locals allege pollution from the mine

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159 "Pengembang Diminta Segera Bentuk Tim Penyelesaian," *Wawasan*, 25 June 2000.
160 "Kaidah Hukum Perlu Diperhatikan, Jangan Asal 'Pokoke'," *Wawasan*, 20 June 2000.
161 This account is based on the following sources:;Lynch and Harwell, *Whose Resources? Whose Common Good?: Towards a New Paradigm of Environmental Justice and National Interest in Indonesia.*, p67-69.;Endi Biaro, "Kem: Cerita Di Balik Perundingan," *Gali-Gali* 2, no. September (2000).;Chalid Muhammed, "Penghianatan Rio Tinto Dan Kelian Equatorial Mining Terhadap Kesepakatan-Kesepakatannya Dengan Masyarakat Kelian," (Jaringan Advokasi Tambang, 2002).;Siti Maimunah, "Membongkar Paradigma Ganti-Rugi," *Gali-Gali* 4, no. 20 (2002).
162 Lynch and Harwell, *Whose Resources? Whose Common Good?: Towards a New Paradigm of Environmental Justice and National Interest in Indonesia.*, p67.

has killed off fish in the river and causes various health complaints when the water is used for everyday needs.[163]

Local opposition to the mine began not long after operations were commenced in 1992. Conflict between the local community and the mining company centred on issues relating to traditional mining, land compensation, human rights abuses and pollution. In 1997 the dispute first attracted widespread publicity after a report providing details of human rights abuses was submitted to the National Human Rights Commission.[164] In 1998 an international campaign against PT KEM and Rio Tinto was organised by a coalition of NGOs. A local community leader and outspoken critic of PT KEM, Pius Erik Nyompe, was invited to travel to Australia and publicise the community's case, where he also met with senior management of Rio Tinto in Melbourne. After this visit, and a presentation of community demands at the annual Rio Tinto shareholder meetings in London and Melbourne in 1998, PT KEM agreed to enter negotiations with the local community represented by the Institution for the Welfare of Mining Community and Environment (LKMTL), a local NGO. An agreement to mediate, to which Rio Tinto and the national environmental group WALHI were also party, was signed on 25 April 1998. The parties to the agreement agreed to address through negotiation a range of issues including land compensation, alleged human rights abuses, pollution, traditional mining and plans for the mine's closure.

Initial progress was evident after several mediation sessions. In June 1998 a preliminary agreement was reached regarding the issue of compensation for land used by PT KEM and a timetable stipulated for the agreement's implementation. In September 1998 the industry agreed to supply electricity to Tutung village where a number of locals had been relocated. In January 1999 the parties agreed to an independent investigation to be carried out into the alleged human rights abuses and PT KEM also undertook to seal a road leading to the mine site and so reduce the problem of air pollution caused by dust from the road.[165]

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[163];Ibid., p68.;Biaro, "Kem: Cerita Di Balik Perundingan.";Muhammed, "Penghianatan Rio Tinto Dan Kelian Equatorial Mining Terhadap Kesepakatan-Kesepakatannya Dengan Masyarakat Kelian." Kelian Equatorial Mining, "Compensation Issues - May 2003," (Kelian Equatorial Mining, 2003).

[164] Biaro, "Kem: Cerita Di Balik Perundingan."The report prompted a subsequent investigation by the Commission, which confirmed some human rights abuses had in fact occurred.

[165] Muhammed, "Penghianatan Rio Tinto Dan Kelian Equatorial Mining Terhadap Kesepakatan-Kesepakatannya Dengan Masyarakat Kelian."

By early 2000, however, progress in the mediation process had apparently stalled. Differences persisted over data relating to land compensation and the agreements relating to electricity and road improvement made in 1998 had still not been implemented. When PT KEM commenced negotiations with another group of community representatives[166] (called the *Tim Murni*) chosen and backed by the local district head, LKMTL accused the mining company of betraying the terms and spirit of the April 1998 agreement and attempting to divide the community.[167] According to LKMTL, PT KEM had originally agreed to negotiate with LKMTL as the sole community representative. On this basis LKMTL had subsequently obtained letters of authority (*surat kuasa*) from all community members who wished to claim compensation.[168] The industry also endeavoured to include the regional government in the mediation process, whilst community representatives claimed it was originally agreed not to do so. Community representatives (from LKMTL) subsequently criticised the Regent (of West Kutai), who they claimed had attempted to dominate mediation proceedings. As a result, the regional government refused to participate in negotiations with LKMTL, and instead proceeded in negotiations with the newly formed *Tim Murni*, which had the backing of the local district head.[169]

The failure to realise the agreements reached early in the mediation process and the escalating conflict over community representation prompted protests and a blockade of the PT KEM mine site in April 2000. The blockade persisted for a period of 3 months, resulting in the temporary closure of the mine during this period. Following the intervention of mediators in June 2000 the blockade was lifted and a mediation process between the various parties was recommenced. Besides KEM and LKMTL, the mediation process also involved the government of West Kutai, Rio Tinto Indonesia, the National Committee for Human Rights and an Australian Federal Court Judge (Marcus Einfield). Despite continuing differences over the involvement of the *Tim Murni*[170], a protocol was agreed upon in March 2001 and in September 2001 a Rp 60 billion

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[166] The group was called the "Tim Murni", (Pure Team) apparently in reference to the allegations of corruption levelled by PT KEM at LKMTL.

[167] Industry representatives accused LKTML of corruption and mismanagement. Maimunah, "Membongkar Paradigma Ganti-Rugi."

[168] Muhammed, "Penghianatan Rio Tinto Dan Kelian Equatorial Mining Terhadap Kesepakatan-Kesepakatannya Dengan Masyarakat Kelian," p9.

[169] Representatives of LKMTL alleged the *Tim Murni* was financially backed by PT KEM and a deliberate tactic to undermine LKMTL's position in negotiations. Ibid., p5.

[170] These differences led to WALHI's withdrawal from the negotiation process in October 2000, in protest over the company's allegedly divisive tactics which WALHI claimed were contrary to the terms and spirit of the original agreement.

compensation package was finalised by the parties.[171] The compensation payment related to land utilised by PT KEM in the course of its operations, damage to land along the access road, plants and grave sites, alleged promises by the company to provide houses and livelihoods and human rights violations.[172] By May 2003, PT KEM reported having already paid Rp 34.7 billion compensation in the period 2000-2003 for claims covered in the agreement.[173] The company had also reportedly implemented its previous commitments to provide electricity to Tutung village at a cost of Rp 2.5 billion and to seal sections of the road between the minesite and Jelemeq port at a cost of 14 billion.[174] In relation to pollution, the company had implemented what it described as a "stringent environmental management system to minimise the impact of its operations"[175] and there had been no further pollution related claims from local residents.

In the KEM dispute, the role of community and non-government organisations appears to have been significant in the dispute resolution process. Mediation was commenced after local residents' claims received national and international publicity. Representation and advocacy of residents' interests was coordinated during the mediation process by LKMTL, a local community organisation. The effects of the 3 month blockade, which adversely affected both PT KEM and local communities, also appears to have acted as a catalyst for compromise, resulting in the final settlement package that followed 3 months later. Implementation of the agreement has occurred to date, although this process is currently continuing.

4.5 Conclusion

This chapter has provided a preliminary overview of environmental mediation in Indonesia. As discussed above, existing traditions of *musyawarah* have provided a cultural foundation for the introduction and socialisation of mediation in Indonesia. The relevance of these traditions is limited in practice, however, as the social and political dynamics of environmental conflict varies significantly from the more circumscribed social context of *musyawarah* at the village level. Mediation in environmental disputes now has a legislative basis, however, found in art. 30-33 of

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171 Mining, "Compensation Issues - May 2003," p1.
172 Ibid., p2.
173 The compay had also made payments of compensation prior to 2000 (relating to similar issues) that totalled Rp 7.7 billion - Ibid.
174 Ibid.However, according to community representatives these two projects were both carried out several years later than was originally agreed. Muhammed, "Penghianatan Rio Tinto Dan Kelian Equatorial Mining Terhadap Kesepakatan-Kesepakatannya Dengan Masyarakat Kelian," p8.
175 Mining, "Compensation Issues - May 2003," p2.

the EMA 1997 and, more recently, Government Regulation No 54 of 2000. Under this new legal framework mediation is now a voluntary choice open to disputing parties and its implementation does not depend on either further implementing regulations or government investigation as was the case under the previous EMA of 1982.

How effective was mediation in resolving the environmental disputes surveyed in this chapter? In 13 of the 15 cases examined, the disputing parties were successful in concluding a written agreement as a basis for resolving the dispute. Yet whilst written agreements were reached between parties in a high percentage (87%) of cases reviewed this did not always result in resolution of the dispute in from a private or public interest perspective. In 9 of the cases reviewed (60%) compensation was paid by the polluting industry to the claimants that had suffered the effects of the pollution. Mediation thus appears to have been relatively effective as a means for obtaining compensation, especially when compared to the litigation cases surveyed in Chapter 2 where compensation payments were much less frequent. However, even where a written agreement was concluded and compensation was paid conflict between the disputing parties still continued in 7 of the 15 cases (47%). Similarly, mediation was not consistently effective in addressing issues of environmental management, as in 7 of the 15 cases (47%) examined there were reports of continuing pollution or unsatisfactory environmental rehabilitation. Whilst polluting industries in a majority of cases were willing to pay compensation to end the dispute this was not always matched by a commitment to improved environmental management or rehabilitation in the longer term. Indeed, the over-emphasis of environmental mediation on pecuniary remedies was noted by several environmentalists interviewed by the author.[176]

From this preliminary overview of environmental mediation cases, it is also possible to identify a number of key variables, which influence the outcome of the mediation process. Firstly, the role of NGOs in facilitating the process of community organisation, institutionalisation and representation before and during the mediation process appears significant. Typically, the victims of environmental pollution and damage are those communities with few social, economic or political resources. Initial responses from such communities to pollution are usually ad-hoc, poorly organised and mostly unsuccessful. Commonly, as occurred in the majority of cases discussed above, environmentally related claims are met initially with

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[176] Nugroho.

indifference, denials or intimidation from industry and government agencies. If a community is to proceed further, a high degree of community solidarity, institutionalisation and effective representation is necessary. Community representatives must in turn become skilled at lobbying a wide range of government agencies, negotiating with industry and utilizing the mass media to gain exposure and support for their case. In practice, most of these tasks are undertaken in conjunction with NGOs at the local, regional, national and occasionally even international level. The involvement of NGOs is thus usually of critical importance, from the community perspective, for a successful outcome to the environmental dispute resolution process. This was certainly the case in the *Tapak River* dispute where a national network of NGOs threatening a boycott action was a vital catalyst in the dispute resolution process. In the *Pura* and *Sumber Sehat* cases, residents were assisted by legal aid advocates in conveying their claims to industry and government agencies. In the *Indoacidatama* case, the farmers received an intensive training in advocacy and negotiation before successfully negotiating an agreement with the industry. Similarly, in the *Kanasritex* case the advocacy and mediation process was facilitated by a farmer who had completed an environmental para-legal training and the Legal Aid Institute of Semarang. In the *Kelian Equatorial Mining* case NGO advocacy at the local, national and international levels was significant in initiating mediation and influencing its final outcome. It is through such processes of mobilisation, representation and networking that the substantial power imbalance that usually exists between victim and polluter can be at least partially redressed, and the process of mediation and dispute resolution thus further facilitated.

In the mediation cases surveyed, the role of government agencies was also an important factor in influencing the outcome and success of environmental mediation. In this respect it is necessary to differentiate between government agencies at the national, provincial and district levels. At the national level the central Environmental Impact Agency provided important support for the mediation process in the *Sambong*, *Tembok Dukuh*, *Ciujung River, Siak River* and *Kanasritex* cases. At the provincial level support for the mediation process also appeared to be an important factor in facilitating a successful outcome in the *Sambong, Sibalec, Naga Mas, Samitex* and *Sumber Sehat* cases. Equally, where support for mediation was lacking at the provincial government level, the mediation process appeared much less likely to succeed. In the *Siak River* case, for example, the failure to involve the Riau provincial government contributed to the unsatisfactory implementation of the mediated agreement. District governments also displayed a greater tendency to support industry interests and demonstrated less support for the dispute

resolution process than the provincial or national level agencies. In the *Ciujung River* case a mediation process was not commenced due to a lack of support from the Serang district government. In the *Tembok Dukuh* case district officials supported a mediation process, but strongly pressured the claimants to accept settlement offers from industry. In the *Samitex* case district officials responded to the community's request for mediation, but were unsuccessful in convincing the industry, PT Samitex, to participate. In the *Tyfountex* case the Regent of Sukoharjo directly undermined the outcome of a mediation process by disbanding the organisation that had represented local residents. Where, however, the district government did support the dispute resolution process this was usually a significant factor in a successful outcome. For example, in the *Kanasritex* case the support of the district government for the community's claim was an important factor in the final agreement reached. Similarly, in the *Tawang Mas* case the support of the Semarang mayor for the community's claim to redirect the river was significant in bringing the industry to a final agreement.

Frequently, government authorities also acted as mediators in the dispute resolution process. In some cases, such as the *Naga Mas* dispute, both parties considered the government mediation satisfactory and sufficiently impartial. In other cases the seniority and status of the government official acting as mediator appeared to have a positive influence on the mediation process. For instance, in the *Tembok Dukuh* case the personal intervention by a senior official of the national Environmental Impact Agency as mediator was significant in facilitating a preliminary agreement. However, in other cases, such as the *Tembok Dukuh* dispute, government officials exerted strong pressure on community representatives to accept offers made by industry. In this respect, the implementation of Government Regulation No 54 of 2000 is of considerable relevance, as the provision of independent, qualified mediators may help to improve the quality and impartiality of environmental mediation in practice.

The process of mediation is a voluntary one and ultimately its success depends on the willingness of both parties to compromise in order to reach an agreement. As discussed in Chapter 1, a party is unlikely to be willing to compromise if that party is able to unilaterally achieve its aims. This is a recurrent problems in the practice of environmental mediation in Indonesia. A small community's claim for compensation or environmental restoration may pose little threat to a well-connected industry quite capable of continuing operations despite a community's opposition. In several of the cases reviewed above industries responded in a 'power-based' manner, seeking to 'resolve' the dispute by stonewalling, using government

influence or intimidation rather than through an interest-based mediation process. For example, in the *Tyfountex* case the industry appeared to use mediation only as a temporary tactic of appeasement, before resorting to intimidation and power politics to undermine the community's position. The more powerful party is only likely to compromise where this power imbalance is redressed and there is some threat of an alternative sanction. This may be the threat of direct action by community members, adverse publicity in the mass media, a blockade by NGOs or pressure from a government agency. This was particularly evident in the *Tapak River* case where the long-running problem of pollution was only addressed through mediation after an organised boycott of the companies threatened adverse publicity. In the *Naga Mas* dispute, widespread publicity of the pollution prompted more rapid government action in facilitating a mediation process. In the *Kelian Equatorial Mining* case an international campaign by NGOs and accompanying publicity was an important step in initiating a mediation process. The willingness of polluting industries to compromise will of course be influenced by the wider administrative and legal context. Where continuing pollution from an industry is unlikely to result in either administrative sanction or judicial enforcement of environmental law then the polluting industry will be under little pressure to modify its behaviour.

In those cases where sufficient incentive has existed for both parties to reach an agreement, subsequent implementation of the agreement in the longer term has still frequently proven to be a problem. In some cases mediation appears to have been utilised merely as a tool of appeasement, as in the *Tyfountex* case where two agreements were reached yet never implemented. In other cases implementation of environmental monitoring is only partial, as in the *Tapak River* and *Siak River* disputes for example. Typically demands of a more private or pecuniary nature, such as compensation or provision of drinking water, where agreed upon in a mediated agreement, tended to be implemented. More problematic was the public issue of pollution prevention and sustainability, which requires a continued commitment from industry in addition to governmental or industry monitoring. Yet to be truly successful as a path of environmental dispute resolution, mediation must address more than the private pecuniary interests of the parties involved and mechanisms to ensure adequate implementation must be created involving the participation of all stakeholders and invoking legal or administrative sanction where necessary. Thus, the implementation of mediated agreements is ultimately dependent on the efficacy and enforceability of legal and administrative sanctions for pollution and environmental damage.