Environmental Dispute Resolution in Indonesia

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5 Case Studies of Environmental Mediation

This chapter presents two detailed case studies of environmental mediation in Indonesia that are intended to complement the overview of cases provided in the previous chapter. In each case study the mediation processs is contextualised in the broader dynamics and circumstances of the dispute, which are explored in substantial detail. The efficacy of the mediation process is then considered in relation to the principles of mediation theory outlined in Chapter 1.

5.1 The Palur Raya Dispute

5.1.1 History of Dispute

PT Palur Raya is a factory that produces the food additive mono-sodium glutamate (MSG), located in the regency of Karanganyar in the province of Central Java. The factory, which commenced operations in 1987, adjoins the village of Ngringo, the residents of which still primarily pursue a livelihood of wet rice agriculture.[177] Some local residents are employed by the factory, although the majority of the workforce is drawn from outside Ngringo village. The residents of Ngringo first reported the effects of pollution from PT Palur Raya in 1992. According to reports from the community the environmental impact of the factory was severe and included the following:[178]

- Resident's wells of a previous depth of 2-3 metres were now unable to draw water above a depth of 20 metres.
- The agricultural output of the surrounding rice paddies had dropped to 40% of their previous output in an area of 14 hectares surrounding the factory. In a 1.5ha area surrounding the factory no crops were able to be planted.
- Discolouration of river water from liquid waste discharge and the death of fish in the river which had previously been a food source for residents.
- Poor air quality, including offensive odours and acrid smoke, in the area surrounding the factory.
- The leaching of chemicals from hazardous, solid waste disposed on the western side of the factory.

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[177] Sri Hardono and Widodo, 23 January 2001.
[178] KKL, "Berita Acara," (2000c).

Community representatives first voiced their opposition to the pollution in 1992 when a letter was sent to Post Box 5000 in Jakarta, complaining of the drop in the level of ground water and consequent failure of resident's wells subsequent to the factory's operation.[179] No solution to the ground water problem was forthcoming, however, and the residents were forced to use piped water for their everyday needs at their own expense. Demonstrations during this period also took place, in some cases prompting physical intimidation or repression by military or hired civilian thugs.[180]

In October 1998 a group of five residents conveyed a claim to PT Palur Raya relating to the impact of pollution and the loss of ground water. The complaints of the residents were also communicated to, and subsequently reported in, a local newspaper, the Solo Post. In the article the residents claimed that their rice harvest had declined from 10 tonnes per hectare to 2.5 ton per hectare. Furthermore, the quality of the rice produced was inferior to that of healthy rice, a situation that had been allegedly endured by residents for more than 10 years. The complaints of the residents were also conveyed to a range of government agencies at the local, provincial and national levels. Yet, other than physical intimidation of residents by third parties, no concrete action was taken by either industry or government agencies to resolve these environmental problems.[181]

5.1.2 Negotiation

Several representatives of the community subsequently formed a 'Team of 9' to represent community interests to PT Palur Raya and monitor the environmental impact of the factory's operations. In December 1998 discussions were held with representatives of PT Palur Raya and agreement reached that the Team of 9 would participate in the process of waste management and environmental restoration. Regular meetings between the Team and factory management were to be held and a medical clinic established to monitor the health of local residents. A formal agreement of cooperation was signed by the community representatives and PT Palur Raya and witnessed by the Regent (*Bupati*) of Karanganyar. The agreement stated that the cooperation between the industry and the community would encompass the following activities:

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[179] Pencemaran Pt Palur Raya. "Post Box 5000" was a general purpose location to which complaints could be addressed to the government.

[180] Hardono and Widodo.

[181] "Sejarah Berdirinya Team Sembilan Dan Perjuangan Terhadap Keseriusan Pt. Palur Raya Untuk Masalah Penanggulangan Cemaran Limbah," (KKL, 1999), p2.

- environmental audit
- improvement of waste water treatment
- employment of experts in environment and community health (with a priority also of employing residents from the adjoining areas in waste management efforts)
- creation of local health facilities (polyclinic).
- the preparation of a section of land to test the penetration of waste and monitor pollution levels.
- facilitate community development through creation of community meeting hall.
- regular meetings between community representatives and industry.

In the subsequent implementation phase, however, differences over implementation of this cooperative approach to environmental management emerged, leading to further conflict. According to community representatives, frequent attempts were reportedly made to either intimidate or, more frequently, bribe community leaders in a bid to maintain the status quo.[182] The agreement was subsequently repudiated by the Team of 9, who felt the industry was no longer willing to allow them to participate in the environmental audit process. Community representatives also condemned the industry's alleged use of 'money politics'.[183] By May 1999 the disillusioned members of the Team of 9 disbanded and community advocacy on the issue of Palur Raya's pollution lapsed.

5.1.3 Community Organisation

In May 2000, a year after the breakdown of the negotiated agreement with PT Palur Raya, community representatives held a series of meetings with several local NGOs to discuss possible responses and solutions to the problems of pollution experienced by the surrounding community.[184] Subsequently, attention was directed toward raising awareness of environmental issues and assisting community leaders to form a new environmental advocacy group: the Consortium of Waste Victims (*Konsorsium Korban Limbah or KKL*). The Consortium, which comprised of eleven active members drawn from the Ngringo community and NGO workers,

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[182] The leaders of the Team 9 at the time stated they were offered Rp 5 million/month as 'peace money' (*uang damai*). Hardono and Widodo.

[183] KKL, "Berita Acara."

[184] The local NGOs involved in the dispute were: Elpamas, LPTP, Studi Penelitian Lingkungan/SPL, Merah Putih, Lumut all of which were based in the nearby city of Solo (Surakarta). Mutakin, 23 January 2001.

became a vehicle for the advocacy of environmental and residents' interests related to the dispute with PT Palur Raya.[185] From its formation *KKL* was proactive in its advocacy of community and environmental interests and made frequent use of a variety of advocacy techniques, including press releases, lobbying and demonstrations. With the participation of various NGOs the group was also well resourced, having access to legal and environmental technical expertise. The cohesion of the group was also assisted by its authoritative leader, a policeman by profession and an influential local religious leader.

One obstacle in the dispute resolution process were divisions in the Ngringo community between residents employed by the factory and those whose livelihood was threatened by the factory's pollution. Conflict was also exacerbated by the industry's strategy of winning support amongst the community through gifts, monetary payments or offering positions of employment.[186] The fact that the official village head (*kepala desa*) had tended to side with the factory also caused some division of leadership in the Ngringo community.[187] Despite this, community support for the advocacy of KKL remained relatively high within the community and a fairly high level of community solidarity remained throughout the process of the dispute resolution.

Partly because of environmental education carried out by NGOs, the community representatives were convinced of the necessity of an environmental rather than a monetary solution. Whilst the community did seek compensation for past environmental damage, this did not displace their primary concern of environmental restoration and prevention of further pollution by the factory. As a result, frequent resort by the industry to "money politics" did little to undermine community opposition to the factory's pollution. As one NGO worker involved with the community observed,

> Other environmental cases are often resolved with money. But I think this case will be different. The community aren't going to stop at compensation. They are determined to resolve the environmental problems at stake.[188]

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[185] Ibid.
[186] Tri, 9 February 2000.
[187] Mutakin.
[188] Mutakin, 11 January 2000.

5.1.4 Mediation Process

Following the Ngringo community's reorganisation and renewed advocacy, a process of negotiation with PT Palur Raya was recommenced on 14 May 2000, in which community representatives conveyed the following demands[189]:

- cease air pollution including smoke and offensive odour from factory within 3 months;
- cease pollution of water including groundwater, well water and irrigation water within 3 months;
- undertake environmental rehabilitation of already damaged land and wells within 1 month;
- pay compensation to residents affected by pollution;
- allow residents to undertake monitoring of industry;

Negotiations continued during the latter part of May 2000 when a series of fractious meetings were held between KKL and PT Palur Raya. To the disappointment of community representatives the meetings failed to produce any concrete result other than an informal agreement on the main environmental issues involved. At this time PT Palur Raya showed little inclination to compromise, as had been the case in the past.

However, it was at this time the industry received an administrative warning from the Karanganyar Environmental Impact Agency. The Head of the Agency recalled,

> On May 12, we told the factory to take a number of steps to clean up the environment. In response the industry promised to repair the waste management unit to an operational level, install a reception tank for solid waste, examine effluent outlets once every 3 months, work on improving relations with the community and undergo a general environmental audit. But the industry was too slow. The community lost its patience and started demonstrating. This was the impetus for the mediation process.

The profile of the Palur Raya dispute was further raised as demonstrations against the factory received publicity in the mass media. Subsequent to this, an administrative directive was issued from the National Environment Minister, Dr Sonny Keraf, to the Environmental Impact Agency of Central Java requesting resolution of the Palur Raya dispute via a mediation process. The mediation process was to involve all stakeholders, namely government agencies, community

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[189] KKL, "Pernyataan Sikap: Hentikan Pencemaran Sekarang Juga," (2000d).

representatives, NGOs, parliamentary representatives and the industry itself. Prompted by the ministerial directive, the Karanganyar Environmental Impact Agency assumed a more active role in facilitating, although not mediating, the dispute resolution process. With the consent of all parties a third party mediator was agreed upon, Mr Goenawan Wibisono, the head of local NGO focussed on environmental issues and social development.

In the mediation process that followed, Wibisono's role as mediator was described favourably by a number of observers. In the words of one participant,

> His role was to bring the interests of the community, industry and the government together. He was quite independent and didn't side with anyone.[190]

Whilst lacking prior experience in mediation, Wibisono adopted an effective approach in promoting compromise and focusing on the key interests of both parties,

> This was my first time as a mediator, but I've been involved in environmental issues for a long time. I don't even know if you'd call this mediation or not. It doesn't really matter to me. I just wanted to avoid anyone feeling like they had won or lost. The principle I suggested at the beginning was that the industry not be closed as long as the community and the environment were not harmed.[191]

In the first mediation meeting between all stakeholders representatives of both the army and police were also present. The mediator, however, discouraged this,

> I told them that this was a civil problem not a military problem. I said it shouldn't involve them and asked them not to come again.

In subsequent sessions government participation was limited to representatives from the Karanganyar environmental agency, whilst a member of the local parliament who lived near the factory also participated in the mediation process. The environmental agency representatives took a more passive role during mediation, with what comments they did make tending to support industry interests.[192] Nonetheless, on several occasions governmental representatives endeavoured to bring both sides to resolution on a number of critical issues, such as the matter of

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[190] Mutakin.
[191] Goenawan Wibisono, 19 April 2001.
[192] Ibid.

implementation time.[193] A primary concern of the agency, as made evident by a number of statements made in mediation, was to avoid escalation of the conflict into possible violence or broader social discord.[194]

PT Palur Raya's initial intransigence was maintained as the previous deadlock dragged on for a further four meetings. According to the mediator, one obstacle was the legalistic and adversarial approach taken by the legal representative for PT Palur Raya.

> The industry used a lawyer which became a problem. He didn't understand environmental issues and just had a "profit-loss" perspective. And he'd always stick to the law, whereas this was mediation. In the end, it was a weakness for them. [195]

However, in the meantime the community were able to gain leverage in the negotiations and ultimately in the fifth session an agreement on the resolution of the dispute was reached. Various theories were expressed by participants for the success of the mediation process in reaching agreement. The outspoken leader of the Consortium of Waste Victims, Sri Hardono, emphasised the role of community pressure and threats of mass action.

> The agreement was reached because of our tactical strategy. I told them I would bring 7000 people to the street and we would close off their outlets or even burn their factory. Palur Raya had been brave to begin with but they soon were scared to death.[196]

Other observers confirmed Hardono's comments in this respect,

> The community pressure on the company was aggressive, even bordering on anarchy. Threats were made to burn the factory. The atmosphere of the negotiations was tense.[197]

Whilst the overt threats and community pressure in the mediation was significant, other observers emphasised the considerable witness and documentary evidence, confirming that PT Palur Raya had in fact been polluting for some years at the expense of both the environment and the local community.

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[193] The industry wanted 2 years for implementation whereas the community wanted 1 month. Eventually the agreement stipulated 3 months for the Independent Team's investigation and 3 months for implementation of its resolutions. Mutakin.
[194] Ibid.
[195] Wibisono.
[196] Hardono and Widodo.
[197] Wibisono.

> The facts of pollution couldn't be ignored – the colour of the river water, the stench in the air, the effluent discharged to the rice paddies...all of this caused much social unrest. These things couldn't be denied. I think it was this that pushed PT Palur Raya into compromise in the end.[198]

An alternative theory presented by another participant in the mediation process attributed the factory's 'capitulation' to other reasons:

> To begin with the factory's attitude was that they weren't in the wrong. They talked about how much they paid in taxes to the government and how many workers they employed. They said they were domestically owned (*Pemilik Modal Dalam Negeri*). But in fact this turned out to be false. The company actually was foreign owned (*Pemilik Modal Asing*) – which meant they should be paying higher taxes and wages and its permits should be different. We got this information from a friend in the Central Environmental Impact Agency and once they (the company) knew we knew, they felt defeated. At that point the company acknowledged all its faults and wrongdoing.[199]

Other informants, whilst confirming the existence of such suspicions as to the company's legal status, did not seem certain that it had influenced the final outcome of the mediation process.

5.1.5 Mediated Agreement

One of the most striking aspects of the agreement reached by the two parties was the comprehensive acknowledgement that pollution and environmental damage of water, ground and air had occurred in the vicinity of the factory, as a result of by waste produced, stored or discharged to the environment by PT Palur Raya. The pollution and environmental damage in question was, according to the agreement, caused by:

- liquid waste exceeding stipulated limits;
- unprocessed solid waste;
- poisonous gases;
- exploitation of shallow and deep ground water.

The agreement signed by the two parties went on to state that such pollution could not be tolerated from an ethical, ecological or legal perspective and had furthermore damaged both

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[198] Goenawan Wibisono, 12 February 2001.
[199] Mutakin.

residents and the environment at large. Consequently, both parties had agreed to resolve the dispute at hand, via mediation and legalisation of the agreement.[200]

In addition to stipulating the nature of the pollution the agreement between the parties promised the "total cessation of pollution and environmental damage resulting from waste produced, stored or discharged by PT Palur Raya." To this end articles 1-3 of the agreement required that PT Palur Raya cease pollution of air (offensive odour and poisonous gases/smoke) and of water (river, ground water, wells and irrigated rice fields) respectively, whilst complying with stipulated waste parameters. The agreement stipulated the further guarantee that "the interests of the community not ... be compromised, whether their right to a healthy environment or their material interests." Accordingly, the agreement, in article 4, made provision for environmental rehabilitation of land damaged by polluting activities, whilst article 5 required PT Palur Raya to pay compensation (material or immaterial) to residents who had suffered loss as a result of the pollution or environmental damage.

On the issue of implementation, the agreement made relatively detailed provision. Article 7 required PT Palur Raya to cease all polluting activities in compliance with articles 1-3 within 90 days of the signing of the agreement. Implementation of environmental rehabilitation (art.4) and compensation (art. 5) was to be facilitated by an Independent Team of experts. The Team would be appointed by both parties, paid by PT Palur Raya and be required to finish its work within 60 days of the agreement's execution (art.10). The decision of the Team in relation to these issues was to be absolute and binding. Some inconsistencies were evident in the implementation schedule, for example art.5 required compensation to be paid within 30 days whilst this was also a matter referred to the Independent Team within a longer time frame. Similarly, article 9 provided for the creation of a "working team" consisting of industry and community representatives to assist with implementation whilst this task was also assigned to the Independent Team pursuant to article 10. Finally, the agreement made provision for a number of sanctions that would apply in the event that PT Palur Raya transgressed the provisions mentioned above. Sanctions stipulated in the agreement included a range of fines, a publicised apology by PT Palur Raya to the community (in the event of continuing pollution) and, where transgression of the agreement continued, an obligatory relocation of the factory premises.

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[200] Legalisation in this respect meant authorisation of the agreement by a public notary.

5.1.6 Independent Team Investigation

As discussed above, the matter of implementation was at first dealt with in the Agreement itself, which specified a number of implementation "deadlines". Pollution was to cease within a period of 90 days from the signing of the agreement. Environmental rehabilitation was to be carried out within a time period specified by the Independent Team, whilst compensation was to be paid to the Ngringo community within a period of 30 days. Finally, sanctions would apply in the event that these and other provisions were not complied with. Whilst sufficiently specific and enforceable on paper, in practice these implementation deadlines were for the most part disregarded due to the involvement of the Independent Team, which became the practical focus of the dispute resolution process following the signing of the written agreement.

As discussed above the initial mandate of the Independent Team, as provided in Article 10, was that of assisting with the implementation of environmental rehabilitation and compensation. In a subsequent addendum agreed to by the Ngringo community, PT Palur Raya management and Karanganyar Environmental Agency this mandate was widened considerably to encompass:

1. Carrying out an environmental audit.
2. Calculating an appropriate level of compensation
3. Recommending an appropriate model for environmental recovery to PT Palur Raya.
4. Carrying out further actions as considered important and necessary for preserving the environment.

Finally, in the work proposal formulated by the Team Members themselves and subsequently approved by both parties the duties and objectives of the Team's investigation were further detailed:

a. Verify the existence of pollution and/or environmental damage
b. Assess the extent of such pollution and/or environmental damage
c. Locate sources of pollution
d. Calculate compensation
e. Make recommendations for implementation of environmentally friendly industry and community development.

This widened mandate was probably reflective of the significance that most parties placed on the participation of the Independent Team in this case. In the words of the Chief Officer of the Karanganyar Environmental Impact Agency,

> This is a new model of environmental dispute resolution. It's different from other cases. It will be based on objective scientific research, not subjective factors. It will tackle the actual

> environmental issues, rather than just giving a peppermint [paying compensation].[201]

Other interviewees echoed his confidence in the "scientific" nature of the dispute resolution process due to the involvement of the academically qualified Independent Team of researchers. Clearly, the involvement of an independent "fact-finding" team was intended by the parties to clarify the environmental issues at stake and to provide a sound scientific basis for implementing a comprehensive solution to the dispute at hand. Nonetheless, some participants also considered strategic considerations to have influenced the decision to appoint the Independent Team.

> The industry representatives argued 'if we are accused of pollution, it must be proven.' Although they acknowledged as much in the agreement, they still wanted evidence to show the extent. For their part the community didn't want to "sell" their environmental case [ie. only take compensation] and were happy for the environmental issues to be clarified by experts. Perhaps this was a trick by industry so they could repair their waste management unit before the tests were carried out.[202]

The composition of the Team was to be decided jointly by the two parties, with each appointing 3 members to form a total of 6. The three industry appointed researchers, from the Centre for Environmental Studies at the University of Gadjah Mada, examined issues of ecology (water and air quality), land/agricultural productivity and community health respectively.[203] The three community appointed researchers examined issues of hydrology, environmental law, and environmental economics respectively.[204] The Team was given 60 days in which to complete its duties and report back to the parties involved. The research of the Independent Team was carried out over a period of several months, in the latter half of 2000. The final results and report of the Independent Team were presented in early March 2001.

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[201] Hartono, 11 January 2001.
[202] Wibisono.
[203] Note that PT Palur Raya did not individually appoint each researcher but rather requested the Centre for Environmental Studies provide three researchers with suitable qualifications. The three industry appointed researchers were Dr Eko Sugiharto (Ecology/Air & Water Quality); Dr Rachman Sutanto (Land & Agriculture); Dr Doeljahman Moeljoharjo (Community Health)
[204] The three community appointed researchers were Dr Setyo Sarwanto Moersidik (Hydrology); Environmental Law (Mr Heru Setyadi); Environmental Economics (Mr Nugroho Widiarto).

5.1.7 Results of Independent Team Investigation

5.1.7.1 Ecology (Air & Water Quality): Dr Eko Sugiharto

Dr Eko Sugiharto was one of the researchers from the Centre for Environmental Studies at Gadjah Mada University, Yogyakarta appointed to the Independent Team by PT Palur Raya. Dr Sugiharto examined water and air quality in the vicinity of the factory location. Tests of residents' well water did not confirm pollution. Samples from the Ngringo River were in excess of regulatory parameters, however PT Palur Raya was considered to be only one possible source for this decline in water quality. Tests of factory effluent produced ambiguous results with one sample of effluent discharged during the day satisfying stipulated parameters, a second sample taken at night was not returned from the laboratory, whilst a third sample was seemingly the result of a possible pipe leak and was greatly in excess of stipulated parameters. The method of sampling adopted by Dr Sugiharto was the subject of criticism by community representatives who argued that more frequent testing of factory effluent was necessary to obtain accurate results. Community reports also indicated that the majority of effluent was discharged from the factory at night, and criticized the failure of Dr Sugiharto's research to satisfactorily examine this.[205] Gas emissions from the factory reportedly did not exceed stipulated parameters although may have been the source of unpleasant odours at times. Recommendations made by Dr Sugiharto included improved operation of the waste management unit to ensure future compliance with regulatory standards and additional treatment of gases emitted during the waste management process.

5.1.7.2 Land & Agriculture – Dr Rachman Sutanto

Another industry appointed researcher from Gadjah Mada University, Dr Sutanto found no evidence of chemical contamination or pollution of the agricultural land in the vicinity of the factory. Contrary to community claims, his research did not support a relationship between the decline in agricultural output and waste disposed from the factory. Damage that had occurred to newly planted rice seedlings was attributed to unusually high nitrogen levels in the soil. In fact Dr Sutanto considered that waste effluent from the factory could be potentially beneficial for crops as tests demonstrated the effluent to hold higher levels of beneficial micro-organisms.

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[205] An official from the district Environmental Impact Agency recounted "The factory still disposes of waste at night, usually between 10pm – 3.30am. The waste is like a torrent of black, foaming liquid. From the Independent Team only Dr Setio (Moersidik – a community appointed member) witnessed this." Tri.

Where waste water was used from the factory to irrigate fields it would be unnecessary for farmers to further fertilize their crops due to the high nitrogen levels of the waste water.[206]

5.1.7.3 Community Health – Dr Doeljahman Moeljoharjo

The third industry appointed researcher examined the area of community health, confirming Dr Sugiharto's conclusion that residents' wells had not been polluted. Clinical examinations indicated that some subjects (26.91%) to suffer from breathing disorders, a possible cause of which was polluting gases from PT Palur Ray, although the evidence was not conclusive in this respect. There were no reported cases of sickness or death due to pollution at the local health clinics. Recommendations by Dr Moeljoharjo were general in nature, including the further improvement and continued monitoring of the waste management unit, continued monitoring of residents' health by local clinics and future cooperation between factory and residents to maintain environmental health standards.

5.1.7.4 Hydrology – Dr Setyo Sarwanto Moersidik

One of the community appointed researchers, Dr Moersidik's research focussed on hydrology and the use of ground water by the factory. Research results confirmed the unauthorised use of ground water in excess of the factory's permit causing a drop in the overall level of ground water by 7-10 metres and confirming the community's claims in this respect. The factory's actual use of water was calculated at 4000m3/day from 7 bores whereas the factory's permit allowed for only 700m3/day from 4 bores. In light of these findings, Dr Moersidik recommended the review of PT Palur Raya's licence for the use of ground water. Compensation was also recommended for residents adversely affected by the reduction in ground water levels. Further testing indicated that the volume of liquid waste produced by the factory exceeded the capacity of the waste management unit (by approximately 540m3/day), resulting in the discharge of untreated waste from the factory via a concealed bypass outlet. Again, discharge of untreated waste via a bypass outlet had been alleged by the community previously, and this point was seemingly confirmed by research in this case. Surprisingly, the existence of such an outlet was not discussed in the research presented by Dr Sugiharto, although one sample of untreated waste effluent greatly in excess of stipulated levels was recorded. On the matter of liquid waste disposal, Dr Moersidik

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[206] There appears to be some inconsistency in these findings which commend high nitrogen levels in waste water as potentially beneficial for agricultural purposes yet also note that excessive levels of nitrogen had caused damage to newly planted rice seedlings.

recommended a reduction in water intake to ensure the capacity of the waste management unit was not exceeded, in conjunction with the closure of the concealed waste outlet pipe.

Further research included a review of previous effluent tests from the factory during the period 1994-2000, which indicated frequent contravention of regulatory levels.[207] Despite recent improvements to the waste management unit, significant fluctuations in waste effluent constituents exceeding stipulated levels, especially from effluent discharged between 10pm and 4am, were still evident. This latter point confirmed community claims that untreated waste was discharged at night into the Ngringo River, a practice common amongst industries in Java, and lent more emphatic support to community allegations of water pollution. The findings of Dr Moersidik also confirmed the conclusion by Dr Sugiharto that "…at certain times liquid waste still exceeded standard regulated threshold limits."

Contrary to Dr Sutanto's research, Dr Moersidik also considered that heavy metal pollution had occurred from solid waste stored in a location adjoining the factory and accordingly recommended review of this potentially hazardous storage facility. Again in contrast to Dr Sutanto, Dr Moersidik cautioned against the use of liquid waste as fertilizer, recommending examination of the waste liquid fertilizer's potential environmental impact and compliance with relevant regulations.

5.1.7.5 Environmental Law – Mr Heru Setyadi

One of the three community appointed researchers, Mr Setyadi's research examined PT Palur Raya's compliance with a range of environmental legislation and regulations. The research concluded that PT Palur Raya had contravened numerous environmental legal obligations relating to management of liquid waste, solid waste, extraction of ground water and production/sale of liquid fertilizer. As a result the company was liable to incur administrative sanctions and legally obliged to pay compensation to residents who had been adversely affected by illegal or improper waste disposal. Mr Setyadi made a number of recommendations including repair of the waste management system, implementation of a process of 'environmental recovery' through cooperation between industry, community and government agencies, closure of unauthorised sources of ground water and further monitoring of ground water levels. Mr Setyadi further recommended payment of compensation by PT Palur Raya in accordance with the agreement and

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[207] Of tests reviewed 50% indicated excessive BOD levels, 15% excessive COD levels and 26% excessive TSS levels.

an environmental impact analysis and review of licensing for liquid waste fertilizer, preceded by a temporary cessation of fertilizer production & sales.

5.1.7.6 Environmental Economics – Mr Nugroho Widiarto

The third community appointed member of the Independent Team examined the issue of compensation from the perspective of environmental economics. Compensation was calculated on the basis of research carried out by other members of the team regarding the nature and extent of pollution. In the areas of ecology (air/water quality); land & agriculture and community health there was no conclusive evidence of pollution and hence no compensation was payable. Research in the areas of hydrology and environmental law, however, confirmed liquid waste pollution and illegal exploitation of ground water for which compensation could be calculated. Given much of the economic data required was not provided by the company, compensation was assessed on a rights basis (what should be paid) rather than a means basis (what the company actually could pay). In total the recommended compensation payment figure was Rp 7,299,569,706 (approx. US$973,000), comprising[208]:

- Liquid Waste Pollution (Environmental Damages) Rp 6,700,529,706
- Ground Water (unpaid tax) Rp 157,248,000
- Ground Water (Environmental Damages) Rp 441,792,000
- Total Compensation: Rp 7,299,569,706

The most visible achievement of the Independent Team's investigation, which spanned a period of some 6 months, was its compilation of a large body of scientific data on the environmental issues, which lay at the core of the dispute between PT Palur Raya and the Ngringo community. Nonetheless, a number of disadvantages of the Independent Team's involvement in this case were also apparent. Firstly, the purpose of the Team's investigation seemed to shift over time from implementation of rehabilitation and compensation (according to original agreement) to data collection and verification of pollution claims. This, in effect, prolonged the dispute resolution process by re-opening issues previously settled between the

[208] Dr Moersidik notes that, as much economic data was not provided by the company, compensation was assessed on a rights basis (what should be paid) rather than a means basis (what the company actually could pay). "Research Report of Independent Team Re Palur Raya," (Karanganyar: 2001), p137.

parties – in this case the matter of pollution and environmental damage.[209] The reopening of decided issues and "surrendering" of the dispute resolution process to a panel of experts was, moreover, disempowering for the community given the concessions it had previously secured in the Agreement. During the period in which the Team was carrying out its research there was considerable anxiety amongst the community as to whether the Team would in fact conclude there was pollution and recommend suitable remedies. The Team in effect became an expert "judge and jury" rather than a technical advisory body on implementation as was originally envisaged.

The failure of the Independent Team to adequately address the matter of implementation was also evident in its final report, which failed to provide a detailed framework or timetable to properly facilitate the implementation process. The recommendations made by the majority of researchers were mostly general or vague in nature, for example recommendations requiring 'improvement of the waste management unit' or a "process of environmental recovery". Furthermore, the important matter of a timetable for implementing key strategies was not addressed in the Team's report.

Thirdly, the value of the data collected by the Independent Team was compromised to a considerable extent by the presence of significant ambiguities and contradictions between the conclusions of individual researchers. Conflicting opinions were evident on a number of issues. For example, Dr Sutanto considered liquid waste discharged from PT Palur Raya to be of potential benefit for agriculture, whilst Dr Moersidik concluded such waste frequently exceeded regulatory limits and could potentially cause a decline in the quality of agricultural land. Similarly, whilst Dr Sugiharto considered PT Palur Raya only "one possible source" of a decline in river water quality, Mr Setiyadi concluded that the factory would be legally liable for damage caused to farmers who had used the polluted waters for irrigating rice fields and suffered crop failure or decline as a result. Whereas the research of Dr Moersidik indicated solid waste containing hazardous levels of heavy metals had resulted in contamination of the storage site and nearby land, research conducted by Dr Sutanto found no evidence of chemical contamination. Thus, whilst the Independent Team's report presented a wealth of data on the disputed issues, it also produced significant ambiguities and contradictions in research results which would most

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[209] See, for instance, the mediated agreement discussed above which explicitly recognised that "...pollution and environmental damage has occurred in the location of PT Palur Raya, caused by waste produced, stored or discharged into the environment by PT Palur Raya."

likely only fuel further dispute between the parties. The report's potential to generate further dispute was also exacerbated by the discernable division in research results between those researchers appointed by the community and those appointed by the industry. Of the three industry appointed researchers, none found conclusive evidence of pollution, whereas of the three community appointed researchers, two found clear evidence of environmental damage and or pollution whilst the third awarded a record level of compensation for such damage on the basis of such conclusions.

The considerable variance in the Team's research results, conclusions and recommendations highlights the ambiguity that may be present in scientific data, which may be caused by a number of factors. In this case, the diversity of research areas and methodologies may have increased the probability of variance in final results. The limited time span of some of the research may also account for some individual variances – most of the field tests by researchers were carried out only over a period of one or two months in 2000. In contrast, document based research, such as that carried out by Mr Heru Setiayadi and Dr Moersidik, covered the period dating back to the factory's operation. The ambiguous results of the investigation also raise the problematic issue of research independence and accountability. Whilst in this case three researchers were appointed by both the community and industry respectively, the costs of the research were paid solely by PT Palur Raya. Such an arrangement, whilst advocated by the community itself, also gave rise to some apprehension that the industry would be in a position to try to influence the research outcomes, although no evidence was presented that this had in fact occurred.

5.1.8 Implementation of Agreement & Team's Recommendation

The final report of the Independent Team was presented in March 2001. Despite its original mandate of implementation as outlined in the agreement, the Team ultimately focussed its efforts mostly on data collection. Whilst specific recommendations were made by the researchers, the mechanisms or timetable for the implementation of these recommendations was not stipulated. Furthermore, the considerable variance in research results and recommendations appeared to create grounds for further conflict, which could potentially obstruct implementation of the original agreement.

Further conflict was in fact what followed the presentation of the Independent Team's investigation. The report received a favourable response from the Ngringo community, with

representatives quickly forming a new 'Implementing Committee' to facilitate implementation of the report's recommendations concerning compensation, waste monitoring, community health monitoring and ongoing compliance with environmental regulations. A less enthusiastic response, however, was forthcoming from representatives of PT Palur Raya, who rejected the Team's conclusions and refused to implement their recommendations. An arbitration process was suggested by several parties but ultimately not initiated. Representatives of the Ngringo community subsequent reported the case to the Karanganyar Police Department, alleging the industry's criminal liability for breaches of environmental law. In July lawyers for PT Palur Raya lodged a civil suit against the Independent Team in the District Court of Yogyakarta, challenging the results of the Team's investigation. In a rather farcical end to this phase of dispute resolution, the District Court of Yogyakarta upheld the claim of the PT Palur Raya, declaring that the results of the Independent Team were invalid and could not be used as a basis for resolving the dispute.[210] Accordingly, the Rp 7.3 billion compensation recommended in the Independent Team's report was also deemed invalid and disallowed. The decision of the court seems a strange one, which involved second guessing qualified experts in an area clearly outside the court's expertise. It is also unclear from the decision what grounds the court had for declaring that the report of the Independent Team was an action contrary to law (*perbuatan melawan hukum*). The only action taken by the Independent Team was to investigate and report on allegations of pollution in accordance with their instructions. Even if there was room for scientific differences over the Team's results, this was surely not grounds for declaring the actions of the Team contrary to law.

5.1.9 Mediation Recommenced

As little prospect of resolution appeared likely at the local level, representatives of the Ngringo community travelled to Jakarta to meet the Environment Minister, Nabiel Makarim. The Minister indicated his willingness to personally mediate the high profile dispute and subsequently met, accompanied by two senior officials, with industry and community representatives in Karanganyar on 19 January 2002. The mediation process proved to be quite lengthy and protracted, with a substantial part of the mediation carried out with each party separately.[211]

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[210] "Pn Yogya Kabulkan Gugatan Palur Raya," *Suara Merdeka*, 14 October 2002.
[211] Widodo Sambodo, 6 June 2003.

Eventually the mediators were successful in guiding the parties to an interim agreement, which encompassed the following principles[212]:

- That PT Palur Raya should comply with regulatory standards on waste emissions
- That monitoring of waste management be carried out by a team coordinated by the Environmental Ministry
- PT Palur Raya would carry out a program of community development as defined by an independent third party after consultation with both parties
- That both parties would discontinue their respective legal actions.

The legal actions commenced by either party were subsequently discontinued. Community representatives, however, expressed dissatisfaction with Palur Raya's implementation of improved waste management and on 29 March 2002 around 200 community members blocked the factory's outlet pipes to the river.[213] Following this incident, and in accordance with the previous interim agreement of January 2002, a second meeting was arranged by the Environment Minister to resolve the issue of a payment to the community.[214] A further agreement, dated 1 April 2002, was the result of this mediation process. In this agreement, Palur Raya undertook to pay an amount of Rp 1.1 billion (termed a contribution rather than compensation) to the Dekoro community and to improve relations with the community through appointment of a 'Communicator' and creation of a cooperative forum. The agreement stipulated that the funds of Rp 1.1 billion would be paid in three instalments: Rp 400,000 in April 2002; Rp 400,000 in August 2002 and Rp 300,000 in December 2002. In addition the industry would comply with regulatory standards and both parties would discontinue any legal actions as stated in the original January agreement. The agreement, widely publicised in the local and national press, was witnessed by the Bupati of Karanganyar and the National Environment Minister and legalised by a notary to give it force of a binding contract. Pursuant to the agreement, community representatives established a preliminary communication forum for the purpose of improving

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212 "Hasil Kesepakatan Mediasi Antara Pt. Palur Raya Di Karanganyar Dengan Konsorsium Korban Limbah (Kkl) Desa Ngringo," (2002).
213 "Kronologi Proses Mediasi Dan Advokasi Penyelesaian Sengketa Lingkungan Antara Masyarakat Desa Ngringo Dengan Pt. Palur Raya," (Ngringo: Konsorsium Korban Limbah PT. Palur Raya, 2002), p1.
214 "Kesepakatan Penyelesaian Sengketa Lingkungan Antara Pt. Palur Raya Dengan Masyarakat Desa Ngringo Yang Diwakili Oleh Konsorsium Korban Limbah," (2002).

relations with PT Palur Raya and a ceremonial event was planned for 30 April 2002 in which the first instalment of the industry funds would be paid to the community.

Ultimately, however, payment of the funds was frustrated once again by a failure to implement the agreement as stipulated. Whilst the community had formed a "Team of 12" to receive and administer the funds in conjunction with other community leaders, in fact the planned ceremony for payment of the first instalment in late April 2002 did not occur. Community reports also indicated that pollution was still continuing and that the civil action of PT Palur Raya against the Independent Team still had not been discontinued.[215] Subsequently, a further meeting was held between industry and community representatives concerning the use and distribution of the funds. It was agreed the funds would be used for environmental rehabilitation and community development purposes. The more precise use of the funds would be determined by a *musyawarah* (negotiation) process between the "Team of 12" and other community leaders.

However, payment as agreed still did not occur. Correspondence from industry representatives to the Environmental Ministry indicated instead the industry's intention to determine the use and application of the funds itself. PT Palur Raya stated that Rp 600,000 would be used to build a community meeting & sports building, for which contractors had previously submitted tenders. The remaining Rp 500,000 would be reserved for the purchase of the necessary equipment and furnishings for the building's operation.[216] Community representatives objected to imposition of this condition, which had not been part of the negotiated agreement. Conflict over the matter created a division in the Ngringo community, between those, including the local village head (*kepala desa*), wanting to receive the payment regardless and those (led by KKL) who wished to refuse the payment if its disbursement was controlled in such a manner by PT Palur Raya.[217]

On 17 June 2002 a publicised meeting of all stakeholders was held at a hotel in Solo. Participants at the meeting included the national Environment Minister and senior Ministry officials, Karanganyar police and prosecutors, the Chief Justice of Karanganyar, district environmental officials and other district government officials. At the meeting the Minister emphasised that the role of the Ministry had already been discharged through its facilitation of the 1 April 2002

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[215] "Kronologis Kasus Pt. Palur Raya," (KKL, 2002), p3.
[216] Pemberitahuan Hasil Pertemuan.
[217] This conflict was apparently exacerbated by industry attempts to 'buy support' among the local community. – Sambodo.

agreement between the parties. Implementation of the agreement was a technical issue to be resolved between the two parties and if agreement was not possible on this issue then the parties should proceed to court. Any further action of the Ministry in relation to PT Palur Raya or this dispute would be toward ensuring proper implementation of EMA 1997. Later that day a group of Ngringo residents again blocked the waste outlet pipes of PT Palur Raya in protest at the industry's failure to implement the agreement.[218] In July 2002 an investigation into PT Palur Raya' compliance with environmental regulations was commenced by the Karanganyar police assisted by a team from the national environmental ministry and Karanganyar environmental officials. The police investigation was, however, subsequently discontinued. An attempt by the national Environment Ministry's team to carry out waste sampling at PT Palur Raya was refused by the industry on the grounds that decentralisation laws had transferred legal authority over environmental supervision from national to regional governments.[219]

In April 2003 a series of meetings were held between the Governor and Vice-Governor of Central Java, the head of the provincial environmental impact agency, the head of the Karanganyar district environmental agency, PT Palur Raya management and Ngringo community representatives. The meetings were intended to facilitate implementation of the previous agreement. Following this, a payment of Rp 600 million (US$80,000) was finally made by Palur Raya to the Ngringo community. This was supplemented by a Rp 500 million (US$66,000) payment from the regional government. The money was distributed to those village members whose wells had dried up or rice fields had been polluted by liquid waste from the factory.[220] The remainder of the Rp 1,1 billion pledged by the industry, an amount of Rp 500 million, was reserved by the industry for the construction of the community building. The remaining money still has not been disbursed to date, as some community representatives are still opposed to the building's construction. Nonetheless, since the payment was made conflict with the local community appears to have subsided and no further demonstrations or actions have occurred. [221] From the perspective of environmental management, local residents have reported a general decrease in pollution levels from the factory. A new waste management unit has been reportedly

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[218] "Pt Palur Raya Ingkari Kesepakatan, Warga Tutup Saluran Limbah," *Kompas*, 18 June 2002.
[219] "Kronologis Kasus Pt. Palur Raya," p5.
[220] Sri Hardono, 18 November 2003.
[221] Ibid.

effective in preventing offensive odours from the factory. Rice paddies in the factories' vicinity are also useable once again, although the rice is apparently of an inferior quality.

5.1.10 Conclusion

The Palur Raya illustrates the potential complexity of environmental dispute resolution, encompassing as it did four distinct dispute resolution processes. The first attempt at dispute resolution was through negotiation, commenced in 1998 between PT Palur Raya and a "Team of 9" representing the Ngringo community. Negotiation initially appeared successful, resulting in a detailed agreement covering matters such as environmental management and community development. Cooperation between community and industry representatives broke down, however, and the agreement failed in the implementation phase. Dispute resolution recommenced in June 2000 with a mediation process mediated by an independent third party, Gunawan Wibisono. Like the negotiation process preceding it, mediation in this case at least succeeded in producing a detailed agreement between the parties. The agreement was also the basis for the third process of dispute resolution, a fact-finding investigation by the "Independent Team". Whilst the Independent Team produced a wealth of data, its ambiguous report generated further conflict between the parties including civil and criminal lawsuits. The fourth and final attempt at dispute resolution was the mediation process most recently initiated by the national Environment Minister, Nabiel Makarim. This most recent attempt at mediation was successful in producing a written agreement and, after some problems with implementation, a compensatory payment from the industry to the local Ngringo community.

The outcome of the lengthy and protracted process of dispute resolution in this dispute has thus been mixed. In terms of the private interests of the Ngringo community, PT Palur Raya finally undertook to make a payment of Rp 1.1 billion, characterised as a contribution toward community development rather than as compensation. In itself this was a significant concession from the perspective of the community, obtained after years of advocacy and several attempts at dispute settlement. Part of the funds (Rp 600 million) has now been disbursed, whilst the remainder of the funds has been retained for the construction of a promised community facility, in a manner contrary to the original agreement. The fact that at least some of the payment has actually been made seems to have dissipated further conflict between the industry and the Ngringo community.

From an environmental perspective, the outcome of the dispute resolution process has also been mixed. In the original mediated agreement between the Ngringo community and PT Palur Raya, the industry acknowledged its operation had caused pollution, which it agreed to cease in addition to undertaking environmental rehabilitation. The subsequent Independent Team investigation appeared to further confuse the matter, with some researchers confirming pollution claims whilst others found no evidence of pollution. In the final mediated agreement PT Palur Raya undertook once again to comply with regulatory standards relating to waste management. According to the agreement, waste monitoring would also be carried out by a team coordinated by the Environmental Ministry. Thus ultimately some provision for the prevention of further pollution was forthcoming from the dispute resolution process. However, implementation of these provisions has also been inadequate. Despite the industry's agreement that the Environmental Ministry could conduct waste monitoring it recently refused access to a team from the Ministry on the grounds that it did not possess the legal authority to do so. According to community reports pollution has also continued, prompting a group of Ngringo residents to block PT Palur Raya's waste outlet pipe for the second time on 17 June 2002. Recent community reports tend to indicate a general decrease in pollution levels, however. Offensive odours from the factory, which were previously a common occurrence, are now prevented by an improvement in the factory's waste management procedures. The storage facility for solid waste from the factory has been moved, preventing further leakage of chemicals into nearby rice fields. Rice fields in close proximity to the factory have also been successfully planted again, although the quality of the rice is apparently less than average.[222]

The progress that was made toward dispute resolution in this case was facilitated by several factors including skilful mediation, which, on more than one occasion was critical in enabling the disputing parties to overcome their differences. This was first evident in the formal mediation process commenced in June 2000. The outcome of that process was effectively facilitated by a capable mediator with considerable experience in environmental issues. Importantly, the mediator was acceptable to both parties from the outset and was able to remain sufficiently neutral during the dispute resolution process to successfully facilitate agreement between the parties. When disagreements re-emerged between the parties following the report of the Independent Team, intervention of a mediator was again significant in bringing the parties once

[222] Ibid.

again to agreement. In the January-April 2002 mediation process, the Environmental Minister himself acted as mediator. According to a senior official from the Minister, the personal intervention of the minister in this capacity was critical in influencing the management of PT Palur Raya to make a payment of the size it eventually did.[223] An series of meetings mediated by the Governor of Central Java in April 2003 also was succesful in facilitating implementation of the previous agreement.

The commencement of a mediation process on several occasions and the respective outcomes of these processes were also strongly influenced by the high level of community organisation and mobilisation in this case. Community organisation was facilitated by the active participation of a number of NGOs who assisted community representatives in clarifying issues, objectives, strategies and formulating a detailed advocacy strategy. An institutional forum, the Consortium of Waste Victims (KKL), provided a vehicle for the community's environmental advocacy. Implementation of various advocacy initiatives then followed, encompassing press releases, demonstrations, written complaints and delegations to both government agencies and industry. The advocacy campaign undertaken by community representatives and local NGOs was successful in raising the profile of the case, ultimately prompting the intervention of the national environment Minister, Dr A Sonny Keraf, and facilitating the start of the first mediation process.

Effective community organisation enabled community representatives to apply sustained public pressure on PT Palur Raya at several critical points in the dispute resolution process. The effect of community or public pressure was amplified in this case by two main factors, being the level of media exposure and the threat of direct action. The profile of the dispute was initially raised in May 2000 by KKL, whose claims were publicised in the regional and national press. This high level of media exposure was maintained and utilised by KKL during the course of the dispute resolution process. The threat of direct action was also utilised by community representatives on several occasions, and more recently actions to close factory outlets were carried out.

The threat of community direct action against the factory was arguably magnified in this case by the wider political context. Before the dissolution of the New Order in 1998, opposition to the factory's polluting activities had been relatively muted and, as in the case of many environmental disputes at the time, often the subject of physical repression by the state security apparatus.

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[223] Sambodo.

However, with the fall of Suharto, the advent of *reformasi* and the consequent decline in military influence, community opposition to pollution had strengthened and become more overt. The widespread rioting and civil disorder that accompanied the fall of Suharto, particularly in the Solo area where this dispute was located, contributed to an apprehension expressed by several observers of potential 'mob violence' or 'anarchy' in the event the dispute was not resolved. This apprehension was heightened to an extent in this case, due to the potential for the environmental dispute to escalate into a racial or religious dispute, given the Indonesian-Chinese ethnicity of the factory owners. The mediator in this case gave voice to these concerns,

> My worry is that this environmental conflict will become a racial or religious conflict. We must not let this happen. It was this that pushed me to become involved.[224]

The threat of community action, disorder or violence may thus have increased the motivation of PT Palur Raya to participate in mediation, if only as a temporary appeasement of community sentiment. However, from the community's perspective, representatives did also emphasise that their intention was not to threaten violence or engender social anarchy. In fact, during the course of the May 1998 riots local residents claimed to have cooperated with factory workers to protect the factory site from damage by rioters.[225] When waste outlet pipes of PT Palur Raya were blocked on two occasions in 2002, community representatives also stressed that the action was limited in nature and was intended as a protest rather than an attempt to encourage social disorder or anarchy.[226]

Another interesting aspect of this case is the somewhat ambiguous role played by scientific evidence in the dispute. According to the mediated agreement of 2000 the parties appointed an independent fact-finding team to clarify the nature and extent of the pollution and to enable it to determine the appropriate level of compensation and environmental rehabilitation. As discussed above, a number of the parties expressed their optimism in this "scientific" and "objective" approach to dispute resolution. Ultimately, however, the scientific research carried out by the Independent Team, whilst comprehensive, did not facilitate resolution of the dispute. The marked

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[224] Wibisono.
[225] "Sejarah Berdirinya Team Sembilan Dan Perjuangan Terhadap Keseriusan Pt. Palur Raya Untuk Masalah Penanggulangan Cemaran Limbah."
[226] Penyampaian Laporan Hasil Pertemuan Bapak Menteri Negara Lingkungan Hidup Tentang Kasus Pt. Palur Raya Di Surakarta Tanggal 17 Juni 2002.

division in results between the industry and community appointed researchers only exacerbated further conflict between the parties. Similarly, the notably high level of compensation recommended by one researcher prompted rejection of the report by PT Palur Raya and the further breakdown in relations between the parties. The case demonstrates the difficulty, which may surround clarification of key factual matters in environmental disputes. Whilst clarification of such matters is often an important step in the dispute resolution process, it will not resolve the dispute of itself. Ultimately, resolution depends not upon scientific research but rather on the willingness of the parties to compromise and reach agreement.

The role of government agencies in this case was also particularly significant in facilitating and guiding the dispute resolution process. At the local level, the Environmental Agency of Karanganyar put PT Palur Raya at one stage issued an administrative warning to the factory to improve its environmental management, but otherwise seemed to lack the influence to facilitate resolution of the broader dispute with the Ngringo community. The intervention of the Environmental Minister, Dr Sonny Keraf, appeared to strengthen the commitment of all parties to resolving the dispute and acted as an important catalyst for the dispute resolution process. The importance of high-level administrative support for the dispute settlement process was also evident in the more recent intervention by the Environment Minister, Nabiel Makarim, as mediator. His seniority and status added authority to the dispute resolution process and successfully motivated compromise between the parties.

The personal intervention of the Central Java Governor was also significant in facilitating implementation of the April 2002 agreement, particularly the promised payment to the Ngringo community.

Whilst the personal intervention of the Environment Minister certainly rescued the failing mediation process, and facilitated further agreement, implementation of the agreement still proved to be a problem. Indeed, implementation failure has been a repetitive theme in the course of this dispute. In 1998, the parties were successful in concluding an agreement through negotiation. However, the agreement was never implemented and conflict between the parties quickly re-emerged. The subsequent mediated agreement of 2000 was implemented only to the extent that an investigation by an Independent Team was initiated. Yet, the final report of the Independent Team itself was never implemented as required and was challenged by PT Palur Raya through the courts. With the most recent agreement of 1 April 2002, implementation again proved to be a problem at least initially. After further high level government pressure from the

Governor of Central Java, PT Palur Raya has disbursed at least a part of the agreed sum. A significant part of the agreed payment, however, has been retained for the construction of a community building, contrary to the original agreement. The agreement also required ongoing monitoring of the industry's waste management practices, coordinated by the Environmental Ministry. Yet, a team of investigators from the national Environment Ministry was recently refused access to the factory on legal grounds. Thus, the willingness of PT Palur Raya to enter mediation and conclude mediation agreements has often been accompanied by failure to actually implement those agreements. The fact that satisfactory implementation has failed to occur on several occasions in this case suggests the manipulation of mediation processes more to appease community opposition than to achieve a genuine position of compromise. In this case, PT Palur Raya's failure to implement mediated agreements also seems to have been facilitated by the inability of environmental agencies, including those at a national level, to effectively enforce environmental regulations. The threat of both civil and criminal judicial proceedings also seems to have been insufficient to compel the industry's compliance.[227] Thus, whilst mediation may indeed offer an alternative to administrative and judicial enforcement of environmental law, its effectiveness depends on the presence of prospective administrative or judicial sanctions, which provide an important incentive for polluters to comply with the terms of mediated agreements.

5.2 The Kayu Lapis Indonesia Dispute

5.2.1 History of the Dispute

PT Kayu Lapis Indonesia (KLI) is a large wood-processing factory located near Semarang, Central Java. The factory produces plywood, blockboard, sawn timber and sawdust.[228] The considerable output of the factory, which employs over seven thousand workers, is exported to Europe, USA, Japan, Hongkong, China and Korea.[229] Construction of the factory premises, which currently cover some 100ha of land, commenced in 1976 and was completed around 1987.

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[227] A recent criminal investigation by the Karanganyar police was discontinued as discussed above. In July 2002, community representatives indicated their intention to commence civil proceedings against the company.

[228] Besides its primary products, the factory also produces side products of formaldehyde, urea formaldehyde and melamine formaldehyde. Environmental Division LBHS, "Gugatan Dari Pesisir Pantura (Tragedi Perusakan Pantai Oleh Pt.Kli)," (Semarang: LBHS, 2001).

The raw materials for the factory's production are supplied from logging concessions controlled by the Kayu Lapis Indonesia Group which totalling some 3,5 million ha, reportedly the largest area of logging concessions held by one single entity in Indonesia.[230] Colloquially, KLI is known as one of the untouchable 'three gods' (*tiga dewa*) of industry in Central Java, holding immense political and economic influence.[231]

In the early 1990s, an environmental dispute (or rather disputes) emerged between PT KLI and several neighbouring communities of traditional fishpond farmers (*petani tambak*). Four neighbouring communities – Wonorejo, Mororejo (both in Kendal Regency), Mangunharjo and Mangkang Wetan (both in Semarang municipality) claimed to have been adversely affected by environmental damage attributable to KLI. The damage suffered by the fishpond farmers in Wonorejo, Mangunharjo and Mangkang Wetan was of a similar nature, consisting of erosion and flooding of a number of fishponds. In Mangunharjo and Mangkang Wetan the area of damaged or submerged fishponds amounted to some 110 ha, whilst in Wonorejo some 76ha of fishponds were affected.[232] The environmental damage suffered by these communities was attributed to a number of developments undertaken by KLI. Foremost in this respect was the factory's redirection of the Wakak River. In 1987, as a result of flooding in a nearby area the government agency responsible for irrigation in West Semarang *(Pemimpin Proyek Irigasi Semarang Barat/PISB)* entered into a cooperative agreement with KLI to 'normalise' the Wakak River so that it wouldn't flood. Following negotiation, the agreement provided for the river's course to be altered within a maximum limit of 100metres from the SE corner of KLI's property. However, in transgression of the agreement and in the absence of the necessary government permits, KLI redirected the river some 90 degrees, thus enabling it to create a log pond where the previous mouth of the river had been. The redirected river was merged with the adjacent Plumbon River, finally entering the ocean some 1,6 kilometres from its original mouth. The fish and prawn ponds of the Mangunharjo farmers lie adjacent to the mouth of the Plumbon and redirected Wakak river.

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[229] On average production levels consist of plywood (1,440,000 m3/day); blackboard (230,000m3/day); sawn timber (166,667m3/day). Ibid.

[230] Suara Pembaharuan, 31 July 1998 cited in Ibid. In 1999 KLI still held 94 concessions three of which had been closed on grounds of corruption. Franz Pagono, "Profil (Sang Dewa) Pt Kli," *Ozon*, no. Januari (2000).Much of the wood supply used by KLI is reputedly sourced from illegal logging including logs with a diameter less than 40cm and a size below 4m. Pagono, "Profil (Sang Dewa) Pt Kli."

[231] ICEL, "Laporan on Site Training," (Semarang: ICEL, 1999).

Some 53ha of the farmers' ponds have been flooded and submerged allegedly due to this redirection of the Wakak River.[233]

KLI's actions in redirecting the river without proper authorisation did not go unnoticed by administrative authorities. In a letter to KLI dated 6 December 1989 the Regent (*Bupati*) of Kendal stated that the redirection of the river had adversely affected the interests of neighbouring communities by obstructing the river's function in containing flooding and resulting in the inundation of neighbouring fishponds.[234] Administrative sanction on the matter was also forthcoming from the Governor of Central Java who, in a letter dated 28 February 1990 gave a strong warning (*peringatan keras*) to KLI. No further administrative action of a more substantive nature was, however, taken against KLI.[235]

Redirection of the Wakak River enabled KLI to construct a log pond which served as a port and storage area for wood shipped from its logging concessions. Maintenance of the log pond, however, required considerable sand dredging, which was carried out by KLI without proper licence, in order to maintain the depth of the pond and allow boats to enter. The removal of large quantities of sand has reportedly caused shifts in sand dunes in nearby areas, and the lowering in height of sand embankments bordering the ocean. Consequently, the sand embankments no longer offered adequate protection from ocean waves which created further damage to the embankments and flooded the fish ponds. The log pond itself is the site for the unloading of logs from barges which, according to the community, number some 5-6/day. This unauthorised traffic and unloading of barges is cited as another reason for the increased erosion of the coast and embankment protecting the farmers' ponds.[236]

The flooding and erosion caused by the Wakak River's redirection and maintenance of the log pond was worsened by further development undertaken by KLI in 1987. This development consisted of the reclamation of some 500m of land from the sea, for the construction of additional

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[232] The claims of the Wonorejo farmers only emerged in the late 1990s whereas the claims of the Mangunharjo and Mangkang Wetan fishpond farming communities date to 1989. It is the claims, and their attempted resolution, of the latter two communities that form the subject of this case study.

[233] Research has confirmed that redirection of the Wakak River by KLI was a key cause of the erosion and submersion of the fishponds – see Sutrisno Anggoro and Slamet Hargono, "Kerusakan Pantai Mangunharjo & Mororejo: Faktor Penyebab & Alternatif Penanggulangannya," (Semarang: UNDIP), p6-7.

[234] ICEL, "Analisa Hukum: Kasus Perusakan Pantai Akibat Kegiatan Pt Kli," (ICEL, 2000).

[235] Ibid.

[236] Queries have also been raised concerning the legal status of much of the wood which passes through this informal, unauthorised port and is not subject to the usual permits, examination etc - LBHS, "Gugatan Dari Pesisir Pantura (Tragedi Perusakan Pantai Oleh Pt.Kli)."

factory units. An Environmental Study (*Studi Evaluasi Lingkungan*) conducted on KLI concluded that this coastal alteration by KLI caused changes in ocean current strength and direction and consequent alterations in sedimentation build-up.[237] Weak currents have increased sedimentation on the western side, whilst on the eastern side (where the fishponds of the Mangunharjo and Mangkang Wetan communities are located) a lack of sediment build up has caused further erosion of the beach and consequent damage to the adjoining fish ponds.[238]

Whilst the substantive environmental changes wrought by KLI caused greatly exacerbated erosion in the areas of Mangunharjo and Mangkang Wetan (to the east of the factory), sedimentation build-up occurred in the area of Mororejo (to the west of the factory) and the area of available land actually increased. Whilst the build-up of sedimentation enabled the creation of some new fishponds, it also obstructed access of existing fishponds to the sea by blocking the mouth of a river into which the factory also disposed liquid waste. Consequently, the factory's waste flowed into the adjacent rice paddies and prawn ponds causing pollution and damage to crops and fish stock. The productivity of fishponds near KLI also reportedly declined as a result of sawdust and smoke discharged from the factory which polluted the ponds.[239] Communities of ocean-going fishermen had also been adversely affected by the factory's discharge of large volumes of inadequately processed waste into the ocean, resulting in a sharp decline in the typical daily catch of local fisherman. Liquid and solid waste discharged by the factory included chemical by-products used in glue production such as urea, phenol, melamine, methanol, ammonia and formalin.[240] The nets, motors and boats of fisherman were also frequently damaged by waste wood disposed from barges and the factory itself. Other solid waste included free floating logs that frequently damaged both fishing vessels and fishponds.

5.2.2 Negotiation

Whilst the prawn farmers in the locality of KLI had suffered the industry's environmental impact since 1987, it was only following the fall of Suharto and the ensuing "reformasi" in 1998

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[237] ICEL, "Analisa Hukum: Kasus Perusakan Pantai Akibat Kegiatan Pt Kli."
[238] Further research has also confirmed that the land reclamation by KLI and its effect on sedimentation buildup resulted in increased erosion of the Mangunharjo coastline – see Randiono, *Tinjauan Secara Kuantitatif Perubahan Volume Sedimen Gisik Sepanjang Pantai Kecamatan Kaliwungu Kabupaten Kendal*, Unpublished Thesis, Facultly of Fisheries and Oceanography, UNDIP, Semarang, p34 cited in LBHS, "Gugatan Dari Pesisir Pantura (Tragedi Perusakan Pantai Oleh Pt.Kli)."and.Anggoro and Hargono, "Kerusakan Pantai Mangunharjo & Mororejo: Faktor Penyebab & Alternatif Penanggulangannya."
[239] LBHS, "Gugatan Dari Pesisir Pantura (Tragedi Perusakan Pantai Oleh Pt.Kli)," p5.

that these communities were prepared to openly advocate their cause against the well-connected industry.[241] At this point, prawn farmers from several communities surrounding KLI, including Mororejo to the west as well as Mangunharjo and Mangkang Wetan to the east, sought compensation and environmental restoration for problems ranging from erosion and flooding to liquid waste pollution.[242] Subsequent to the farmers obtaining legal representation a series of 12 negotiation meetings ensued between the farmers and KLI in 1998. One outcome of these meetings was an undertaking by KLI to construct an sea embankment 500m-700m wide and 2km long. However, after KLI reviewed the actual conditions in the field it was considered too difficult and was not carried out.[243] The two parties were unable to reach agreement on the matter of compensation, with the farmers requesting Rp. 5000/m2 but KLI offering only Rp. 900. KLI justified its position by claiming that the damage in question was due to natural phenomena and that the farmers had failed to produce evidence to support their claim that KLI was responsible. The industry reiterated that it was only prepared to help the farmers in a cooperative manner (*secara gotong royong*), by assisting with heavy machinery in the repair of damaged embankments and fishponds.[244] Further negotiations were stalled when KLI refused to participate on the basis that the farmers' representatives did not have proper legal authority from their respective communities.[245] Finally the negotiation process was overtaken, when outside negotiations a payment of Rp 110 million offered by KLI to the sub-group of 12 Mororejo farmers (known as the 'blok Wakak') was accepted.[246] Prawn farmers with fishponds in other areas, such as Mangunharjo and Mangkang Wetan, were not included in this payment, which caused some division among the broader community of farmers and suspicion as to KLI's intentions.

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[240] Franz Pagono, "Pt Kli Berulah, Petani Kena Tulah," *Ozon*, no. January (2000).
[241] Ibid.
[242] The claims of the Wonorejo farmers were only raised at a latter date, around June 2000.
[243] LBHS, "Deskripsi Perusakan Pantai Desa Mangunharjo Kec. Mangkang Kabupaten Semarang," (1999).
[244] KLI, "Sikap Pt. Kli Terhadap Kasus Tambak," 22 September 1998.
[245] this stance was taken despite the representatives being accepted in previous negotiations.
[246] All of the farmers who received compensation owned ponds in Mororejo although some of them happened to live in Mangunharjo. This group was also known as the blok Wakak. The farmers who did not receive compensation were those who owned ponds in Mangunharjo, further to the east of PT KLI. This group of farmers was also known as the Blok Irigasi.

5.2.3 Community Organisation

Following the failure of the negotiation efforts to resolve the problems of the Mangunharjo & Mangkang Wetan community, contact was renewed with the Legal Aid Institute of Semarang (LBHS) in June 1999. With assistance from LBHS the farmers regrouped, forming an advocacy oriented body named the *Kelompok Masyarakat Peduli Lingkungan (KMPL)*.[247] Further capacity building was carried out in a training workshop for the Mangunharjo community conducted by the Indonesian Centre for Environmental Law (ICEL) and LBHS from 10 –13 September 1999 in which 20 to 30 members of the Mangunharjo community, mostly members of *KMPL*, participated.[248] The workshop focussed on raising community awareness of environmental laws and building basic skills in techniques of advocacy, mediation and environmental dispute resolution. Other themes included the importance of addressing environmental issues in mediation and maintaining realistic expectations concerning the process of mediation, which could be lengthy and protracted.[249]

One successful outcome of the workshop was that members of the community and KMPL itself were able to clarify their interests and subsequently communicate their key claims through several media releases and also direct communications with KLI and a range of government agencies. The claims conveyed by the Mangunharjo farmers were:

- Construction of a sea wall to prevent further erosion
- Repair of damaged embankments and ponds
- Restoration of coastal environment through removal of liquid & solid waste and stopping further disposal of unprocessed waste.
- Compensation for lost income (1990-1998)
- Compensation for ponds that have been totally lost (submerged).[250]

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[247] Community Group of Environmental Carers. Prior to the formation of *KMPL* 8 farmers (who had lost fishponds) had been organised in a group named "The Community Group of Erosion Victims" (*Kelompok Masyarakat Korban Abrasi [KMKA]),* however the farmer had felt the group was too small and under resourced to deal with the might of KLI. As the environmental effects of KLI's actions were also increasingly widely felt there was a perceived need to make the group more representative. Thus the new *KMPL* was formed, which consisted of a wider cross section of the community including farmers directly affected by erosion, other farmers that potentially could be affected, community leaders, fishermen, youth and other interested persons. ICEL, "Laporan on Site Training."

[248] Ibid.

[249] Ari Mochammad Arif, 17 November 1999.

[250] "Pengaduan Tak Ditanggapi, Temui Dewan," *Suara Merdeka*, 5 November 1999.

From the description above it is apparent that the claims of the farmers had evolved over the period from when negotiation was first commenced with KLI before the commencement of the formal mediation process. Whilst the farmers initial concern was primarily economic (obtaining compensation for lost income and the lost capital in the form of submerged fishponds), subsequent to the training carried out by ICEL and LBHS at the community level, community representatives agreed it was equally important that environmental issues be addressed in any resolution of the dispute. Environmental solutions canvassed and adopted by KMPL included repair of damaged embankments and ponds, construction of a 'sea wall' to prevent future erosion and stopping disposal of solid and liquid wastes causing pollution.[251]

The community and NGOs canvassed both litigation and mediation as a possible path for dispute resolution in this case.[252] Certainly the legal position of KLI was, on paper at least, highly problematic. An analysis by ICEL concluded the factory had contravened the following laws[253]:

- Spatial Planning – according to the General Spatial Plan of Kendal Regency the location of the factory is zoned as an area of fishpond farming not an industrial area, a fact recognised by an environmental study sponsored by KLI itself in 1992;[254]
- Environmental Impact Assessment (art. 15,18 EMA 1997; GR27 of 1999) – No environmental impact assessment was carried out prior to redirection of river by KLI, which also contravened a legal agreement with a government agency (PISB). KLI's actions in redirecting the river prompted a strong administrative warning (*peringatan keras*) from the Governor, however, no further administrative action was taken.
- Government Regulation No. 35 of 1991 concerning Rivers – Article 25 prohibits redirection of a river without a proper licence, which KLI did not possess.
- Pollution/Environmental Damage of a Coastal Area (No. Kep45/MENLH/11/1999 regarding Sustainable Coastal Program) – Article 2 places an obligation on an enterprise to prevent pollution and/or environmental

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[251] Initially redirection of the Wakak to its original course did not appear as a key demand, although this was adopted later as it was perceived by the farmers as necessary to prevent flooding of the fishponds.
[252] Poltak and Bawor, 24 Nov? 2000.
[253] ICEL, "Analisa Hukum: Kasus Perusakan Pantai Akibat Kegiatan Pt Kli."
[254] LBHS, "Gugatan Dari Pesisir Pantura (Tragedi Perusakan Pantai Oleh Pt.Kli)."

damage of coastal areas. Evidence indicates such pollution and damage had occurred due to KLI's activities.

- Prevention of environmental damage – Article 6 (1) of the EMA 1997 states that "each person is obligated to preserve environmental functions and prevent and control pollution or environmental damage". Evidence indicates that the developments carried out by KLI failed to preserve environmental functions and caused considerable pollution and environmental damage.

Nonetheless, most of the NGO workers involved considered a legal suit unlikely to succeed, given the practical difficulties of proving environmental damage or pollution in a court of law and, moreover, the prevalence of judicial corruption.[255] The prospects of a successful legal suit were also rated low due to the considerable political and economic clout of PT KLI. A further procedural and technical obstacle was the perceived difficulty of proving causation of pollution or environmental damage. Mediation, supported by a range of advocacy strategies, was thus considered the best available option for the Mangunharjo farmers to resolve the dispute. Support in lobbying government agencies and industry to commence a mediation process was provided by ICEL and LBHS both of which had considerable experience in the mediation of environmental disputes.

5.2.4 Response of Government Agencies

Subsequent to the capacity building training undertaken at the community level, advocacy initiatives were undertaken including representations made to the provincial parliament and a media campaign to attract publicity to the farmers' cause.[256] Efforts to approach government agencies to resolve the problem were initially unproductive. Representatives of the Mangunharjo farmers together with LBHS initially requested assistance from the Governor's office (of Central Java), but were redirected to the regional government level II of Semarang Municipality. Subsequently the farmers and LBHS met with a representative of the Semarang Mayor's office on 1 July 1999 and representatives of other relevant agencies including the Environmental Impact Agency of Semarang. The Mayor's representative was sympathetic to the farmers concerns, agreeing that the river should be redirected to its original course and undertaking to meet with the

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[255] Arif.
[256] ICEL, "Tor: Advokasi Kasus Perusakan Pantai Oleh Pt Kli," (ICEL, 1999).

director of KLI.[257] The meeting with the mayoralty of Semarang and associated officials at least prompted a visit to Mangunharjo the following day to view the damage in question. On 5 July a further meeting was held between LBHS, KMPL and the Environmental Impact Agency of Semarang. Representatives of the Agency agreed with LBHS that the dispute resolution process should emphasise the matter of environmental restoration (as opposed to mere compensation). Whilst the Semarang Environmental Agency undertook to assist the community as much as possible, it stressed the dispute was the responsibility of the provincial level government (level I) as it encompassed two administrative areas (Semarang municipality and Kendal regency).[258] Subsequently, the Semarang regional government formally requested the assistance of the Governor (of Central Java) in resolving the dispute.[259]

The request of the Semarang regional government was followed by a petition in August 1999 to the Governor from the Mangunharjo community itself to resolve the dispute with KLI. A formal complaint and request for assistance was also sent to the Central Environmental Control Agency. After several months, the lack of response from either government agency prompted 30 members of KMPL to undertake a widely publicized visit to the Central Java legislature.[260] Subsequently, a meeting with the governor's office was finally granted on 17 November. The meeting, however, produced little result as representatives of KMPL and LBHS were met only by administrative staff with no decision-making authority.[261] A legislative hearing was also subsequently held on 18 November 1999 by the Development Commission of the Central Java legislature in response to the citizens' demands. The meeting was characterized by a heated exchange between representatives of the water management agency (*PU Pengairan*) and PT KLI over the redirection of the Wakak River, prompting the Head of the Commission to suggest resolution of the case via judicial channels.[262]

In early December 1999 community representatives met with the Environmental Minister, Dr Sonny Keraf, and conveyed their concerns relating to the dispute with KLI.[263] Subsequent to this meeting, Dr Keraf publicly requested the Governor of Central Java resolve the long-running KLI

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257 "Pemda Kodya Akan Panggil Bos Pt Kli," *Wawasan*, 2 Juli 1999.
258 LBHS, "Deskripsi Perusakan Pantai Desa Mangunharjo Kec. Mangkang Kabupaten Semarang."
259 "Pemda Kodya Minta Bantuan Gubernur; Soal Abrasi Kli," *Wawasan*, 30 July 1999.
260 "Pengaduan Tak Ditanggapi, Temui Dewan."
261 "Pt Kli Saling Tuding Dengan Dinas Pengairan," *Kompas*, 20 November 1999.
262 Ibid.
263 "Rusaknya Tambak Di Mangkang Dilaporkan Kepada Menteri Lh," *Wawasan*, 1 December 1999.

dispute.[264] The Environment Minister's injunction added momentum to the dispute resolution process, prompting a visit of provincial legislative members and senior government officials the next day to view the environmental damage in Mangunharjo. The governor also pledged to form an independent team of government officials and NGO members to investigate the contributing causes of the damaged fishponds in Mangunharjo and facilitate mediation between KLI and the Mangunharjo community. The team was to be headed by Dr Sudharto P Hadi from the University of Diponegoro, Semarang. [265]

5.2.5 Response of KLI

As discussed above, the factory initially entered negotiations with several communities of farmers in 1998. Its conduct in the negotiations varied, with concessions made often later retracted. When a payment was finally made by the company to the Mororejo farmers in 1998, it was described as a "goodwill" payment (*tali asih*), rather than compensation. Furthermore, the farmers were pressured to sign an agreement prior to receipt of the money, which abrogated their rights to bring any future claim against KLI. The agreement was subsequently used by KLI as a defence against further environmental claims by the Mororejo community. Furthermore, from an early stage the company also consistently denied culpability for any environmental damage or pollution, attributing the erosion and flooding suffered by the Mangunharjo farmers to natural phenomena including the 'El Nino' effect.[266] More direct approaches have also been employed by KLI to discourage claims against it, from time to time hiring "third parties" (hired thugs) to intimidate the local populace. This occurred, for example, after the training program carried out by ICEL and LBHS in the Mangunharjo community.[267] Around the same time the company also fired 600 workers from the Mangunharjo community and hired 600 workers from the Mororejo community. This was perceived by locals as an attempt to promote discord and conflict within the communities and prevent any "united front" against the factory.[268]

Despite pressure from government agencies PT KLI adamantly refused initial overtures to join a mediation process toward resolving the dispute. The factory justified its refusal by reference to

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[264] "Gubernur Harus Segera Selesaikan Kasus Kli," *Suara Merdeka*, 1 December 1999.
[265] "Muspida Pantau Pertambakan Di Mangkang Lewat Helikopter," *Wawasan*, 2 December 1999 1999.
[266] "Kali Wakak Bukan Dibuat Pt Kli," *Suara Merdeka*, 7 December 1999.
[267] Arif.
[268] Ibid.

the monetary payment (of Rp 120 million) made to the farmers (of Mororejo) in 1998.[269] Furthermore, the industry argued that the ponds of the Mangunharjo farmers had been submerged because of wider climatic changes and rising sea levels rather than any fault of its own. The stalemate persisted despite formal and informal requests from the Governor of Central Java and the Ministry of the Environment to participate in discussions towards resolution of the dispute.[270] The company finally acquiesced to the Governor's request to participate in a mediation process following the formation of an independent team to resolve the dispute by the Governor at the Environment Minister's behest. Yet, whilst KLI had finally agreed to enter the mediation process, it was clearly a problematic start to an "interest based" dispute resolution process. KLI's commitment to the mediation process appeared shaky, and at least partially the product of administrative pressure rather than self-interest.

5.2.6 Mediation Process

5.2.6.1 Mediation December 1999 – June 2000

A new phase of dispute resolution was then entered into on 3 December 1999 when mediation was commenced between the Mangunharjo community and PT KLI.[271] In the first mediation session Dr Sudharto P Hadi, the Third Assistant to the National Minister for the Environment and Sri Suryoko, an academic from the Centre for Environmental Studies, University of Dipononegoro were appointed as mediator and co-mediator respectively. Whilst Sudharto suggested ICEL as a potential co-mediator, this was rejected by KLI, who seemingly retained suspicions as to their neutrality.[272] There was some speculation as to the appropriateness of Sudharto because, as he himself acknowledged, he had previously had some interest in the matter as the author of an Environmental Evaluation Study of KLI in 1985.[273] Whilst the representatives

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[269] Several government agencies also considered the case to be closed on this basis. After some lobbying by ICEL, it was recognised however that the separate plight of the Mangunharjo farmers had not been resolved and that the environmental problems were in any case still continuing. ICEL and Bapedalda Tk. II Semarang, "Rapat Bapedalda Tk Ii Semarang," (Semarang: 1999).

[270] Arif.

[271] LBHS, "Gugatan Dari Pesisir Pantura (Tragedi Perusakan Pantai Oleh Pt.Kli)."

[272] LBHS, "Notulensi Perundingan 1," (1999).

[273] ICEL, "Laporan Perjalanan Semarang (16-19 Agustus 1999)," (Semarang: ICEL, 1999).

of the community retained some suspicion toward him on this basis, it was not sufficient for them to oppose his appointment as mediator.[274]

In the first session (4 December 1999) an "agreement to mediate" was reached, where both parties agreed to attempt resolution of the dispute via mediation rather than litigation. Mediation, as Dr Sudharto emphasised, should benefit both parties and therefore produce a lasting resolution of the dispute. This theme of an "interest based" approach adopted was accentuated by the mediator at several points in the first session. For instance Dr Sudharto stated,

> KLI has an interest to maintain a good image and continue its production without obstruction. Meanwhile, the farmers also have an interest that their fishponds and their livelihoods are not threatened. So it may be said that between KLI and the fishpond farmers there is a synergy of interests... Here we will explore ways to allow KLI and the community to live side by side. The direction of the dispute resolution will be toward that which benefits both parties.[275]

Following classic interest based approaches to mediation, the mediator thus stressed the need to "separate between the people and the problem" and "concentrate on attacking the problem rather than the people". The parties were urged to "focus on their respective interests rather than their respective positions" and brainstorm multiple solutions based on their shared interests.[276]

A further focus of the first mediation session was the identification of stakeholders who would participate in the mediation process. The main protagonists in the conflict, PT KLI and the Mangunharjo farmers, were represented by three spokespersons and an additional legal representative. Other parties identified as primary stakeholders in the dispute included the provincial Environmental Control Agency, the district (Semarang) Environmental Control Agency, the Environmental Bureau of Kendal and the Governor of Central Java (usually represented by its Legal Bureau) each of which was allowed two representatives. In addition, a number of other parties were also identified as having some stake in the dispute and thus a legitimate basis for involvement in the mediation process. These included:

- Water & Public Works Agency (*PU Pengairan*), which had originally contracted with KLI concerning the redirection of the Wakak River.

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[274] Poltak and Bawor.
[275] LBHS, "Notulensi Perundingan 1."
[276] Ibid.

- Department of Mining, whose authority was invoked given KLI had carried out unlicenced sand excavation activities.
- Department of Fisheries, which held administrative authority over the activities of the fish-pond and ocean fishermen.
- ICEL, an environmental NGO with expertise in environmental mediation.
- Local government officials from Mangunharjo and adjoining areas
- The Development Commission of the Central Java legislative assembly (*DPRD*)
- Workers at KLI.
- Fishermen in Mangunharjo and adjoining areas
- Other observers (including press; NGOs; university academics; Mangunharjo farmers) to play a supportive or advisory role as needed.

The considerable representation of governmental agencies was a notable feature of the mediation process, due in part to the fact the dispute crossed administrative boundaries, thus involving agencies from the provincial level (level I), Semarang municipality (level II) and Kendal regency (level II). The complexity of the environmental damage in question and the political and economic significance of KLI also ensured that an inclusive mediation process would need to include a wide range of stakeholders.

The main dispute over stakeholders occurred in the second session when community legal representatives supported the inclusion of the Mororejo fishpond farmers as stakeholders in the mediation process.[277] As discussed above, the Mororejo farmers, whose fishponds were situated to the west of the factory, had experienced a number of problems relating KLI's activities. The industry's land reclamation had obstructed a river mouth, which both restricted the flow of water into existing fishponds and channelled pollution from the factory into the ponds. Whilst some of the Mororejo farmers had received a 'goodwill' payment from KLI in 1998, the environmental problems had remained unresolved. However, the proposal to include the Mororejo farmers in the mediation process was firmly opposed by KLI, resulting in a deadlock in the third mediation session. Ultimately community legal representatives acquiesced to KLI's continuing opposition on this issue and the mediation process continued without including the Mororejo farmers.

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[277] Several of the Mororejo farmers had approached the Legal Aid Institute of Semarang after mediation had commenced and requested their inclusion in the process. - "Giliran Warga Mororejo Gugat Pt Kli," *Suara Merdeka*, 10 December 1999.

Some discussion was also held concerning the nature of the conflict between the Mangunharjo fishpond farmers and KLI. As the mediator noted, one aspect of this conflict was a difference in perception as to the causes of the environmental damage in question.

> Like it or not there is a problem between KLI and the prawn farmers. There is a difference of opinion or conflict. The difference of opinion is a difference of perception between the prawn farmers and KLI. The prawn farmers claim the damage is because of KLI, whereas KLI claims it is due to natural phenomena.[278]

Disagreement over the nature, extent and causes of the environmental damage in question emerged in the first mediation session and resurfaced frequently as the mediation process progressed. Shortly after the first session conflict between the parties emerged when KLI publicly asserted that the damage to the fishponds and the coast was solely due to natural factors. In response, the legal representative for the Mangunharjo farmers, Poltak Ike Wibowo accused KLI of provocation contrary to the agreement to mediate. Wibowo maintained the coastal erosion and flooding of the fishponds was caused by KLI's development activities as was confirmed by the administrative warning issued by the Governor to KLI in 1990 concerning redirection of the Wakak River.[279]

The parties' positions on this issue shifted little in the second and third mediation sessions.[280] KLI refused "to be blamed" for the environmental damage in question, which it maintained was due to natural phenomena. On the other hand, community representatives continued to assert KLI's responsibility for coastal erosion and flooding. The conflicting positions of the parties on the causes of the environmental damage influenced their respective views on how discussion should proceed. Anxious to avoid further blame, KLI suggested that discussion in the sessions focus on potential solutions,

> We are meeting here to solve a problem not a case. How can we repair and utilise the coast together.[281]

Whilst KLI itself had not proposed a solution at this point and was opposed in principle to the payment of compensation, it was seemingly prepared to undertake environmental restoration.[282]

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[278] LBHS, "Notulensi Perundingan 1."
[279] "Pt Kli Dinilai Melakukan Provokasi," *Suara Merdeka*, 8 December 1999.
[280] Also held in December 1999.
[281] LBHS, "Laporan Live in Di Desa Mangunharjo," (Semarang: LBH Semarang, 2000), p4.
[282] "Alot, Perundingan Antara Petani Tambak Dan Pt Kli," *Wawasan*, 13 December 1999.

On the other hand, legal aid representatives, whilst having previously suggested construction of a sea wall (*sabuk pantai*) and compensation as suitable remedies, nonetheless insisted that discussion proceed on an "issue by issue" basis. As one representative stated,

> We prefer to discuss issue by issue, because if we suddenly discuss solutions it will only obscure the causes.

In the fifth mediation session, held on 22 December 1999, the mediator suggested a focus on "alternative solutions" or "joint problem solving" consisting of coastal rehabilitation, community development and improved operation of industry (KLI). KLI and the participating government agencies agreed to this agenda, yet LBHS continued to insist the discussion proceed upon an issue-by-issue basis. The issue of causation and blame resulted in further division between the parties with KLI becoming increasingly defensive:

> KLI: "If we discuss issues we also have a requirement. The respective parties should show proof. The fact is there is a difference in opinion and a difference in evidence...Then who will evaluate the validity of the evidence. This isn't a court....And to clarify, if we discuss solutions it doesn't mean that the cause is PT KLI..."
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> LBHS: "We only have discussed one issue, but I think that PT KLI already doesn't want to be blamed."
>
> LBHS: "Its better we return to our early agreement to find the causes so that then we may find the solutions."
>
> Mediator: "Focussing on solutions in this forum doesn't mean leaving the sources of pollution. But it would be better if it were focussed on solutions."

Ultimately, discussion proceeded on an issue-by-issue basis, with the mediators' entreaty to "not only discuss the problem but also the solution."

Despite continuing disagreement over the causes of environmental damage, the parties were finally able to agree on an agenda of issues for further discussion. The five issues to be discussed were redirection of the Wakak River, coastal reclamation, sand excavation, disposal of waste and damage caused by free floating logs. On the mediator's suggestion, the parties began discussion on the least contentious issue, that of free floating logs causing damage to embankments. KLI acknowledged that some logs could dislodge and float free, although there was considerable difference with LBHS over the number of logs involved and the culpability of KLI for the

damage in question.[283] The Environmental Agency of Semarang also conveyed its concern that the free-floating logs were causing damage to mangrove plantations. Despite the disagreement over the extent of the problem the parties were able to reach some consensus on this issue as to proposed solutions in the form of an agreement in principle, encompassing coastal rehabilitation (tree planting, repair of fishponds & construction of breakwater), review of KLI's environmental management plan and operating procedure, and improved communication between farmers and KLI .

The next issue examined by the parties was the disposal of oil, solid and liquid waste. LBHS presented its claims, based on a range of written and oral evidence, that hazardous solid and liquid waste disposed of by KLI had caused environmental pollution and affected the livelihoods of local fishpond farmers and fishermen. In a continuation of the previous pattern of conflict, KLI responded belligerently, denying any culpability:

> ...KLI is an industry oriented toward business. All its actions are calculated by profit and loss. Used oil we sell, so it isn't possible we just dispose of it like that. Furthermore, for us solid waste (in this case woodchips) is money. We take that to RPI (an associated factory) to process it and sell. Then for other chemicals, its expensive...if we just throw them away its inefficient. Then we'd like to ask if we bring a tissue and drop it does this pollute the environment?"

KLI's representative then proceeded to make his own counter accusations:

> I'd like to ask about the fisherman's operations. The fishpond farmers also use *Bristan* to kill small pests (*trisipan*) which is then thrown in the river. But they are never touched.

The mediator responded by suggesting a technical team be appointed to review the issue, as the party's animosity heightened:

> LBHS: The area where KLI is located is not industrial, according to spatial planning. You (KLI) are a guest who hasn't been invited.
>
> KLI: This is the risk if we discuss issues. As for the problem of language, how can we use polite speech, how dare we be called an uninvited guest.

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[283] According to LBHS and the farmers the logs could "...number in the hundreds", whereas KLI's estimates were much less than this.

The mediator's idea of a technical review (of both KLI and the farmer's operations) was received by government agencies and KLI. LBHS, however, opposed the review, arguing that what was required was the implementation of existing environmental management plans.

> LBHS: this is certainly a collective problem but the one that hasn't fulfilled its commitment is KLI so why is the community blamed? The fishpond farmers are already being examined by the Fisheries Department...

Continuing to oppose the idea of a technical team, LBHS adhered to its proposed solutions of moving KLI's log pond to land to ensure no ship traffic in the vicinity of the factory, stop using hazardous materials and move the location of methanol storage.

The positions of the parties were seemingly further hardened in the following, sixth, pleno forum on 28 January 2000. Conflict emerged over a press report, which, according to KLI, contravened a previous agreement between the parties regarding restrictions on information given to the mass media on the case. KLI also reiterated its positions that any 'issues' raised for discussion should be subject to investigation and any 'accusations' made by LBHS should be supported by evidence. As the pattern of recrimination and counter-recrimination continued between the primary parties, the commitment of KLI to the mediation process began to visibly weaken. KLI demanded that the pleno session be postponed and that separate discussions be held between the mediator with the respective parties. In the event this was not be carried out KLI threatened withdraw from the mediation process. In any event the parties agreed to the proposal and separate discussions were carried out. Subsequent to these discussions, both parties affirmed separately their intention to continue with the mediation process.

In light of the increasing conflict between the primary parties in the pleno sessions the mediation team changed tack in February and March 2000, embarking on an intensive series of separate meetings with the respective sides to facilitate progress toward agreement. The expressed intention of the mediation team was to convene a meeting of all parties only when there was sufficient indication of progress toward an agreement. Then a pleno session would be organised to bring all sides together and produce a comprehensive agreement. The separate meetings were designed to enable individual parties to discuss and elaborate their own potential solutions to the dispute. Given the state of animosity and conflict that had been reached in the pleno mediation sessions, this change of tactic seems to have been appropriate in the circumstances and did serve to minimize conflict between the primary parties. By April 2000, after seven separate meetings,

the parties had at least reached an agreement in principle on the need for three broad solutions: coastal rehabilitation, improved environmental management of KLI and community development, although the details of each had not been determined or agreed upon.[284]

Subsequent to the series of separate meetings and discussion of possible solutions, the Mediation Team produced a written proposal for resolution of the dispute to all the parties. The solution detailed a number of measures be undertaken including

- Construction of sea barrier
- Tree planting
- Repair of river embankments
- Normalisation and restoration of Wakak River
- No further disposal of solid or liquid waste to sea
- Compliance with stipulated levels re waste disposal
- Enforcement of environmental law
- Compensation for lost income of farmers
- Payment for submerged ponds
- Exemption from land tax for submerged ponds

The proposal by the mediation team was clearly an attempt to refocus the parties on a possible solution rather than continuing the increasingly acrimonious discussion of "issues" as had occurred in previous sessions. Whilst the mediator's proposed solution attempted to cover all of the issues raised by the parties, some of the proposed measures were insufficiently specific, such as "enforcement of environmental law". Even "normalisation" of the Wakak River, sidestepped crucial questions about whether "normalisation" would mean returning the river to its original course or only slightly readjusting its current course – a matter that would become a key issue in later discussions.

All parties were given a period of time to consider the mediator's proposed solution and were required to respond by 14 April 2002. Whilst the Mangunharjo community and regional government responded favourably to the proposal, no reply was forthcoming from KLI even after several subsequent extensions of the deadline by the mediation team. As the stalemate in negotiations dragged on, the community representatives publicly criticized the mediator and carried out several demonstrations in conjunction with other communities that had experienced environmental damage or pollution in the vicinity of KLI.[285] A circular letter subsequently issued

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[284] A particular point of contention was whether the third solution 'community development' would encompass payment of compensation "Tanggapan Sudharto P. Hadi," *Radar Semarang*, 6 April 2000.
[285];"Warga Sekitar Kli Tak Percaya Prof Soedharto," *Radar Semarang*, 4 April 2000. "Demo Kli Dan Rpi, Digiring Polisi," *Radar Semarang*, 4 April 2000.

by the Governor (of Central Java) appealed to all parties to respond to the solution proposed by the mediator and resolve the dispute.[286] Despite this appeal, KLI refused to accept or even respond to the proposed solution. As the deadlock in negotiations continued, the level of frustration in the Mangunharjo community increased with one representative publicly warning the community was "… ready to wage a holy war in fighting for their rights".[287] By the late May the mediator, Prof Sudharto P Hadi, also expressed disillusionment with the industry's lack of response,

> Actually [the mediation team] is weary of the process, but we respect Governor Mardiyanto who still wishes to resolve the case through mediation.[288]

In a further attempt to break the dead lock the Governor's office attempted to arrange separate negotiations with each of the respective parties on three occasions. Yet despite requests from the Governor's office, KLI consistently refused to attend.

5.2.6.2 Mediation Recommenced: June – September 2000

In June 2000, a group of 100 Mangunharjo fishpond farmers visited the Central Java Governor's office requesting the assistance of the Governor in resolving the mediation with KLI.[289] The Governor confirmed his willingness to facilitate further negotiation and stated that KLI's management had also indicated their willingness to continue mediation. In response the community's request, a further meeting was held on 29 June, chaired by the Vice-Governor and Sudharto, at which all parties were present. At this meeting KLI indicated it was only willing to continue mediation under a new format, according to which the primary parties (Mangunharjo community and KLI) would negotiate directly without legal representation, mediated by the Governor or his representative. This "small format" (*format kecil*) negotiation was agreed to by all parties in a subsequent pleno session on 10 July 2000, at which KLI was not present, although community representatives requested that the process be mediated by a member of the mediation team rather than the Governor's office.[290] At the pleno session the parties also agreed to continue the mediation process, which had originally been scheduled to end on 31 March 2000.

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[286] "Jika Macet Masyarakat Siap Jihad," *Wawasan*, 12 May 2000.
[287] Ibid.
[288] "Tim Mediasi Lelah Urusi Kli," *Wawasan*, 27 May 2000.
[289] "Kasus Kli, Gubernur Akan Pertemukan Pihak Terkait," *Kompas*, 17 June 2000.
[290] Sudharto, "Perkembangan Perundingan Kasus Kerusakan Tambak Dan Panti Mangunharjo, Kecamatan Tugu Kota Semarang," 28 July 2000.

The first meeting of the "small format" mediation was held on 15 July 2000 at the Centre for Environmental Studies, University of Diponegoro. KLI, however, again failed to attend, yet discussion proceeded between community representatives, the Vice-Governor and the Central Java Environmental Control Agency. The Mangunharjo farmers presented an offer for resolution of the dispute which discussed by government representatives. A broad consensus on the need for coastal rehabilitation was reached with regional government representatives further agreeing to several initiatives including:

- Discharging submerged fishponds in Mangunharjo from further tax,
- Supervision of industry operations,
- Enforcement of environmental regulations,
- Repair of Wakak (Beringin) River (contingent on approval of legislature)
- Normalisation of Santren and Paluh Rivers.

After KLI's failure to attend the mediation session of 15 July facilitated by the Governor, an administrative warning was issued to the company, which prompted its attendance at the subsequent session on 11 August.[291] At the meeting the industry indicated its willingness to resolve the case by mediation yet reiterated it was not prepared to pay compensation, although a 'good will' payment (*tali asih*) below Rp 110 million could be made. Yet, despite pressure from government representatives to reduce their demands, community representatives rejected what it saw as a "manipulative" approach to resolving the dispute.[292]

A pleno session of all stakeholders, with the exception of KLI who did not attend, was held on 9 September 2000. At this meeting, it was agreed to form two separate forums for resolution of the dispute: the "Small Format" mediation and the "Consultation Forum", both of which are discussed below.

5.2.6.3 Small Format Mediation

The so-called "Small Format" Mediation was originally proposed by participants in a meeting on 10 July 2000. This simplified form of mediation would be restricted to the Mangunharjo fishpond farmers and KLI, without legal representation. The process was to be facilitated by the

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[291] "Gubernur Tegur Keras Kli," *Wawasan*, 12 August 2000.
[292] Ibid.

Mediation Team and Governor's representative with a particular focus on resolving the matter of compensation.

An initial meeting of the "small format" group was held on 19 September 2000. Again, KLI failed to attend and the farmers were therefore unable to gain clarification concerning KLI's willingness to give capital assistance to the farmers. Due to the lack of response from KLI, the farmers intended to formally request a direct audience with the Governor to convey their concerns. The persistent failure of KLI to further participate in mediation attracted public criticism from the mediator, Dr Sudharto P Hadi, who speculated that the industry's failure to participate in negotiations could provide a basis for the regional government to close down the industry.[293] Within the Mangunharjo community, the refusal of KLI to participate in further negotiation caused increasing frustration and threats of direct action against the industry.[294] A further meeting was held between KLI and the Mangunharjo farmers pursuant to the "small format" in early February 2001, where KLI reportedly offered the farmers some Rp 50 million in compensation.[295] This was, however, rejected by the farmers, and no agreement was forthcoming.

More recently the "Small Format" mediation between KLI and the Mangunharjo farmers has finally resulted in a payment of Rp 125 million (US$16,000) being made by KLI to the 16 farmers whose fishponds had been completely submerged as a result of encroaching sea levels. The payment was supplemented by an additional sum of Rp 375 million also paid to the farmers by the provincial government.[296] Other farmers, whose ponds had suffered partial damage from erosion or flooding, were not compensated, however.[297] The payment was also not described as compensation, but rather a goodwill payment to those farmers who had lost their fishponds because of "natural disaster". Whilst the payment satisifed the farmers' demands for compensation, it also resulted in conflict within KMPL, between those who wished to accept the payment and those who did not. Some within the group felt that payment should only be accepted if it were accompanied by a commitment to carry out environmental rehabilitation.

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293 "Gubernor Punya Landasan Uu 23/1997," *Wawasan*, 6 November 2000.The comment provoked much controversy in the regional press, with several legislative members and

294 KMPL/LBH, "Dalam 1 Tahun Kli Pasti Jadi Milik Rakyat," (Semarang: KMPL LBH Semarang, 2000).

295 Andi, 15 February 2001.

296 Wiwiek Awiati, 18 November 2003.

297 Wiwiek Awiati, 4 June 2003.

However, for the 16 farmers who had lost land because of erosion and flooding, the payment was a welcome compensation of their economic loss. The payment was ultimately accepted by the 16 farmers and KMPL subsequently disbanded.[298]

5.2.6.4 Consultation Forum: September 2000 – March 2001

The second mediation process, termed the "Consultation Forum", was intended to focus on discussing and elaborating potential government programs connected with the above solutions. Participants in the forum would include Mangunharjo fishpond farmers (and their legal representatives from LBHS), relevant government agencies from Semarang, Kendal Regency and the Central Java Provincial government and other experts. The Consultation Forum would be facilitated by the Mediation Team.

In the first session of the Consultation Forum, held on 20 September 2000, the parties present agreed to develop joint programmes addressing coastal rehabilitation, operational improvement (of industry) and community development.[299] Participants agreed that programmes should be based on the "…the common commitment… of community and regional government…to uphold environmental law". Programmes should also "…anticipate potential negative impacts" and "…be real and applicable and of benefit to both community and regional government" and hopefully become "… a planning model that will facilitate joint community/government decision making in the future also."[300] The parties resolved to discuss operational improvement (*peningkatan kinerja*) first, referring to the 5 issues identified in previous meetings:

1. Redirection and restoration of river
2. Reclamation
3. Sand excavation
4. Free-floating logs

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[298] Although a number of members from the community continue to be active in environmental advocacy through other organisations. Bawor, 18 November 2003.

[299] These programs corresponded with the three broad categories of solutions agreed by KLI and the Mangunharjo farmers in previous mediation sessions. The parties present included representatives of: Mangunharjo farmers & legal representatives (from Semarang Legal Aid Institute); Kendal Environmental Bureau; Legal Bureau (provincial); Semarang subdistrict head; Fisheries Agency (Semarang); Environmental Agency (Semarang); Semarang Mayorality; Environmental Agency (Central Java); mediation team.

[300] "Laporan: Hasil Kegiatan Tim Dalam Format Kecil Dan Forum Konsultasi," (Semarang: PPLH, Undip Semarang, 2000).

5. Disposal of oil, solid waste and other chemicals.

The second Consultation Forum, held on 12 October 2000, provided an opportunity for the respective parties and coordinating groups to present preliminary drafts of suggested programs, which for the most part were still couched in general terms.[301] The suggested program of the provincial coordinating group (headed by the Central Java Environmental Impact Agency) emphasised rehabilitation of damaged coast/ponds, re-evaluation of redirection of river and operational improvement of industry. The suggested program of the Semarang coordinating group (headed by the Semarang Environmental Impact Agency) emphasised coastal rehabilitation, whilst the officials of Kendal regency were not present. The proposed programs of the community coordinating group focussed on operational improvement of KLI. Community representatives stressed that KLI's operations to date had been illegal in a number of respects. The industry had never held a permit or licence for its reclamation of land, which had also contravened spatial planning requirements that development only be carried out a minimum of 100 metres from the waterline. KLI had also failed to carry out recommendations of a previous environmental review (*kajian SEL*) and still disposed of solid waste into the ocean. In the community's opinion there was still no evidence of a change in the industry's behaviour and accordingly the community considered it necessary to carry out an environmental audit. The proposal of an environmental audit was supported by other government representatives and all participants in the Forum endorsed the enforcement of environmental law as an element of a comprehensive solution, further noting that the application of sanctions to KLI did not imply closure of the industry.

The community also emphasised the need to ensure suitability of coastal rehabilitation programs for conditions on the Mangunharjo coast and requested government agencies coordinate program implementation with community members to this end.[302] The most essential programs, from the community's perspective, were the construction of a sea wall, redirection of the Wakak River to its original course and reclamation of submerged coast. The Mangunharjo fishpond

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[301] Several coordinating groups (*gugus tugas*) were formed to facilitate interaction between the large number of government agencies. Coordinating groups included the provincial coordinating group (headed by the Central Java Environmental Impact Agency), the Kendal coordinating group (headed by Kendal environmental bureau), the Semarang coordinating group (headed by the Semarang Environmental Impact Agency) and the community coordinating group (headed by representatives of the Mangunharjo community).

[302] Previous rehabilitation measures, including tree planting had failed due to a lack of suitability and knowledge of local conditions.

farmers considered the redirected river as the primary cause of the erosion and flooding of their fishponds, which research from several different sources had confirmed.[303] Whilst re-evaluation of the Wakak River issue was included in the provincial coordinating group's program, the matter was a problematic one for several of the government agencies involved. The river had been illegally redirected by KLI and, in failing to act on the matter, the government agencies involved had been tacit accomplices in the matter. As a result, some of the agencies involved were reportedly apprehensive at the possibility of being sued in the administrative court over their role in the matter.[304] In subsequent meetings of the Forum, redirection of the Wakak River would become one of the major issues of negotiation.

The third Consultation Forum was held on 2 November 2000. The forum commenced with the presentation of proposed solutions by the regional government agency of Kendal, which emphasised coastal rehabilitation and was supported by all participants. Regency officials also presented the proposed solutions of KLI, which were sent to Kendal regency on 29 September 2000.[305] Further discussions by the coordinating group for Semarang City, had resulted in several additions to their proposed program including creation of basic map of the coastal area within Semarang Municipality, inventorising coastal problems and carrying out a Beach Preservation Program (*Program Pantai Lestari*). Redirection of the Wakak River was again a central issue for discussion at the third forum. The Water/Public Works agency responsible argued that further redirection of the Wakak River would require a legal permit, and consequently a prior legal review to be carried out. Representatives of the community criticised this position, maintaining that as the river had been illegally redirected in the first place a legal permit should not be necessary to return it to its prior course. Government representatives agreed that the matter should be the subject of further review, and a consensus was reached to form a team to carry out a legal and technical review on the matter.[306]

A further forum was held on 13 January 2001 at which the task of implementation was discussed, with some government agencies cautioning that legislative approval might be required

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[303] Anggoro and Hargono, "Kerusakan Pantai Mangunharjo & Mororejo: Faktor Penyebab & Alternatif Penanggulangannya."
[304] Bawor, 15 February 2001.
[305] These included standard environmental management measures in accordance with regulatory requirements and some physical development proposals, which were to be further monitored by the Kendal regency.
[306] *Tim Pelurusan Sungai Wakak* coordinated by the Agency for Public/Water Works.

to carry out their proposed programs. Legal representatives of the community feared the need for legislative approval could be used as an excuse for non-implementation of the programs and solutions and requested that the relevant government agencies give some certainty that programs could be implemented as proposed. To facilitate implementation, the mediator proposed a joint working group to supervise implementation of the agreement. The proposal to return the Wakak River to its original course was also the subject of further discussion. The Mangunharjo community agreed that diversion of the river, short of returning it fully to its original course, was acceptable provided no further negative environmental impacts occurred. It was agreed that a comprehensive technical review would be undertaken to determine the suitability of redirecting the river. Finally, an agreement was reached between all parties to hold a subsequent workshop to finalize solutions, which would then be put to the provincial legislative assembly and governor for agreement and immediate implementation.

On 16-17 February 2001, 2 & 9 March several final consultative workshops were held between the Mangunharjo community and various government agencies to finalize the proposed programmes relating to the environmental issues in this dispute. The conclusions of three working groups were finally combined into an agreement, signed on 9 March 2001, detailing the proposed solutions to be implemented in the KLI dispute.[307]

The two main areas covered by the agreement were coastal rehabilitation and operational improvement. Coast rehabilitation measures would address the problems of erosion and flooding caused by the redirection of the river and land reclamation. Specific measures included restoration of the Aji and Wakak Rivers to ensure they continued to fulfil drainage and irrigation functions properly in relation to the surrounding fish-ponds. Further erosion would be prevented by construction of a sea-wall and groin. Operational improvements were intended to address the problems of free-floating logs, waste management and compliance with environmental standards. Specific measures included relocation of KLI's existing log-pond and improvements in the transport of logs to prevent further damage by free-floating logs to fishponds. Waste management would be implemented by monitoring of KLI's waste (solid, liquid and gaseous) emissions and improvement of its waste processing unit. An environmental audit of KLI's operations, including its use of hazardous chemicals, would also be carried out to ensure compliance with existing

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307 "Kesepakatan Perundingan Penyelesaian Kasus Kerusakan Tambak Dan Panti Mangunharjo Kecamatan Tugu Kota Semarang Dalam Forum Konsultasi," (2001).

environmental regulations. The agreement also provided for community participation and access to results of audits or reviews at all stages of the program.

All parties present agreed that implementation of this program of solutions was possible as it was within the authority of the Central Java, Kendal Regency and Semarang City regional governments. Nonetheless, the leader of the Mediation Team, Dr Sudharto P Hadi, recognised that the program would certainly benefit from a corresponding commitment from KLI to its implementation. The participating parties also agreed that the details of the agreement should be incorporated into a decision of the Central Java Governor to further facilitate the process of implementation.[308]

By 2002 the program of solutions elaborated by the Consultation Forum was approved by the regional parliament of Central Java. To date, however, only partial implementation of the program has occurred. Environmental rehabilitation work so far undertaken includes the reclamation and rehabilitation of a beach. The provincial government of Central Java sponsored the work, which cost approximately Rp 500 million and was implemented by the local community. Rehabilitation of the beach is expected to reduce erosion and flooding although further work will be necessary in the longer term for a more lasting solution to these problems.[309]

5.2.7 Conclusion

Like the *Palur Raya* case discussed in the first half of this chapter, the dispute between KLI and the Mangunharjo fishpond farmers has been a protracted one, dragging out for over ten years without comprehensive resolution. In the late 1990s, a combination of factors contributed to the commencement of a mediation process. Chief amongst these were the broad political changes accompanying the demise of the Suharto regime and the advent of *reformasi*, which initially created the political space for a dispute with such a well-connected industry to openly emerge. A process of community education and organisation facilitated by several NGOs also resulted in more effective advocacy and a subsequent higher profile for the dispute in the regional and national press. Whilst the industry at first paid little attention to the community's demands, a campaign by KMPL involving visits to government agencies and the provincial legislature

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[308] Decision of the Central Java Governor No. 660.1.05/07/1999 had initially provided for formation of the mediation team and commencement of the mediation process to resolve the KLI dispute.
[309] Bawor.

gradually increased the public pressure on KLI. The final catalyst for the mediation process came from the national Environment Minister Dr Sonny Keraf who met with Mangunharjo community representatives on a visit to Central Java and subsequently requested the Governor resolve the long running dispute. By December 1999 an independent mediation team had been formed to mediate the dispute at the Governor's directive. In this respect, the factors that facilitated access to a structured mediation process are directly comparable to the *Palur Raya* dispute, which only gained momentum in the post-New Order period, supported by effective community advocacy and, finally, intervention from the national Environment Minister.

In the initial mediation sessions the parties were at least able to agree on procedural matters and the use of mediation as a means to resolve the dispute. Progress on substantive issues was less forthcoming and conflict between KLI and the community's legal representatives increased in the early phase of mediation. The mediation team accordingly chose to split the mediation process and negotiate separately with KLI and the Mangunharjo community. Whilst this strategy minimized conflict it did not prevent KLI's subsequent withdrawal from the mediation process as evinced by the industry's failure to respond to the mediator's proposed solution or participate in further discussion. Despite KLI's withdrawal the process of mediation has continued on two separate tracks – the "small format" mediation focussed primarily on issues of compensation and the "consultation forum", which has focussed on elaborating social and environmental solutions to the dispute in conjunction with government agencies.

Whilst mediation has certainly been protracted and hindered by KLI's frequent failure to participate, it now appears to have at least borne some concrete results. Through the 'small format' mediation, compensation has been paid to those farmers whose land was lost as a result of encroaching sea levels. Through the 'Consultation Forum' mediation process a program of solutions to address issues of environmental rehabilitation, waste management and community development has now been elaborated and endorsed by regional government agencies. Whilst the program has yet to be properly implemented, one initiative of environmental rehabilitation has been carried out successfully. More substantive initiatives, including the proposed redirection of the Wakak River, are likely to require substantial commitment from both district and provincial agencies and, moreover, KLI itself. More generally, the mediation process has greatly facilitated communication

Important progress has thus been made, not least of which is improved communication amongst the diversity of stakeholders involved in this dispute, particularly between the Mangunharjo

community and numerous government agencies from the Central Java, Kendal regency and Semarang city regional governments. The most serious obstacle to progress toward resolving this dispute was KLI's withdrawal from mediation in March 2000, which caused a serious derailment of the mediation process. Despite this withdrawal, progress toward resolution of the dispute was still achieved. Nonetheless, KLI's lack of commitment to the dispute resolution process could continue to threaten comprehensive resolution of this dispute, in the event it does not support implementation of the rehabilitation program.

Before the commencement of mediation in December 1999, KLI had displayed little willingness to compromise or even enter into discussions with the Mangunharjo farmers. KLI's position in this respect was strengthened by the marked imbalance of power between the parties. As a national political and economic heavyweight with strong government backing, an industry of KLI's stature had seemingly little to fear from a small community of fishpond farmers. Ultimately, the participation of the otherwise recalcitrant industry in the mediation process was only secured by direct political pressure from the Governor of Central Java.

The possibility of compromise was also possibly limited by the history of contentious relationships between the parties. The Mangunharjo community had suffered the effects of environmental damage for almost a decade without recompense from KLI. Furthermore, the community had been angered at the industry's supposedly manipulative resolution of the previous dispute with surrounding farmers in 1998.[310] Furthermore, a history of contentious relationship also existed between KLI and the Legal Aid Institute of Semarang (LBHS), who were appointed legal representatives for the Mangunharjo farmers and negotiated on their behalf during the mediation process. The same lawyers representing the Mangunharjo farmers in this dispute were frequent public critics of the industry and had acted against the industry in numerous environmental and labor disputes in the past.[311] An imbalance of power between the parties and a history of contentious relationships were thus factors mitigating against the success of mediation from an early stage.

Yet, despite these factors, some potential for compromise did apparently exist at the commencement of mediation. Several mitigation measures for the environmental damage in question, such as construction of a sea wall, were possible. Whilst refusing to accept

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[310] The industry's payment of Rp 110 million to only a small group of Mororejo farmers was regarded as an attempt to split opposition to the factory.

[311] Note in the subsequent process of "small format" mediation legal representatives did not participate.

responsibility for the environmental damage, KLI was still reportedly prepared to undertake some measures of environmental rehabilitation. The "interest based" approach to mediation that commenced in December 1999 was intended to build upon such areas of potential compromise with the hope of achieving, in the mediator's words, a "...resolution that benefits both parties."[312] As explained in the first mediation session, an interest based approach implied "attacking the problem not the people", "focussing on interests rather than positions", and "brainstorming multiple solutions that reflect common interests".[313] Yet, in practice, the process of mediation was unable to shift the parties from their relatively entrenched positions to focus on areas of potential compromise.

One contributing factor in this respect was a lack of objective standards by which to assess the extent and causes of the environmental damage in question. KLI's often reiterated defence from the earliest stage in negotiation was that the environmental damage was not 'proven' to be KLI's responsibility. The company itself attributed the damage to natural phenomena and so was prepared to help "solve the problem", in the spirit of "*gotong royong*" (mutual cooperation), but were singularly unprepared to acknowledge any wrongdoing or obligation on their part. The company thus wished to focus on solutions rather than issues as it was "…here to solve a problem not a case."[314] In contrast, legal representatives for the Mangunharjo farmers argued vigorously that the damage to the fishponds was directly attributable to KLI's redirection of the Wakak river and associated activities including sand dredging and land reclamation. Community legal representatives responded to KLI's position of denial by presenting evidence to clarify the 'causes' of the environmental damage, namely KLI's development activities. This approach, however, only elicited further denials from KLI who stated bluntly,

> The fact is there is a difference in opinion and a difference in evidence...Then who will evaluate the validity of the evidence. This isn't a court....[315]

Both parties thus started the mediation process from fundamentally different assumptions concerning the factual circumstances of the case, a conflict in perception that was apparently not resolved during the mediation process. Clearly, the need in this case was for some objective, informed and independent standard by which the extent and causes of the environmental damage

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312 LBHS, "Notulensi Perundingan 1."
313 Ibid.
314 "Notulensi Perundingan V," (LBH, 2000).

could be assessed. Whilst some research into the environmental damage had confirmed the farmers' claim, the research was not comprehensive in nature nor jointly arranged by (and thus acceptable) to both parties. [316] As discussed above, such research was undertaken in the *Palur Raya* dispute, yet did not ultimately resolve conflict over factual issues. In both disputes, disagreement over issues of factual causation thus remained an obstacle to resolution.

The escalating dynamic of conflict that appeared in the early stages of mediation in this case was quite contrary to the mediator's initial intentions of an interest-based approach. The parties held to their respective positions rather than identifying potentially common interests and increasingly attacked each other rather than the problem at hand. In retrospect, one informant regretted that further training in interest-based mediation had not previously been carried out with all stakeholders. Such training may indeed have further 'entrenched' an interest-based approach, which the mediator's brief initial overview seemed unable to do. In the face of escalating conflict the mediation team made the appropriate choice, probably somewhat overdue, to pursue a strategy of 'shuttle diplomacy', negotiating separately with each of the parties from mid-February 2000 onwards. The strategy of shuttle diplomacy was unsuccessful, however, in producing an agreement between the parties. Subsequent to a series of separate negotiations, the mediator presented a proposed solution to the parties as a basis for a potential agreement. Whilst favourable responses to the proposed solution were received from community representatives and government agencies, no response was forthcoming from KLI. The industry reportedly considered the proposal to demonstrate bias on the part of the mediation team and effectively withdrew itself from the mediation process for a period of several months.

KLI's withdrawal and its failure to even respond to the proposed solution was a tangible expression of the industry's lack of commitment to the mediation process as a whole. This partial commitment to the mediation process was evident from the pre-mediation phase, when KLI was willing to participate in the mediation process after only direct pressure from the Governor of Central Java. Following renewed political pressure and an administrative warning from the Governor in July 2000, the industry agreed to reopen negotiations with the Mangunharjo farmers without legal representation. Yet even in this revised "small format" mediation, which it itself

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[315] Ibid.

[316] In fact, more detail research was commissioned into the environmental damage much later in the dispute resolution process, subsequent to KLI's withdrawal. The research, which at March 2001 was still

had suggested, the company failed to attend subsequent scheduled meetings on several occasions. The industry's behaviour in this respect seemed to demonstrate intent to delay, obfuscate and manipulate, rather than actually resolve the dispute at hand. Similar behaviour was also evident from PT Palur Raya in the *Palur Raya* dispute, although this occurred more in the implementation rather than mediation phase. This lack of willingness on the part of KLI to negotiate and resolve the dispute constituted probably the most serious obstacle to resolution in this case. As stated by Dr Sudharto P Hadi, mediator to the dispute:

> PT KLI did not demonstrate a willingness to negotiate. In contrast, the willingness of the community to negotiate was very high.[317]

The tenuous commitment of KLI to the dispute resolution process demonstrated not only the marked imbalance in power between the parties but also the absence of effective administrative or legal sanctions that could have acted as an incentive for the industry to persevere with negotiations. As discussed above, KLI had typically acted in a unilateral fashion in redirecting of the Wakak River, reclaiming land and carrying out sand dredging. The company displayed little concern for regulations, which it contravened, nor for administrative warnings issued to it by regional government agencies on several occasions. Evidently, the company enjoyed government backing at high levels and no regional government agency was prepared to go beyond an issuance of written warnings despite numerous breaches of environmental law. The threat of potential administrative sanction was thus to weak to provide a sufficient incentive for the company to either desist from environmentally damaging activities or resolve related conflict with neighbouring communities. Parallels may again be drawn with the *Palur Raya* dispute in this respect, where the inability or unwillingness of supervising administrative agencies to enforce environmental regulations ensured there was little pressure on the industry to comply with mediated environmental agreements.

Despite transgressing numerous environmental, spatial planning and sectoral regulations in the course of its operations, KLI also seemingly had little to fear from legal suits brought by the neighbouring communities with which it was in conflict. In a letter to the Mangunharjo and

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not available, was to provide a basis for government departments and agencies to implement their proposed solutions.

317 "Gubernor Punya Landasan Uu 23/1997."

Mororejo fishpond farmers in September 1998, the Director of KLI stated that if the farmers were unwilling to accept the company's offers of limited cooperative assistance then "...the problem should be solved through legal channels".[318] It is also telling that, despite KLI's withdrawal from mediation, the Mangunharjo community had not resorted to litigation to address its environmental and economic claims. As discussed above, the most salient reason for this choice was the perceived poor prospects of success within a court system that was inexperienced in dealing with environmental suits, formalistic and conservative in its application of laws and, moreover, riddled with corruption.

Thus, in both the *KLI* and *Palur Raya* cases, a lax environment of administrative and judicial enforcement enabled or contributed to the industries' contravention of environmental regulations and apparent lack of commitment to mediation. However, in both cases the industries eventually did make significant compensation payments to the respective claimants.[319] Thus, despite the weakness of administrative and judicial law enforcement, the industries' apparently did have at least some incentive to make substantial payments toward resolution of the respective disputes. In the *KLI* case, part of this incentive was due to senior government pressure on the industry to resolve the high profile dispute. It was initially the intervention of the national Environmental Minister, Dr Sonny Keraf, in 1999, which prompted formal initiation of the mediation process by the Central Java Governor in December 1999. The Governor also exerted personal pressure on KLI's management on several occasions to participate in mediation and resolve the dispute.[320] Similarly, in the *Palur Raya* case, the national Environment Minister was a catalyst for the start of mediation and also brokered the final agreement between the parties.

The intervention of senior government figures to resolve the dispute was in turn related to the high level of public pressure evident in both the *KLI* and the *Palur Raya* cases. In the *KLI* case, community organisation was facilitated initially by the involvement of local and national level non-government organisations. Subsequently, a local community organisation, *KMPL*, became the institutional focal point for advocacy assisted by the Semarang Legal Aid Institute. Advocacy encompassed a range of approaches including press releases, seminars, demonstrations and lobbying. As in the *Palur Raya* dispute, focussed community advocacy maximised exposure through print and electronic media. Both disputes developed quickly into high profile cases,

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318 KLI, "Sikap Pt. Kli Terhadap Kasus Tambak."
319 In the case of PT Palur Raya, Rp 1.1 billion. In the case of KLI, Rp 125 million.
320 Arif.

ensuring that any developments regularly received wide coverage in national print and electronic media.

Whilst both these factors encouraged an industry payment to "resolve" the dispute, there appears to be less incentive for industries in either case to comply with environmental agreements or regulations on an ongoing basis. In the *KLI* case, regional (district and provincial agencies) appear to have had very limited capacity to enforce compliance of the industry with environmental regulations. Similarly, in the *Palur Raya* dispute district and provincial agencies have been reportedly ineffective in ensuring the factory's compliance with waste management regulations. Thus, whilst both industries appeared prepared to make substantial payments to end the disruptive disputes, it is less certain whether the incentive exists in the longer term to implement solutions to the environmental problems underlying the disputes. Interestingly, in both cases, the payments made by industry have had the effect of significantly muting community opposition, despite the failure to address environmental issues.