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Addressing industrial pollution in Indonesia: The nexus between regulation and redress seeking

D'Hondt, L.Y.

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Author: D'Hondt, L.Y.

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6 | Losing sight of appropriate redress

Mining and pollution in Kao-Malifut, North Maluku

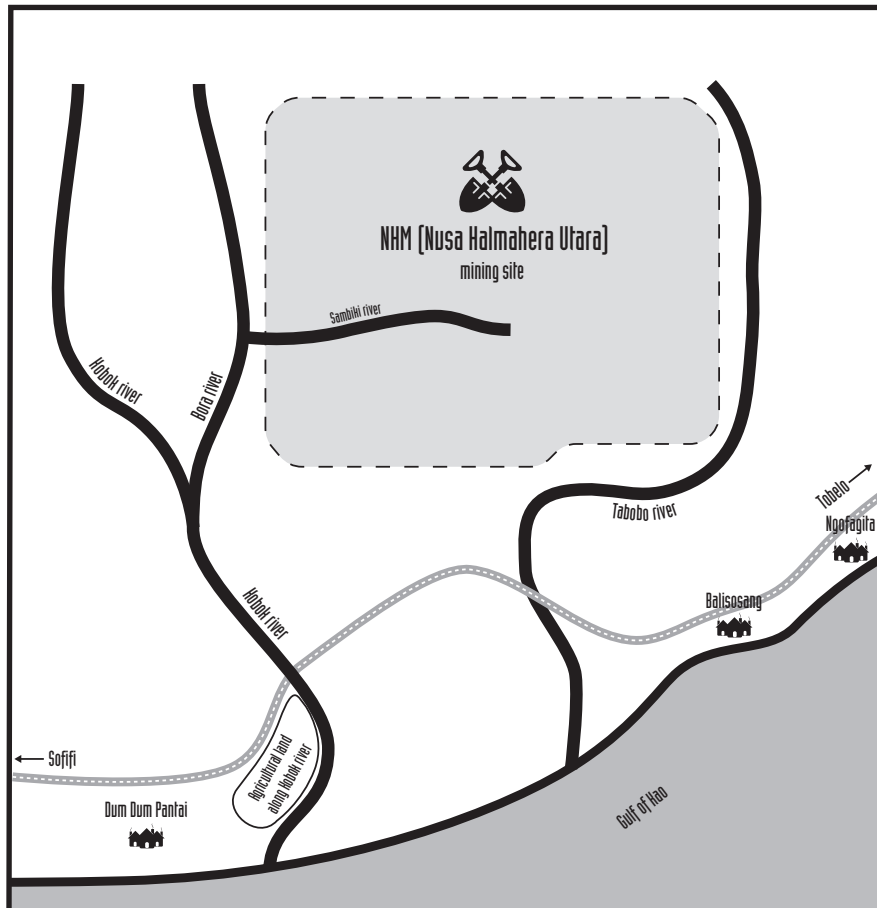
This book's second in-depth case study occurs in Kao-Malifut, on the island of Halmahera in North Maluku province. The gold mining company Nusa Halmahera Minerals (NHM) arrived in the area in the late 1990s. Gold mining is generally a polluting activity, amongst other things because of the chemicals that are used to extract gold from ore. In this case, citizens and interest groups began to complain about the environmental impact soon after the company became operational. However, the environmental impact was not their only concern. What the local population framed as grievances changed over time. This chapter discusses this framing process from the late 1990s until 2012. It focuses on the roles and perspectives of interest groups and villagers.

The Rolax-analytical framework, which chapter 2 discussed, offers a method for analysing the redress seeking process. The framework proposes assessing various elements in the process: peoples' real-life problems, whether they can formulate these problems into a grievance, the available redress forums, and whether they eventually achieve appropriate redress (Bedner and Vel, 2010).

However, in this case, the process did not develop linearly. Throughout the years, interest groups and villagers raised many grievances. The grievances moved beyond the mining's environmental impact and were continuously reframed in response to new opportunities. This framing and reframing of grievances happened regardless of whether the sought redress could contribute to solving the initial problem. This chapter seeks to understand how it was possible that redress became so detached from the initial problems, and the implications of this detachment.

I analysed approximately 450 documents related to the case, consisting mostly of local newspaper articles and NGO reports. During two fieldwork periods in 2009 and 2012, I interviewed 39 key government employees, NGO members, village representatives and mining officials, and asked villagers in four locations about the mining activities' impacts on their lives. In 2009, I interviewed more than 50 respondents in the villages of Ngofagita, Dum Dum Pantai and Balisosang. In 2012, I interviewed nearly 30 respondents, in Balisosang and on the agricultural land along the Kobok River, where the mining's environmental effects were most noticeable.¹

1 A fully annotated version of this chapter, with references to all documents and interviews, is available with the author.



Map 2: Schematic map of Kao-Malifut area (not to scale), by the author.

The first section of this chapter sketches the regulating background against which the redress seeking process took place. It explains some of the particular features of regulating mining in Indonesia. It briefly describes how various governmental institutions were involved in regulating the mining company NHM's environmental impact. Section 2 describes the redress seeking process. It begins with a brief history of the Kao-Malifut area as a place marked by ethnic and religious tensions. It describes how interest groups addressed grievances for the first time soon after the company arrived, and how these grievances were reframed in later years. Section 3 focuses on the claims to redress related to indigeness, and how they became a dominant theme in the redress seeking process after 2010. Section 4 explains how interest groups and villagers sought redress for the mining's environmental impact in particular. It focuses on the environmental NGO's role and how villagers reflected

on the environmental impact and the redress seeking process. Section 5 presents some general conclusions.

1 REGULATING MINING AND NHM'S ENVIRONMENTAL IMPACT

In the mid-1990s, the Indonesian Central Government allowed the mining company NHM to operate on 296 square kilometres of land, through a so-called 'Contract of Work'. At that time, the Central Government held full powers of regulation over NHM's operations.² However, due to the decentralisation process that started in the late 1990s, regional governments received more authority to regulate mining activities. Nevertheless, recent laws and regulations³ are not fully clear on whether the Province or District is authorised to regulate a particular case (Hamidi, 2015: 89). Additionally, existing 'Contracts of Work' need to be renegotiated and converted into mining permits, which Indonesia's Investment Coordinating Board would issue. This Board functions directly under the President. In the transitional period, the Contract of Works will remain honoured (PWC, 2017: 9, 33-32). Therefore, it is unclear to what the extent the District, the Province and the Central Government are authorised to regulate NHM.

The sectoral division of regulatory authority over mining activities is also unclear since forestry and environment regulations are not consistent with the Mining Law. Since the 1970s, various implementing regulations under the Mining Law set requirements on the environmental behaviour of mining companies. Since 1986, they are required to conduct Environmental Impact Assessments, and more recently, to obtain an environmental license (Devi and Prayogo, 2013: 22, 32-37, 56). However, it is unclear which institution is responsible for monitoring compliance with the environmental standards, particularly when the environmental impact crosses District or Provincial borders (PWC, 2017: 33).

The regulation process of mining activities is notorious for its lack of transparency and corruption (Hamidi, 2015). The economic stakes are high for governments at all administrative levels. For example, in 2011, mining accounted for 6.14 per cent of Indonesia's Gross Domestic Product, and tax revenues amounted to a total of 70.5 trillion rupiahs (approximately € 28 billion) (PWC, 2017: 22-3). Of those revenues, 80 per cent go to the Central Government, and only 20 per cent go to the regional governments (Hamidi, 2015: 81, 91). The stakes for local communities are also high, not least because

2 The 'Contract of Work' included the concession area on which the company could operate. This 'Contract of Work' system was abolished in 2009 and replaced by a permit system (Bhasin and Venkataramany, 2007; Scott and Tan, 2014).

3 Hamidi (2015) refers in particular to the Regional Government Acts of 2014 (Law 23/2014) and the Law on Mineral and Coal Mining of 2009 (Law 4/2009).

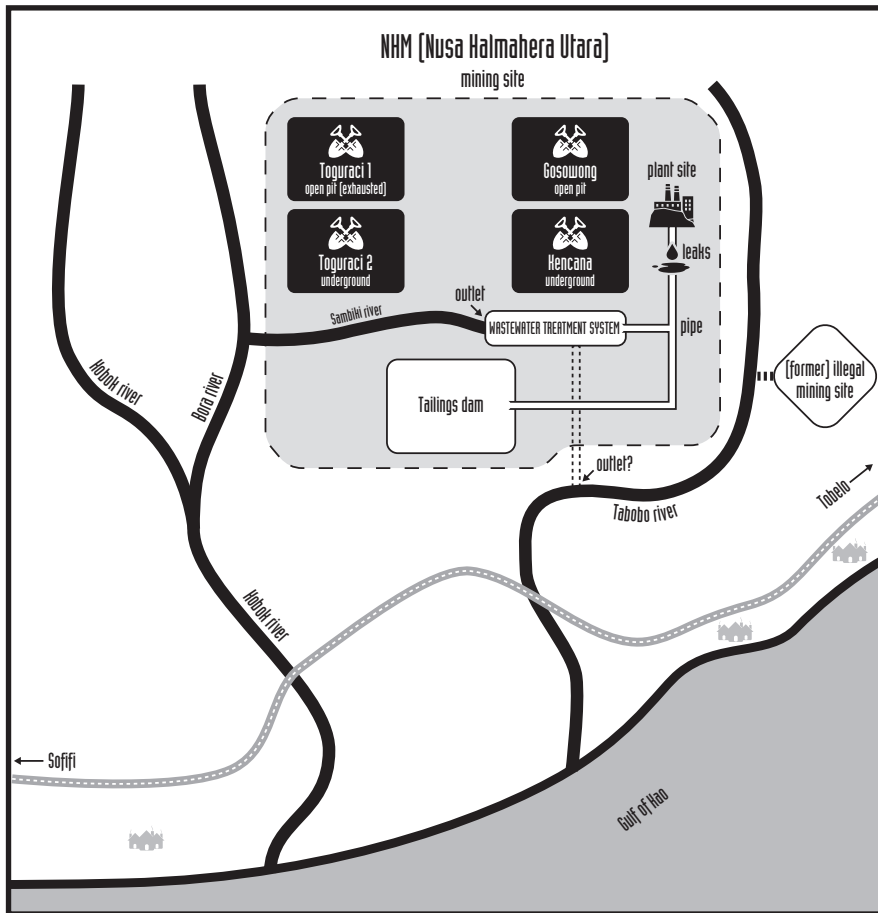
the mining industry provides job opportunities. Moreover, since 2007, the companies are supposed to act by following corporate social responsibility (Devi and Prayogo, 2013: 37-38). Mining debates include a strong call for increased citizen participation, also in their monitoring capacity overseeing mining activities (Hamidi, 2015: 96).

1.1 Regulating the environmental impact of NHM

In the 1990s, the Australian-Indonesian company NHM came to the Kao-Malifut area. In 2015, the company employed approximately 1,200 full-time workers, 95 per cent of who were Indonesians, and 55 per cent of who were local people. That year, the company produced approximately 330 thousand ounces of gold, valued at an estimated € 350 million (NHM, 2015).

The company exploited four mines. It began to operate the open-pit mines of Gosowong and Toguraci in 1999 and 2003, respectively. In 2006, NHM started to exploit the underground Kencana mine, and in 2011, it began operations in the underground mine Toguraci 2.

The company would transport ore from the mines to the plant, where they used chemical cyanide to extract the gold from the volcanic rocks. They then transported the extraction's waste material through pipes. They stored solid waste material in tailing dams, i.e., large pools of black mud. The wastewater was separated and detoxified before being discharged into the Bora River. Further downstream, the Bora River merged with the Kobok River, eventually flowing into the Gulf of Kao.



Map 3: Schematic map mining site NHM (not to scale), by the author.

Since their arrival, interest groups and villagers had accused NHM of causing environmental pollution. Over the years, different actors raised various environmental concerns, including the destruction of protected forest areas and river pollution, decreasing fish stocks and increasing health problems. They mentioned various possible causes, such as overflowing acid water from open-pit mines and insufficient wastewater treatment. Interest groups and villagers also accused the company of illegally discharging untreated wastewater into the Tabobo River and dumping tailing material.

However, government officials and the mining company accused small-scale miners (or 'community' or 'artisanal' miners) of causing pollution. Such miners operate illegally, obtaining ore from NHM mining sites and processing the raw material using mercury. These miners often discharge their wastewater directly into the environment without any treatment. When water samples contained

traces of mercury, NHM defended itself by saying that it did not use mercury. It claimed that only artisanal miners use it to extract gold, leading to environmental and health problems.⁴

Officials said that NHM polluted the Bora and Kobok Rivers, while illegal miners were responsible for polluting the Tabobo River. However, some respondents declared that illegal miners had also operated along the Kobok River. In recent years, the number of illegal miners diminished. After 2010, it became more difficult for them to obtain ore from the mining site because NHM no longer operated open-pit mines, and accessing the underground mines was very difficult for the small-scale miners.

In practice, mining and environmental institutions from all administrative government levels participated in regulating NHM's environmental behaviours. Officials gave conflicting statements of each institution's tasks and authorities. For example, a Provincial mining agency official said his agency was primarily responsible for monitoring NHM, while environmental institutions were merely authorised to carry out regulatory activities outside of NHM's terrain. By contrast, Provincial environmental agency officials said they also conducted monitoring at the mining site.⁵

Government institutions also contradicted one another about the company's level of compliance. Some stated that NHM generally complied with environmental standards. For example, the Ministry of Energy and Mineral Resources rewarded NHM with the Aditama (Gold) Environmental Award for its work in 2006-2007. However, the Ministry of Environment's PROPER programme rated NHM 'red' in 2006, indicating non-compliance. NHM later stated that the negative PROPER rating in 2006 was merely related to the absence of certain required licenses. Notably, between 2008 and 2012, the company's PROPER rating was 'blue', indicating compliance.⁶

A Ministry of Environment official expressed doubts on whether the negative 2006 PROPER rating was merely related to the absence of required licenses. In 2007, the Ministry received complaints from local interest groups about the mining activities' negative environmental impacts. In reaction, the Ministry formed an investigation team and took water samples. However, the team lost the samples on their way back to Jakarta. They eventually recovered

4 Presentation by Terry Pilch and Brett Fletch (Newcrest) 'Welcome to Gosowong Gold Mine' at the Ozmine 2012 Conference.

5 The Ministry of Environment's *Kali Bersih* (Clean River) Programme aimed to monitor the general quality of several rivers throughout the country. Within this programme, the provincial environmental agency had regularly taken water samples from the Tabobo River. This river had been notorious for the pollution that the illegal, small-scale miners had allegedly caused. However, the agency had always concluded that Tabobo's water quality was in line with the legal standards.

6 See press releases by the Ministry of Environment on the PROPER ratings between 2002 and 2014. <http://proper.menlh.go.id/portal/?view=28&desc=1&iscollps=0&caption=PUBLIKASI>.

them, and an examination revealed that the cyanide levels were above acceptable standards. However, due to the delay in examinations, the lab results could not be included in a legal procedure.

In the summer of 2008, officials from mining and environmental institutions, and District, Provincial and Central Government levels carried out a joint environmental audit. They did not publish the details, but a newspaper reported that they had detected no environmental violations or other problems. However, the District Parliament did not trust the audit results and requested additional research, conducted by the Centre for Environmental Studies from UGM University in Yogyakarta. The UGM report indicated that the cyanide and mercury levels were within tolerable limits. However, the environmental organisation Walhi criticised several methodological aspects of the research, such as where the UGM team took the samples. UGM's research results also surprised a researcher from a local university in Ternate. His research from 2007 on the water quality of the Tabobo and the Bora Rivers had indicated that the levels of both cyanide and mercury were above the legal standards.

In 2010, researchers from the well-respected ITB University in Bandung assessed the quality of fish from the area. They found that the levels of mercury and cyanide in shrimp and jackfruit fish were acceptable according to WHO standards. However, the high levels of mercury and cyanide in red snapper and mullet fish made them unsuitable for consumption (Simbolon, Simange and Wulandari, 2010). The company itself claimed that it had always complied with the wastewater quality standards.

In 2010, the District Head of Halmahera Utara complained to the National Parliament about NHM, with support from Walhi. Two years later, the same District Head fully supported the local NHM activities. A District mining agency official declared in 2012 that there had never been proof of NHM's non-compliance.

In sum, many institutions participated in regulating the mining activities gave conflicting statements about NHM's compliance. As a result, the environmental situation remains contested, including with regard to the identity of the polluter. The unclear division of authorities between government institutions, which often have considerable interests in keeping mining companies operational, makes it difficult to hold them accountable for taking insufficient regulatory actions.

2 SEEKING OPPORTUNITIES TO OBTAIN REDRESS FOR MANY GRIEVANCES

This section chronologically describes how individuals and interest groups have attempted to seek redress for injustices allegedly caused by NHM. Several factors complicated the process severely. Groups contested the mining's environmental impact. Both government institutions and locals held high economic stakes in the mining activities. Also, the area was home to different

ethnic groups. Ethnicity served as the basis for redress claims, feeding into existing ethnic tensions.

This section demonstrates that grievances and redress seekers were not static. They transformed, often more because the opportunities to achieve redress or benefit from the mining activities changed than because they had to face new real life problems.

2.1 A brief history of the Kao-Malifut area and its population

The Kao-Malifut area is in Halmahera Utara District. The area consists of five Sub-Districts: Kao, Kao Utara, Kao Barat, Kao Teluk and Malifut. Each Sub-District has between 5,000 and 8,000 inhabitants and consists of 12 to 22 villages.

The Kao are the indigenous population in the area. They are predominantly Christians and have a customary system in which the highest leader is the sultan of the nearby island, Ternate. In the 1970s, a volcanic eruption threatened the island of Makian, located some 100 kilometres from the Kao-Malifut area. The Indonesian Central Government decided the Makian people had to migrate to the Kao region. Thus, 16 Makian villages were established on supposedly 'empty' land. However, the indigenous Kao population considered this land to belong to the Pagu, one of the Kao tribes. The Makian migrants are predominantly Muslim and generally supported the sultan of Tidore Island. Over the years, the migrant Makian managed to gain a relatively strong economic and political position in the poor Kao region. This gain frustrated the Kao, who felt that the government privileged the Makian by providing the migrants with, amongst other things, schools and roads (Duncan, 2005: 56-63; Wilson, 2008: 54-6; JŠger, 2017: 96-114)

NHM's arrival aggravated the existing frictions between the Kao and the Makian (Alhadar, 2001; Van Klinken, 2001: 6). In 1999, soon after the company became active in the region, a number of Kao representatives complained to the company about its recruitment policy. Of the local NHM workers, 90 per cent were Makian. The Kao also demanded more respect from the company for their indigenous leaders.

After Suharto's fall in 1998, the decentralisation process created opportunities to reset administrative boundaries across the country. New Provinces, Districts and Sub-Districts emerged throughout Indonesia (Van Klinken and Nordholt, 2007: 18-25). The Makian managed to get official recognition for their Sub-District, Malifut. Its territory comprised 16 Makian and 5 Kao villages. The Kao in these villages were upset because the new administrative boundaries separated them from other Kao villages (Duncan, 2005: 63). In addition, the rearrangement of administrative boundaries meant that Halmahera Barat District lost six villages to the Halmahera Utara District, leading to resentment among Halmahera Barat's inhabitants (JŠger, 2017: 102). As

section 2.2.3 explains, this division later had considerable repercussions for how the mining company divided its Corporate Social Responsibility fund.

In August 1999, a day after the government officially recognised the Malifut Sub-District, a violent conflict erupted between the Kao and Makian. Regional leaders in other parts of North Maluku, especially the two local sultans, became involved as well. Violence swiftly spread to other areas throughout North Maluku. The conflict lasted one year. Some 3,000 people were killed, thousands were injured, and approximately 200,000 became internally displaced (Van Klinken, 2007: 107-9, 118-9; Wilson, 2008: 1; Cordaid, 2001; International Crisis Group, 2009).

The conflict was often interpreted along religious lines, between Christians and Muslims. However, the roots of the conflict lay in the tensions between various local ethnic groups (Duncan, 2005).⁷ Competition between the ethnic groups over mining company jobs seemed to have intensified the tensions.

After the conflict, it remained quiet in the area for some years. People seemed to have lacked the energy or desire to complain to the mining company. Only former NHM employees complained – Kao and Makian alike – having lost their jobs during the conflict when the mining company had to stop its operations.

2.2 Mass demonstrations, but for what cause? (2003-2004)

Three years later, with the support of interest groups from outside the area, new opportunities led to new complaints. However, the form of redress somehow became detached from the underlying problems. Complainants also did not form a homogeneous group to strive for the same kinds of redress.

The new actions were sparked by NHM's decision to start mining in a second location. This new Toguraci-mine was an open-pit mine, i.e., a landscape cavity exposed to the open air. Its location in a protected forest area triggered interest groups from outside the region to broadly resist NHM. National and international organisations, including Walhi and WWF Indonesia,⁸ formed the Coalition against Mining in Protected Areas.⁹ It focused on targeting NHM's open-pit mining activities in protected forest areas.

7 Duncan (2005) provided a good overview of the violent events in 1999 and 2000 in Kao-Malifut and across North Maluku, emphasising the contradicting chronologies of the events and that the roots of the conflict are complex.

8 See for example 'NGOs urge Australian firm to stop mining in Halmahera', Jakarta Post, 24 December 2003.

9 This Coalition also consisted of Jakarta-based JATAM (Mining Advocacy Network) and the Indonesian Centre for Environmental Law (ICEL), along with the Australian Mining Policy Institute.

Although the Forestry Law of 1999¹⁰ banned open-pit mining in protected forest areas, the government still provided some permits to mining companies across Indonesia. The Coalition petitioned to the Constitutional Court to review the Government Regulation and Presidential Decree that permitted 13 companies across Indonesia, including NHM, to conduct open-pit mining in protected forest areas.¹¹ The NHM case then became part of a broader national campaign strategy against mining in such areas.

The Coalition also employed activities besides legal action. It sought media attention within Indonesia and abroad, lobbied against NHM, and supported mass demonstrations organised by local interest groups. In doing so, it focused attention on issues besides open-pit mining, such as the violation of customary rights. Before the violent conflict, Kao representatives had also made claims based on their indigenous status, demanding more jobs and respect for their indigenous leaders. By contrast, the Coalition referred to the land, claiming that NHM operated on traditional, indigenous land.

The Coalition also accused the special police force overseeing the mining site of violating human rights. It pointed to the mining company's alleged environmental impact, especially the acid water flowing from one of the non-operational open-pit mines. However, I found no records on complaints to regulatory institutions, e.g., demanding law enforcement measures. Remarkably, while the only appropriate redress for the grievances seemed to be NHM's departure from the area, the Coalition's only specific call for redress was the demand for more job opportunities for the local population.

In the extra-legal campaign against NHM, interest groups who initially addressed different grievances aligned with each other. For example, the Coalition supported former NHM employees who wanted to reclaim their jobs after they had been dismissed during the violent conflict. Kao and Makian joined forces as a group of former NHM employees collaborated with the Adat Pagu organisation (i.e., a Kao tribe advocating for its customary rights). In a joint petition, the two groups claimed that NHM and the government had not paid sufficient attention to labour and customary rights issues, or human rights and environmental matters. The petition did not specify these grievances, and it did not seek a particular kind of redress. By generalising the grievances, the petition possibly intended to promote support amongst other local (customary) leaders while denouncing the company before a broader audience (e.g., national and international NGOs and the media).

An informal NGO report from around 2003 provided snippets of the two customary Pagu leaders' opinions of the land, labour and environmental problems. Priest Yance Namotemo, of the Balisosang village, complained about

10 Law 41/1999.

11 See for example 'Walhi urges government to solve dispute in Halmahera', Jakarta Post, 15 January 2004, and 'Constitutional Court bows to pro-mining pressure', Down to Earth magazine, no. 66, August 2005.

the limited number of jobs for the local population – Kao and Makian alike – compared with the job opportunities for people outside the region. The customary leaders also lamented the mining's impact on river pollution and the related decrease in fish stock – particularly the 'teri' species – in the nearby Gulf of Kao. They furthermore mentioned the health impact, referring to the polluted river water infecting a man's leg. Finally, they stated that the Gosowong-mine site had a sacred significance. The leaders concluded that if the mining company would meet the compensation demands, the community was likely to agree and would cease its protests. The leaders did not specify what kind of compensation they envisioned, but they likely meant monetary redress rather than environmental measures.

Tim 13, a group of 13 local leaders from Christian and Muslim villages wrote various statements opposing NHM. They organised mass demonstrations with the support of the Coalition. The group raised a wide variety of grievances, including the violation of indigenous rights, the lack of job opportunities and environmental matters, such as the open-pit mining in a protected forest area and pollution. The mining company and the special police force that secured the mining site accused the protesters of being illegal miners in the company's mining area. Eventually, the mass demonstrations came to a dramatic end in January 2004, when one of the protesters was shot and killed by the special police force.

After that, a group of community, customary, religious and youth leaders from the Kao-Malifut region dissociated themselves from the protesters, and especially from the latter's customary rights and land claims.

In the spring of 2004, the Coalition brought a case against the Government Regulation and Presidential Decree before the Constitutional Court. The Regulation and Decree had allowed 13 companies to conduct open-pit mining in protected forest areas, which they reasoned was unconstitutional. The plaintiffs partially won: six companies had to stop their open-pit mining activities in those areas. However, NHM was not among them. Down to Earth Magazine criticised the Court's decision, reasoning that NHM failed to conduct the required environmental impact assessment of the new open-pit Toguracimine (Down to Earth Magazine, 2005). Journalist Chris Hamby argued that the company managed to continue its open-pit mining activities in the area because it threatened to sue the Indonesian government, through the so-called investor-state dispute settlement (ISDS) arbitration mechanism for international investment agreements (Hamby, 2016).

After the Constitutional Court's ruling, the Coalition members' attention on the NHM case subsided. Taking further legal action would be too costly and time-consuming, while the outcomes of court cases were uncertain, a former staff member of an involved NGO commented. 'It is not possible to stop NHM. You would need a foreign law firm that is willing to invest a lot of time and money in litigation. Our goal was to put pressure through national and international platforms. We were not really after getting the mining

companies to stop their activities. If the people would have been happy with compensation that probably would have been enough, he said. Indeed, people in the area did not seem to consider open-pit mining in protected forest areas to be a real problem. None of the respondents I interviewed in 2009 mentioned open-pit mining in protected forest areas as a wrong corporate action. None of the interviewees recalled that the 2003-2004 demonstrations were about this specific issue.

However, the new Forestry Law created an opportunity to reframe the overall dissatisfaction with NHM into a legal critique of NHM's actions. Various grievances related to different problems were bundled to mobilise people and increase the pressure on the company. As a consequence, it became less clear who experienced which problem and what redress would be appropriate. For example, the monetary redress that according to the former NGO staff member could have been a satisfying kind of redress, would not solve the problems related to the environmental impacts, the customary and land rights, or limited job opportunities.

Soon after the Constitutional Court's ruling, most national and international organisations retreated from the case in Halmahera.

2.3 Reframing grievances (2004-2009)

After the demonstrations and the Constitutional Court decision, the protests against NHM ceased. I did not find reports of developments in the redress seeking process anytime between mid-2004 and 2005. Nevertheless, in the following years, the redress seeking process slowly revived. Local interest groups raised some of the same themes as in previous years: limited local job opportunities and environmental pollution. Grievances related to a new issue also arose. The increased amount of Corporate Social Responsibility funding that the company provided to villages near the mining site led to more interest groups becoming involved, with problems arising about the fund's distribution.

2.3.1 *Labour related grievances*

The issue of former NHM employees losing their jobs after the violent conflict in 1999-2000 was addressed for the last time in 2008. The Provincial Parliament facilitated a meeting between former NHM employees and the company. However, I found no documents that reported on the meeting's outcome. Former NHM employees whom I interviewed in 2009 said that they still hoped NHM would reemploy them, but that they were no longer participating in demonstrations or actively trying to achieve this goal. Overall, many respondents lamented the mining company's limited local job availability. This limited availability was partially related to mining work requiring a certain education, which the respondents and their relatives often lacked. Some also

complained about the unfair recruitment procedure. One 'needs to know someone within the company' and has to pay them to be recruited. Although limited job opportunities were one of the biggest frustrations for many respondents, interest groups and the media only sporadically mentioned grievances related to this issue after 2009.

2.3.2 *Environment related grievances*

Between 2004 and 2009, interest groups increasingly combined grievances related to the environmental impact and violations of indigenous rights.

The North Maluku branch of the environmental organisation Walhi (i.e., Walhi Malut) met with the Minister of Environment in 2006 to call for an environmental audit of NHM. The organisation suggested that NHM had caused severe environmental damage with its wastewater and with acid water overflowing from the Gosowong-mine, and through its drilling, blasting and demolition activities. When the government finally conducted an environmental audit in 2008, it did not grant Walhi's request to be part of the auditing team.

Walhi Malut also protested at the District Parliament's office, together with interest group *Forum Peduli Halamahera Utara*. It claimed that NHM had polluted the Kobok and Tabobo Rivers, obstructing access to clean water and causing a decline in the fish stock. They also claimed that NHM had taken indigenous land from the Pagu tribe without consulting the population.¹² As redress, the organisations demanded a revision of NHM's Contract of Work and a cancellation of all mining activities. In response, NHM workers started protesting against the possible closure of the mine.

Together with anti-mining NGO JATAM, Walhi Malut organised a seminar to discuss the mining's economic benefits and negative environmental impacts. A Provincial Government representative complained that NHM's Contract of Work did not sufficiently serve regional interests. By contrast, a Provincial Mining agency official said that the mining company contributed to the local economy through its taxes and royalty payments.

In 2006, the Village Head of Bukit Tinggi and several others reported to Walhi Malut that many people, including children, were suffering from itchy skin and swellings after they had bathed in the Tabobo River. Others complained about the loss of livelihoods due to the declining shrimp stock. Walhi reported on citizens' complaints that the river water was no longer drinkable.¹³ Meanwhile, five political parties in the Provincial Parliament advocated that the government should legalise small-scale, illegal mining, despite it

12 Notably, this was the first time the issue of indigenous rights violations was framed as a land problem specific to the Pagu tribe.

13 During 2006 and 2007, Walhi Malut focused on the villages of Tabobo and Bukit Tinggi. In 2012, a former Walhi Malut member noted that inhabitants from these two villagers had become particularly eager to engage in demonstrations against the mining company.

causing severe environmental damage, because local communities could then also benefit from the mining activities.

These developments demonstrate that different groups addressed environmental grievances and occasionally combined them with grievances concerning indigenous land. However, they usually sought redress through economic compensation for the local communities, rather than cancelling activities at the root of the grievances.

2.3.3 CSR related grievances

In January 2008, complaints were first raised about NHM's Corporate Social Responsibility (CSR) funding. When NHM first arrived in 1998, it paid 64 million rupiahs (approximately € 5000) to the fund for nearby villages. However, after Indonesia's Company Law of 2007 made it mandatory for mining companies to provide CSR,¹⁴ the amount increased significantly. In 2007, NHM paid 24 billion rupiahs (approximately € 1.9 million), with each village receiving an average of approximately € 22 thousand. However, the fund's distribution led to controversies within and between the villages, between the Halmahera Utara District Government and NHM, and between NHM and specific groups within the community.

The fund's distribution mechanism changed over time. Initially, a Community Consultative Committee managed the fund. After 2000, the company took over. In 2004, the District Government came to manage the fund's distribution, but according to NHM, considerable parts of the fund disappeared, and it feared this would lead to unrest.¹⁵ Therefore, in 2007, the company established a CSR team to work closely with 'village teams' (*tim desa*) that drafted proposals on behalf of villagers to allocate the funding. The fund's donations were in the form of goods and services and could be spent on, e.g., building materials, health services and scholarships.

In 2008, the Malifut and Kao Teluk Sub-District Heads complained about this distribution mechanism and questioned whether each village received its allocated amount of funding. They considered the CSR funding as redress for the violations of indigenous rights. They also criticised the recruitment system, since the company had not hired enough locals. In 2009, NHM admitted it encountered difficulties with allocating the fund. Serious problems had occurred in about 10 per cent of the villages.

14 Law 40/2007 obligated companies engaged in natural resource businesses to allocate one per cent of their gross revenues to CSR.

15 In 2009, complainants suspected NHM's sub-contractors, who were responsible for delivering construction materials donated within the CSR programme, of corruption. The complainants also doubted whether NHM's CSR fund amounted to one per cent of the company's revenues.

Ngofagita was one of the villages where CSR distribution issues caused tensions. Many respondents were dissatisfied with the village team, which consisted of three members, including the Village Head and the Village Secretary. 'The slow distribution of the fund is the *tim desa*'s fault. (É) There are always a lot of discussions in meetings between the team and other village members. I suspect that NHM does not know much about the situation in the village. The people who distribute the fund can easily take advantage of the situation. Those people only think about themselves.' Many respondents felt they did not have any options to address grievances. 'We do not have enough skills to talk to the *tim desa*. It's always the same people who talk. During meetings, I tried to speak but I was easily interrupted. If we already lack the skills to talk to the *tim desa*, forget about expressing our opinion to the District Government.'

Dum Dum Pantai became divided about the CSR's distribution. The Government reset administrative borders after the decentralisation process, and the village became part of the District Halmahera Utara. One part of the population identified strongly with their former district, Halmahera Barat. In response, the Halmahera Utara government offered Dum Dum villagers the possibility to register under either Halmahera Utara or Halmahera Barat. Therefore, from 2006, Dum Dum had two village administrations, including two Village Heads. While supporters of each District lived side by side, only the villagers registered under Halmahera Utara received CSR funding.

Many Dum Dum respondents considered the CSR funding as redress for the negative impact the mining had on them. 'It would be fair if the CSR went to the whole village because the whole village is affected by the mining. However, the village team decided that Halmahera Barat people are not entitled to CSR, but NHM does not know about that.' One of NHM's CSR team members commented that the company would not have any problem distributing CSR to those registered under Halmahera Barat. However, he said: 'It is not NHM's, but the Government's responsibility. NHM doesn't want to get involved in that'.

Dum Dum's Village Head under Halmahera Utara was also accused of committing fraud. 'He takes personal benefit from the assistance provided by NHM. For example, if there are ten families who have not yet received CSR, the Village Head reports that twenty families are still waiting for CSR. He will keep the difference himself.'

After 2010, discussions about alternative distribution mechanisms for the CSR fund dominated media reports on NHM. The discussions were initiated by the Halmahera Utara District Head's demands to the National Parliament. He claimed that the District Government should have more regulatory power under the Regional Government Act and that the District should receive company shares to compensate for the mining's environmental damage caused. He also suggested revising the CSR programme so as not to contradict the District's development plans. The District Head threatened to close down the

company if his demands were not met. The District Head also announced that he would establish a foundation to manage the CSR fund. NHM rejected this idea. However, between October 2010 and mid-2012, 29 local parties – including NGOs and Village Heads – stepped forward and competed to obtain a position in the CSR distribution mechanism. To solicit public support, some claimed that they could address both CSR problems and other mining-related issues.

NHM eventually refused to allow any local party to play a part in the fund's distribution while local interest groups continued raising CSR-related problems. These problems included the late payment of CSR scholarships, resulting in students' expulsions from their universities. They also included late CSR payments to the village teams and alleged fraud by the NHM's sub-contractors responsible for delivering CSR-financed goods and services.

In sum, CSR laws and policies led to controversies within and between villages, between the Halmahera Utara District government and NHM, and between NHM and specific groups within the community. At the village level, tensions increased as village representatives were accused of personally benefiting from their position in distributing the CSR fund. Many also saw CSR as redress for the company's wrongdoings. As section 4 will demonstrate, CSR could be used to 'buy off' people who had complained about the mining's environmental impacts.

2.3.4 Bundling grievances and seeking monetary redress

After 2008, a growing number of interest groups increasingly voiced grievances related to various themes together, often aiming for monetary redress.

In early February 2008, the local interest group *Aliansi Masyarakat Lingkar Tambang (AMLT)* blocked the road to NHM. Walhi Malut reported on the blockade, writing that it consisted of '*masyarakat adat*' (the indigenous community), including representatives from the Pagu, Boeng, Modole and Towiliko tribes. They also reported that *AMLT* demanded 500 billion rupiahs (approximately € 40 million) as redress for the violations of their indigenous and environmental rights.

Later that month, another group that claimed to represent five Sub-Districts also demonstrated against NHM, blocking access to several vital work locations for various days. District Parliament members facilitated the meetings between the protesters and NHM. The tense meetings did not lead to any concrete agreement.

In May 2008, a student group called *AMPP* proposed to nationalise NHM, while another group called *Forum Peduli Daerah Halmahera Utara* staged demonstrations to demand more job security for mine workers and improved management of CSR distribution. One advocacy team announced that it would file a lawsuit against NHM for the NHM's Corporate Social Responsibility team mismanaging the CSR. The District Parliament's chairman also stated that the

distribution through the company's CSR team was not transparent and that NHM's empowerment programme (as part of the CSR programme) did not work properly. Walhi Malut and interest group *ORANG* accused NHM of causing a decrease in the Gulf of Kao's fish stock.

A local division of the Indonesian National Youth Committee (*KNPI*) asked the demonstrators to stop their protests and await the discussion between the District Parliament, the District Government and NHM regarding regional legislation possibly recognising the local population's customary status. *KNPI* said such regulation could serve as a basis for making further claims, referring to the mining case in Papua New Guinea with the company, PT Freeport. In that case, formal recognition of the customary status had resulted in benefits for the local population, including housing and shares in the company (Sethi et.al., 2011).

In 2009, five Kao leaders from different tribes sued the Republic of Indonesia as well as NHM in the first instance court in Tobelo to have NHM return the customary land and to obtain a compensation of 7 billion rupiahs (approximately € 500,000). The court rejected the claims, finding insufficient proof that the land was Kao customary land. On appeal, the High Court of North Maluku upheld the first court's decision. During the case, the position of these five leaders appeared to be controversial within their communities.¹⁶ Different persons claimed to be the customary leaders of the same groups. Nonetheless, neither the court nor Parliament asked critical questions about this issue. As a result, there was a window of opportunity for fortune seekers to bring forward grievances on behalf of a group, and seek redress that would merely serve their private interests.

Despite the many complaints, some interest groups were satisfied with NHM. For example, a group called Forum of Concerned Youth Halmahera Utara (*FP2HU*) said the district parliament had evaluated NHM's performance incorrectly, especially concerning its assistance to the local population. According to this group, NHM had fulfilled its duties.

2.3.5 *Parliaments acting as intermediaries between citizens and the company*

As previously mentioned, in 2006, the Provincial Parliament's chair declared that this Parliament was the most appropriate forum to resolve problems related to labour, the environment and customary land. Nevertheless, in 2008, a delegation from the District Parliament and the District mining agency approached the National Parliament and the Ministry of Mining to ask for help in solving the problems between NHM and the local population. They asked the National Parliament to revise the NHM's Contract of Work in order

16 One of the appellants, Yeskiel Ngingi, claimed to be the customary leader (*sangaji*) of the Pagu tribe. However, around that time, many respondents in the predominantly Pagu village of Balisosang identified Yakop Nanotemo as the Pagu leader at that time.

to give more power to the District Government and suggested that the District Parliament manage the distribution of the CSR funding. In response, the Ministry of Mining met with NHM to discuss the District Parliament's proposal. The parties agreed that the Central Government would audit the distribution of CSR funding, while the District Government and Parliament would establish a foundation for the fund's distribution. The 'indigenous people' would conduct a comparative study of PT Freeport in Papua New Guinea to assess their arrangements on customary rights and CSR. Finally, the Central Government and District environmental agency would conduct a joint environmental audit. The audit concluded that the environmental impact did not exceed any legal standards.

2.3.6 *Reflecting on the reframing and bundling of grievances*

The grievances voiced between 2006 and 2009 revolved around violations of labour, the environment, and customary rights. However, the details changed. Labour problems no longer evolved around the dismissed workers. Environmental problems no longer related to acid water overflowing from the mine or to open-pit mining in protected forest areas. The violation of customary rights no longer concerned the lack of respect for customary Kao leaders but focused on land, especially Pagu land. It seems that grievances were reframed according to the new possibilities of achieving (monetary) redress or benefits. The number of different local interest groups that sought redress increased, and they frequently competed with one another instead of taking a joint stand against the company. Their efforts often had the veneer of rent-seeking and opportunism. The link between redress and sought benefits also became further detached from real-life problems that people who lived near the mining site experienced.

The roles of Parliaments also stand out. They began to act as intermediaries between the redress seekers and the company, instead of holding the government accountable for failing its regulatory tasks. It shows how the regulation process that ought to promote the public interests instead facilitated private parties in their quest for redress.

3 THE REVIVAL OF INDIGENOUSNESS AS A BASIS FOR CLAIMS

The developments of grievances and claims related to the indigenous status of Kao, specifically the Pagu, are key to explaining the dynamics of the redress seeking process in Kao-Malifut.

As described in section 2, soon after the mining company's arrival, the indigenous Kao demanded the company's respect for their indigenous leaders and claimed to be entitled to more jobs than the migrant Makian. After the conflict between 1999-2000, the issue of ethnicity was temporarily not

emphasised as a basis for claims, perhaps because the conflict highlighted the danger of such an approach. However, in the turmoil of the mass protests in 2003 and 2004, the ethnicity issue was raised again. This development coincided with a general turn towards indigenism as a basis for land claims in Indonesia (see, e.g., Henley and Davidson, 2007; Bakker and Moniaga, 2010).

This section demonstrates how, throughout the years, grievances were reframed because opportunities to achieve redress changed. It also shows how the redress seeking process can have harmful effects on the social relations in communities. Although indigenous-based claims were directed primarily at the company, the Pagu tribe's increased awareness about their status also fuelled tensions between the different ethnic groups in the area.

3.1 The Pagu in 2009

When I conducted fieldwork in 2009, the Pagu people I interviewed rarely made claims to compensation based on the loss of indigenous land. The leader of the Pagu tribe, *sangaji* Yakub, lived in Balisosang, a predominantly Christian and Pagu village. He had suffered from a stroke, so his brother priest Yance – who was part of *Tim 13* in 2003 – had taken over many of his tasks.

Yance played down claims that were based on the indigenous status of the Pagu, particularly those related to land. 'Honestly speaking, we did not know much about our right to customary land until in 2002 two NGOs from Ambon came to make us aware of that. [...] It is true that close to the mining site there is a grave of one of the former *adat* leaders. Before we became Christians, people went there to worship their ancestors, but not anymore. Nevertheless, people still have respect for that. The grave has been destroyed by NHM.'

Yance was most frustrated by the mining decision-making process excluding the community, and he linked this to customary rights (D'Hondt and Sangaji, 2010: 20). 'The biggest problem in Balisosang is that *adat* rights are not respected. The concession was an agreement between the company and the central government, but the community should have been involved in the decision-making. It should have been an agreement between the company, the government and the community.' Keeping in mind the memory of the 1999 conflict, Yance made no distinction between the Kao – or more specifically, the Pagu – and the Makian regarding the extent to which each group would

be entitled to involvement in the decision-making process or compensation for land loss.¹⁷

Many respondents in the villages of Balisosang and Dum Dum Pantai identified as Kao, and more specifically, as Pagu. In 2009, most said ethnicity and indigenusness were important to them. A majority thought that the mining company should have asked the people for permission to use the land. A few respondents were dissatisfied with the redress the company had provided for the loss of land and other negative effects. 'NHM's mining activity is on Pagu land because the landowners of the mining area are from here. However, the loss of land affects not only the direct owners of that land but the whole community. The compensation paid by NHM is very little. It is not enough for all we have lost: the land, the plantations, our livelihood.' Someone else remarked: 'They stole our land and now they don't improve our lives.' By contrast, others were unsure whether the company had violated customary rights. They said they did not feel any special attachment to the land on which NHM operated, based on their ethnic background. 'We no longer went to the land for rituals. The landowners who had plantations received compensation for the land they lost,' one respondent explained (D'Hondt and Sangaji, 2010: 10).

Although in 2009, barely any of the Balisosang respondents made claims to the mining company based on their Pagu identity, many did express their desire to be hired by NHM or one of its sub-contractors.¹⁸

3.2 A revival of claims based on customary rights: compensating the Pagu or individual landowners?

In 2010, the issue of 'indigenusness' was spectacularly revived as a ground for seeking redress. When national NGO *Aliansi Masyarakat Adat Nusantara* (AMAN) became active in the Kao-Malifut area, it organised national conferences in Halmahera Utara's District capital Tobelo in 2010 and 2012. The 2010 conference marked the starting point of AMAN's activities to increase the Pagu's awareness about their substantial entitlement to compensation for the customary land they lost to NHM.

That same year, Pagu-leader Yakup passed away. One year later, priest Yance – who had also formally replaced his brother as the Pagu leader – died as well. It left the Pagu – approximately 8,000 people living in 17 different

17 The Coalition Against Mining in Protected Areas, the Kao and Malifut Community Council and local leader Yance Namotemo linked *adat* rights to the general right of the community to be involved in the decision-making process or to be entitled to compensation for the loss of land.

18 Two respondents worked as a driver and in the catering service for NHM's sub-contractors. One of them estimated that NHM salaries are between 5 and 6 million rupiahs per month, while sub-contractors pay between 2 to 3 million per month.

villages – without *sangaji*. According to tradition, the sultan of Ternate should appoint the *sangaji*'s successor. However, when AMAN learned that the Pagu were without a leader, it facilitated a leadership process in an entirely novel fashion. It organised 'focus group discussions' (FGDs) in the 17 Pagu villages with the village elders. During these discussions, the participating villagers decided that the only candidate for the position, a woman named Ibu Ida, would become the new *sangaji*. AMAN representatives reasoned that the deviation from the traditional procedure was justified for democratic and emancipatory reasons.

The new Pagu-leader was a charismatic woman. In 2012, she demanded free access to the Pagu's customary land on which NHM operated. She also demanded either the restoration of the mining area to its previous condition or 20 to 50 per cent of shares in NHM's profits.¹⁹ A member of the local AMAN division did not worry about the potential tensions between Pagu and non-Pagu if the Pagu would obtain shares. "All those who would like to become Pagu are welcome to join the tribe," he reasoned.

However, the redress seeking strategy of the new Pagu leader did lead to tensions with other local community members. For example, in 2012, a few Makian cultivated a piece of land that a plantation company had abandoned. The Pagu's new awareness led certain tribe members to demand that the Makian ask permission from the Village Head of one of the Pagu villages to use the land, which the Makian refused. The Pagu *sangaji* received death threats, and people threw rocks at Pagu houses in the Soso village.

The new *sangaji*'s strategy required that the land on which NHM operated would be recognised as Pagu land. However, the majority of respondents considered the land to be the property of individual owners, who in many cases happened to be Pagu. Most Dum Dum respondents felt that the individual landowners who had lost land to NHM were properly compensated. 'The land taken by NHM was not *adat* land. It belonged to private owners who were compensated.' Another respondent remarked: 'NHM bought the land from the owners. They received a fair price.' Several respondents differentiated between selling the land and being compensated for losing it. 'Last year, NHM just took our land without our consent. We asked for 50 million rupiahs (some € 4000), but we only received 20 million (€ 1600).'

Others said they had sold their land to NHM, but the company had pressured them to agree to an unfair price. Only a few Dum Dum respondents said that the company had violated their indigenous land rights. 'The *adat* people have not been consulted, only the local government. NHM should have

19 In 2012, AMAN engaged in drafting maps of the Pagu area. They did so in support of the claim that the area is indeed Pagu customary land. It also planned to conduct linguistic research to prove that certain names (e.g., Toguraci and Gosowong) derive from the Pagu language.

made an agreement with the *adat* people, especially with the *sangaji*.' Another respondent remarked: 'It is Pagu land so it should go to the whole community.'

Grievances related to indigenesness transformed over time. These transformations concerned whose rights had been violated and, therefore, who was entitled to redress: the Kao, the Pagu or the local population as a whole. The claims to particular kinds of redress also changed, from more jobs for a particular ethnic group, to respect for indigenous leaders, access to and restoration of the indigenous land and shares in the company. To the outside world, the indigenous population was usually portrayed as a unified group, with collective rights to redress, e.g., for the loss of land. However, as already indicated, many considered the loss of land as an individual landowner issue, rather than something for which the mining company should compensate the indigenous as a collective.

The increased awareness of indigenous status led to tensions between different ethnic groups in the area. Some of those who self-identified as entitled to redress because of the loss of Pagu land expanded their claims to demand that local people with a different ethnic background ask the Pagu's permission to use the land. These demands increased the risk of conflict between ethnic groups and demonstrated the potentially harmful effects of seeking redress when the logical link between the real-life problem and the redress is lost. In this case, the real-life problem appeared to be the general poverty of the local population. It also included the frustration, among the Kao in particular, that they could barely share in benefits from the natural resources that were hidden in the ground on which they lived. In the current socio-political circumstances, framing the grievance as being related to the violation of indigenous rights provides an opportunity to share in the redress benefits. However, this is not a solution for all those in Kao-Malifut who live in poverty.

4 ADDRESSING ENVIRONMENTAL GRIEVANCES, BUT NO APPROPRIATE REDRESS (2010-2012)

Since the mining activities began, affected individuals sporadically raised environmental problems in attempts to seek redress. As section 2 described, in 2003 and 2004, a coalition of interest groups addressed issues such as open-pit mining in protected forest areas, the overflowing of acid water from open-pit mines, and the fish stocks decreasing in the Gulf of Kao. However, in the years that followed, the groups paid less attention to the mining's environmental impact.

Between 2010 and 2012, two issues dominated the public discussions about NHM: the CSR's division mechanism and the redress seeking attempts for customary land rights violations. The media barely mentioned grievances related to the mining's environmental impact. However, several incidents occurred involving leaking pipes and were visible and tangible. The next

section will explain how a small group of redress seekers – through private negotiations with the company – were able to achieve some redress for that environmental impact of the mining.

Section 4.2 focuses on the environmental NGO Walhi and tries to explain why it had little success in addressing the mining company's environmental impact, despite the organisation's long-time involvement in the case. Section 4.3 presents villagers' views on the mining's environmental impact on their lives and illustrates the discrepancy between the narratives of redress seeking groups and the reality of pollution on the ground.

4.1 Some redress for some people

On 17 March 2010, one of the pipes that transported waste material from NHM's plant to the wastewater treatment facility leaked. Walhi Malut had obtained an inspection report written by the Provincial mining agency that contained detailed information about the exact time of the incident and the amount of leaked material. Walhi Malut urged the District government to impose a sanction, which it did not.

Despite the leakage, the PROPER programme rated NHM as 'blue' later that year.²⁰ This rating indicated that the Ministry of Environment considered NHM to have been fully compliant throughout that year. Walhi Malut objected to the rating by referring to the pipe leak incident and by emphasising that it had particularly affected people from Balisosang.

On 3 February 2011, a second pipe leak occurred, which Walhi Malut reported on through the local media. Again, Walhi Malut obtained detailed information about the leak and said that Balisosang was primarily affected. It used the momentum to direct attention to the overall degradation of the water quality since 2000. The water was no longer suitable for consumption: the pollution caused fish to die, and negatively affected crops along the river. People had been forced to move and take their children out of school to help their parents earn money after suffering from the environmental impact. Walhi Malut requested the Provincial environmental agency investigate the case, and threatened to organise demonstrations and bring the case to court.

On 2 June 2011, a witness reported that he had seen another broken pipe on NHM's terrain, leaking white-coloured water into the river. A newspaper reported that NHM's staff had rushed down to the location to clean it up with heavy equipment. According to members of Walhi Malut, the NHM staff had asked villagers not to report the incident to Walhi Malut. A local newspaper quoted the director of Walhi Malut asking why the public was not properly informed and why NHM's management was not criminally prosecuted, as had happened in a similar case in Sulawesi.

20 The PROPER programme has been discussed more extensively in chapter 3.

On 10 June 2011, a fourth leak occurred. To gather evidence, Walhi Malut visited the location of the incident, together with people from Balisosang. They photographed the broken pipe, the milky water and a dead fish. The Balisosang interest group *Peduli Ramah Lingkungan (PRL)* – with Balisosang’s Village Head amongst its members – reported to local media that *PRL* had gathered proof because ‘the District Government of Halmahera Utara and the Provincial environmental agency did nothing’.

While various local interest groups supported *PRL*’s demand to close down NHM,²¹ one group named *LIRA* said that NHM’s closure would negatively impact its employees and that *PRL* was only acting in its own interests. It proposed the District Parliament mediate between the company and *PRL*. Other groups proposed the same.²² In other words, when one interest group asked the government to perform its legal, regulatory duty, other interest groups suggested that the government mediate a conflict between two private parties.

In response to Walhi’s reports, officials from the Ministry of Environment travelled to the location and directed NHM on how to handle the situation. At the same time, *PRL* handed over the proof it had gathered on the leak to the District Parliament, and urged the parliament members to visit the location, together with leaders from the District executive government.

PRL claimed that the Balisosang population was suffering from skin problems and that crops had died after the leaks. The Village Head of Balisosang – who was also a member of *PRL* – said that Balisosang had suffered the negative environmental impact relatively more than other villages. Therefore, they argued that NHM should construct clean water facilities in Balisosang. NHM eventually gave in and constructed water wells along the polluted Kobok River, where people from Balisosang cultivated plots of land. However, it rejected the Village Head’s request for new electricity facilities as a form of redress.

Certain people along the Kobok River said they were satisfied with the water wells. However, many people who suffered from the river pollution had not received wells. Furthermore, the wells provided access to clean water, but they did not resolve the risk to health problems and the decreased fish stock. Instead, Balisosang representatives used the environmental problems to negotiate for financial compensation and other benefits from NHM (e.g., improved electricity facilities in Balisosang, contributions to the village’s church and jobs for Balisosang’s people). Notably, the CSR funding was to pay for these benefits. However, although Balisosang’s representatives considered using

21 *KNPI* said the District Parliament did too little and that the District environmental agency should investigate the case. The group *LSKPH* demanded that the District Parliament form an investigation team.

22 Political party *PKP* agreed with *LIRA* that the parliament should mediate. Interest groups *Fopernas*, *Kao Center* and *SKPH* also asked the government to mediate.

the CSR fund to compensate for damages, the CSR was not legally intended to provide redress.

The Balisosang representative's redress seeking strategy required them to change the pollution narrative. They argued that the pollution was only related to the pipe leakages in 2010 and 2011. The photographs of the broken pipes created an opportunity to deliver visible proof of the company's environmental wrongdoings and to pressure it in the negotiations. However, according to many respondents, the pollution had been there long before the leaks. They believed the representatives had been 'bought off' with additional CSR funding. Since the river pollution only directly affected a few people from Balisosang, the village representatives were unlikely to repeatedly pressure the company to improve its environmental behaviour or to urge the government to take regulatory measures to protect the environment.

4.2 Reflecting on the role of an environmental NGO

For many years, the environmental NGO Walhi played a role in the redress seeking process in the Kao-Malifut area. This subsection explains the NGO's redress seeking strategy throughout the years and why its success was limited.

In 2003 and 2004, the national office of Walhi had directly addressed various grievances related to mining. In later years, Walhi also attempted to raise international attention for the case in Kao-Malifut, reframing the problems in appealing terms. For example, during a human rights conference in Bali in 2010, Walhi drew a parallel between global warming and the mining activities in North Maluku. It argued that the government should be held responsible for violating the economic, social, cultural and political rights of the villagers of Balisosang. Walhi also emphasised the need to unite all people who had experienced injustices. Balisosang pollution victims, affected fishermen, those encountering labour problems, and those whose indigenous land rights were violated should organise together. It proposed to establish a network of local NGOs to stand up for their common interests. However, the substance of these common interests was unclear. This lack of clarity resembled the strategy of the mass protests in 2003, which also lost the nuance of different appropriate redresses.

In 2005, Walhi established its branch in North Maluku, Walhi Malut. Two years later, Walhi Malut engaged in a project financed by UNDP LEAD.²³ The first phase of this project (2007-2008) established local complaint posts for the population to address their (environmental) grievances (D'Hondt and Sangaji,

23 United Nations Development Programme Legal Empowerment and Assistance for the Disadvantaged.

2010: 28).²⁴ However, since people submitted few complaints, the project adopted a different strategy during the second and final phase of the project (2009-2010). Walhi Malut staff members were embedded in eight selected villages where they talked with the villagers almost daily, gathered complaints and discussed how these could be addressed. The aim was to increase the villagers' awareness of environmental problems, to mobilise them to take a stand against the company and the government, and to gather evidence of the environmental impacts.

According to Walhi Malut, NHM was entirely responsible for the local pollution through its illegal discharging of wastewater and dumping of tailing material. However, despite Walhi's long and intensive involvement in the case, the organisation could not gather convincing evidence that supported these claims. When I examined the organisation more closely, I found that its inconsistent gathering and archiving of data hindered its attempts to address the environmental grievances. Walhi members' distrust towards the authorities also hampered their attempts to seek redress.

In the archives of Walhi Malut, I found an undated report, with no recorded author, stating that illegal miners were active in the area, using both mercury and cyanide to extract gold. Analyses of water samples of both the Bora and Tabobo River had shown that the levels of mercury did not exceed the legally tolerable standards, but that levels of cyanide were too high. The report did not say whether NHM or the illegal miners should be held responsible for the pollution. It found that the population living within one kilometre of the waste disposal site were at risk: after 5 to 20 years, consuming or coming into skin contact with the cyanide-polluted water could cause skin diseases and affect vital organs (e.g., kidneys, brain, heart, nerves, and liver).²⁵ In 2012, the members of Walhi Malut were unaware that this report existed. They were also unaware that in 2003, Walhi had complained about acid water overflowing from the open-pit mines, which was then believed to be the biggest source of pollution.

When I asked them about this, the Walhi Malut members explained that the computer with the records had broken down. Staff members keeping case data on their personal computers also hampered proper archiving. These

24 The posts hardly received complaints. The first phase of the LEAD project did train some villagers to gather information and evidence. However, the training lacked a clear vision for how a solution-based strategy would actually use the information. It seems that Walhi Malut's presence during this first phase had a limited impact. LEAD itself was not satisfied and remarked that, despite Walhi Malut's efforts in the project's first phase, the communities near the mine had not gained sufficient critical understanding and independence to be able to see the real conditions under which they were operating.

25 Despite lacking a published date and the name of the author, the report described its methodology, including the time and locations of sample taking, increasing its credibility. By contrast, the personal archives of one of Walhi Malut's former members also contained laboratory analyses of water samples, but the documents lacked the locations and times when the samples were taken.

computers were separated from the organisation's data system. Walhi Malut's members were moreover often young and worked on a voluntary or temporary basis for the duration of a project. The fast staff turnover hindered the development of the organisation's institutional memory. It also impeded the development of a more robust data management system that could help them build a case against the mining company.

As a consequence, the members of Walhi Malut looked for evidence of environmental violations in an ad hoc manner. For example, in early 2010, they went to the NHM mining site and took photos of various locations they considered 'suspicious' (e.g., swampy and with dead trees). These characteristics could indicate illegal dumping of tailing material. However, the organisation's members did not dare inform the authorities or media because they had no permission to enter NHM's terrain. They also took water samples but did not have them analysed.

Walhi Malut also took pictures of villagers in Tabobo. These villagers had medical anomalies, including nodules. One graphic photo showed a young child with a bleeding head wound. Walhi Malut suspected that these anomalies were related to the river pollution caused by NHM. They brought the child's blood samples to a hospital in Ternate, but the laboratory refused to investigate whether there were traces of toxic substances. The organisation's members interpreted this as a conspiracy against them. As part of the same conspiracy, the local press would no longer be willing to publish Walhi Malut's findings.

A former Walhi Malut member criticised the organisation's functioning and its redress seeking strategy. He believed strategic choices were primarily made based on funding opportunities. As a result, the strategy lacked consistency. For example, Walhi Malut was very active in the area around NHM's mining site for a few years. However, when the project funding of these activities ended in 2011, it focused its attention on cultural heritage preservation in another region and on another mining company elsewhere in the Province. Walhi's sudden departure from the Kao-Malifut area affected the relationship with the villagers, he said. If in the future Walhi would like to become active in Kao-Malifut again, it would first have to regain the villagers' trust. Some respondents in one of the villages where Walhi had been active confirmed this. One fisher called them 'very money minded'. Another stated: 'The negative environmental impact is merely invented by people who wanted to make money out of that.'

The former Walhi Malut member was also concerned about the unintended effects of organisation's activities in the villages. In Tabobo and Bukit Tinggi, the population became eager to engage in demonstrations, he said, particularly against river pollution. 'They often call me to ask my advice on how to organise the demonstrations. And then all of a sudden, the protests are cancelled. I never hear what they have achieved. (...) When they receive money, they will stop the demonstrations. They spend the money on the mosques.'

You can see that in Tabobo and Bukit Tinggi; the mosques are much nicer than elsewhere.'

In summary, Walhi and Walhi Malut's strategy to seek redress was characterised by attempts to gather evidence of environmental wrongdoings and to mobilise people against the mining company. However, their attempts were often ad hoc, due to the temporary funding opportunities and the quick turnover of inexperienced staff. This prevented the organisation from building a strong case against the mining company based on proof the organisation had gathered over the years.

The failed attempts to achieve redress left Walhi Malut's members distrustful of the government institutions that were responsible for regulating the company's environmental impact. In the early years of the redress seeking process, the organisation urged them to take regulatory measures, but later in the process, the organisation started avoiding them. At the same time, the organisation's continuous failed attempts to address the environmental problems also damaged the villagers' trust in the organisation.

4.3 Villagers' perspectives on pollution

The previous sections demonstrated that those who sought redress for the environmental impact frequently identified Balisosang, a village of approximately 420 inhabitants, as the one that suffered the most from the pollution. This approach was somewhat strange because the polluted Kobok River flows approximately ten kilometres away from the village. This subsection shares the perspectives of villagers who had not been directly involved in the redress seeking process. How did villagers in Balisosang and along the Kobok River perceive the mining's environmental impact on their lives? How did fisherman in Dum Dum who experienced a decrease in fish in the Gulf of Kao perceive the environmental problems? What did these villagers think of the attempts to seek redress for the mining's environmental impact?

I interviewed villagers in 2009 and 2012. In 2009, only a few respondents mentioned that the mining had polluted the local water sources. 'The water in the Kobok River has become brown and black, especially in the rainy season.' One man stated that he left his farming lands close to the river because of the pollution. Some respondents worried about the possible health impact. 'We saw the waste in the river, but the water is still used for drinking and bathing. Recently some people started complaining about an itching skin and stomach aches.' Another declared: 'In a village meeting, government officials advised us to no longer drink the water. But the people who have lands close to the river still drink it because there is no other water source.' Others added that the amount of fish decreased. 'I used to make a living by fishing and farming. But the fish disappeared after NHM came.'

However, most of Balisosang respondents said that they had not been directly affected. 'We don't know about the environmental impact because we have not experienced it yet. We heard about the river pollution but that only affects people who have farming land over there, not us.' Others were sceptical about the environmental complaints. One woman questioned whether the health complaints were related to the mining, and another thought that the bombs and poison used to catch the fish caused the decreasing fish stock in the Gulf of Kao. 'People also complain about the quality of the river water, but they still drink it, so it cannot be that bad' (D'Hondt and Sangaji, 2010: 37-40).

Within three years this mixed picture changed completely. In 2012, nearly all respondents in Balisosang believed that the mining activities had a negative environmental impact. Various respondents mentioned that the Kobok River's water had become murky. Most agreed that the water was no longer drinkable, that people suffered from an itching skin after bathing in the Kobok River, that fish had died and that it was unsafe to consume the fish from the rivers and the Gulf. Two respondents recalled that, during a village meeting and through flyers, government officials had informed people that they should no longer consume the river water.

Newspapers, Walhi Malut, and Balisosang's Village Head portrayed Balisosang as the village that had been most affected by the pollution, with all of its inhabitants suffering. However, there were different accounts of how many of them were actually affected. Some owned land along the Kobok River, but estimates of how many were widely disparate.

Several respondents had heard that NHM arranged for water wells to provide access to clean water along the Kobok. Some respondents considered this an appropriate solution for the pollution problem, but others thought the pollution should stop altogether. 'I am afraid that NHM will use the installation of the water wells to please the government, while the environmental problems will just continue', one man said.

When asked how the pollution problems could be addressed, some commented that the government did not do anything. 'I cannot do anything by myself. There needs to be a 'community aspiration', and then we can address our problems via the Village Head', one woman said. Two other respondents spoke positively about the direct link that the Village Government had with the company and considered the CSR funding as a kind of compensation for the mining's negative impact. They mentioned that the Village Government, right after the pipe leaks, had managed to install water wells and taps. Several respondents also stated that they would be satisfied if NHM provided sufficient jobs for the villagers.

Redress along the Kobok's riverbanks, but for whom?

Along the relatively small Kobok River, some ten kilometres south of Balisosang, people work on plots of land where they grow vegetables and other crops. In the weekends, they usually return to their home villages, such as Balisosang.

Nearly all respondents along the Kobok River confirmed that they had noticed pollution. Some said the pollution was continuously noticeable, while others said the water turned blue or red only after it had rained. A few said that the colour of the water turned blue every evening, and remained that colour until the morning. All agreed that the water was not suitable for drinking. Some people brought water from their home villages, which required quite an effort. Others who lived closer to the main road would get their drinking water from NHM, at the security post at the entrance of the mining site. Most respondents had heard that bathing in the river water could lead to skin rashes, but only one respondent had experienced this himself. A few respondents also reported that the quantity of the harvests had diminished and that fish in the river had died.

After the pipe leaks in 2010 and 2011, NHM had constructed water wells along the Kobok River. Not everyone along the river had access to these wells, which NHM had only constructed for residents of Balisosang, specifically those who had good connections to the Village Government. Some of them respondents complained that the water from the wells was smelly and murky.

Remarkably, the accounts of the two respondents who had a water well on their plot of land differed from those of others. For example, while almost all respondents indicated that the pollution had been occurring for many years, the two respondents said that the pollution had started only recently, right after the pipe leak incidents. The two argued that only people from Balisosang had plots of land there. Therefore, they thought it was fair that their village would be compensated for the environmental damage that the company had caused. They trusted that the Village Head of Balisosang would soon negotiate with NHM to arrange more funding for Balisosang's church, more jobs for Balisosang's people and monthly payments to compensate for the destruction of the land.

Fishermen from the village of Dum Dum Pantai also said they had suffered directly from the mining's environmental impact on the fish stock in the Gulf of Kao. 'It is still possible to make a living as a fisherman, but it is nothing compared to the 1970s when you did not even need a boat to go fishing. You could just walk through the water to catch them. (...) Rivers have become polluted because NHM dumps its waste directly into the water.' Another Dum Dum fisher commented: 'I don't know why the amount of fish decreased. It could be because of changes in the weather or the current. But before the company came, there was still a lot of fish. It could also have disappeared because of NHM's waste.' In 2003 and 2004, during the mass demonstrations

against NHM, the protestors had raised the decrease in the fish stock in the Gulf of Kao as a grievance. However, both before and after, people rarely sought redress for this issue, most likely because the Dum Dum fishers lacked access to interest groups and government institutions to promote their cause.

In conclusion, the mining's environmental impact affected the lives of villagers in Balisosang, Dum Dum and those along the Kobok differently. For some, the impact was much more severe than for others. The case demonstrates the discrepancy between the narrative employed by the Balisosang representatives to seek redress, and the perception of villagers who were directly affected by the polluted water. It shows the importance of framing a pollution problem in an appealing manner, e.g., by illustrating it with photographs and linking it to the image of indigenous people. However, the real problem remained unaddressed. People who suffered from the pollution but had no access to the redress seeking process remained empty-handed. The involved government institutions again did not take a firm stand to promote the public environmental interest. The few people who tried to seek redress for the environmental impact changed the narrative, trying to achieve at least some kind of redress for a few people. They were unlikely to address the true magnitude of the mining's environmental impact.

5 CONCLUSION

This chapter presented research findings on the process of redress seeking for environmental grievances caused by gold mining in the Kao-Malifut area in North Maluku. It sought to understand how it was possible that redress became so detached from the initial problems and the detachment's implications. It is worth briefly addressing the lessons from this case.

For a start, the redress seeking process did not develop linearly (i.e., from a real-life mining-related problem to redress that solved the problem). The reason for this lies partially in the regulatory and socio-economic backgrounds against which the redress seeking developed.

The regulation process had an unclear division of authority between multiple institutions that often had considerable financial interests in keeping the mining company operational. Certain institutions were critical of the mining company's environmental performance, but this did not lead to a thorough assessment of the company's compliance. The lack of clarity surrounding the environmental impact persisted and obstructed redress seeking efforts.

Regarding the case's socio-economic context, the population living in and around the mining area was generally poor, and the different ethnic groups had a history of severe inter-group tensions. The mining company's arrival aggravated these tensions. Different people were also affected by the mining company's presence in different ways, and they based claims for redress on

different grounds. Consequently, there was a serious collective action problem. A multitude of interest groups competed with one another over redress. Interest groups frequently made claims on behalf of a particular group of affected citizens, but the extent of their representativeness remained unclear. Compensation and benefits also became mechanisms for co-opting interest groups, who initially had been critical of the company.

The interest groups seeking redress for environmental problems were hindered by the difficulties involved in gathering proof and building a strong case against the company. In the course of the redress seeking process, environmental arguments were increasingly used to achieve financial compensation and a share in the company's benefits.

The redress process also involved grievances expanding beyond the mining's environmental impact. Local people were generally dissatisfied with limited job opportunities. Some lamented the lack of respect for their indigenous rights and the loss of land. The distribution of the company's CSR fund was also problematic. Grievances related to these themes were often bundled to gain traction. Grievances were often reframed throughout the years. This reframing was usually not the result of new problems, but due to changed opportunities. For example, the new Forestry Law, the increased attention on the loss of indigenous land, and the visible evidence of pipe leakages all presented new opportunities for expression.

In the complexity of multiple and flexible grievances, the link between the initial problem and the desired redress became increasingly distant. This growing gap occurred in part because people considered financial compensation and a share in the mining company's economic benefits as appropriate redress for certain problems.

This approach had considerable negative implications. First, the detachment of the problem from the redress made it unclear who was entitled to redress, and what redress was appropriate. In the case of river pollution, although many people suffered, those with no access to representative interest groups received nothing.

Those who were capable of participating in the process and getting some compensation were less likely to address the root problem. They were also less likely to demand that the regulating institutions improve in their responsibility to promote a clean environment. Instead, they were likely to opt for negotiating with the company. The role of Parliaments stimulated this behaviour, since they acted as intermediaries rather than pressuring the regulating institutions to solve the pollution problem.

Finally, although people initially directed claims at the company, the process increasingly contributed to social divisions relations within the affected communities. The increased emphasis on indigenous rights also led to tensions between community members. This approach accentuated differences between people, making their differences the basis for their redress claims.

Finally, this case and the one of Rancaekek demonstrate how government agencies seem to conceive of democracy as a process that requires them to keep all parties in a conflict satisfied to the extent that they do not revolt. Legislation in their view is not something they should implement as the outcome of a democratic process, but rather as a reference point in the negotiations between the different parties involved. In the end, this undermines the essence of a democracy under the rule of law.