

# Indonesia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations

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# Acronyms

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AGO: Kejaksaan Agung	Attorney General Office
AMDAL: Analisis Mengenai Dampak Lingkungan	Environmental Impact Assessment (EIA)
APL: Areal Penggunaan Lain	Other Land Use (non-forestland)
APP	Asia Pulp and Paper
APRIL	Asia Pacific Resources Industry Limited
Bapedal: Badan Pengendalian Dampak Lingkungan	Environment Impact Management Agency
BHKP	Bleached Hardwood Kraft Pulp
BKPM: Badan Koordinasi Penanaman Modal	Investment Coordination Board
BPLHD: Badan Pengelolaan Lingkungan Hidup Daerah	Regional Environment Management Agency
BPK: Badan Pemeriksa Keuangan	Supreme Audit Board
BPHTB: Bea Perolehan Hak atas Tanah dan Bangunan	Acquisition Rights to Land and Buildings Tax
BPN: Badan Pertanahan Nasional	National Land Agency
Brimob: Brigade Mobil	Mobile Brigade
CIFOR	Centre for International Forestry Research
COP	Centre for Orangutan Protection
CPO	Crude Palm Oil
DNPI: Dewan Nasional Perubahan Iklim	National Council on Climate Change
DPPL: dokumen pengelolaan dan pemantauan lingkungan hidup	Environmental Management and Monitoring Document
DPLH: dokumen pengelolaan lingkungan hidup	Document of environmental use
DR: Dana Reboisasi	Reforestation Fund
Inpres: Instruksi President	Presidential Instruction
EIA	Environmental Impact Assessment (also: Environmental Investigation Agency)
FLEGT	Forest Law Enforcement, Governance and Trade
GAR	Golden Agri-Resources Ltd.
GHG	Green House Gas
HCVF	High Conservation Value Forest
HGU: Hak Guna Usaha	Land Use Rights Permit
HL: Hutan Lindung	Protection Forest
HLG: Hutan Lindung Gambut	Peatland protection forest
HP: Hutan Produksi	Production forest
HPK: Hutan Produksi yang dapat dikonversi	Conversion production forest
IPK: Izin Pemanfaatan Kayu	Timber Utilization Permit
ISPO	Indonesia Sustainable Palm Oil
IUP: Izin Usaha Perkebunan	Plantation Business Permit
IUPHHK-HTI: Izin Usaha Pemanfaatan Hasil Hutan Kayu pada Hutan Tanaman Industri	Business permit for industrial plantation utilization
KPK: Komisi Pemberantasan Korupsi	Corruption Eradication Commission

LPI: Lembaga Penilai Independen  
NGO  
Mha  
MTH  
NES  
PPNS: Penyidik Pegawai Negeri Sipil  
PT: Perseroan Terbatas  
PMDN: Penanaman Modal Dalam Negeri  
PMA: Penanaman Modal Asing  
PMP: Penyertaan Modal Pemerintah  
RAPP  
REDD  
  
RGE  
RSPO  
Walhi: Wahana Lingkungan Hidup Indonesia

Independent audit foundations  
Non Government Organization  
Million hectare  
Mixed Tropical Hardwood  
Nucleus Estate (Plasma) Scheme  
Civil Servant Investigators  
Limited company  
Domestic investment capital  
Foreign investment capital  
Government Equity Fund  
Riau Andalan Pulp and Paper  
Reducing Emissions from Deforestation and Forest Degradation  
  
Royal Golden Eagle  
Roundtable on Sustainable Palm Oil  
Indonesian Forum on the Environment

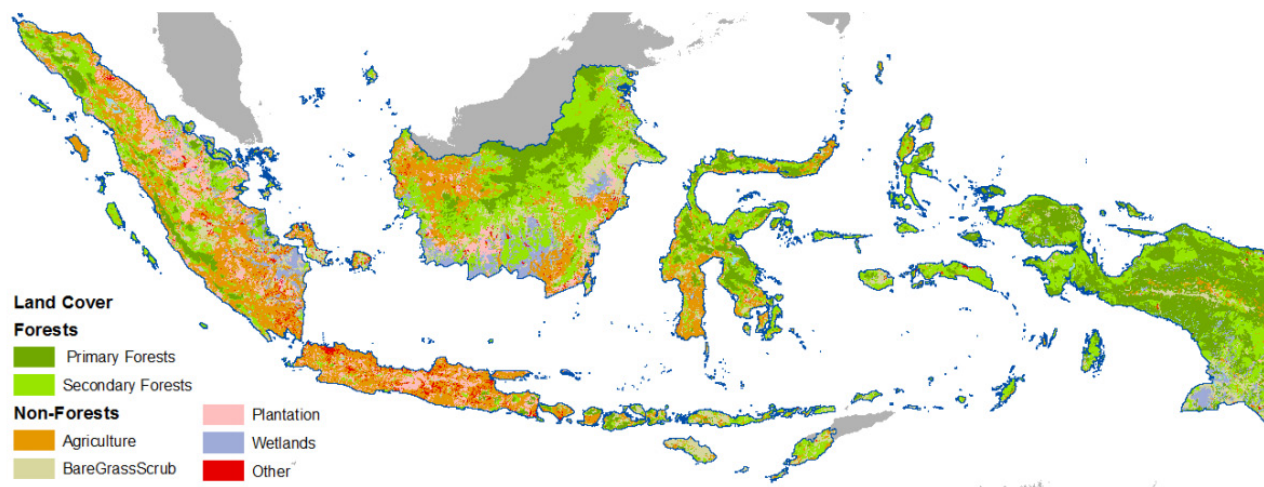
# 1. Introduction

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In 2012, Forest Trends started a four-year research program into the nature, scale and extent of illegalities and irregularities in the process of forest clearance for large-scale agricultural estates and ranch-lands, and the scale of the trade in commodities grown or reared on land illegally cleared of forests. As a first step, Forest Trends commissioned individual country assessments for ten countries across Asia, Africa and Latin America. These studies examine the state of knowledge on the topic. Each paper examines the nature, scale and recent history of relevant sectoral activity in each country, profiles key companies, outlines the legal and regulatory environment, and summarizes the available evidence of illegalities and irregularities. Forest Trends commissioned Aidenvironment to carry out the literature review for this Indonesia country case study.

This study focuses on oil palm and pulp and paper plantations because these two industries are generally seen as the main drivers of deforestation over the past ten to twenty years. In 2010, the Indonesian National Council on Climate Change (DNPI) observed that increasing global demand for pulp and paper and palm oil together with a growing domestic demand for food crops will result in the conversion of an additional 21–28 million ha of currently forested land by 2030. Under a business-as-usual scenario, the pulp and palm oil sectors would likely drive half of this predicted deforestation.<sup>1</sup>

Figure 1. Land Cover in Indonesia, 2010



Chapter 6.

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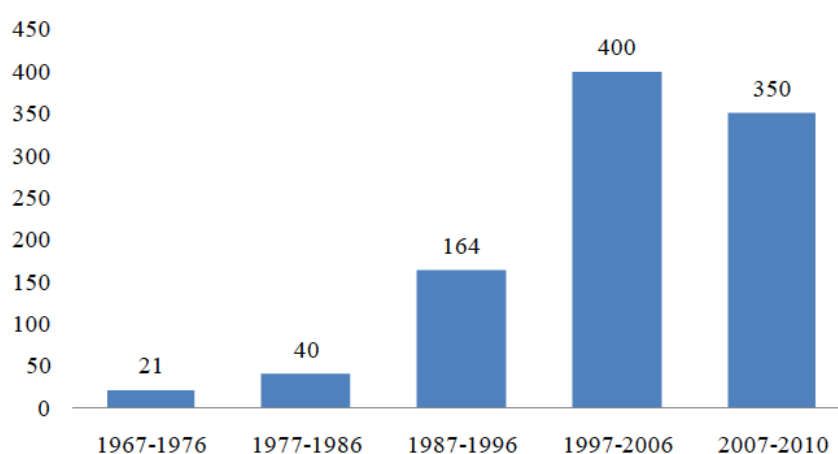
<sup>1</sup> DNPI, 2010; Greenpeace, 2011.

## 2. Oil Palm

### 2.1 Project History and Key Developing Institutions

The first commercial oil palm plantation was established in North Sumatra in the early 19<sup>th</sup> century. The planted area remained small until the Indonesian government commenced the Nucleus Estate Scheme (NES) with support from the World Bank in the 1980s. This scheme, which combined a corporate estate (the nucleus) with smallholder lots (*plasma*), was closely aligned with the Indonesian Transmigration programs that initially focused on Sumatra. Today, Sumatra is home to the majority of the palm crop, with 75% of total mature palm area and 80% of total palm oil production. In the early 1990s, the Indonesian government encouraged further plantation expansion in Kalimantan, Sulawesi and Papua and expansion, primarily corporate driven, reached a rate of 400,000 hectare (ha) per year between 1997 and 2006 (see Figure 2).<sup>2</sup>

Figure 2. Average Annual Oil Palm Planting in Indonesia, 1967-2010 (1,000 ha)



Source: Slette and Wiyono 2011.

The recent slowdown has been attributed to the newly introduced Spatial Planning Act (2007)<sup>3</sup>, but may also be related to the fact that the bulk of the area leased out (9.7 million hectares in 2009. See Figure 3) had been planted up by 2012 (8.2 Mha).<sup>4</sup>

### 2.2 Major Companies Involved

In 2010, private companies held 50% of the area planted with oil palm, smallholders 42%, while the government-owned plantations represented 8%.<sup>5</sup> In 2009, there were reportedly 814 private palm companies operating 1,006 plantations with an average size of 3,500 hectares.<sup>6</sup> Through numerous estate subsidiaries, the ten largest groups control approximately 30% of the currently planted land bank (see Table 1 below). Most of these groups still hold leases over undeveloped land and continue acquiring new 'greenfields.'

<sup>3</sup> Slette and Wiyono, op cit.

<sup>4</sup> Jakarta Post, 2009; Reuters, 2012.

<sup>5</sup> Bromokusumo and Slette 2010. Note: The relative share of smallholders has grown faster than that of private companies in recent years. Since 2007, plantation companies are obliged by law to develop at least 20% of their landbanks into smallholder or benefit sharing projects.

<sup>6</sup> US-FAS 2009.



Aidenvironment estimates that Malaysian investment in Indonesia's oil palm sector extends to around two million hectares of land bank (21% of the land bank leased out in 2009).<sup>7</sup> This includes the better known company groups such as Sime Darby, PPB/Wilmar International, Kuala Lumpur Kepong, IOI Corporation etc., but also companies with much less exposure in the oil palm industry and media such as TSH Resources, Southern Group, NPC Resources, MKH, Kwantas Corporation, Kumpulan Fima, Asia Pacific Land, Cepatwawasan Group, Lion Forest Industries, MHC Plantations, and Glenealy Plantations. Many of these Malaysian groups actively acquire estate land in East and Central Kalimantan and Papua.

**Table 1. The Ten Largest Oil Palm Groups in Indonesia, by Planted Land Bank**

Group	Country of Origin of Group	Holding Company	Ownership of Holding Co.	Hectares Planted with Oil Palm
Government of Indonesia	Indonesia	Perkebunan Nusantara	Government	700,576
Sinar Mas Group	Indonesia	Golden Agri-Resources	Listed	392,000
Jardine Group	Hong Kong	Astra Agro Lestari	Listed	250,883
Salim Group	Indonesia	Indofood Agri Resources	Listed	213,328
Government of Malaysia	Malaysia	Sime Darby	Listed	202,196
Wilmar Group	Singapore	Wilmar International	Listed	160,805
Raja Garuda Mas Group	Indonesia	Asian Agro Abadi	Private	160,000
Bumitama Group	Indonesia	Bumitama Gunajaya Agro	Listed	119,162
KLK Group	Malaysia	Kuala Lumpur Kepong	Listed	106,341
Sampoerna Group	Indonesia	Sampoerna Agro	Listed	90,055
<b>Total Planted Area</b>				<b>2,395,346</b>

Source: Adjusted from Van Gelder, 2010.

## 2.3 Forest Loss

The extent to which oil palm expansion in Indonesia contributes to deforestation is still contested because reliable data is not widely available and there are a variety of 'forest' definitions, which add to confusion.<sup>8</sup> Using FAO data, Koh and Wilcove (2008) estimated that over 56% of oil palm expansion between 1990 and 2005 occurred at the expense of at minimum 1.7 Mha of natural forest.<sup>9</sup> However, Fitzherbert et al. (2009) have criticised the usefulness of FAO's datasets because of changing definitions of forest, lack of information on causes of land cover change, and minimal independent monitoring of government statistics.<sup>10</sup> Based on detailed satellite image analysis over the period 1990 to 2010, Carlson et al. (2012) found a much higher share of deforestation for Kalimantan, where 90% of lands converted to oil palm were forested (47% intact, 22% logged, 21% agroforests).

<sup>7</sup> Malaysian investment behavior in Indonesia is dynamic. Divestments occur, but are clearly outnumbered by investments.

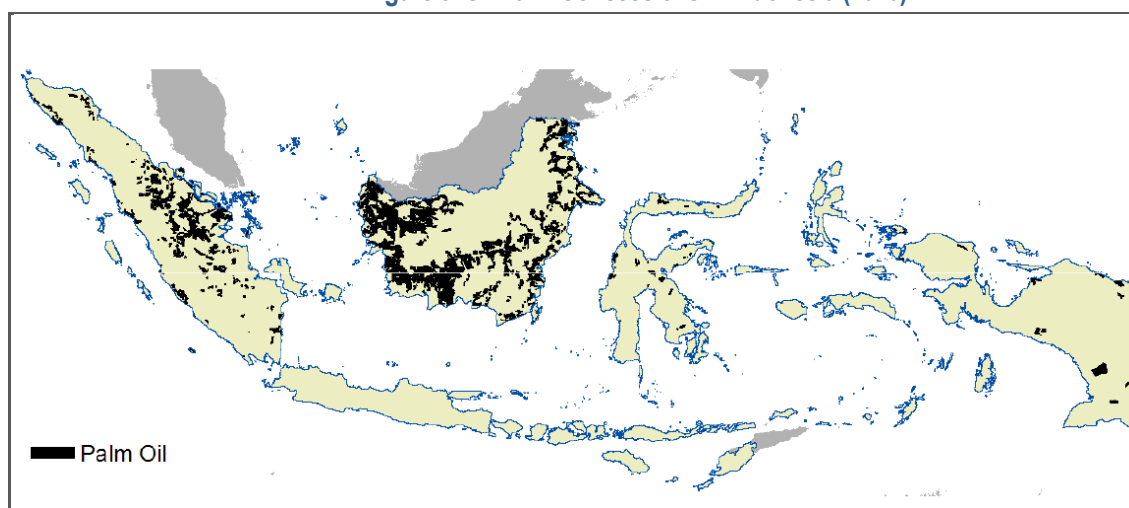
<sup>8</sup> There is considerable pressure on the Indonesian government to allow unbridled conversion of additional forestlands for oil palm expansion, to the extent that several (failed) attempts were made to legislate oil palm plantations as "planted forests". A first attempt was made early 2010 (Jakarta Post 2010a; Jakarta Post 2010b) followed by another bid was made in 2011 through Ministry of Forestry regulation Nr. P.62/Menhut-II/2011, which opened the door to oil palm in industrial tree plantation lease areas (HTI). The regulation was officially revoked five weeks after its issuance (Kontan, 2011).

<sup>9</sup> Koh and Wilcove 2008.

<sup>10</sup> Fitzherbert et al., 2008.

The findings for Kalimantan do not explain why Indonesia's deforestation rate has been considerably higher (1.8 Mha at the end of the 1990s and 0.9-1.1 Mha in more recent years) than the rate of oil palm expansion (0.4 Mha).<sup>11</sup> Sheil et al (2009) argue that the area of forest loss is greater than the area of oil palm plantation expansion because of indirect effects such as fires, infrastructure, displaced people, plantation failures, bankruptcies, and timber-theft land-clearance frauds--factors that explain to some extent why many areas allocated for oil palm plantations in Sumatra and Kalimantan were previously not developed into productive estates.<sup>12</sup> Analysis of what happened to previously forested areas by the Indonesian Ministry of Forestry suggests that commercial agriculture (primarily oil palm) plays a significant (32%) but not exclusive role in deforestation.

**Figure 3. Oil Palm Concessions in Indonesia (2010)**



Source: Saxon and Sheppard, 2010

*\*Note: This map comprises planted and unplanted lands, likely under Location Permits and Plantation Business Permits, and not the long term land use rights permits. The area allocated for oil palm in Papua as depicted on Figure 3 underrepresents the actual area.*

## 2.4 Main Expansion Areas

There is limited acreage of 'greenfields' (undeveloped lands) left for further oil palm expansion in Sumatra, where the industry has seen stronger competition for long term access to land from the pulp and paper industry. Sulawesi is recently seeing a surge in oil palm development in relatively scarce lowland areas where Cargill, Astra Agro Lestari, Kencana Agri and others have recently become active.<sup>13</sup> Kalimantan and Papua presently hold the largest tracts of 'greenfields' already slated for future oil palm expansion.<sup>14</sup> Obidzinski et al. (2012) report that as of 2011, Papua was processing 1.5 million ha of oil palm plantation permits and had another 2 million ha at the state of preliminary proposals pending. Whether Papua can realize its plans to open up five million hectares of land for plantation crops remains to be seen. Poor infrastructure, a small local labour force, customary land rights, dense forest cover, political unrest and governmental commitment to low carbon emission policy pose major disincentives to serious investors compared to business-as-usual. Nonetheless, the EIA/Telapak landmark study "Up for Grabs" (2009) on oil palm expansion in Papua demonstrates that logging and land clearing has commenced in many areas and that a similar trend may take place as that previously seen in Kalimantan, whereby companies primarily interested in logging ultimately have their leases withdrawn while the same land is sold off to more serious plantation developers.

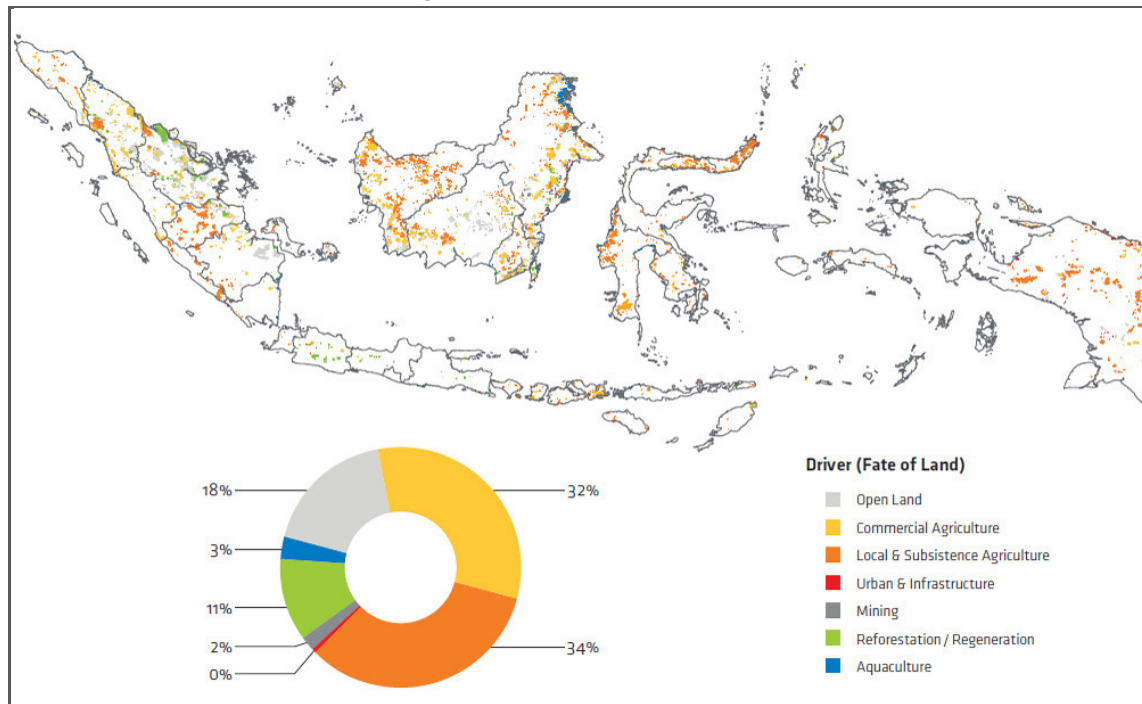
<sup>11</sup> Bates et al., 2008.

<sup>12</sup> In Kalimantan, 79% of the land bank allocated for oil palm remained undeveloped in the 1990-2010 period (Carlson et al., 2012). Many lease areas change owners before they are fully developed.

<sup>13</sup> See [<http://www.kencanaagri.com/ourlocation.html>]; Astra Agro Lestari 2012; Jakarta Post, 2013; WSJ, 2013.

<sup>14</sup> The Jakarta Globe (2013) reported that East Kalimantan is pondering implementing a moratorium on issuing new oil palm permits in 2013 considering that permits have been issued in East Kalimantan for 2.4 million hectares of palm oil plantations, although by the end of last year only one million hectares had been planted. Instead, the province would focus on other food crops, notably rice.

Figure 4. Drivers of Deforestation, Indonesia



Source: Ministry of Forestry, cited in Wihardandi, 2012

## 2.5 Future Expansion Plans

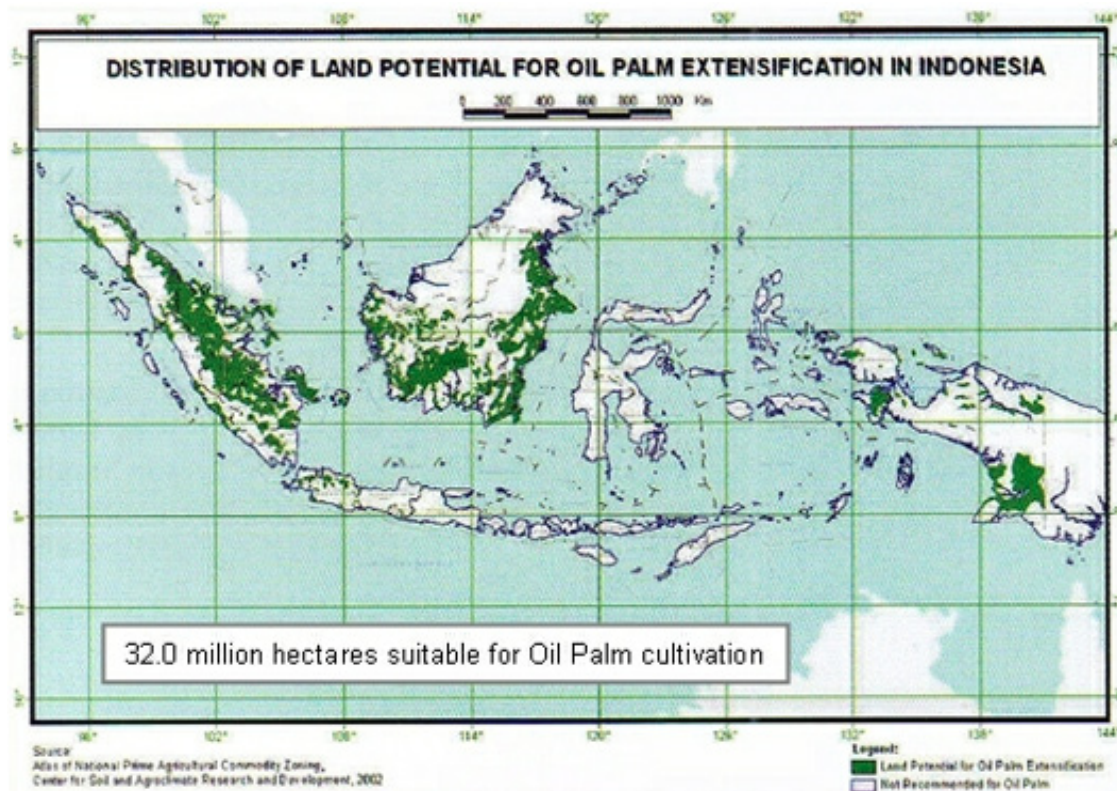
There is broad consensus that oil palm expansion is set to continue in the coming decade, considering that global demand for vegetable oils will continue rising, oil palm is subject to few agronomical constraints and cheap labor is widely available. The main economic factors that determine future oil palm expansion in Indonesia are land, policy and capital.

### 2.5.1 Land

Over the years, various national and regional feasibility studies were conducted to assess the total area of plantable land in Indonesia. One such study conducted under the auspices of the Directorate General of Plantation Production and Development identified 32 Mha of land is potentially suitable for oil palm (see Figure 5).<sup>17</sup>

<sup>17</sup> Cited in: US-FAS 2009.

Figure 5. Distribution of Land Potential for Oil Palm Expansion in Indonesia



Source: Puslitanah 1997 in: Wirawan, 2007. See also Jakarta Post, 2009.

### 2.5.2 Policy

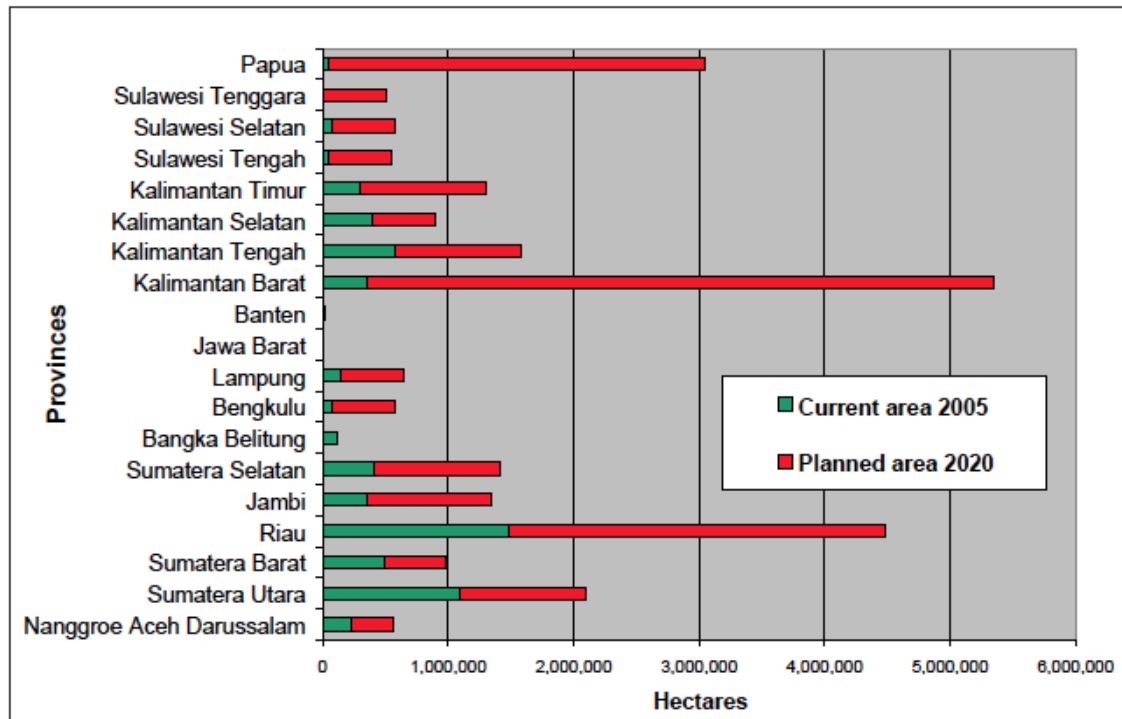
After decentralization policies were introduced in Indonesia in 1999 and 2001, local governments announced numerous commitments to expanding their oil palm acreages. Although many of these local government targets represented “soft policy,” many district governments issued oil palm leases up to 40 to 50% of their territories just within a decade after Indonesia’s 1999 *Reformasi*. The total area dedicated by local governments to oil palm expansion as of 2005 amounted to some 20 Mha (Figure 6).<sup>18</sup>

Tallied local government targets roughly match with the national target to achieve a Crude Palm Oil (CPO) production of 40 million metric tons by 2020 (for comparison: CPO production in 2011 reached 23.5 million tonnes) (PWC, 2012).<sup>19</sup>

<sup>18</sup> Colchester et al. 2006.

<sup>19</sup> Antara, 2012.

Figure 6. Realized and Planned Oil Palm Expansion in Indonesia



Source: Colchester et al., 2006.

This national target, expressed in terms of CPO output rather than acreage, implies an expansion of the productive estate area ranging from 2.1 Mha (PWC, 2012) to 8.6 Mha (Greenpeace, 2011) on top of the planted acreage as of 2011 and 2008 respectively. The range depends on the realization of efforts to increase efficiency in yields per hectare, or actual expansion with continued low yields.<sup>21</sup> Considering that the Indonesia government has demonstrated little commitment to increase yields per hectare in existing estates (which are seriously below the oil palm's genetic potential), the high end of the range of expansion is to be taken most seriously. Furthermore, it is not clear if the production target includes production for biofuel. According to Greenpeace (2011), Indonesia targets 9.25 Mha for biofuel production, of which 2.5 to 4 Mha would be dedicated to palm oil.<sup>22</sup>

### 2.5.3 Capital

A 2010 survey by Enviromarket Research estimated that some 307 public companies worldwide had invested US\$ 82 billion in the global palm oil sector, a good portion of which was directed to Indonesia.<sup>23</sup> In 1997, the Indonesian Investment Coordination Board (BKPM) had approved over 600 oil palm plantation investment projects for 8.7 Mha with a value of US\$ 23.6 billion while in 2000, the Indonesian Ministry of Forestry and Plantations stated that 1,896 investors had applied for permits to develop oil palm plantations in a total area of 30 Mha.<sup>24</sup> Although the Asian monetary crisis slowed down actual expansion for a few years, it regained speed from 2004 onwards. Soon thereafter, the industry received another from the 2005-2007 "biofuel boom." In 2006, Stephenson estimated that the oil palm industry would have to expand with 10 Mha to meet expected growth in demand for edible oils and biofuel.<sup>25</sup>

<sup>21</sup> Bromokusumo and Slette 2010; PWC 2012.

<sup>22</sup> Greenpeace 2011.

<sup>23</sup> WWF 2012.

<sup>24</sup> Ministry of Forestry, 2000.

<sup>25</sup> Stephenson, 2006.

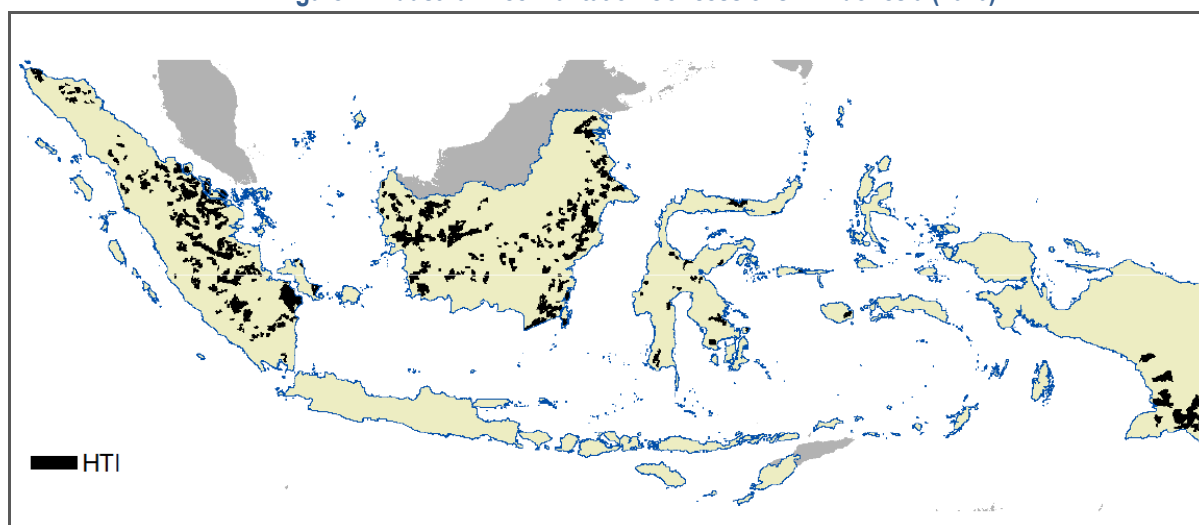
### 3. Industrial Tree Plantations

#### 3.1 History

Indonesia's policy to promote large-scale commercial tree plantation development commenced in 1990 with the adoption of Government Regulation Nr. 7 on Industrial Tree Plantations (*Hutan Tanaman Industri*, HTI). The regulation aimed to upgrade forest productivity in degraded production forests and to supply logs for forest-based industries.<sup>26</sup> To support the financing of plantation development, the government introduced a special levy on natural forest logging through the Reforestation Fund (DR, *Dana Reboisasi*) and a special transmigration program (HTI-Trans) to mobilize plantation labor through the state-owned company Inhutani as well as private companies. The industry has seen numerous additional policies introduced since the inception of the HTI concept.<sup>27</sup>

By the end of 2011, the Ministry had issued permits to 249 companies with total area of 10.0 Mha,<sup>28</sup> As of 2012 there were 285 HTI units with assets worth Rp15.8 trillion.<sup>29</sup> Three-quarters of all HTI lease areas are developed to supply pulp and paper companies.<sup>30</sup> The distribution of HTI concessions throughout the country is shown in Figure 7.

Figure 7. Industrial Tree Plantation Concessions in Indonesia (2010)



Source: Saxon and Sheppard, 2010.

#### 3.2 Major Companies Involved

Indonesia is the world's ninth largest pulp producer with Bleached Hardwood Kraft Pulp (BHKP) being by far the most common grade. This industry segment counts fourteen producers of which the six largest count for over 90% of the total country capacity.<sup>31</sup> APP and APRIL jointly control over 75% of Indonesia's total BHKP capacity of 7.1 million tonnes.<sup>32</sup>

<sup>26</sup> DJ-BPK, 2009. There are various types of HTI concessions, and industrial plantations can be developed for pulpwood/fibre production as well as sawn wood. In this paragraph, we focus on industrial tree plantations for pulpwood ("HTI Pulp", or just HTI).

<sup>27</sup> Ministry of Forestry 2012.

<sup>28</sup> IFT, 2011.

<sup>29</sup> Surya Mahendra Saputra, 2012.

<sup>30</sup> Verchot, 2010 (situation as of 2005).

<sup>31</sup> Cossalter, C. 2006.

<sup>32</sup> Barr and Cossalter, 2004; Barr, 2004a; Barr, 2010.



**Table 2. Indonesia's Main Pulp and Paper Producers**

<b>Asia Pulp &amp; Paper (APP) - Sinar Mas Group</b>	
<b>Indah Kiat mill in Riau</b>	Pulp Capacity: 2.3m Air Dried Tonnes (Adt)/yr (Dec. 2011) Proposed expansion to 2.83m Adt/yr <sup>33</sup>
<b>Lontar Papyrus mill in Jambi</b>	Pulp Capacity: 652,000 Adt/yr
Core supply base	35 plantation concessions cover 2.3 Mha in Riau, Jambi, South Sumatra, West and East Kalimantan. In early 2011, Bisnis Indonesia reported that SMG/APP intends to develop 500,000 hectares of pulpwood plantations in Papua and two new pulp mills in South Sumatra and East Kalimantan with an annual pulp production capacity of 2 million tons each by 2017. <sup>34</sup>
<b>Asia Pacific Resources Ltd. (APRIL), RGE Group<sup>35</sup></b>	
<b>Riau Andalan Pulp &amp; Paper (RAPP) mill in Riau</b>	Pulp Capacity: 2m Adt/yr
<b>Toba Pulp Lestari in North Sumatra</b>	Pulp Capacity: 200,000 Adt/yr
Core supply base	28 plantation concessions cover 1.2 Mha in Riau, North Sumatra, and East Kalimantan
<b>Marubeni</b>	
Tanjungenim Lestari Pulp and Paper (PT TEL) in Lampung	Pulp Capacity: 420,000 Adt/yr <sup>36</sup>
Core supply base	293,000 ha of acacia plantations in Southern Sumatra

Source: Barr, 2010; various other online sources such as company websites.

### 3.3 Forest Loss

The HTI concessions issued in the early 1990s comprised a variety of landscapes, including logged-over forests and jungle rubber; swamp forests; some smallholders' rubber and oil palm plantations; grasslands, and areas of agricultural fields and village settlements.<sup>37</sup> In addition, pulp mills have also begun to buy logs from land clearings for oil palm and other estate crops and purchases from local communities and timber suppliers.<sup>38</sup>

The currently planted area (~ 4.9 Mha) produces 25 million m<sup>3</sup> of plantation logs (for wood pulp and timber), whereas 38 million m<sup>3</sup> is required for existing mills alone, assuming they produce at full capacity.<sup>39</sup> This gap in supply and demand emerged in the 1990s and persisted over the years, in spite of new plantings in HTIs. According to the Ministry of Forestry, in 2006 the national supply shortage of about 40 million m<sup>3</sup> (pulpwood and timber) was still being met with illegally harvested logs.<sup>40</sup>

<sup>33</sup> APP 2011.

<sup>34</sup> Eyes on the Forest, 2011a.

<sup>35</sup> Formerly Raja Garuda Mas (RGM). RGE stands for "Royal Golden Eagle". Its subsidiary Asia-Pacific Resources Ltd. is the majority shareholder of RAPP.

<sup>36</sup> Radar Lampung, 2011. PT TEL's website [<http://www.telpp.com/>] claims that the mill has realized a capacity of 5 million tons at the end of 2011. This figure is barely credible and cannot be confirmed because the company does not publish its annual reports. Most likely, it has reached capacity of 500,000 tonnes.

<sup>37</sup> Maturana, 2005.

<sup>38</sup> Barr and Cossalter, 2004.

<sup>39</sup> Cossalter, 2006. Estimated yield from the currently planted area is an extrapolation of 2008 data, when 4.3 Mha produced 22.3 million m<sup>3</sup>. In: Obidzinski and Dermawan, 2010.

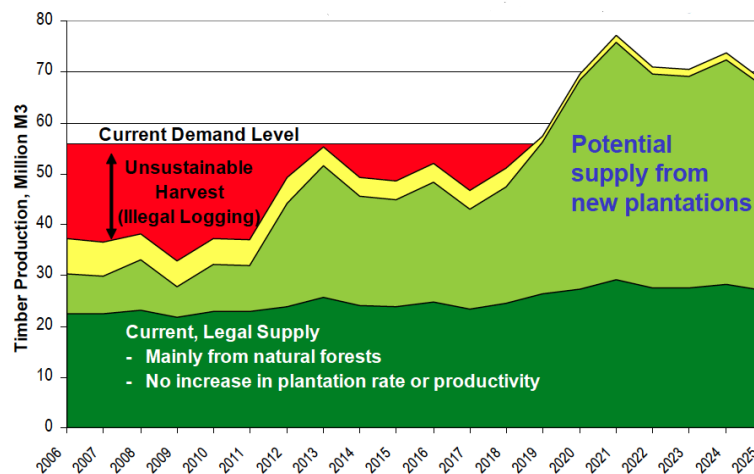
<sup>40</sup> Sinar Harapan, cited by Obidzinski and Chaudhury, 2006.

Furthermore, most Indonesian pulp producers expanded their processing capacities at a much faster pace than plantations were planted, putting up continued pressure on the authorities to release more concessions with densely stocked natural forests. It is estimated that some 80% of the 185 million m<sup>3</sup> of wood fiber consumed by Indonesian pulp and paper producers between 1988 and 2003 comprised ‘Mixed Tropical Hardwoods’ (MTH) from natural forests.<sup>41</sup> In addition, around 40% of log supply to Indonesia’s two largest mills in Riau province mills was undocumented in the 1990s, and likely originated from illegal sources.<sup>42</sup>

The NGO coalition Eyes on the Forest estimates that by 2010, APP’s mills alone have caused the loss of 2 Mha of natural forest in Riau and in Jambi.<sup>43</sup> APP, on the other hand, claims that in recent years over 80% of its pulpwood supply predominantly originated from “sustainable plantations.” NGOs subsequently argued that this claim failed to acknowledge that the bulk of APP’s natural forest fibre came from third party suppliers. The discourse saw a significant breakthrough in February 2013 when APP published its new Forest Conservation Policy, which included an announcement of an immediate end to all natural forest clearance throughout APP’s entire supply chain. APP also announced that all High Conservation Value forests, including those on peatland, would be protected, that a High Carbon Stock Assessment would be undertaken and that the company would adopt best practice rights for Indigenous Peoples. Finally, and crucially, all monitoring would be undertaken by independent NGOs.<sup>44</sup>

Meanwhile, another discourse about the Ministry of Forestry’ data on the actual area planted in HTI concessions continues, nurturing speculation that HTI permit holders are interested in capitalizing on remaining timber stands rather than in investing in reforestation.<sup>45</sup> In a recent media report, a Ministry of Forestry official acknowledged that 30% of HTI companies are not actively operating their lease areas.<sup>46</sup> Independent observers therefore consider government and industry estimations of long-term pulpwood yields from plantations (see Figure 8) too optimistic. They expect that Indonesia’s pulp and paper sector will continue to rely on natural forest clearance to meet at least one-quarter of current production for years to come.<sup>47</sup>

**Figure 8. Log Production in Indonesia Forecast, 2006-2025**



Source: Figure derived from Brown et al., 2005 cited in Barr, 2007.

<sup>41</sup> Barr, 2000; Barr and Cossalter, 2004. Only Barito Pacific’s subsidiary Tanjong Enim Lestari in Lampung developed its plantations prior to constructing its mill.

<sup>42</sup> Barr, 2000.

<sup>43</sup> Eyes on the Forest, 2011a.

<sup>44</sup> Greenbury, cited in Mongabay (2013).

<sup>45</sup> Verhot et al., 2010; Cossalter, 2006; Barr, 2004b.

<sup>46</sup> Surya Mahendra Saputra, 2012.

<sup>47</sup> Greenpeace, 2011; Verschot et al., 2010; Barr, 2004, 2007.



### 3.4 Main Expansion Areas

The seven existing pulp and paper mills in Indonesia have mostly impacted the forests within a radius of some 100-150 kilometers within their immediate surroundings. Due to mounting log supply deficits, both APP and APRIL have acquired concession rights beyond the conventional economic log supply range by acquiring concession rights in Kalimantan, at considerable distance from their processing units in Riau. Regardless, CIFOR asserted that pulp wood production from HTI plantations in Kalimantan was not likely to compensate for the companies' shortfall of plantation-grown wood in Sumatra for the period 2005-2010.<sup>48</sup>

### 3.5 Future Expansion Plans

There is broad consensus that industrial tree plantations are set to continue expanding in the coming decade, and it is deemed likely that pulp and paper mills will continue to rely on MTH, at least for a quarter of log supply, in years to come. The main economic factors that determine future HTI expansion in Indonesia are land, policy and capital.

#### 3.5.1 Land

In theory, land is widely available to the pulp and paper industry because HTIs are allocated within the production forest category within the forestland area, currently 34 Mha nationwide. The policy that HTI expansion should be limited to degraded/marginal lands appears to have been abandoned in practice and policy, although no evidence could be found of relevant policy changes.

#### 3.5.2 Policy

The Ministry of Forestry is promoting US\$ 15b of investment in new capacity by 2020, with pulp production capacity to 16.0 m tonnes/year and paper and board capacity to 18.5m tons/year (Barr, 2010). The government is considering the approval of 12 new pulp mills, with a total production capacity of approximately eight million tonnes of pulp (Figure 9).<sup>49</sup>

Figure 9. Existing and Proposed Pulp Mills in Indonesia



Source: Verchot et al., 2010

The envisaged expansion of pulp production capacity implies that the industry's annual wood demand will triple from 29 m<sup>3</sup>/year to 72 m<sup>3</sup>/yr.<sup>50</sup> To meet this rise in demand, the Ministry of Forestry's 2008 Forestry Revitalization Plan aims to establish nine Mha of new timber plantations by 2016, of which approximately 5.4 Mha will be developed

<sup>48</sup> Pirard and Cossalter, 2006.

<sup>49</sup> Verchot et al., 2010.

<sup>50</sup> Barr, 2010.

as smallholder community ventures called HTR (Hutan Tanaman Rakyat, community plantation forest).<sup>51</sup> The Ministry of Forestry has an ambitious planting rate of at least 550,000 ha annually.<sup>52</sup>

### 3.5.3 Capital

In the 1990s, Indonesia's main pulp and paper producers successfully attracted vast amounts of credit from hundreds of domestic and foreign investors. Through the Reforestation Fund (DR), furthermore, the government poured more than US \$1.0 billion in cash grants and discounted loans to commercial plantation companies.<sup>53</sup> When the 1997/98 monetary crisis triggered the largest mill owners to default on their debt, many creditors were intent on pulling out but some saw themselves forced to provide more capital for mill capacity expansion.<sup>54</sup> Major corruption scandals surrounding the allocation of Reforestation Funds furthermore led to reforms in the management control over and allocation of funds. In 2007, the Ministry of Forestry announced that it would make available Rp 20.4 trillion (US\$2.2b) in funding for tree plantation development through the Funding Agency for Forest Development (*Badan Pembiayaan Pembangunan Hutan*).<sup>55</sup> However, at least mid-2009 the fund had failed to disburse any of the US\$500 million budgeted for plantation development during 2008 and 2009.<sup>56</sup>

Whether corporate investors will realize their planned investments in new chip, pulp and/or paper mills (e.g., UFS, Kertas Nusantara - formerly Kiani Kertas, Korindo, PT Medco Papua Industri Lestari) remains to be seen. Various existing and planned mills on Kalimantan and Papua appear to continue to struggle with debt, takeovers, permits and competition from the dominant producers, but this does not necessarily imply that without new mills, logging and plantation development is also stalled.

## 4. Legal and Regulatory Arrangements

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### 4.1 Introduction

Indonesia's legal regulatory framework for plantation expansion is still very much in development, and often both promotes growth and restricts it. Oil palm and pulpwood producers are required to comply with a wide-ranging set of sector-specific legislation that affects all aspects of plantation development, management, processing, trade, and investment. These industries affect different policy themes (spatial planning, environmental management, social development, anti-corruption, etc.), creating a continuous need for harmonization. Similarly, decentralization policies have led to the transfer of many decision-making powers from the national level to local authorities, which contributes to continuous discourse about government mandates at different levels.<sup>57</sup>

### 4.2 Spatial Planning and Forestland Allocation

Indonesia's Forestry Act Nr. 41/1999 determines forests based on title status (i.e. ownership right) and based on ecological functions set forth by the Ministry of Forestry.<sup>58</sup> The Act classifies forests based on three functions a) conservation, b) protection, and c) production.<sup>59</sup> Given the fact that 68% of Indonesia's land-based territory represents the forestland estate, it is no surprise that a fierce battle over the jurisdiction and access to forestland has emerged in the post-*Reformasi* era.

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<sup>51</sup> Obidzinsky and Dermawan, 2010.

<sup>52</sup> Surya Mahendra Saputra, 2012. According to Ministry of Forestry statistics, the total new planting in 2010 reached 396,754 ha.

<sup>53</sup> Barr et al., 2010.

<sup>54</sup> BloombergBusinessweek, 2001; Matthew and Van Gelder 2001.

<sup>55</sup> Ministry of Forestry, 2007.

<sup>56</sup> Barr et al., 2010.

<sup>57</sup> The responsibilities of various government bodies at different spatial levels for different types of land use in Indonesia are summarized in Attachment 1.

<sup>58</sup> Suryadi, 2010.

<sup>59</sup> Andiko, 2010.

One of these battles came to a close recently after local governments challenged the Ministry of Forestry's exclusive claim of jurisdiction over forestland estate within their districts.<sup>60</sup> In 2011, five district governments and a timber businessman from Central Kalimantan antagonised the Ministry of Forestry directly by challenging Article 13 of the Forestry Act in the Constitutional Court, which stated: "A forest area is an area that is indicated and/or designated by the government for retention as permanent forest" (emphasis added). The plaintiffs won, which resulted a new definition as follows: "A forestland area is an area that is designated by the government for retention as permanent forest" (emphasis added). Because the Ministry of Forestry had gazetted only 14.24 Mha (11%) of the total forestland area as of 2011, the implications are evident: the Ministry of Forestry's claimed jurisdiction over the use of some 118 Mha of land has been thrown into question. The ruling, which is not likely to be valid retrospectively, can have both negative and positive outcomes, depending on the manner in which the government deals with development interests on the one hand and conservation and (indigenous) community interests on the other.<sup>61</sup>

The legal review was very much triggered by the impacts of the Spatial Planning Act Nr. 26/2007, which came into force in 2008, and Government Regulation Nr. 15/2010 on Spatial Planning Implementation to facilitate due spatial planning. The Act sparked nationwide revision of previous local land use plans that often contradicted national level planning and also provides for stiff penalties for any government officer who issues permits over land that is not designated for that particular land use as per harmonized land use plan. The plaintiffs thus realized that, if they were to avoid being charged under the Act, they had to challenge the Ministry of Forestry who had commenced to map out all lease areas (notably for oil palm and mining) that overlapped with the indicated and/or designated forestland area (see also paragraph 4.1.2 for details).

Given the recent court ruling, the Ministry of Forestry is now forced to step up efforts to complete the designation/gazettement of all forestland by the end of 2014. The Ministry's jurisdiction over forestland appears to be weakened further by two new laws, Government Regulation Nr. 60 of 2012 on the amendment of No. 10 of 2010 on Procedures for Conversion of Allocation and Functions of Forest Areas ("PP 60/2012") and Government Regulation Nr. 61 of 2012 on the amendment of No. 24 of 2010 on Forest Area Utilization. These regulations stipulate that mining and palm oil businesses that started operations before the enactment of the Law on Spatial Planning and Forest Utilization Permits in 2007 can now acquire and own their concessions within forestlands. These regulations will likely result in a massive legal 'white-wash' of numerous permits irregularly issued by local governments. Articles 25 and 26 of Government Regulation Nr. 61/2012 offer oil palm plantation and mining companies a six-month window of opportunity to apply with the Ministry of Forestry to acquire forestland release approvals in convertible production forest and to apply for land lending approvals for concessions within production forest and limited production forest. Any applications after January 6, 2013 will be rejected.<sup>62</sup>

### 4.3 Plantation Act

Plantation development and management is primarily regulated through the Plantation Act Nr. 18/2004. The Act regulates non-forestry plantation industries (oil palm, rubber, cocoa etc.) and acknowledges the need for sustainable practices. It affirms the need for companies to obtain environmental permits and Plantation Business Permits (IUP). The Act makes it mandatory for plantation companies to consult with customary law communities and other parties who have rights on the land within the company's concession area, even after the company has obtained the rights through the 'Land Use Rights' Permit (HGU, *Hak Guna Usaha*). Such consultations need not always result in land acquisition by the company, e.g. when communities refuse to release their land to the plantation company, or if they disagree with the compensation offered by the company. The Plantation Act recognizes customary rights over land, provided that all criteria that define customary law communities are met. The criteria are:

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<sup>60</sup> The approval of spatial plans follows a procedure through the various levels of parliament where various interests are represented, and not just that of the Ministry of Forestry whose proclaimed exclusive authority over the forestland estate can be overridden by democratic decision-making.

<sup>61</sup> Wells et al., 2012.

<sup>62</sup> Jakarta Post 2012; Legal500, 2012. The latter source gives an English language brief of the regulations' main contents.

- a) The community is still organized or recognizes itself as one association under a common or customary law;
- b) There is an active institution in form of customary leadership;
- c) There is a clear territory subject to customary law;
- d) There is a customary law, especially a customary court which is still respected and followed by the communities.

The customary rights land has been gazetted through local regulations. The same criteria are used in the Forestry Act nr. 41/1999, and as such are applicable to HTI permits.

In spite of the Plantation Act's recognition that there may be customary rights over land allocated for plantation development, land conflicts have risen throughout the country along with the expansion of the oil palm industry.<sup>63</sup> Instead, Plantation Act article 21 has been widely used by plantation companies to see community members arrested and prosecuted. The article prohibits any person from causing damage to the plantations and its assets, from using the plantation land without permission and from any other attempt to disrupt the company's operations. Some 170 villagers had been criminalized under article 21 of the Plantation Act up to the end of 2010.<sup>64</sup> After a multiple year proceeding on a juridical review request filed by a group of Indonesian lawyers and four community members who were found guilty by the Criminal Courts for seizing company equipment on the customary land, Indonesia's Constitutional Court ruled on 19 September 2011, that article 21 contradicts with the country's Constitution<sup>65</sup> and is no longer legally binding to anyone. This means that the stiff penalties for violation of the article (2.5-5 years imprisonment and Rp 2.5-5 billion fine) under article 47 are also no longer valid.

#### 4.4 Peatland Legislation

The most important laws that regulate oil palm development in peatland are Ministry of Agriculture Decree Nr. 837/1980 on criteria for gazettelement of Protection Forest, Presidential Decree Nr. 32/1990 concerning protected area management and Ministry of Agriculture Regulation Nr. 14/2009. In addition to these, the Presidential Instruction Nr. 10/2011 (the "Norway – Indonesia Moratorium") is currently in place.

Ministry of Agriculture Decree Nr. 837/1980 defines *organosols* as a marginal soil. As such, peatlands had the potential to be categorized as Protection Forest. However, for lands to be ranked as such, a high score based on a combination of high rainfall and slope of more than 15% (8.5°) is required, and as a result many peatlands did not pass the score. Those peatlands that were included in the forestland estate are mostly categorized as peatland protection forest (*Hutan Lindung Gambut*: HLG), a forestland category that cannot be released for oil palm plantation development.

Presidential Decree Nr. 32/1990 on protected area management (Art. 10) generically states that peatlands with a depth of 3 meters or more in swamps and are located upstream (of a river) must be defined as conservation areas. Like Decree Nr. 837, Presidential Decree Nr. 32 has not been widely implemented as the conservation areas had to be gazetted through a Provincial Decree within two years after the issuance of the Presidential Decree and many deep peat areas were not identified as conservation areas.

Ministry of Agriculture Regulation Nr. 14/2009 was essentially designed to promote further expansion of oil palm plantations within peatlands, and lays out criteria for eligible areas and provides guidance on how the development should be conducted:

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<sup>63</sup> Colchester et al., 2011.

<sup>64</sup> Politik Indonesia.com, 2011. An overview of cases (in Indonesian) is presented in Dokumentasi Public Interest Lawyer Network (PIL-Net) 2004-2010 [<http://pilnetindonesia.files.wordpress.com/2010/08/data-kasus-kriminalisasi-petani-2010.doc>].

<sup>65</sup> Indonesian Constitution article 18b (2) states that indigenous peoples law and traditional right are recognized and respected, so long as these communities and their traditions still exist.

- a) Not in forestland;
- b) At least 70% of the area cultivated comprises peat of less than three-meter depth;
- c) The substratum is suitable for plant growth (not composed of quartz sand or sulphate acid soil);
- d) The peat has matured to the stage of saprik (mature) or hemic (half mature) type; and
- e) The peat soil is eutrophic.

Since the issuance of Regulation Nr. 14/2009, the two-year Moratorium (Inpres Nr. 10/2011) was signed on 20 May 2011. The Presidential Instruction orders the National Land Agency (BPN), governors and district heads to postpone issuance of new recommendations and location permits in forest areas and peatland and other use areas based on the Indicative Map of Postponement of New Licenses. This raises the question of the place that the Ministerial Regulation and Presidential Instruction have in the hierarchy of Indonesia's legal framework. Murdiyarso et al. 2011 argue that the Presidential Instruction is a non-legislative document, which means that "there are no legal consequences if its instructions are not implemented."<sup>66</sup>

## 4.5 Environmental Legislation

The Environmental Protection and Management Act Nr. 32/2009 is at present the main reference for any environmental management matters in Indonesia.<sup>67</sup> The Act aims to create environmentally sustainable development through means of an environmental planning policy, and the rational exploitation, development, maintenance, restoration, supervision and control of the environment. Act Nr. 32/2009 does not set directive criteria for, but requires local governments (district governments) to adopt these in their spatial plans, whereby the local Environmental Impact Management Agencies (*Bapedal*) play a coordinating and controlling role. EIA assessors are required to assess a project's potential environmental and associated social impacts against local criteria as well as national laws and regulations for plantations, forestry, pollution etc.

It is mandatory for any company with activities with significant environmental impacts to carry out an EIA, including assessment, planning for mitigation and a monitoring plan. The EIA mitigation and monitoring plans are legally binding. Done right, the EIA represents a due process of comprehensive (ecological and social) impact analysis, planning for prevention and mitigation of negative impacts and monitoring of impacts and mitigation measures for future years to come. The process guarantees review and approval of the draft EIA documents by a multi-stakeholder EIA Commission, and for continuous monitoring by the provincial Environment Monitoring Agency. The positive outcome of the formal EIA review process is the main prerequisite for the Minister, Governor, District Head or Mayor to issue a letter of environmental feasibility. This letter of environmental feasibility is then the main provision for the Minister, Governor, District Head or Mayor to issue an Environmental Permit. This permit must then be attached in the application to obtain a Plantation Business Permit (IUP) for an oil palm plantation or an Industrial Plantation Permit (IUPHHK-HTI).<sup>68</sup>

Like the Spatial Planning Act, this law newly introduces stiff sanctions for government officers and EIA assessors if found to operate in violation of the Act. For example, if a company requests or accepts a Plantation Business Permit (IUP) before the EIA permit is obtained, the government officer in charge is put in a position where he/she is liable to punishment by imprisonment for a maximum of up to 3 years and a maximum fine of Rp 3 billion. The tightening of sanctions aims to counter the rampant violation of the previous Act (Nr. 23/1997).

## 4.6 Indonesian Sustainable Palm Oil (ISPO)

In March 2011, the Ministry of Agriculture released regulation Nr. 19/2011 on Indonesian Sustainable Palm Oil (ISPO). The attachment to the regulation outlines a certification system for plantation groups and estates as well as chain-of-

<sup>66</sup> Murdiyarso et al 2011.

<sup>67</sup> See e.g. Suryadi (2010) for a more detailed description of the EIA procedure.

<sup>68</sup> Note that the Ministry of Environment has also published a view that the EIA approval should be set as a precondition for the application of the Location Permit.

custody. ISPO became officially effective in March 2012, and has set out the ambitious target that all oil palm plantation companies will have obtained the ISPO certificate by 2014.<sup>69</sup> Compliance with the ISPO standard will be mandatory for all companies. The standard contains many of the main legal requirements for oil palm companies, but not all.<sup>70</sup> The draft ISPO standard is particularly superficial with regards to customary rights to land and does not make clear reference to key legal requirements associated with forestland release.

Section II, article 2.1 of Regulation 19/2011 on ISPO stipulates that non-compliance with the ISPO standards can ultimately lead to the cancellation of a company's plantation business permit. It is, however, not quite clear how this would work in practice because authority to withdraw IUPs lies with the district head, provincial governor or Minister, and not with ISPO, which is essentially a semi-governmental NGO. ISPO's target to certify all (over 1,000) oil palm estate companies by 2014 does not appear viable, but the initiative may help assist the government to gain a better understanding of the scale and nature of illegality in the oil palm sector.

#### **4.7 Permit Order for Oil Palm**

The order in which permits for oil palm development are to be issued is subject to debate that is nurtured by misunderstandings between government agencies as well as neglect. Furthermore, the permit order is not necessarily chronological. Figure 10 presents the main permit structure, categorizing permits concerning rights to land, rights to cultivation (and rights to processing and trade, which is not covered in this report) and environmental management rights. See attachment 1 for the detailed formal requirements that applicants must comply with and which government bodies are responsible for various permit types.

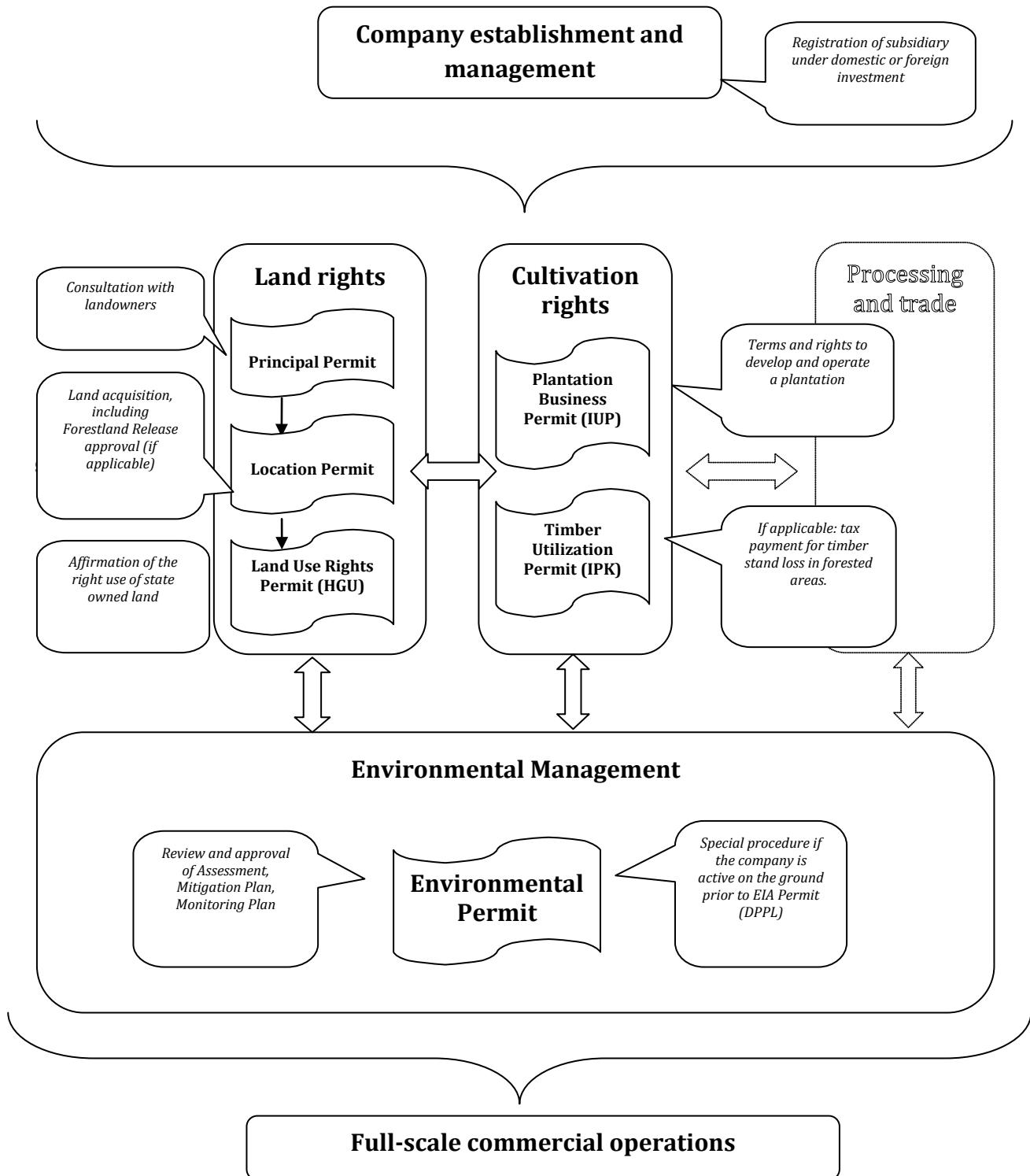
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<sup>69</sup> 20 oil palm plantations take part in ISPO pilot projects. The Jakarta Post, 2 July 2011.

<sup>70</sup> An English version of the ISPO draft standard (version February 13, 2011) is available [here](#). It contains some of the finer details of applicable legislation that cannot be covered in this report.

**Figure 10. Permits in Oil Palm Plantation Development in Indonesia**

(See also Annex2 for details)





#### 4.7.1 Company Establishment

Any corporate plantation company must first be registered with the Investment Coordination Board (BKPM) as a domestic investment company or as a foreign investment company. Most Malaysian investors acquire shareholdings in Indonesian plantation companies through 100% owned subsidiaries that are often specially registered for the purpose in Singapore. The acquisition in Indonesia then involves the purchase of up to 95% shares in local companies that already hold Principal or full permits over a particular piece of land. These local companies are usually low profile and most likely founded for the very purpose of attracting foreign investors and may be linked to financing of local political patronage networks at a local level.

#### 4.7.2 Principal Permit (Izin Prinsip or Informal Lahan)

The Principal Permit is based on various historic Ministry of Agriculture and Ministry of Forestry and Plantations decrees. Most districts continue to issue Principal Permits for administrative goals, such as to permit companies to conduct field surveys so that the company can commence consultations with the relevant landowners in the area envisaged for development. If the area at hand includes forestland, the Principal Permit stage is also the appropriate time to apply for forestland approval with the Ministry of Forestry, since the 'land owner' in that case is the State.

#### Community Participation and Land Acquisition Prior to Applying for a Location Permit

Location Permits usually stipulate that the applicant has the responsibility to consult with local communities as landowners prior to the issuance of the Location Permit by the District Head or Mayor, who is also responsible for monitoring. The investor must:

- 1) Disclose its investment plans, investment impact, land acquisition plans and mitigation of problems that may arise during the land acquisition process;
- 2) Provide the land owners access to information about its investment plans and about solutions in case of conflicting interests;
- 3) Collect information directly from communities about social and environmental data;
- 4) Consider any proposals put forth by the communities on alternative ways for land acquisition, including the amount of payable compensation.

When applying for a Location Permit, the investor should furthermore provide evidence that consultations have taken place.

#### 4.7.3 Environmental Permit (Izin Lingkungan)

Based on the Environmental Protection and Management Act Nr. 32/2009 and Plantation Act, companies should obtain an environmental permit prior to applying for an IUP. The Environmental Impact Assessment comprises three main elements: assessment, mitigation plan, and monitoring plan. An accredited consultant is required to consult with potentially affected local stakeholders, conducts the audit, and reports to a multi-stakeholder Technical Evaluation Committee, which should also comprise local community and NGO representatives. The Committee issues a recommendation to the Regional Environment Management Agency (BPLHD), which may subsequently recommend the appropriate authority (district head or governor) to issue the Environmental Permit.

#### 4.7.4 Forestland Release Letter (SK Pelepasan Kawasan Hutan)

To excise Conversion Production Forest from the forestland estate completely, the applicant (usually an oil palm plantation company) must obtain a forestland release decision letter *Surat Keputusan Pelepasan Kawasan Hutan* from the Ministry of Forestry. This letter is to be obtained prior to applying for an IUP, i.e. at the Location Permit stage. A proposed excision of the petitioned area is evaluated based on a detailed map showing the forest boundaries as agreed by the governor/district head and the Head of Forestry Planning Agency. The procedure for forestland release is detailed by Suryadi (2010) and Andiko (2010). In essence, it implies the change of status of Convertible Forestland into Other Land Use (APL). Similar procedures exist to change the status of forestland categories within the



permanent forest estate. For example, Protection Forest (*Hutan Lindung*) can be converted into Production Forest in order to issue an Industrial Timber Plantation Permit (IUPHHK-HTI).

#### 4.7.5 Location Permit (Izin Lokasi)

The Minister of Agriculture and the Head of BPN introduced the Location Permit for oil palm plantations through Joint Decree Nr. 2/1999. In the same year, the Minister of Agriculture issued a circular Nr. 110-424/1999 to explain the Joint Decree to local authorities. The Joint Decree was adopted to promote investment, to coordinate with spatial planning, and to address the rights of land owners/users residing within an area allocated under a Location Permit. It also set limits to the total plantation land bank that a non-publicly listed private company can hold.<sup>71</sup>

The application for a Location Permit is made to the relevant district head or, if the area spans across two districts, the governor, by proposing the target area and outlining a development plan. The target area proposed should be in line with local spatial plans indicating land use types suitable for plantation development. The Location Permit holder cannot sell or transfer the permit to another company.

The Location Permit gives the holder the right to acquire land within an identified area, shown on a map attached to the permit. The acquisition should be based on prior consultations held with the landowners, i.e. other plantation companies, local communities and/or, in case the area at hand is part of the State Forest, the Ministry of Forestry. If the Ministry approves the release of forestland, the National Land Agency has to delineate the land and convert the status into APL. The Joint Decree states that landowners within a Location Permit area continue to own the land, until the Location Permit holder has acquired the land directly from them. Most Location Permits stipulate this, and also instruct the investor to acquire the land through *musyawarah* (negotiated mutual agreement through consent).

The term of validity of the Location Permit is limited by the target area in question and areas over 50 ha are given three-year permits. Within this time the company must obtain tenure over a minimum of 51% of the target area, if an extension of one additional year is to be applied for. If land acquisition is not completed after four years, the land can be released to another company, or be reduced to the area of land acquired, with the remainder potentially made available to other companies.

#### 4.7.6 Plantation Business Permit (Izin Usaha Perkebunan)

The Plantation Act Nr.18/2004 and Ministry of Agriculture Regulation Nr.26 /2007 currently form the legal basis of the Plantation Business Permit (IUP). The new legislation stipulates that an IUP is to be obtained *after* a Location Permit is obtained. The IUP grants the holder the right to commence land preparation (stacking, land clearing, planting) and cultivate an oil palm plantation in land acquired under the Location Permit. The IUP is issued by the district head, mayor or governor, on behalf of the Minister of Agriculture. Once issued, the IUP is then valid as long as the holder fulfills all obligations specified in the permit.

Ministry of Agriculture Regulation Nr. 26/2007 (Art. 11) requires oil palm plantation companies to develop at least 20% of the total area cultivated into plantations or schemes that benefit local communities. This is to be realized with credits, subsidies or profit sharing. The regulation does not clearly clarify if this requirement also applies to companies who obtained IUPs prior to 28 February 2007.

#### 4.7.7 Timber Utilization Permit (Izin Pemanfaatan Kayu)

Prior to clearing any forest with remaining timber stand, a plantation company or its contractor must apply for a Timber Utilization Permit (IPK). The IPK is not directly connected to the land acquisition permits and IUP; it needs to be obtained once the right to cultivate is secured (IUP) but can still be applied for when the Land Use Rights permit (HGU) has already been obtained, so long as there is undeveloped forest.

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<sup>71</sup> Ministry of Agriculture Regulation Nr. 26/2007 also set maximum land banks at national level, but not for provinces. This regulation did not revoke the former Joint Decree.

To obtain an IPK, a timber stand survey must be conducted to determine due taxes. With the introduction of Ministry of Forestry Decree Nr. 59/2009 on stumpage fees for land development and/or tree plantations, payment of provincial forestry taxes and Reforestation Fund (DR) contributions is required when the proposed area contains more than 50 m<sup>3</sup> of trees of 30 cm diameter and above. If the survey establishes that such is the case, the company must deposit a bank guarantee for 100% of the expected yield. Thereupon, and if an Environmental Permit and (if applicable) a forestland release approval has been submitted, the Timber Utilization Permit (IPK) will be issued by the local Forestry Office.

#### 4.7.8 Land-Use Rights Permit (Hak Guna Usaha)

The “Land Use Rights” Permit (HGU) was introduced in the Basic Agrarian Law Nr. 5/1960, and further elaborated on in Government Regulation Nr. 24/1997 on Land Registration, Government Regulation Nr. 40/1996 on Business Use Permit, Building Use Permit and Land Use Permit and the Plantation Act Nr. 18/2004. The HGU gives the right to full legal tenure over the land once BPN has affirmed that the land is conflict free. An applicant company should publish in the local newspapers its intention to acquire an HGU and affected stakeholders can still challenge the company’s claims over the land up to two or three years after an HGU is awarded.

Basic Agrarian Law Nr. 5/1960 provides that an HGU is valid for a period of 35 years, extendable (by the Ministry of Agriculture) another 25 years. The land is to be used only for the purpose specified in the HGU permit. The Plantation Act states that the HGU can be revoked if the holder abandons the site for three years, or fails to clear and/or develop a minimum area within a given period.

### 4.8 Legislation for Industrial Tree Plantations

Over the years, the government formalized HTI into various regulating policies, including Government Regulation (PP) Nr. 7/1990 on the Rights of Industrial Plantation Forest Control, PP Nr. 34/2000 on Forest Governance and Forest Management Planning, Forest Utilization and the Use of Forest Areas whereas the Forestry Act Nr. 41/1999 is the overarching law.

Article 50 of the Forestry Act prohibits illegal forest product harvesting and clearing (i.e. without permit), burning of forests, it sets buffer zone requirements etc. Violations of this article can lead to a maximum of five year imprisonment and penalty of maximum Rp 10 billion.

Part IV on rehabilitation and reclaiming forest in the Forestry Act is rather vague, but is generally understood to imply that plantation permits are to be allocated over *unproductive* Production Forests *in order to* preserve natural forests. A strict definition of unproductive forest was laid down in Minister of Forestry Decision Letter Nr. 10/2000, but this decision was revoked in 2003, which meant that the Forestry Act itself applies, and this essentially means that HTI permits are to be granted over “unproductive Production Forest.” Government Regulation Nr. 34/2002 subsequently defined unproductive forest as empty land, grassland and scrubland, while stipulating that HTI leases issued before the Forestry Act came in place remain unaffected. Finally, Government Regulation Nr. 6/2007 cancelled the previous regulation and gives the Ministry of Forestry the authority to identify unproductive forests for allocation to HTIs.<sup>72</sup>

In the run up to this significant change that grants the Minister a great deal of freedom, a number of additional policies were released in order to promote and facilitate further expansion of HTIs, including 100 year leases to be issued without tender, tax exemptions for the first 8 years of operation, remnant timber stock can be put forth for collateral for bank loans, a multi- billion dollar credit schemes from the Reforestation Fund and allowance to local governments to allocate Convertible Production Forest to HTI projects.<sup>73</sup>

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<sup>72</sup> DJ-BPK, 2009.

<sup>73</sup> Obidzinski and Chaudhury, 2006.

## 4.9 Permit Order for Tree Plantations

The permit order for an HTI concession is relatively more straight forward than it is for oil palm. The terms and procedures are laid out in Ministry of Forestry regulation Nr. 50/2010 and summarized in Attachment 2.<sup>74</sup>

The process starts when a fully registered company has obtained recommendation letters from various local government representatives (governor, district head, heads of technical review teams). Jointly with the development plan, the applicant applies to the Forestry Planning Unit (BPK) and subsequently to the Forest Production Planning Unit of the Minister of Forestry. The Minister then issues an order to the company to prepare and complete the Environmental Impact Assessment and Management and Mitigation plans. These are to be approved by the regional Environmental Impact Management Agency (*Bapedal*), the only point in the procedure that a non-Forestry agency is involved. The head of the Planted Forests Development Unit then prepares a draft decision, followed by a legal compliance review by the Secretary General of the Ministry of Forestry. If all is approved, the Minister of Forestry issues a decision letter, after which the applicant is to pay applicable taxes, of which the proof of payment then leads to the issuance of the IUPHHK-HTI permit by the responsible officer of the Forestry Planning Unit.<sup>75</sup>

## 5. Evidence of Legal Non-Compliance

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### 5.1 Oil Palm

Over the past five to ten years, the negative environmental and socio-economic impact of oil palm expansion has become widely accepted. These impacts are generally seen through the lens of sustainability, i.e. “beyond legal compliance.” Legal compliance is thus assumed, but studies by NGOs and some RSPO audits demonstrate that this assumption is false. Legal non-compliance in the oil palm sector appears to be widespread and, as such, contributes to major environmental, social, economic and governance impacts.<sup>76</sup> Based on in-depth research in Central Kalimantan, EIA/Telapak (2012) has described the situation as follows:

*During the past decade, large-scale land acquisition in Indonesia’s Central Kalimantan province has been characterized by widespread illegality, to the extent that failure to abide by the law is now the norm.*

An overview of cases of alleged illegality by subsidiaries of oil palm plantation company groups is presented in Appendix 4. The most commonly observed non-compliances are summarized in Appendix 4. The main areas of concern are summarized below.

#### 5.1.1 Forestland Encroachment

The issue over forestland encroachment concerns the issuance of permits by the local authorities to plantation companies within the forestland area, without formal approval of the Ministry of Forestry. Since 2004, the Ministry has been reluctant to issue forestland release approvals and would do so only if the area requested was located in Conversion Production Forest. Local government authorities either assumed that the company would subsequently seek Ministry of Forestry approval to release the land. Many companies thus commenced land clearing in violation of the 1999 Forestry Act. Without IPK permits, they failed to pay forestry duties due, notably the Reforestation Fund and provincial forestry tax. In 2011, the Ministry of Forestry issued findings from a survey that had found that local governments had issued permits to 537 plantation units in a total forestland area of 6.9 million hectares in three provinces of Kalimantan alone, without approval from the Ministry of Forestry:

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<sup>74</sup> Ministry of Forestry 2010b.

<sup>75</sup> See [[http://www.dephut.go.id/files/IUPHHK\\_pd\\_HTI\\_dlm\\_HT\\_pd\\_HP.pdf](http://www.dephut.go.id/files/IUPHHK_pd_HTI_dlm_HT_pd_HP.pdf)].

<sup>76</sup> See Attachment 3 and 4, and e.g. also BSI-CUC, 2010; Wakker and Zakaria, 2009; EIA/Telapak, 2012.

- Central Kalimantan: 282 units, covering in total 3.934.963 ha
- East Kalimantan: 86 units, covering 720.829,62 ha
- West Kalimantan: 169 units, covering 2.145.846,23 ha
- 54 plantation companies in Central Kalimantan had already opened up 623,001 ha of forestland without the approval of the Ministry.<sup>77</sup>
- In addition, the Ministry of Forestry estimated losses to the state at Rp 158.5 trillion (US\$17.54 billion).<sup>78</sup>

These findings resulted in law *modification*, rather than law enforcement. As mentioned in paragraph 3.2, the Indonesian government has recently adopted new laws that may lead to a “whitewash” of the numerous irregularly issued permits and illegal conversion of forestland. The scale in which this will take place is not yet clear at the time of writing of this report.

### 5.1.2 Violation of EIA Regulations

Another common legal non-compliance in the oil palm sector is that plantation companies request and/or are granted plantation business permits and subsequently start land clearing without having secured the legally required environmental permit. In some cases, companies have demonstrably lied to the local Environmental Impact Monitoring Agency about not having any activities on the ground before they obtained their environmental permit.<sup>79</sup> The development of oil palm plantations prior to the issuance of environmental permits implies that there is no monitoring of environmental impacts during the land clearing process.<sup>80</sup> Furthermore, EIA content and reviews are generally substandard. A sample of EIA reports reviewed in 2008 by the Indonesian Ministry of Environment found that 78% of studied EIA reports were of poor quality. Furthermore, it was found that almost 50% of the District EIA Commissions did not properly conduct the EIA reviews.<sup>81</sup> In a more recent survey (2011), the Ministry of Environment found that only 300 of 1,086 mining and plantation companies in Kalimantan could prove compliance with environmental laws, whereas the non-compliant group faced many problems with their permits and environmental problems.<sup>82</sup>

### 5.1.3 Land Conflicts

Over the years, Sawit Watch has documented 576 oil palm related land conflicts throughout Indonesia and recorded around 20 arrests of community members annually (see Figure 11).

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<sup>77</sup> Ministry of Forestry 2011c.

<sup>78</sup> EIA/Telapak, 2012.

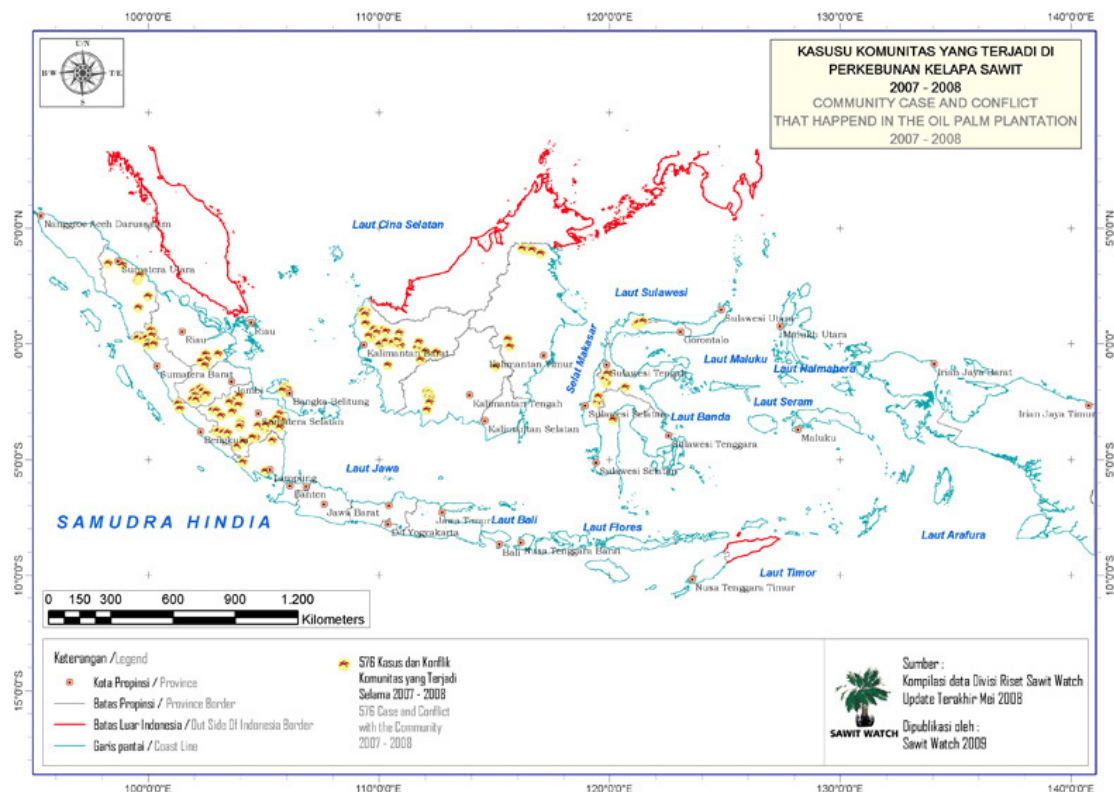
<sup>79</sup> Sinar Mas: Greenpeace 2009; IOI: Wakker & Zakaria 2010.

<sup>80</sup> Wakker and Zakaria, 2009.

<sup>81</sup> Kompas 2008.

<sup>82</sup> Harian Umum Tabengan, 2012.

Figure 11. Approximate Locations of Oil Palm Related Land Conflicts in 2007-2008



Land conflicts between local communities and plantation companies have many different causes that result from illegal activities on the part of the company or community as well as the government. Numerous conflicts are related to late release of smallholder plots and land conversion without community consent (*musyawarah*). The fundamental problem behind many cases lies in the failure of local government authorities to enforce the law in the Principal Permit and Location Permit stages of plantation development. Ultimately, this problem backfires on the companies. When they want to apply for land use permits (HGU) they must demonstrate to the National Land Agency (BPN) that their land is legally acquired and conflict free. In many districts, a remarkably high number of plantation companies are already fully operational without HGU permits, which also implies that these companies are not paying due taxes associated with the permit.

Some provinces have adopted regulations that recognize customary law (such as in Central Kalimantan<sup>83</sup> and Papua). We are aware of only one case where such legislation is used in a lawsuit that remains pending.<sup>84</sup>

#### 5.1.4 Corruption

Corruption in the oil palm plantation sector has not yet been well investigated, except for the Torganda and Surya Dumai cases addressed by the Corruption Eradication Commission (KPK). In the issuance of oil palm permits, local governments play a stronger key role compared to tree plantation permits. It could be that corruption in the issuance of Location and Plantation Business Permits is pettier, involving “smaller fish”. In their study on government revenue from oil palm, Persey and Anhar (2010) have attempted to capture what informal fees local officials are charging applicant plantation companies, but failed to come to clear findings. It is worth noting that the Indonesian Ministry of Agriculture is subject to less scrutiny than the Ministry of Forestry.

<sup>83</sup> Government Regulation 16/2008 and Governor Regulation 13/2009.

<sup>84</sup> Wakker, 2011 (see Appendix 4, Anglo Eastern case).

## 5.2 Industrial Tree Plantations

Field investigations and mapping work by the NGO coalition “Eyes on the Forest” (Jikalahari, WALHI Riau and WWF Teso Nilo Programme) and Greenpeace delivered a vast body of research documents over the years, describing the destruction of forests, peatlands, community lands, and endangered species habitats by APP and APRIL and their suppliers. Several of these documents also make allegations of (potential) illegality such as burning to clear land or lack of fire prevention measures, conversion on well stocked forests, development of deep peat, clearing outside concession boundaries, forest clearing near rivers, road construction without traceable environmental permits, plantation development without traceable permits, and trading logs from illegal logging and/or protected tree species.<sup>85</sup> A recent report by Eyes of the Forest (2012a) alleges that APP in Riau is involved in:

- Forest clearance in areas with legally questionable concession licenses, including those obtained from officials convicted for or on trial for graft;
- Forest clearance in violation of government spatial planning law and within Indonesia’s “deforestation moratorium area”;
- Forest clearance causing persisting social conflicts;
- Pursuing a business model based on generating GHG emissions from continuing peat drainage;
- Destruction of High Conservation Value Forests.

The Supreme Audit Board has also published studies that contain a wealth of detail about government failures and company law violations. On the part of the government, main failures identified include inappropriate spatial allocation of lease areas, late approvals of company annual work plans, failure to penalize companies who are in violation of lease terms, and lack of clear Ministry of Forestry plans to recollect loans. On the part of companies, BKP found that many held inactive HTI-permits, did not meet planting targets, and were clearing land without IPKs; thus, were failing to pay provincial forestry taxes, Restoration Fund levies, and zero-interest loans from the Restoration Fund.<sup>86</sup>

### 5.2.1 Corruption and the Reforestation Fund

Misuse of the Reforestation Fund (DR) is without doubt the most blatant illegality in the industrial tree plantation sector, causing the program to fall well short of its area and productivity targets. An Ernst & Young audit in 1999 found systematic financial mismanagement, fraudulent practices by recipients of DR subsidies, and routine diversion of funds for uses that were not consistent with the Reforestation Fund’s mandate. The audit documented losses of US\$5.2 billion in public funds during the five-year period FY 1993/4–FY 1997/8, the lion share of funds collected under the DR.<sup>87</sup> More recent BPK audits also found continued widespread irregularities and weak internal controls in DR funds administered by the Ministry of Forestry.<sup>88</sup> The prosecution involving one case of embezzlement would lead to additional (alleged) corruption in the highest court of Indonesia that continues to be investigated by KPK today.

The case of former president Suharto’s half-brother Probosutedjo started in the early 1990s with plans to construct a pulp mill in South Kalimantan, PT MHB. At that time, he owned two HTI concessions. In the mid-1990s, Probosutedjo used his political connections to secure Rp 144 billion from the DR, making it the second largest beneficiary of DR allocations through May 1998. In 2001, a government appointed research team conducted an aerial photography study of the site and concluded that PT MHB had only planted around 40,000 ha instead of the 70,000 ha claimed by Probosutedjo (which is now confirmed by UFS’ 2011 Annual Report which states that the planted area is 30,600 ha). In 2002, Probosutedjo was charged for “marking up” the size of the planted area, thereby pocketing excess reforestation loans totalling Rp 49 billion. In 2003 the court sentenced Probosutedjo to four years in prison. He appealed his case to

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<sup>85</sup> See e.g. APP, 2012; PEFC 2011; BPK, 2006. Greenpeace 2012; Eyes on the Forest, 2011a; Eyes on the Forest 2011b; Eyes on the Forest, 2012; WWF et al., 2008. See <http://www.eyesontheforest.or.id/index.php?page=content&cid=5> for a full series of investigative reports.

<sup>86</sup> BPK 2006, BPK, 2010, BPK, 2008, BPK, 2009.

<sup>87</sup> Barr et al., 2010.

<sup>88</sup> Barr et al., 2010.



the Supreme Court. After losing that case, he made bribery allegations against Supreme Court officials, including the Chief Justice. Probosutedjo claimed he was the whistle-blower and spent a total of Rp 16 billion (US\$1,6 million) to evade prison. The KPK later confiscated some US\$400,000 and Rp 800 million from Supreme Court clerks, which Probosutedjo alleged were to be paid to the Supreme Court justices handling the case. In 2005, Probosutedjo was sentenced to four years in jail. He later won a reduction of his sentence to two years, initiating a probe by the Indonesian Corruption Eradication Commission into the alleged scandal of the "judicial mafia" which uncovered offers of US\$600,000 to various judges. When Probosutedjo confessed to the scheme in October 2005, his full four-year term was reinstated. He was released in 2008. The KPK investigation into the Supreme Court judges is ongoing.<sup>89</sup>

### 5.2.2 Licensing and Corruption

Pelalawan (Riau): During 2001–2006, Jaafar, the District Head of the Pelalawan Regency in Riau, issued 15 timber plantation licences. An investigation by the KPK found that the owners of 7 of the 15 companies have affiliations or a family relationship with Jaafar. By granting the licences, Jaafar violated Ministry of Forestry Regulation No. 10.1/Kpts-II/2000 on guidance for granting timber plantation permits and Ministry of Forestry Regulation No. 21/Kpts-II/2001 on Criteria and standards for licensing timber plantations in production forests. Jaafar was charged with enriching himself, other people, or a corporation; causing state losses; and for abuse of power and authority in violation of Law No. 31/1999 and Law No. 20/2001 on corruption eradication. The Supreme Court sentenced Jaafar to 11 years of imprisonment and fined him with US\$56,000. He was also sentenced to pay restitution to the state to the amount of \$1.4 million. Also implicated in the case was the head of the Riau forestry department (2004 and 2005) who was sentenced to two years and six months in prison for corruption. There are still other suspects in the case, two former heads of the Riau forestry agency, who have not been detained. Total losses to the state in this case were found to be US\$131 million. The KPK is also investigating the head of Riau's Siak district, a suspect in connection with the issuance of illegal permits between 2001 and 2003.<sup>90</sup>

## 6. Monitoring, Investigation, and Prosecution

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### 6.1 Monitoring

Monitoring of law implementation and enforcement is the core task of ministerial inspectorates at every spatial level. Forestry, environment, and agriculture departments all have their own monitoring agencies with the authority to conduct preliminary investigations and order the police to proceed with further investigations when and where illegality is suspected. Obviously, each government agency (district head, mayor, or governor office and sector ministries) issuing permits for plantation development is responsible for overseeing compliance with the terms and conditions prior and after issuance.

Government agencies themselves are subjected to review by the Supreme Audit Board (BPK), which was founded on the basis of Law Nr. 15/2004 on Auditing of the Management and Accountability of State Finance. The BPK has the authority to audit the management of state finance and budget of national government, local government, parliament, state commissions, state companies and other organizations that work with and/or manage state budget, including the forestry and agriculture sectors. The BPK does not have a mandate to enforce laws; its main function is to provide public transparency in government performance, including rent capture from the exploitation of natural resources and funds allocated for the rehabilitation of environmental damage (Nasution, 2008).

The government has also mandated semi-governmental organizations (such as ISPO) to conduct monitoring. Furthermore, ISO-accredited Conformity Assessment Bodies will be mandated to verify legality in timber trade under the Voluntary Partnership Agreement associated with the Forest Law Governance and Trade (FLEGT) agreement between the European Union and the Indonesian government. The President's Delivery Unit for Development Monitoring and Oversight (UKP4 or Unit Kerja Presiden Bidang Pengawasan dan Pengendalian Pembangunan), set up

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<sup>89</sup> Jurgens, 2005; Jakarta Post 2005; 2006; UFS 2011.

<sup>90</sup> Dermawan et al., 2011; U4, 2010; Jakarta Globe, 2011.

in 2009, plays an important role in monitoring the performance of different government agencies (sectoral and spatial) in various policy fields and reports directly to the Indonesian President. UKP4 heads Indonesia's Judicial Mafia Eradication Task Force (Presidential Decree Nr. 37/2009) and REDD+ Task Force (Presidential Decree Nr. 19/2010).

The Judicial Mafia Eradication Task Force vigilantly pursued corruption cases soon after its foundation but did not see its two-year term extended, likely because it stirred up cases that were alleged to be politically charged.<sup>91</sup> Some of the taskforce's responsibilities were subsequently taken over by the REDD+ Task Force, which is responsible for monitoring the Norway Indonesia Moratorium. The Task Force is in the process of setting up an independent monitoring, reporting, and verifying (MRV) body. The MRV would serve as a clearinghouse that collects and publishes data on greenhouse gas emissions from deforestation and forest degradation.

The Indonesian Corruption Eradication Commission (KPK) is publicly perceived as the "super body of anti-corruption". The commission was empowered by Parliament in 2002 through Law No. 30/2002 and has since achieved a high conviction rate while addressing 86 cases of bribery and graft related to government procurements and budgets.<sup>92</sup> The KPK has prosecuted six forestry related cases, resulting in 21 convictions of government officials and businessmen, and other cases are still being investigated.<sup>93</sup> Although the KPK has investigated a range of sectors, most of the US\$100 million in assets recovered through law enforcement activities has come from the forest sector.<sup>94</sup>

Indonesian legislation also allows for public participation in monitoring of legal compliance. For example, EIA procedures provide locally affected stakeholders (including local NGOs) opportunities to provide (technical) inputs in the EIA and land acquisition process. The Public Disclosure Act Nr. 14/2008 also enables the public to request information about a company's permits and supporting documents (including compliance reports) from the relevant authority, including all government agencies, state owned companies, political parties, and NGOs.<sup>95</sup> There are also provisions for public participation in reporting corruption to the relevant agencies.<sup>96</sup>

## 6.2 Prosecution

Law violations can be brought forward to the criminal and civil courts, starting at district level High Courts. The Supreme Court deals with appeals at the national level. Civil courts rule in disputes involving the state officials or bodies, at both the central and regional levels. The criminal courts can try criminal and civil cases involving Indonesian citizens or foreign citizens. The procedure by which an alleged law violation enters the court system differs for each law. For example, violations under the Plantation Act have to be put forth to the police by the "Civil Servant Investigators" (PPNS) within the line agency (forestry, agriculture, mining, environment etc.). The police may then investigate the case further, and have the mandate to arrest suspects or call witnesses prior to submitting the case to the Attorney General Office (AGO) for prosecution. Under the Forestry Act, violations can be taken straight to the AGO as the Ministry of Forestry has its own Quick Response Forest Police Unit, whereas under the new Environment Protection and Management Act, the PPNS can file the case directly to the AGO upon informing the police. Under the latter Act, the PPNS even have the authority to arrest suspects for investigation. The PPNS is represented at all spatial levels, but their human resource capacity at district level is generally limited.

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<sup>91</sup> Jakarta Post, 2011a.

<sup>92</sup> Onishi, 2009.

<sup>93</sup> Jakarta Globe, 2012.

<sup>94</sup> U4, 2011.

<sup>95</sup> Information requested in writing or verbally has to be made available by the relevant agency within ten days, extendable with another seven days. Information may, however, be denied on the following grounds, if the request: a) Impedes with the law enforcement process; b) Interferes with the interests of protection of intellectual property rights and could lead to unfair competition; c) Jeopardizes state defence and security; d) Reveals the natural wealth of Indonesia; e) Is detrimental to the national economic resilience; f) Is detrimental to the interests of foreign relations; g) Discloses the contents of an authentic deed of a personal nature or one's will and/or h) Reveals personal secrets.

<sup>96</sup> Makarim and Taira, 2012.



Over the past decade, Indonesian NGOs have repeatedly filed lawsuits against law offenders, including both government officials and companies, but few such efforts led to successful prosecution.<sup>97</sup> The Indonesian Forum on the Environment (WALHI) observed that successful convictions represent a minute portion of suspect cases and that there is a tendency to prosecute the direct actors involved in forestry law violations, rather than corporate and government officials believed to be behind law-breaking:

- Between 2005 - 2008, over 10,000 cases of suspected forestry law violations were filed with the police;
- Of 205 individuals accused between 2005-2008, 137 were acquitted;
- Of those charged and found guilty, 44 were sentenced to imprisonment for less than one year; 14 were sentenced to 1 - 2 years of imprisonment; and only 10 were sentenced for over 2 years;
- In the Supreme Court, 83% of all cases handled involved farmers, field operators and truck drivers as the accused. Only 17% of the cases challenged company CEOs, commissioners and sawmill owners.<sup>98</sup>

Even where prosecution yielded actual convictions, the government rarely managed to recapture state financial losses resulting from forestry related crimes (Luttrell et al., 2012).

In efforts to see justice served in a case of illegality involving an oil palm company in Central Kalimantan, EIA/Telapak (2012) encountered “a bureaucracy in which illegality is publicly acknowledged but not punished in accordance with the law; a bureaucracy prioritising the continuing operation of plantations over law enforcement.” This situation is in part the result of enforcement agencies’ lack of capacity and lack of political mandate, but suspected to be ultimately driven by institutionalized corruption within the higher echelons of civil service and judiciary. In its draft national strategy for REDD+ in Indonesia, the Ministry of Forestry (2009) acknowledges the role of the latter:

*“The prevention, detection, and suppression of forest crimes continue to be hampered by corruption in the justice system at each step from criminal detection and investigation, through case preparation and prosecution, to adjudication and appeal.”<sup>99</sup>*

It does, however, also acknowledge the linkage between district level politics and natural resource exploitation. For example, in their recent study, Burgess et al. (2011) established a statistically significant relationship between illegal logging and the years leading up to district level elections in Indonesia (“*political logging cycles*”).

Corruption, major or minor, *de facto* or perceived, remains a huge problem in Indonesia. In 2009, Transparency International revealed that Indonesian business players are deeply entrenched in corruption, with 60% of respondents to the survey admitting to paying bribes to ensure the smooth outcome of projects.<sup>100</sup>

## 7. Conclusion and Recommendations

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Market forces and Indonesian government policy are driving development of another 9 to 13 Mha of new oil palm and tree plantation estates over the next decade or so, on top of existing land banks granted and/or planted (13 Mha). Under business-as-usual scenarios such expansion would represent about half of the deforestation forecasted by the National Council for Climate Change under a business-as-usual scenario. Although government-to-government agreements (such as the Norway – Indonesia Moratorium and FLEGT) and private sector commitments (APP, GAR,

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<sup>97</sup> See for an overview of suspected open burning cases and efforts by Walhi Riau to challenge the companies and government institutions involved: Wakker, 2005.

<sup>98</sup> WALHI, 2011.

<sup>99</sup> Ministry of Forestry 2009a.

<sup>100</sup> Jakarta Post, 2009.

RSPO etc.) begin to create dents in the business-as-usual scenario, these initiatives have yet to demonstrate that they will stall and reduce illegal/irregular plantation development and deforestation in Indonesia.

During Forest Trends' "Workshop on illegalities and irregularities in forest clearance for large-scale agricultural and timber plantations in SE Asia/Pacific" held on March 7 and 8, 2013, it was observed that the Central Kalimantan experience is a nation-wide, indeed a regional phenomenon. With regard to the nature, scale and extent of illegalities and irregularities, the workshop observed, among others, that:

- Industrial commercial agriculture and tree plantation development is now the largest driver of deforestation in the tropics, and its importance is growing;
- The bulk of new commodity production is destined for export markets, but largely aims to supply emerging Asian middle-class consumers, also domestically;
- Much, perhaps most, of the deforestation that makes way for this commodity production is illegal one way or another. Not all illegal development is necessarily environmentally or socially damaging, but the bulk contributes to serious short-term and long-term sustainability impacts at local, national and international levels;
- Linkages between the trade in illegal timber and oil palm plantation expansion are complex and require further research;
- Many cases of illegality involve some form of collaboration between the plantation companies and government officials which makes law enforcement particularly difficult;
- Illegal behavior rarely results in effective disincentives because vested interests in development and illegality dominate over societal, long-term interests, which erodes the effectiveness of even good legal frameworks;
- Illegality undermines efforts to achieve good governance because development occurs without formal review and monitoring of environmental and social impacts. Illegality also results in the loss of vast amounts of government revenue, which affects emerging Asian middle classes economically and politically;
- Plantation projects are often approved outside the public eye, while cases where companies with irregular leases have begun operations are particularly difficult to address. Transparency and public consultation in the early stages of permit issuance is often minimal;
- The understanding and appreciation of illegality in the plantation sectors lags behind with knowledge about illegal (selective) logging in natural forests. Legality verification mechanisms tend to be designed for selective logging and do not adequately address the increasingly important role of timber production from forest conversion.

Further research in the Indonesia case that would be relevant to the Forest Trends project on forest clearance for large-scale commercial plantations includes the following four areas:

## **7.1 Additional Research into Known or Suspected Cases of Illegalities/Irregularities**

Earlier EIA/Telapak studies have already highlighted a number of disturbing cases and there is an evident need to update and research new cases in Papua where plantation expansion takes place largely off the radar screen, in spite of vast areas of forest and customary rights land being subjected to development. With regards to the tree plantations sector, both APP and RAPP will continue to be under intense scrutiny in Sumatra. There is a need to closely monitor the realization of additional pulp and paper projects in parts of Indonesia, both those associated to the largest producers as well as newcomers.

## **7.2 Additional Research into Scale and Nature of Development of a Specific Commodity**

Whereas the scale and nature of oil palm and tree plantation expansion is intensively scrutinized, the expansion potential of other commercial crops (sugar cane, padi, and biofuel crops) is not to be ignored, particularly in East

Kalimantan (which intends to adopt a moratorium on oil palm expansion and promote food crop expansion) and Papua (in which various crops are to be developed in the framework of large regional development plans).

### **7.3 Additional Research into the Legal and Regulatory Arrangements Governing Development of a Specific Commodity**

The early stages of concession/permit allocation represent an important priority research area; the lack of transparency in this important stage is evident. Too little is known about the patronage networks through which concessions/permits are issued; about how much is paid by permit holders and to whom, and about how it is paid. This research is best focused on the Location Permits issued for oil palm expansion, and should also address questions as to what role transparency and public accountability could play in the early stages of concession allocation and land rights acquisition.

### **7.4 Other Relevant Research**

The potential linkages between forest conversion for plantation expansion and the timber trade are not yet adequately understood. This field requires research, especially in light of Indonesia's commitments to ensure that timber traded is from legal origin and the tendency among decision-makers to focus on the legality of selective felling forestry. Illegality in the commodity business is not necessarily limited to actual production on the ground. Several major tax evasion cases related to palm oil trade have made the Indonesian headlines in recent years, which suggest that transfer pricing is a potential area of major concern. Another interesting area of potential research is to seek answers to the core question of why illegality is so widespread, and why some cases have made it into high-level anti-corruption cases while many others do not. This also leads to questions about opportunities offered by increased interdepartmental coordination and transparency, which are being gradually introduced against the backdrop of post hoc whitewashing of illegality and its associated costs.

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## Annex

### Annex 1. Administrative Requirements for Plantation Industry Related Permits - Oil Palm

Type of Permits	Main Requirements	Relevant Government Agencies
<b>Company Establishment</b>	<p>Domestic companies and foreign companies have to obtain approval from the Chairman of BKPM to establish a limited liability company (PT), the most common vehicle to develop commercial scale oil palm plantation companies. The application must be accompanied with the following:</p> <p>Letter of recommendation from the related country or letter which is issued by the Embassy/ Representative Office of the related country in Indonesia if the applicant is The Government of another country;</p> <p>Copy of valid passport if the applicant is a foreign individual;</p> <p>Copy of Articles of Association of the company in English or its translations in Bahasa Indonesia from a sworn translator if the applicant is a foreign company;</p> <p>Copy of valid Identity Card (KTP) if the applicant is an Indonesian individual;</p> <p>Copy of Articles of Establishment of the company and any amendment (s) and approval from the Minister of Law and Human Rights if the applicant is incorporated under the law of Republic of Indonesia; and</p> <p>Copy of Tax Registration Code Number (NPWP) for the applicant, either for Indonesian individual or company which is incorporated under the law of the Republic of Indonesia.</p> <p>This application should be properly and duly signed with sufficient stamp duty by all applicants (if the company is not yet incorporated) or by the company's Board of Directors (if the company is already incorporated) attached with Power of Attorney with sufficient stamp duty from whom signs and/or submits the application if the applicant is represented by another party (provisions concerning the Power of Attorney is strictly regulated in this regulation (article 63).<sup>101</sup></p> <p>Based on Presidential Decree Nr. 36/2010, foreign plantation investors can only own up to 95% of a plantation joint venture and are not allowed to use passive nominees for the remaining shareholding. The applicant must obtain a recommendation from the Minister of Agriculture or Directorate General of Plantations.</p>	<p>Investment Coordinating Board (BKPM)</p> <p>Chairman of BKPM</p> <p>Minister of Agriculture or Directorate General of Plantations</p>
<b>Principal Permit</b>	<p>There is no clear guideline on issuing Principal Permits. However, most districts require companies to fulfill the requirements for Principal Permits based on Minister of Agriculture Decree Nr. 786/Kpts/KB.120/10/96:Notary</p>	<p>Governor or district head</p> <p>Head of Plantation Office or</p>

<sup>101</sup> See [<http://www4.bkpm.go.id/contents/general/12/permit-license-mechanism>].

	Act on company establishment and latest amendment; Recommendation letter from relevant government officers; and Proposed location map at scale 1:100,000.	another officer in charge if there is no Plantation Office Head
<b>Environmental Permit<sup>102</sup></b>	The Environment Impact Assessment (EIA) approved by the EIA Commission is the main requirement for the relevant officer in charge to issue an Environmental Permit to the company. To obtain such approval from EIA commission, the company needs to address the main aspects in their EIA, namely: Analysis of potential impacts of the proposed activities Evaluation of activities for surrounding areas Inputs or comments from communities on proposed activities Forecast on scale of potential impacts and types of impacts that would likely happen if the proposed activities are implemented Integrated or comprehensive evaluation of the potential impacts in order to determine whether the proposed activities are eligible or not Environmental management and monitoring plan	Governor or Head of district Head of the Environmental Monitoring Office (Bapeda) EIA Commission at provincial or district level
<b>Forestland Release Letter<sup>103</sup></b>	Application for forestland release approval requires a series of both administration and technical requirements to be met.  Administrative: Application letter with proposed forestland map overlay with basic layer map with minimum scale of 1:100,000; Location permit from officers in charge; Plantation Business Permit (IUP) as required by law; Governor or head of district recommendation letter with proposed forestland map overlay with basic layer minimum scale of 1:100,000; Statement letter in form of Notary Act on: Commitment to comply with laws and regulations; Commitment to not transfer the principal permit on forestland approval to other parties without approval of the Ministry of Forestry.	Minister of Forestry Head of Planning Division at Ministry of Forestry Governor or Head of district Head of BPN at provincial or district level Balai Pemantapan Kawasan Hutan (BPKH; branch office for Delineating Forest Functions)

<sup>102</sup> Environmental Protection and Management Act Nr. 32/2009.

<sup>103</sup> Minister of Forestry, 2011b.

	<p>Commitment to develop at least 20% from total forestland that will be released for smallholders. It also must provide name of smallholder beneficiaries/recipients with acknowledgement from head of sub-district and village head.</p> <p>Company profile;</p> <p>Notary Act of company establishment and latest amendment;</p> <p>Taxpayer Identification Number;</p> <p>Financial statements audited by public accountants.</p> <p>Technical requirement:</p> <p>Proposals, technical plan and/or master plan signed by Ministers, Governors, District head and company director;</p> <p>Field survey minutes and reports from relevant government offices;</p> <p>The interpretation of satellite imagery on the proposed area not older than two years with statement letter from company on the accuracy and validity of the interpretation.</p>	
<b>Timber Utilization Permit (IPK)</b> <sup>104</sup>	<p>A company with a Location Permit with forest located outside the forestland area can apply for an IPK when fulfilling the following requirements:</p> <p>Copy of company Notary Act and latest amendment;</p> <p>Copy of Location Permit, legalized by officer in charge;</p> <p>Map of requested location</p> <p>A company with a Location Permit with forest located inside convertible production forest and who has obtained forestland release approval from the Ministry of Forestry can apply for an IPK when fulfilling the following requirements:</p> <p>Copy of company Notary Act and latest amendment;</p> <p>Copy of the forestland release approval letter from the Ministry of Forestry, legalized by officer in charge</p> <p>Map of requested location</p> <p>When a company concession is located within convertible production forest, and the company has obtained an HGU and forestland release approval from the Ministry of Forestry, the company does not have to obtain an IPK but needs to pay provincial forestry provision/tax (PSDH), contribute to the forest rehabilitation fund (DR) and compensation for timber stand value.</p>	<p>Minister of Forestry</p> <p>Head of Forestry Utilization at the Ministry of Forestry</p> <p>Governor or district head</p> <p>Head of Forestry office, or other officer in charge if there is no Forestry Office head in the province or district</p>

<sup>104</sup> Minister of Forestry, 2011a.

<b>Location Permit</b>	<p>Based on the Ministry of Agriculture and National Land Agency Joint Decree Nr. 2/1999 on Location Permits, the main requirements for application are:</p> <p>Investment approval from Investment Coordinating Board (BPKM)</p> <p>Statement letter on size of existing land controlled by company</p> <p>Minutes of consultation meeting with land owners within the proposed areas</p> <p>Most districts set additional requirements based on Ministry of Agriculture and National Land Agency Joint Decree Nr. 22/1993 on the Guidelines for Location Permits:</p> <p>Notary Act on company establishment</p> <p>Taxpayer Identification Number</p> <p>Company identity</p> <p>Location map with scale &lt;1:100,000 for Java and Bali and &gt;1:100,000 outside Java and Bali</p> <p>Application proposal</p> <p>Pre-survey report</p> <p>Receipt of non-tax revenue (Penerimaan Negara Bukan Pajak – PNBP)</p>	<p>Governor or Head of district</p> <p>Head of Plantation Office or another officer in charge if there is no Plantation Office Head</p> <p>Head of BPN at provincial or district level</p>
<b>Plantation Business Permit (IUP)</b>	<p>Company Registration Certificate and latest amendment;</p> <p>Taxpayer Identification Number;</p> <p>Certificate of domicile;</p> <p>Recommendation of conformity with the regional spatial plan</p> <p>Recommendations of conformity with provincial plantation development macro plan;</p> <p>Location Permit with maps of candidate locations (1: 100,000 or 1: 50,000);</p> <p>Forestland release approval (if the proposed area is located partially or fully in forestland);</p> <p>Plantation development work plans;</p> <p>Environmental Permit;</p> <p>Statement of ability to control pests;</p> <p>Statement of ability to perform land clearing without burning and with fire control;</p> <p>Statement of willingness and work plan to develop community plantations in accordance with Article 11; and</p> <p>Statement of willingness to realize the partnership.</p>	<p>Governor or Head of district</p> <p>Head of Plantation Office or another officer in charge if there is no Plantation Office Head</p>

**Land Use Permit  
(HGU) <sup>105</sup>**

The application should include:

Name of the corporation, domicile, Company Registration Certificate.

Land use plan for the short term and long term;

Copy of Location Permit or designation of land use permit or provisioning land permit in accordance with the Regional Spatial Plan;

Copy of evidence and or receipt of land acquisition such as forestland release from the competent authority, deed of release of former customary land or other letter evidence of land acquisition;

Approval of domestic investment (Penanaman Modal Dalam Negeri-PMDN) or Foreign Investment (Penanaman Modal Asing-PMA), or approval letter from President for certain foreign investment or principal approval from Technical Department for non-domestic investment or foreign investment;

Survey Certificate (*surat ukur*), if any.

The company needs to pay various taxes associated with the HGU, such as the BPHTB (Acquisition Rights to Land and Buildings Tax).

Head of BPN at national level  
Governor or Head of district  
Head of BPN at provincial or district level  
Ministry of Forestry/Minister of Forestry

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<sup>105</sup> Minister of Agriculture and National Land Agency (BPN), 1999.



## Industrial Tree Plantations (HTI)

Type of Permits	Main Requirements <sup>106</sup>	Relevant Government Agencies
Company Establishment	In Principal the same requirements apply as listed above under oil palm, but Foreign Direct Investment in HTI plantations is not encouraged. As a consequence, there are no known foreign dominated HTI holders, although some may indirectly be foreign controlled as subsidiaries of timber processing company groups with a significant FDI share.	Investment Coordinating Board (BKPM) Chairman of BKPM Minister of Forestry
IUPHHK-HTI	<p>The application of an Industrial Tree Plantation Business License (Izin Usaha Pemanfaatan Hasil Hutan Kayu Hutan Tanaman Industri, IUPHHK-HTI) is as follows:</p> <p>Applicants who are eligible include: a. Individuals or firms: certificate of registration as Commanditaire Vennootschap (CV); b. Cooperatives and private companies: company registration and any amendments approved by the relevant agency.</p> <p>Application to the Minister of Forestry, with a copy addressed to the Director General of Forestry Enterprise, Director General of Forestry Planning, Governor, Regent / Mayor and Head of Forest Area Consolidation (BPKH).</p> <p>Company registration with BKPM and any amendments</p> <p>Business license</p> <p>Tax Registration Code Number (NPWP)</p> <p>Statement of willingness to establish a company in the region of operation signed by the company director and a notary</p> <p>Governor recommendation and accompanying map of the location of at least a scale of 1:100,000, to be based on:</p> <p>Recommendation from the Regent / Mayor based on technical considerations and Head of Department of Forestry district / city, to establish that the area is not encumbered with other rights;</p> <p>2) Analysis of forest functions by the Head of the Provincial Forestry Office and the Balai Pemantapan Kawasan Hutan (BPKH), with reference to the function of forest area in accordance with the Ministerial Decree on the designation of forest areas and water bodies and other data available such as boundaries, a description of the vegetation canopy, use, utilization, changes in the designation and functions outlined with spatial and numeric data.</p> <p>h. Technical proposal that contains, among others:</p>	Minister of Forestry Bapedal

<sup>106</sup> See for a more complete flowchart [[http://www.dephut.go.id/files/IUPHHK\\_pd\\_HTI\\_dlm\\_HT\\_pd\\_HP.pdf](http://www.dephut.go.id/files/IUPHHK_pd_HTI_dlm_HT_pd_HP.pdf)] or [[http://www.dephut.go.id/files/syarat\\_permohonan\\_IUPHHK-HTI.pdf](http://www.dephut.go.id/files/syarat_permohonan_IUPHHK-HTI.pdf)].

	<p>1) The condition of the area and condition of the company;</p> <p>2) The technical proposal with the aims and objectives, plan of utilization, the silvicultural system, organization/governance, financing / cash flow and forest protection.<sup>107</sup></p> <p>HTI is (Timber Plantation) a license to grow an industrial forest to supply industrial fiber, usually pulpwood, for 60 years. The license may be renewed for a further 35 years.</p>	
<b>Environmental Permit<sup>108</sup></b>	<p>The Environment Impact Assessment (EIA) is integrated in the application process for the IUPHHK-HTI as part of the technical feasibility review. The process involves other government agencies (the regional divisions of the Ministry of Environment, Bapeda).</p> <p>The Environment Impact Assessment, mitigation plan and monitoring plan must be approved by the EIA Commission and the Ministry of Forestry/Director of Planted Forests Development. To obtain such approval from EIA commission, the company needs to address the main aspects in their EIA, namely:</p> <p>Analysis of potential impacts of the proposed activities</p> <p>Evaluation of activities for surrounding areas</p> <p>Inputs or comments from communities on proposed activities</p> <p>Forecast on scale of potential impacts and types of impacts that would likely happen if the proposed activities are implemented</p> <p>Integrated or comprehensive evaluation of the potential impacts in order to determine whether the proposed activities are eligible or not</p> <p>Environmental management and monitoring plan</p>	<p>Governor or Head of district</p> <p>Head of the Environmental Monitoring Office (Bapeda)</p> <p>EIA Commission at provincial or district level</p> <p>Minister of Forestry and Director of Planted Forests Development</p>
<b>Timber Utilization Permit (IPK)<sup>109</sup></b>	<p>A company must apply for an IPK when converting natural forests into industrial plantations. It must submit the following information</p> <p>Copy of company Notary Act and latest amendment;</p> <p>Map of requested location</p> <p>Development plan, including technical assessment conducted by the Provincial Head of Forestry for at least 5% of the timber stand (trees &gt; 30cm dbh). The information is to be included in the Annual Work Plan.</p> <p>Progress made with land development, including progress with any previous IPKs</p> <p>Statement of Willingness to pay replacement tax.</p> <p>Evidence of payment to the Forest Rehabilitation Fund (Dana Reboisasi) and provincial forestry tax (PSDH).</p> <p>If the company will not use the timber itself, another eligible party may apply for an IPK.</p> <p>IPKs are valid for one year maximum and may be extended.</p>	<p>Minister of Forestry</p> <p>Head of Forestry Utilization at the Ministry of Forestry</p> <p>Governor or district head</p> <p>Provincial Head of Forestry office, or other officer in charge if there is no Forestry Office head in the province or district</p>

<sup>107</sup> Ministry of Forestry, 2010.

<sup>108</sup> Environmental Protection and Management Act Nr. 32/2009.

<sup>109</sup> Ministry of Forestry, 2009b.

## Annex 2. Government Roles and Responsibilities by Land Use Type in Indonesia

Land Use Category based on Function	Main Laws and Regulations	Role and Responsibilities of Different Level of Government		
		National	Province	District
Forestland				
Conservation Forest	Forestry Act Nr. 41/1999; Conservation of living resources and their ecosystems Act Nr. 5/1990; Government Regulation Nr. 44/1998 on distribution of power on forestry sector from national government to local government; Presidential Decree Nr. 32/1990 on management of protection areas	Dominates all process of planning, development and monitoring on all types of conservation forest	Role and responsibilities limited to management of grand forest park	
Protection Forest	Forestry Act Nr. 41/1999; Government Regulation Nr. 44/1998 on distribution of power on forestry sector from national government to local government; Presidential Decree Nr. 32/1990 on management of protection areas	Planning: designation, demarcation and stipulation Development: utilization permit Monitoring: Yes	Planning: designation and demarcation Development: recommendation for utilization permit, rehabilitation Monitoring: Yes	Planning: No Development: recommendation for utilization permit, management and rehabilitation Monitoring: Yes

Limited Production Forest				
Production Forest	Forestry Act Nr. 41/1999; Government Regulation Nr. 44/2004 on forestry planning;  Government Regulation Nr. 44/1998 on distribution of power on forestry sector from national government to local government;	Planning: designation, demarcation and stipulation  Development: approval utilization permit  Monitoring: Yes	Planning: demarcation  Development: recommendation for utilization permit, rehabilitation  Monitoring: Yes	Planning: No  Development: recommendation for utilization permit, rehabilitation  Monitoring: Yes
Convertible Production Forest	Government Regulation Nr. 10/2010 on procedure to change of allocation and function of forestland	Planning: designation, demarcation and stipulation  Development: forestland release approval, approval of heavy equipment permit after IPK  Monitoring: Yes	Planning: No  Development: recommendation for forestland release approval, recommendation for IPK, approval for annual cutting planning for IPK holders  Monitoring: Yes	Planning: No  Development: recommendation for forestland release approval, approval for IPK  Monitoring: Yes
<b>Non-forestland</b>				
Other Land Use (APL)	Forestry Act Nr. 41/1999; Plantation Act Nr. 18/2004; Spatial Planning Act Nr. 26/2007	Planning: No  Development: approval of heavy equipment permit after IPK  Monitoring: Yes	Planning: Yes  Development: recommendation for IUP, recommendation for IPK, approval for annual cutting planning for IPK holders  Monitoring: Yes	Planning: Yes  Development: approval on IUP, approval for IPK  Monitoring: Yes

### Annex 3. Examples of Oil Palm Plantation Company Groups with Subsidiaries Alleged to be Involved in Illegal Activities

Company Group	Subsidiaries and Indicative Year of Exposure	Allegations of Illegality	Response	Main References
<b>Anglo-Eastern Group</b>	PT Sawit Graha Manunggal in East Barito District in Central Kalimantan	<p>PT SGM did not respect the Serapat customary rights institution and customary land whereas these are recognized in Central Kalimantan by local regulation 16/2008 and Governor Regulation 13/2009. It is furthermore alleged that PT SGM trespassed article 236 of the Criminal Law because of falsification of village leader signatures and article 378 of the Criminal Law for deception by using trickery to manipulate Serapat community members to sell their land.</p> <p>According to the community's history there used to be tribal tensions between Serapat and Murutuwu communities. To promote peace building, the leaders of each tribe sacrificed themselves through beheading, allowing their blood to flow in a hole of a big sacred tree called 'Lalutung Panatai Ira' where their bodies would be buried. This sacred tree was cleared by the company and planted with oil palm plantation.</p>	<p>On August 14th, 2008 Village Parliaments sent a letter to PT SGM requesting suspension of land acquisition. In March 2011, the community filed a report to the local police about the falsification of community member signatures. In the same month, they appointed two pro deo lawyers. Subsequently in April 2011, they filed a second report to the provincial police, reporting the falsification of various documents, including this statement by the Damang on the communal land. The villagers also started to mobilize support from provincial NGOs (WALHI Central Kalimantan, the Indigenous Peoples Alliance AMAN), the human rights commission (KOMNAS HAM), the Ombudsman and others.</p> <p>No information on recent developments is available.</p>	Wakker, 2011.

<b>BEST Group</b>	PT Suryamas Cipta Perkasa (PT SCP) in Central Kalimantan (2012)	<p>By the company: a) Obtaining IUP without approved EIA; b) Clearing and cultivation in forestland without forestland release letter; c) Clearing forest without IPK or with illegitimately issued IPK; d) Operating without EIA; e) Clearing and cultivation in protected forest and nature reserve; f) Clearing and cultivating deep peat (&gt;3m); g) Operating outside concession boundaries; h) Failing to mitigate risk of fire during land clearing.</p> <p>By the government authorities: a) Issuing an IUP without approved EIA; b) Failure to enforce laws, preventing state losses and environmental damage, while aware of on-going clearance/cultivation by PT SCP.</p>	In March 2012, EIA/Telapak submitted a dossier of evidence to a range of authorities in Indonesia. Although a Government investigation into PT SCP's activities was still on-going in July 2012, the NGOs observed that clear procedures to examine and prosecute blatant legal violations are not in place. Further, EIA/Telapak have encountered a continued lack of understanding of key environmental legislation and low levels of will at the district level to properly prosecute the case.	EIA/Telapak 2012; 2012a.
<b>BGA Group</b>	PT Hati Prima Agro in East Kotawaringin, Central Kalimantan (2012) (minority shareholding held by IOI Corporation)	Land clearing by PT HPA's contractor in 2011, despite the revocation of a forestland release letter issued in 2000.	<p>The Ministry of Forestry had revoked the forestland release letter in 2008. However, the local Forestry Department issued an IPK for 3,000 ha to the company's contractor.</p> <p>On April 24th, 2012 the head of district revoked PT HPA's permit.</p>	SoB, 2012.
<b>Cargill</b>	PT Harapan Sawit Lestari, PT Indo Sawit Kekal, PT Ayu Sawit Lestari, and PT Harapan Hibrida Kalbar in West Kalimantan (2011).	Operating without an Environmental Assessment Report or Business Permits; clearing rainforest without Timber Cutting Permits; exceeding the maximum allowed concession area; clearing peatlands; and using fire/burning in palm oil concessions.	Cargill's response to RAN's 2010 report does not address all allegations of illegality - specifically allegations that PT Indo Sawit Kekal did not have an IPK. It denied using fire to clear land and clearing deep peat. It claims that a 2007 Ministry of Agriculture regulation allows unlisted companies to hold estate land in excess of 100,000 ha in the country, but does not acknowledge that this regulation did not invalidate the 1999 Joint Decree of the Ministry of Forestry and Plantations and BPN, which sets this limit.	RAN, 2010; Cargill, 2010.
<b>CCT Resources / Merdeka Timber Group</b>	PT Merdeka Plantation Indonesia in Papua (2009)	Forest clearing without IPK.	N/a	EIA/Telapak 2009.

<b>Duta Palma Group</b>	Various subsidiaries in Riau (PT BBU, PT BAY and PT Palma Satu) and West Kalimantan (PT Ledo Lestari and others). (2007- present)	Widespread and systemic illegality: open burning, land grabbing, land clearing without EIAs and IPKs, forestland release, deep peat conversion, land conflicts etc.	Minor local government intervention, but without avail. A formal grievance filed with RSPO remains pending. In 2012, KPK verbally expressed to AidEnvironment researchers that it was unable to take up the case.	Gilbert, 2011; Greenpeace 2007.
<b>Indofood Group</b>	PT PP LonSum in North Sumatra; PT Gelora Mahapala and PT Lonsum International in East Kalimantan (1999-2004)  PT Gunung Mas Raya in Riau (formerly Indofood Group (2003)	Land clearing without EIA; land conflicts. One commenced in the 1960s, and others in the late 1990s.  Clearing outside concession boundaries, peat forest conversion, open burning.	Various court proceedings and direct actions delivered no progress in conflict resolution. North Sumatran subsidiary was RSPO certified. As of 2011, RSPO Dispute Settlement Facility may follow up on the cases.  During a meeting with the company and one of its bankers, company management denied any responsibility. No follow up.	Wakker, 1999; Telapak, 2000; Wakker, 2003.
<b>Ibris Group</b>	PT Sisirau in Aceh (2012)	Land clearing with the knowledge of orang-utan presence in the estate area. Orangutans are a protected species in Indonesia.	Sumatran Orangutan Society (SOS) filed a grievance with the RSPO, which acknowledged the virtue of the complaint. A response of the company remains pending.	SOS, 2012; RSPO, 2013.
<b>IOI Corporation (Malaysia)</b>	PT SKS and PT BNS in West Kalimantan (2010 – present) (minority shareholding held by BGA Group)	Development of over 10,000ha of land without IUP and EIA, clearing outside final IUP boundaries, clearing of forestland, forest clearing without IPKs, false declaration to Bapedal West Kalimantan regarding activities on the ground prior to EIA approval.	No action by authorities upon informing them of the case.  NGOs submitted the case to RSPO's Grievance Procedure, leading to suspension of new certifications for IOI (RSPO's systems require full suspension) in April 2011. In May 2012, RSPO dismissed the case, claiming there was not enough evidence to demonstrate illegality.	Wakker & Zakaria, 2010, other sources.

<b>Kayu Lapis Group</b>	Four subsidiaries in Papua: PT Henrison Inti Persada (HIP), PT Inti Kebun Sejahtera (IKS), PT Inti Kebun Sawit, and PT Inti Kebun Lestari	Land conflicts; in 2006, a Ministry of Forestry audit found that the group's logging subsidiary PT Intimpura had illegally utilized timber cleared from 600 ha of land while only having a permit covering 200 ha in the PT HIP concession.  HIP had been operating its oil palm plantation before all the relevant permits were acquired.  PT IKS cleared land without EIA, while permits were still being processed.	The Forestry Minister recommended that PT Intimpura answer questions concerning utilization of illegal timber from 400 ha of land, and instructed the head of the West Papua Forestry and Agriculture Office to evaluate and revoke KLI's relevant wood utilization permits. Despite the evidence, in December 2007 the KLI Group was granted more Ministry of Forestry permits to harvest over 100,000 cubic metres of timber on over 6,000 ha of the Mooi tribe's land, within the HIP conversion area.	EIA/Telapak 2009.
<b>Kuala Lumpur Kepong Group</b>	PT Menteng Jaya Sawit Perdana in Central Kalimantan	Clearing and draining peat land and forests in spite of the Indonesia – Norway Moratorium; open burning; land clearing without IUP and without forestland release letter.	KLK declared the allegations “preposterous” but admitted a small area of potential illegal clearing of 70 ha by a contractor, but claimed it had secured a permit in 2009, two years before the moratorium went into effect. Indonesia's REDD+ Task Force committed to investigate the case. No update is available.	EIA/Telapak , 2011; Butler 2011; The Sun, 2011.
<b>MKH Berhad (Malaysia)</b>	PT Khaleda Agroprima Malindo	The Centre for Orangutan Protection (COP) supported a lawsuit filed by the police against PT KAM for the killing of at least 20 orang-utans and other primates in Kutai Kartanegara since 2008.	The suspects were charged under the 1990 Natural Resources Conservation Law for harming endangered species. The offense carries a maximum prison sentence of five years and fines of up to Rp 100 million. In March 2012, four men were sentenced to only eight months in jail, leaving key decision makers out of the line of fire.	Yamin, 2012.
<b>Sinar Mas (Golden Agri Resources)</b>	PT Matrasawit in East Kalimantan (2001)  Various PT SMART/GAR subsidiaries in West and Central Kalimantan (2009-2010)	Open burning, clearing of primary forest, clearing of orangutan habitat, land clearing without EIA, land conflicts with local Dayak communities.  Land conflicts, irregular permits, land clearing without EIAs, clearing of protected forest, clearing of forestland, deep peat development, forest clearing without IPKs, open burning, false declaration to Bapedal West Kalimantan regarding activities on the ground prior to EIA approval.	Dutch banks investing in Sinar Mas adopted investment policies. In a court case, the company was fined US\$60 for illegal burning.  Following Greenpeace's campaign, Unilever suspended palm oil trade with Sinar Mas at the end of 2009. Golden Agri Resources has since commenced a major programme to pursue a comprehensive sustainability policy with the assistance of the Tropical Forest Trust.	Greenpeace 2009; Greenpeace 2010; Wakker & Zakaria 2009; BSI-CUC, 2010; EIA/Telapak 2009; Vechot et al. 2010.



	PT SMART in Lereh, Papua (2009)	Open burning; failure by the company to pay for timber felled on clan lands, in contravention of a decree by the provincial governor, and contravention of a Ministry of Agriculture regulation setting aside twenty per cent of plantation areas for local communities.	N/a	
Surya Dumai Group (now: First Resources Ltd. listed in Singapore)	Various subsidiaries in East Kalimantan (1999-2008)	Through 11 plantation subsidiaries under the Surya Dumai group, the company director Martias obtained a series of permits from the provincial government and forestry services with a total area of 147,000 ha in Berau and Nunukan district. Whereas the forest was logged on a large scale, the actual plantation development did not take place.	On December 11, 2007, The Supreme Court set the jail sentence for the company director at 18 months and a fine of Rp 346.8 billion. After completing the jail sentence, Martias paid the fine to the KPK, which handed over the money to the state treasury on 18 March 2008. The Governor of East Kalimantan was found guilty of illegally issuing recommendations for Principal Permits and IPKs and had issued provisional rights for forest plantation concessions. Furthermore, he was found guilty for giving dispensation to obligatory bank guarantee for the provincial forestry tax and Reforestation Fund (DR). In appeal, the High Court of Central Jakarta topped up the jail sentence to 4 years and maintained the fine of Rp 200 million. The provincial Director General of Production Forest was charged for issuing irregular IPK permits to Surya Dumai subsidiaries operating between 2000 and 2001. On September 19, 2007, the Corruption Crime Court sentenced the DG to two years and six months imprisonment and a fine of Rp 50 million.	Tempo Politik, 2008; other sources.
	PT Borneo Surya Mining Jaya	Clearance of forestland prior to carrying out the proper environmental impact assessment as well as possible infringement on the RSPO's rules governing Free, Prior and Informed Consent of affected communities. The village of Muara Tae, a community of Dayak Benuaq people, has actively protested the plantation development project for over a year.	Environmental Investigation Agency filed a complaint against the company with RSPO, which was upheld in November 2012. The company was granted 6 months to come up with a mitigation plan.	[ <a href="http://www.rsपो.орг/file/PTBSMJFR.pdf">http://www.rsपो.орг/file/PTBSMJFR.pdf</a> ].

<b>Torganda Group</b>	PT Torganda Bukit Harapan and PT Torus Ganda in North Sumatra	Open burning; plantation development despite a revoked forestland release letter; alleged attempt to bribe the Minister of Forestry.	In 1999, a court case against PT Torganda in Bangkinang, Riau province, for illegal burning was dismissed.	Jakarta Post, 2011; Tempo 2011; Media Indonesia 2011.
	PT Damai Jaya in Central Sulawesi	PT Damai Jaya, to the local police for allegedly burning land in a 13,000 ha plot of Production Forest. In 2006, the company applied for approval of forestland release (pinjam pakai kawasan hutan) for oil palm cultivation in an area of approximately 20,000 ha. Through decision S.369/Menhut-VII/2007, the Ministry rejected the application. Despite the decision, the NGO claims that the company continues to build and operate workers' housing and office buildings.	Through Minister of Forestry decision Nr. P.60/2008, the Ministry eventually declared that the 47,000 ha area held by KPKS Bukit Harapan and PT Torganda be allowed to be productive under oil palm for a single rotation, after which it would be converted into industrial tree plantations.  The total sum involved in the attempted bribery is reportedly estimated at Rp 141 billion. The high level case is under investigation by KPK.  The Central Sulawesi police stated in a media report that it would further investigate the report filed by Walhi.	
<b>TSH Resources (Malaysia)</b>	PT Munte Waniq Jaya Perkasa in East Kalimantan (2012)	Land conflict with the Dayak Benuaq of Muara Tae; EIA/Telapak question the legality of the company's operations because it does not have a HGU permit.	N/a	EIA/Telapak 2011.
<b>United Plantations (Malaysia)</b>	PT SSS1 and PT SSS2 in Central Kalimantan (2008-2009)	Land conflicts, irregular permits, land clearing without EIA, clearing of protected forest, clearing of forestland, peatland conversion, forest clearing without IPKs.	UP denied all allegations, but took some corrective measures; no action from the authorities. A formal grievance against UP's RSPO-recognized auditor remains pending.	Wakker & Zakaria, 2008; other sources.

N/a	PT Kalista Alam in Aceh	<p>Suspected use of fire, clearing of deep peat, orangutan habitat clearance. The company began clearing forests in January 2010, 18 months before it had a valid IUP.</p> <p>Based on Government Regulation Nr. 26/2008, Tripa's peat swamp forest should have been protected for it falls within the Leuser Ecosystem, a recognized UNESCO World Heritage Biosphere Reserve.</p>	<p>The Coalition for the Protection of Tripa (<i>Koalisi Penyelamatan Rawa Tripa</i>) had filed various reports of illegal land clearing to the police, but these were not processed. In April 2012, the court in Banda Aceh dismissed the case filed by the Indonesia Environmental Forum (WALHI) against PT Kalista Alam and the former Governor of Aceh. In September 2012, The company had its permit withdrawn following a State Administrative Court ruling. The Ministry of Environment is still pursuing a lawsuit against the company while the company filed a lawsuit against the Aceh governor for withdrawing the IUP. WALHI has requested to be listed as a co-defendant in the case.</p> <p>In May 2013, the administrative court ruled that the Aceh governor unlawfully withdrew the company's permit. WALHI intends to file an appeal. The Supreme Court has yet to rule on the case.</p>	Yamin, 2012; RAN, 2012; other sources.
Wilmar International	<p>PT Wilmar Sambas Plantation, PT Buluh Cawang Plantation, PT Agronusa Investama and other subsidiaries in Indonesia (2008)</p> <p>PT Asiatic Persada in Jambi</p>	<p>Open burning, land clearing without EIA, land clearing in forestland, land conflicts, irregular permits, peatland conversion, forest clearing without IPKs</p> <p>Indonesian paramilitary in Jambi, working with plantation staff, systematically evicted people from three settlements, firing guns to scare them off and then using heavy machinery to destroy their dwellings and bulldoze concrete floors into the nearby creeks.</p>	<p>PT WSP and PT BCP were prosecuted for open burning, but the prosecution lost the case.</p> <p>The Wilmar case triggered the World Bank moratorium and policy review on investment in oil palm and an IFC Compliance Ombudsman Advisor mediated settlement of PT WSP and PT ANI cases. An RSPO grievance triggered a company commitment to sustainable practices.</p> <p>Wilmar commissioned TUV Rheinland to verify the claims, which found that no one was shot or killed during the incident; of the 18 community members detained, 11 were released soon after. The remaining seven stayed on to assist in the investigation. The case was subsequently taken up by the IFC Complaints Advisory Ombudsman.</p>	FoE et al., 2007; Colchester et al. 2011; other sources.

## Annex 4. Common Legal Non-Compliances in Different Stages of Oil Palm Permitting

(Note: not all non-compliances listed are de facto associated with administrative or criminal sanctions).

Permits or documentation	Main Weaknesses and Non-compliances	Comments
Overall	Fast track licensing (issuance of permits in unrealistically fast sequence)	Common in some provinces and districts due to administrative negligence
	Application for and issuance of permits before all required terms and conditions are met	Common due to corporate and administrative negligence
Principal Permit	The scope of the Principal Permit has been narrowed in 1999, but some companies and districts continued to work with Principal Permits under the previous scope, which allowed pre-planting land development.	Systems weakness that results in illegal land development by companies
Location Permit	Previously, there have been cases of companies operating without Location Permit	Systems weakness and corporate negligence, currently not widespread
	Some companies and government officers consider the Location Permit as a license to commence operations on the ground	Common due to corporate and administrative negligence
	Land grabbing (land development without community consultation, consent and compensation)	Very common due to corporate negligence
	Local government does not adequately monitor the implementation of the permit terms	Very common, due to administrative negligence
	Undue renewal of Location Permit by local government (>4 years)	Administrative negligence, only few documented cases
	Land clearing outside Location Permit area, continued land development after revocation of the permit	Fairly common due to corporate negligence
	Overlapping (Location) Permit areas	Fairly common due to administrative negligence
	Company group land bank in excess of maximum provincial and national limits	Some cases known, but exemptions apply to a/o blue chip companies
Plantation Operation Permit (IUP)	IUP applied for or issued without approved EIA/Environmental Permit	Common due to corporate and administrative negligence
	IUP applied for or issued without approved forestland release	Common due to corporate negligence and administrative negligence
	Land clearing outside IUP boundaries (e.g. because land clearing commenced in Location Permit stage) Concession boundaries or land clearing inside protected areas, including national parks.	Some cases known. Results from corporate negligence and administrative negligence

	Land development without IUP	Some cases known. Results from corporate negligence and administrative negligence
	At least 20% community plantations: no implementation	Probably very common in some provinces due to administrative and corporate negligence. The regulation is fairly new and implementation has major implications for the business model
	Company group land bank in excess of maximum national limits	Some cases known, but exemptions apply to a/o blue chip companies
	Open burning, no fire prevention measures	Common due to corporate negligence
<b>Land Use Rights Permit (HGU)</b>	Full scale commercial operations without HGU, resulting in underpayment of due land and building tax	Not illegal in all cases, but common due to corporate and administrative negligence
	Land conflicts unresolved during Principal and Location Permit stage	Common, due to administrative negligence
	National Land Agency (BPN) has no law enforcement power	Systemic weakness
<b>Forestland release letter/permit</b>	Concession overlaps with non-convertible forestland / permanent forest reserve or overlap with protected areas (including national parks)	Common, due to administrative negligence
	No full forestland release letter attached to IUP application	Common due to corporate negligence and administrative negligence
	Operations within the permanent forest estate without Ministerial approval	Common, due to corporate negligence
	Operations in convertible forestland without approval	Common, due to corporate negligence
	Forestland release approval obtained after land clearing	Common, due to corporate negligence
	Ambiguous and regular changes in policies and rules	Systemic weakness
<b>Environmental Permit</b>	Poor quality EIA report	Common, due to corporate negligence
	Poor quality review by EIA Commission	Common, due to administrative negligence
	No Environmental Permit attached to IUP application	Common due to corporate negligence and administrative negligence
	Land clearing prior to EIA approval / Environmental Permit	Common, due to corporate negligence

	Providing false and misleading information about activities on the ground	Due to corporate negligence, various cases documented
	No DPPL submitted when developing land without Environmental Permit	Common, due to corporate negligence
	Changes in policies and rules that lower performance standards	Systemic weakness
<b>Timber Utilization Permit (IPK)</b>	Forest clearing without IPK, i.e. no payment of due forestry taxes	Common, due to corporate and administrative negligence
	Manipulation (under reporting) of yield data	Common, due to corporate negligence
	No timber stand survey conducted	Common, due to administrative negligence
	Changes in policies and rules that lower performance standards	Systemic weakness
<b>Peatland</b>	Deep peat (>2m) not mapped as conservation area	Common due to administrative negligence
	Deep peat (>3m) developed into oil palm	Common, due to corporate negligence



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