environmental investigation agency

hutan telapak

# Deforestation and Deregulation

## Indonesia's policies and implications for its palm oil sector

October 2021

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## ABOUT KAOEM TELAPAK

Kaoem Telapak (KT) is an environmental non-governmental organisation (NGO) working across forestry, agriculture, fisheries and rights of local communities and indigenous peoples. KT is working to strengthen governance in these broad overlapping areas, including monitoring illegal and illicit activities, and communicating the findings. In 2016, KT grew out of Telapak, which was originally founded in 1996. KT is a member-based organisation.

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## EIA UK

62-63 Upper Street,
London N1 0NY UK
**T:** +44 (0) 20 7354 7960
**E:** ukinfo@eia-international.org
**eia-international.org**

## KAOEM TELAPAK

Kaoem Telapak Jln.
Sempur No. 5 RT 02/RW 01 Sempur,
Kecamatan Bogor,
Jawa Barat 16129, Indonesia
**T:** +62 251 857 4842
**E:** kaoem@kaoemtelapak.org
**kaoemtelapak.org**

## EIA US

PO Box 53343
Washington DC 20009 USA
**T:** +1 202 483 6621
**E:** info@eia-global.org
**eia-global.org**


**Front cover:**
Forest clearing for palm oil in Central Kalimantan, Indonesia.
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**Above:**
Forest area being cleared for conversion to palm oil plantations in West Kalimantan.
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# Summary

The year 2020 has seen Indonesia report one of its lowest rates of net deforestation – 115,459 hectares, according to Government figures – although the extent of deforestation is still debated. At the same time, it rapidly passed a controversial new Omnibus law – the Job Creation Law (UU Cipta Kerja/UUCK) – which potentially threatens social and environmental policies while promoting investment and development.

Indonesia has long been seeking to improve the ease of doing business in the country by simplifying its permitting and other processes, culminating in the UUCK (Omnibus Law). During the past decade, Indonesia has also enacted a number of policies to improve palm oil governance and curb deforestation. How much these policies have improved the sector is debatable, however, as there are numerous exemptions and inadequacies in their implementation.

Here we analyse Indonesia's key policies related to palm oil sustainability and deregulation, including the potential impacts of the newly passed UUCK.

## Policies towards sustainability

The **Indonesian Sustainable Palm Oil (ISPO) certification scheme**, first enacted in 2011, was revised in 2020. ISPO is Indonesia's national certification system for ensuring the legality of its palm oil sector. There are some improvements to the ISPO scheme as of 2020, such as the inclusion of a new transparency principle and the inclusion of Free, Prior and Informed Consent (FPIC) as an indicator. On the other hand, as the ISPO scheme is based on the prevailing laws and regulations in Indonesia, it is only as good as those laws and their enforcement, which still have serious inadequacies.

Uptake of ISPO certification has been slow, with about 38 per cent of industrial concessions now certified, despite the fact all companies were meant to be certified by 2014. Violations by palm oil companies still seem prevalent, with Indonesia's Audit Board finding in 2019 that 81 per cent of palm oil plantations have illegalities, despite ISPO being mandatory and more than a third of industrial plantations now being certified.

Fieldwork conducted in two palm oil concessions in West Kalimantan in 2021 found irregularities in the permitting process, a company operating illegally in the Forest Estate – the area designated by the Indonesian Government to be maintained as forest – and ongoing conflict with communities, despite a Supreme Court ruling more than seven years ago.



This highlights the ongoing issues in the sector. Such violations, as well corruption, being prevalent in the palm oil sector leads to low confidence that governance has improved.

**The Forest Moratorium**, established in 2011, aims to protect Indonesia's primary forests and peatlands and was made permanent in 2019. It encompasses an area of 66 million hectares – 51.5 million hectares already protected under Indonesia's Forest Estate and an additional 5.3 million ha of peatlands and 9.7 million ha of primary forest. It is estimated that more than one million hectares of forest has been lost inside the moratorium area since 2011, in part due to exemptions and changes to the moratorium area. In addition, up to 18 per cent of Indonesia's primary forests are not within the protected moratorium area as they have previously been allocated business licenses, making them vulnerable to clearing.

Multiple concerns remain with Forest Moratorium. As a Presidential Instruction it is not legally binding, the area protected is still subject to change on a regular six-monthly basis and business licenses granted within primary forests and peatlands before the moratorium's establishment in 2011 are still excluded.

One solution is to turn the Instruction into a Presidential Regulation as this would give it greater legal weight. However, the new Job Creation Law also now mandates that the moratorium area and Forest Estate can be cleared for the Food Estate programme - Indonesia's national programme to improve food security by increasing domestic agricultural production – which is feared to lead to the clearing of millions of hectares of forest.

**Above:** River running through forest in Kalimantan, Indonesia.

**The Palm Oil Moratorium**, enacted in 2018 for three years, mandates the evaluation of palm oil permits and halts the issuance of permits in Indonesia's Forest Estate. An estimated 3.37 million ha of palm oil plantations are still situated within the Forest Estate area. Other concession areas have been released from the Forest Estate, but many still remain forested as they have not been cleared. It was hoped the moratorium would review all these areas and any violations in the permitting process. After three years, the implementation and the results so far of the Palm Oil Moratorium are unclear, hampered by a lack of transparency and clear coordination.

A possible shining light is West Papua – the only province to have completed the permit evaluation to date. There, 12 out of 24 palm oil companies were found to not have the required permits to operate, with the local government beginning to revoke plantation permits. Only some 40 per cent of the palm oil concessions have been cleared and planted, with most of the remaining areas still being forests. Here it is hoped that the forests will be conserved, including land being returned to local communities and indigenous people, rather than the land just allocated to new companies.

## Policies towards deregulation

While it has been enacting sustainability policies, Indonesia also has been pursuing a deregulatory approach to improve investment for many years, culminating in the **Job Creation Law (UUCK/ Omnibus Law)** that rapidly became law in 2020. The UUCK affects

78 laws in Indonesia and removes a number of previously important safeguards, notably: the requirement to maintain 30 per cent forest area within a watershed/island; the removal of forest buffer zones around lakes, springs and rivers; and the removal of criminal sanctions for businesses operating on customary land.

Instead, it enables: the Forest Estate to be converted for national strategic projects, such as the Food Estate; the Government to have more control over the Forest Estate conversion process; those companies illegally operating within the Forest Estate to be legalised; companies to operate more in Protected Forests; and mandates land clearance of concessions within two years.

Such provisions are feared to have negative impacts, such as more land-grabbing, less consideration of the rights of indigenous peoples and local communities and accelerated deforestation and degradation of forests.

The UUCK follows the **Online Submission System (OSS)**, which was introduced in 2018 – Indonesia's electronic system simplifying the business permitting process. While the OSS has made it easier to do business and invest in Indonesia, it removed some requirements. Notably, it has changed the environmental approval process. Whereas environmental impact assessments (EIAs) were previously done at the beginning of the process and used as the basis on whether to award a business permit or not, this is no longer the case. The UUCK has further streamlined requirements and mandated the move to a risk-based permitting system through the OSS, with concerns this may further lower the priority enviornmental and social issues are given.

Also of note is the **draft Palm Oil Bill** which has been in the works since 2015, although is yet to be passed. It has long been criticised as favouring palm oil companies, as well as contradicting existing laws and regulations instead of helping farmers and improving the industry. While it is currently not a legislative priority, it is awaited to see if it will return.

**Below:** Community member discussing land grabbing in East Kalimantan.

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# Conclusions and recommendations

While the Government has instigated a number of policies focused on deforestation and improving governance, these are imperfect and to date have not been fully optimised. They have a number of loopholes and exemptions that weaken their effectivenes and confidence in them. At the same time, there are fears that deregulation, notably the UUCK, instead weakens the protection of the environment and peoples' rights.

Indonesia remains one of the countries with the largest tropical forest and yet also the country with the fourth highest loss of tropical forest. Irregularities, illegalities, conflict and corruption have and continue to hamper the palm oil sector. These still need to be addressed. Indonesia needs to build on its sustainabilty policies to make them more effective in order to fully reform goverance in the sector. It also should further recognise the role and rights of local communities and indigenous peoples to manage forests, for example, through enacting the Indigenous Peoples Bill which has been in the works since 2013. It additionally needs to be more transparent and participatory in how it implements its policies to improve confidence and deliver results, more like it has done in the timber sector.

With the upcoming UN Climate Change Conference – CoP26 – Indonesia needs to strengthen its commitments, not weaken them. This includes halting deforestation of all natural forests, as only this will deliver its low carbon scenario compatible with the Paris Agreement. The UUCK needs close monitoring and regular review to ensure the changes it mandates do not have detrimental impacts on the environment and people.

**To the Government of Indonesia:**

- **Extend, improve and make permanent the Palm Oil Moratorium** through issuance of a regulation to allow time for the evaluation of existing permits and to halt all natural forest conversion
- **Upgrade the Forest Moratorium and Palm Oil Moratorium to Presidential Regulations** to make them legal requirements and more easily enforceable
- The Palm Oil Moratorium extension must be supported by a **concrete road map for implementation and sufficient budget** to ensure effective implementation and achievement of targets
- **Protect all remaining primary forests** by including them within Forest Moratorium area (PPIPBB)
- **Give greater protection of secondary forests** by including them in the Forest Moratorium or otherwise ensuring their protection
- **Carry out the evaluation of all palm oil permits** in all provinces and specify follow-up actions to ensure that all palm oil businesses are operating in areas that are in full compliance with laws and regulations
- **Revoke the permits of any concessions still within natural forests** and return land to be managed by local communities and/or indigneous peoples, or otherwise ensure it is protected
- **Enact Indonesia's Low Carbon Scenario**, which is compatible with the Paris Agreement, by halting all deforestation of remaining natural forests
- **Develop and implement a review and evaluation system for the UUCK** to regularly assess the implementation of UUCK, with a formal review every two years, and identify its impacts at an early phase to obtain critical information regarding whether the policy has run as expected and to foster further analysis to undertake improvement or policy changes
- **Revise the ISPO standard** and guidelines to be in line with relevant regulations after the enactment of UUCK and ensure the ISPO is not weakened. This must be conducted through a transparent and participatory process involving all stakeholders
- **Ensure that the ISPO institution runs properly**, including the independent monitoring function
- **Ensure that national strategic projects, such as the Food Estate, do not clear natural forests** and peatlands

**On specific case studies:**

- **Investigate PT IJG's permitting history** and its operation within the Forest Estate and outside its concession boundaries and revoke those areas still within the Forest Estate area
- **Revoke the Cultivation Rights Title (HGU) of PT Sintang Raya** and then reissue as a replacement according to the instructions of the Supreme Court Decision Number 550K/TUN/2013
- The ISPO Certification Body (Mutu Indonesia Strategis Berkelanjutan) must conduct a **special audit of PT Sintang Raya** to ensure its compliance

**To consumer countries:**

- **Establish robust and binding standards** that meet international standards by engaging multi-stakeholders and ensure sustainability, legality, no deforestation, transparency, fairness, respect of human rights, recognition of indigenous people's rights and protect workers
- **Adopt due diligence regulations** that apply both to operations within and outside your own markets and are not discriminatory to certain commodities or products
- **Build an independent platform** to identify and monitor companies' supply chains connected to deforestation and tenurial conflict and build a complaints mechanism accessible for all stakeholders as evidence of the system's transparency and accountability
- **Accommodate the financial sector** into the standards to prevent any further funding to the companies responsible for deforestation

## GLOSSARY

**Bupati**
Executive head of a regency or rural district.

**City *(Kota)***
A city is a second-level administrative division of Indonesia, directly administrated under a province and is headed by a mayor. Each city further is divided into sub-districts.

**Deforestation**
Loss of natural forest cover that causes a change from forest to plantation forest or non-forested area.

**Regency *(Kabupaten)***
A regency is a second-level administrative division of Indonesia, directly administrated under a province. A regency is headed by a Bupati and each regency is further subdivided into rural sub-districts.

**Environmental Impact Assessment *(Analisis Mengenai Dampak Lingkungan - AMDAL)***
AMDAL is the assessment of the environmental consequnces of a plan, policy, programme or actual project prior to the decision to move forward with the proposed action.

**Food Estate**
National program to increase food security and decrease reliance on foreign imports through increasing agriculture production in Indonesia.

**Forest Estate *(Kawasan Hutan)***
A certain area designated and enacted by the Government to be permanently maintained as forest. The Forest Estate is categorised into Conservation Forests, Protection Forests and three types of Production Forests.

**Conservation Forest (*Hutan Konservasi -HK*)**
Areas to be protected with the principal function of preserving animal and plant biodiversity and life supporting ecosystems. This includes Nature Reserve Areas (*Kawasan Suaka Alam* – KSA) and Nature Conservation Areas (*Kawasan Pelestarian Alam* – KPA), which includes protected areas such as national parks, wildlife sanctuaries, nature reserves, etc.

**Protection Forest (*Hutan Lindung -HL*)**
Areas to be protected so that their ecological functions are maintained, especially those concerning water management and soil fertility.

**Limited Production Forest (*Hutan Produksi Terbatas - HPT*)**
Areas in which the limited and selective extraction of timber and non-timber products is allowed.

**Production Forest (*Hutan Produksi - HP*)**
Areas with sloping topographical conditions, low soil erosion and little rainfall that can be fully used for clear cutting and selective logging techniques.

**Convertible Production Forest (*Hutan Produksi yang dapat dikonversi - HPK*)**
Areas that are not productive which can be spatially reserved for forestry or non-forestry activities and may be permitted to be released from the Forest Estate to become non-forest (APL) areas.

**Gross Deforestation**
Total of deforestation without considering regrowth or reforestation.

**National Strategic Projects (*Proyek Strategis Nasional - PSN*)**
Infrastructure projects which are considered to be strategic to increasing economic growth and development and therefore are accerelatered.

**Net Deforestation**
The total of gross deforestation substracted by reforestation. Indonesia defines deforestation in this context as including loss and gains in primary forests, secondary forests and plantation forests.

**Non-Forest Estate/Other Use Areas (*Areal Penggunaan Lain - APL*)**
Land outside of the Forest Estate designated for use for agriculture, settlement, etc.

**Plantation Business Permit (*IUP*)**
Written business permit issued by local authority as a right to conduct plantation business.

**Province**
First-level administratrive division which divides the country into areas led by local government and a governor (Gubernur). Provinces are further sub-divided into regencies (kabupaten) and cities (kota).

**Reforestation**
Replanting trees in a deforested area to become forested area.

**Predisential Regulation (*Perpres*)**
Regulation stipulated by the President.

**Presidential Instruction (*Inpres*)**
Executive order issued by the President regarding the implementation of a presidential decree containing technical rules.

**Job Creation Law (*UU Cipta Kerja/UUCK*)/ Omnibus Law**
Indonesian Law No. 11 of 2020 that came into effect on 2 November 2020, interchangeably known as the Job Creation Law or the Omnibus Law.

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# Introduction

As a country with the third largest tropical forest cover in the world, Indonesia has lost a significant area of forest due to logging, encroachment, forest fires and forest conversion.

The country's natural forests[a] were reduced from 113 million to 89 million ha from 1990 to 2019, based on Government data.[1] The highest rate of forest loss took place between 1996-2000, when 3.51 million hectares of deforestation[b] occurred per year, partly attributed to major forest fires.[2]

Deforestation has, though, reduced. There was 115,459 ha of net deforestation in 2019-20, according to the Government.[3] This is a substantial reduction from the 1990s and from the 1.09 million ha reported in 2014-15, following major forest fires again in 2015.[4]

However, estimates of the decline in deforestation do significantly differ.[c] The University of Maryland reports 230,000 ha of primary forest loss[d] in Indonesia in 2020, although some of this is explained by methodological differences[5] and spikes in forest loss in late 2020.[6] The World Resources Institute (WRI) now ranks Indonesia fourth for primary forest loss, behind Brazil, Democratic Republic of the Congo and Bolivia.

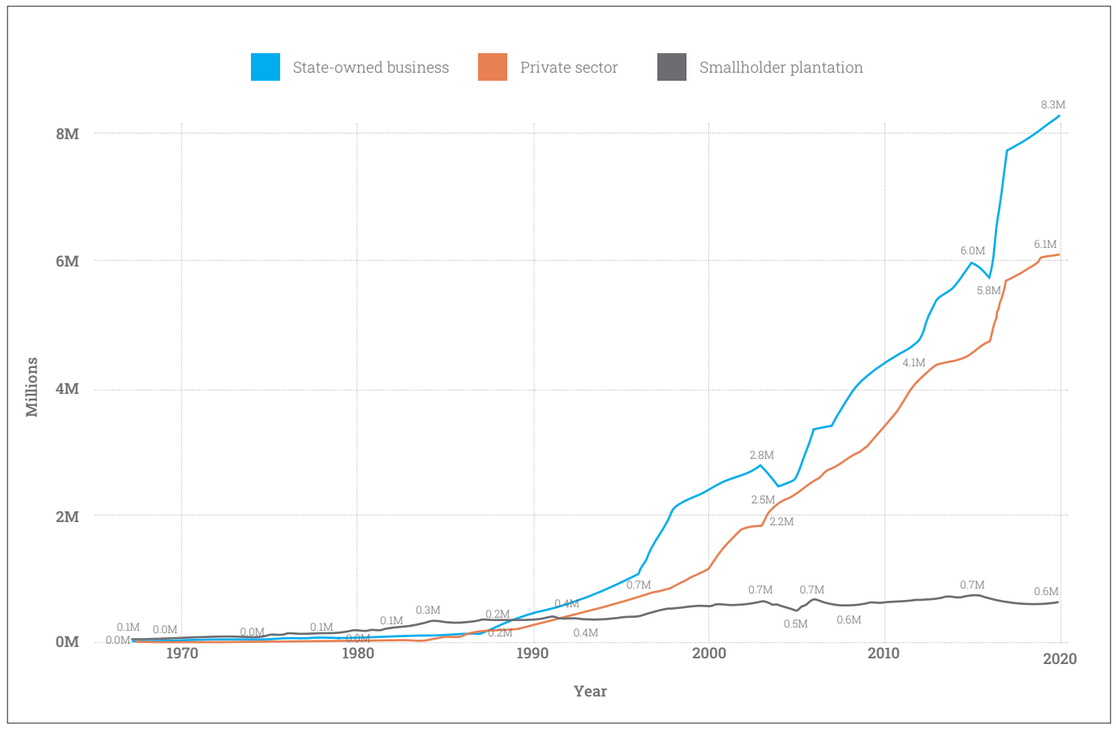
Conversion of forests into plantations, particularly palm oil plantations, has been one of the top causes of the high deforestation rate in Indonesia.[7] During the 2019 forest fire season, 80 per cent of the burnt land subsequently became plantation areas, including for palm oil.[8]

Since being commercialised for the first time in 1910, the area of palm oil plantations has been continuously expanding. In 1967, the total palm oil plantation area was 105,808 ha.[e] In 2019, Indonesia officially announced its total palm oil planted area[f] was 16.38 million ha, the largest in the world.[9]

Indonesia has exceeded its 40 million tonnes of crude palm oil (CPO) production target in 2020 and aspires to increase its CPO production to 52.3 million tonnes by 2021.[10] By supplying the high global demand for palm oil, Indonesia's palm oil sector contributes on average $21.4 billion USD to its foreign exchange annually, or about 14.2 per cent of the country's total annual non-oil and gas exports.[11] The palm oil industry has also become the direct livelihood for approximately 4.6 millions workers and 2.4 million independent palm oil smallholders, as well as their families.[12]

**Above:** Road inside palm oil concession with abandoned illegal logging activity.

**Figure 1:** *Palm Oil Cover Based on Ownership*




*Source: Directorat of General of Estate Crops, Ministry of Agriculture of Indonesia*



**Above:** Forest fire in Kalimantan.

However, palm oil plantation expansion is strongly related to tenurial conflict between local communitlies and palm oil plantation companies. In 2020 alone, the Consortium for Agrarian Reform (Konsorsium Pembaruan Agraria/KPA) recorded 241 cases of tenurial conflicts (Figure 2). The plantation sector contributed to 51 per cent of conflicts or 122 cases and the conflicts were dominated by palm oil sector (101 cases), followed by forestry sector (17 per cent, or 41 cases). In addition, Indonesia's Anti-Corruption Commission (KPK) has found illegalities and corruption are prevalent in the sector, as well as bribery in the permit process.[13]

To improve palm oil plantation governance, curb the adverse impacts of plantations and slow down deforestation, a number of policies related to sustainability have been developed by the Government of Indonesia. For example, the Indonesian Sustainable Palm Oil (ISPO) certfication scheme, the Forest Moratorium (both in 2011) and the Palm Oil Moratorium in 2019. Although the rate of deforestation in Indonesia has reduced recently, the extent of this reduction and the reasons for it are still debated. Declining palm oil prices, COVID-19, wet weather and voluntary commitments have all been cited to explain declining forest loss.[16] The effectivesness and role of governmental policies in reducing deforestation and conflicts is uncertain, given the enforcement of such legal instruments is still seriously inadequate.

In tandem, the Government has long been seeking to make it easier for investors to do business in Indonesia and streamlining existing regulations and processes. The Government is further prioritising the relaxation of regulations – notably through the Job Creation Bill (UUCK), otherwise known as the Omnibus Bill – as a means to rebound its economy severely hit by the COVID-19 pandemic. The following analyses the effects of such policies and considers what the future may hold.

## Failures and corruption in the permitting process

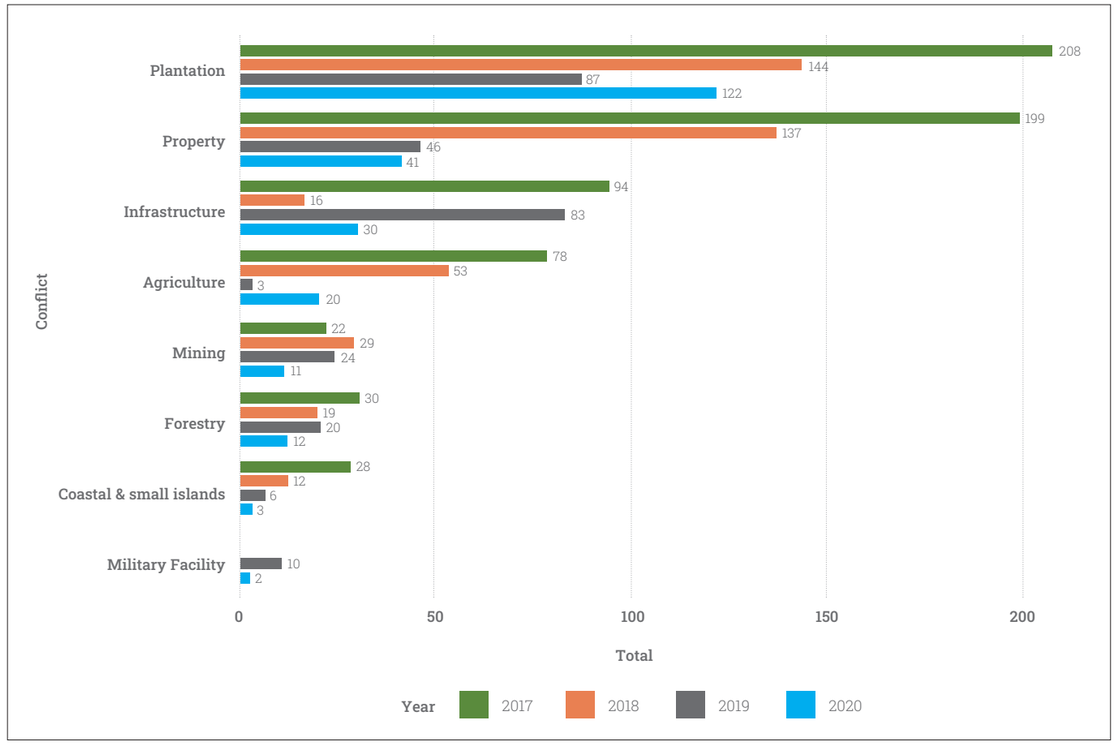
Indonesia's permit process operates under a step-wise approach (see box on the permitting process) with the assumption that if a permit is issued, the applicant must have obtained the pre-required permits.

While Indonesia's laws and regulations have administrative sanctions that can lead to revocation of permits in relation to misconduct or violations by the permit holders, there are no provisions regarding the implications of an irregular permitting process. If non-procedural permit issuance occurs and is proven, it is at the discretion of the government institution granting the permit to take corrective action such as revoking the permit.

As such, we have seen many examples whereby a local governmental head, such as governor or Bupati, was convicted of permit corruption and sentenced to jail, but the companies granted the permits still operate unhindered.[14]

The case of former Riau governor Rusli Zainal, who was sentenced to 14 years in prison for permit corruption involving nine timber plantation companies, is such as case.[15] While he was charged with abuse of power and conducting non-procedural permit issuance, there was no case brought in relation to the maladministration in the permitting process, resulting in the companies implicated still being free to operate up until now.

**Figure 2:** *Land tenure conficts in Indonesia 2017-2020*




*Source: Konsorsium Pembaruan Agraria/KPA*

**Above:** Worker harvesting palm oil on side of road.

# Policies towards sustainability

## ISPO (Indonesia Sustainable Palm Oil) certification scheme

The mandatory certification policy for palm oil, the ISPO scheme, was initiated by the Government in response to market demand for sustainable palm oil. ISPO aims to guarantee that every certified palm oil plantation complies with the sustainability principles and criteria in the scheme, which are based on the prevailing laws and regulations of Indonesia.

It was passed in 2011,[g] mandating that all palm oil plantation companies had to achieve ISPO certification by 31 December 2014 at the latest. By 2014, only 40 companies had achieved ISPO certification.[17]

The regulation was subsequently revised in 2015.[h] It again required plantation companies to achieve ISPO certification and encouraged voluntary certification for independent smallholders, plasma smallholders and companies producing palm oil for renewable energy.

Despite ISPO certification being mandatory, uptake remains low. As of 2021, 750 ISPO certificates had been covering more than a third of the total palm oil plantation area.[18]

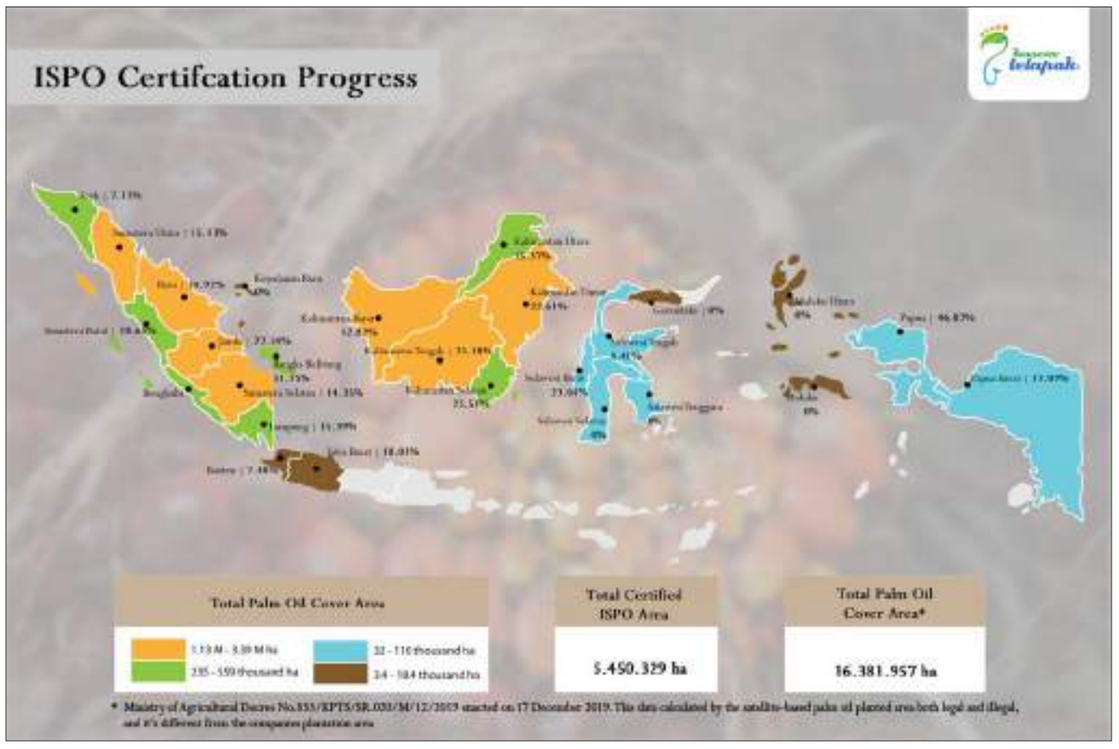
### The effectiveness of ISPO

Despite an increasing number of ISPO-certified concessions, there are continuous occurrence of fundamental problems in the sector, such as non-compliance with legality, the permitting process and procedural practices,[19] as well as tenurial conflicts.

Kaoem Telapak conducted desk research analysing the compliance of ISPO-certified palm oil companies in five provinces in Kalimantan with the ISPO Principles and Criteria between 2015-21.[i] This found 85 cases suggesting violations of the ISPO standards. The most frequent violations were those against Principles 1.8 on Land Disputes (30 cases), 5.2 on Workers' Well-being and Capacity Building (27 cases), 4.3 on Fire Prevention and Mitigation (10 cases), 4.6 on Biodiversity Preservation (6 cases) and 5.3 on the Use of Child Workers and Discrimination (two cases).

Equally, Indonesia's Audit Board (Badan Pemeriksa Keuangan – BPK) found in 2019 that some 81 per cent of palm oil plantations are operating in violations of regulations, such as operating in the Forest Estate area, outside concession boundaries, not having cultivation rights (HGU), failing to allocate sufficient land to

**Figure 3:** *IPSO certification progress*



smallholders and not complying with the ISPO standard.[20]

This reality has made some stakeholders consider that ISPO certification is not an adequate instrument to ensure legal and environmentally friendly palm oil or to serve as social safeguard for indigenous peoples and local communities. This in turn has led to the low credibility of ISPO certification by the international market.[21]

**The ISPO revision process**

To fix palm oil governance in Indonesia and its reputation in the international market, the Government of Indonesia in 2016 initiated efforts to revise the ISPO scheme by establishing the ISPO Strengthening Team, led by the Coordinating Ministry of Economic Affairs (Kemenkoperek).[j]

In October 2016, the ISPO Strengthening Team started working together with various stakeholders, who welcomed the Government's measures, in part due to a participatory and transparent process. Some civil society organisations established the Civil Society Communication Forum (Forum Komunikasi Masyarakat Sipil/FKMS)[k] for ISPO strengthening that played an active role in this process.

A multi-stakeholder meeting in December 2016 agreed on nine standard principles,[l] up from the current seven, for ISPO certification and several draft clauses. The agreement was supposed to be followed by a more intensive public consultation process in 2017. However, it did not go as expected. In January 2017, the Government held a closed meeting to discuss the ISPO standards, undermining the nine previously agreed principles, and removed the two new principles on Traceability and Transparency and Respect for Human Rights.

Various stakeholders condemned this move as they considered it a deviation from the previously developed multi-stakeholder process. Civil society organisations released a brief setting out their position on ISPO.[22] The Government responded by holding a series of regional public consultations in Sumatera, Kalimantan, Sulawesi and Papua, which were attended by the representatives from national and local governments, business, academics, independent smallholders and civil society. Another draft Presidential Regulation on ISPO was agreed in September 2017.

However, since the end of 2017, the ISPO strengthening process again became a closed process, as shown by the Government's decision to hold various important meetings in closed session and cancel the plan for a national public consultation.[23] This situation continued into 2018 and 2019.[24]

Finally, in March 2020, a new Presidential Regulation on ISPO was officially passed, setting out the revised high-level principles that mandate ISPO certification as required for both plantation companies and, for the first time, smallholders by 2025.[m]

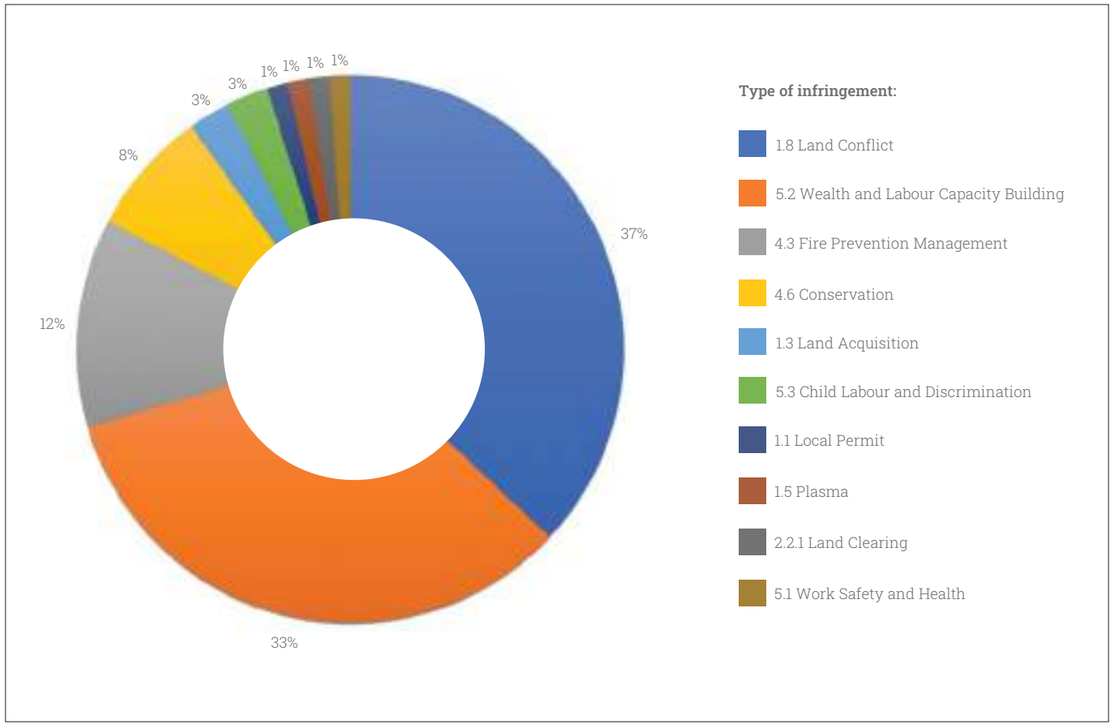
However, the substance within the Presidential Regulation is not what was jointly developed in the multi-stakeholder process. Various stakeholders objected, arguing that the long strengthening process they had undertaken resulted in a regulation with no significant substance.[25]

Indonesian CSOs subsequently gave some input to the draft implementing regulations through a limited consultation held in May 2020. Nevertheless, the Presidential Regulation issued in March 2020 was followed by implementing regulations later in 2020,[n] which completed the ISPO revison process.

**The newly revised ISPO**

The newly revised ISPO includes a new adopted transparency principle which is expected to enable the source of fresh fruit bunches (FFB) to be known and traceable in the supply chain. In addition, it also includes the adoption of free, prior and informed consent (FPIC) as one of the indicators and verifiers which have to be complied with under the criteria of land acquisition.

**Figure 4:** *Infringements of the palm oil sector in Kalimantan against ISPO PnC 2015-21*




*Source: Data internal hasil dari kompilasi data*

**Below:** Heavy vehicles in palm oil plantation in preparation of making a new road.

## The palm oil permitting process up to 2018

Many palm oil concessions in Indonesia were allocated prior to 2018, when the permitting process was as below. In 2018, with the introduction of the Online Single Submission (OSS), and now the Job Creation Law in 2020, the permitting process for new concessions has been changed and simplified. However, concessions allocated pre-July 2018 must have followed the below process and obtained these permits in this order:

1. **Principle Permit (Izin Prinsip)** – issued by the district government indicating that the company is allowed to survey the land and consult with the landowners;

2. **Location Permit (Izin Lokasi)** – issued by the Bupati/Mayor if within one district/city, or by the provincial governor if falling across two districts. It gives the company the opportunity to seek and acquire the landholding rights from the state or from private landowners. Neither the Location Permit nor Principle Permit can be issued outside of the permitted plantation development area as specified in the district or provincial spatial plan. Appropriate compensation must be agreed. Location Permits are valid for three years and applicable for a one year extension only if half the land, or more, has been acquired;

3. **Relinquishment of the Forest Estate Letter (SK Pelepasan Kawasan Hutan)** – where the area under the Location Permit includes any Forest Estate area, the Ministry of Environment and Forestry (MoEF) must approve the release of Forest Estate and its status be converted to non-forest use (APL). Conducting land clearing and other operations within the Forest Estate area prior to this is a criminal offence under forestry law;

4. **Environmental Permit (Izin Lingkungan)** – issued by the regional environmental impact assessment commission (Komisi AMDAL Daerah) when it is satisfied with the Environmental Impact Assessment (Analisis Mengenai Dampak Lingkungan, AMDAL), environmental monitoring plan (Rencana Pemantauan Lingakunga, RPL) and environmental management plan (Rencana Pengelolaan Lingkungan Hidup, RKL). Operating without one is a criminal offence;

5. **Plantation Business Permit (Izin Usaha Perkebunan, IUP)** – issued by the Bupati/Mayor or Governor once all the above documents are obtained. It allows the company to develop a nursery and carry out land preparation and clearing on undisputed land within the area specified under the Location Permit. It does not provide the right to the land, it is merely a license to operate;

6. **Timber Utilisation Permit (Izin Pemanfaatan Kayu, IPK)** – must be obtained by a plantation company or its contractor prior to clearing to any forest. Involves a timber survey and gives the rights to harvest a given volume of timber.

7. **Cultivation Right (Hak Guna Usaha, HGU)** – must be obtained by the plantation company within two years of receiving a plantation business permit (IUP). It provides a temporary land title in the form of HGU certificate issued by the National Land Agency (Badan Pertanahan nasional, BPN). It is valid for up to 35 years and extendable for up to another 25 years.

The new ISPO scheme also specifies the term 'independent monitor' as part of the ISPO Committee. Independent monitors can submit a complaint/ objection about the certification result. However, the monitoring function and procedures are not clearly regulated and the independent monitors are appointed by the Government. Similarly, with regard to transparency there is no obligation for there to be a public summary of the audit result nor a guarantee of the public having access to information.

In the end, the new ISPO shows some limited improvement, despite the strengthening process not being as expected (see Table 1). However, it is considered that as long as there is ineffective law enforcement and no transparent system to ensure public participation and accountability, the credibility of ISPO will always be under question, as will its acceptance in the global market as one of the sustainability standards.



**Table 1:** *Comparison of the old and new ISPO*

| Old ISPO | New ISPO | Remarks |
|---|---|---|
| Enacted through a Minister of Agriculture regulation | Enacted through a Presidential Regulation | Elevating ISPO's legal basis to a presidential regulation might make it easier to ensure coordination among relevant ministries and between central and regional governments and accelerate rolling out of the scheme |
| Mandatory for growers, mills and integrated plantations. Voluntary for smallholders (plasma and independent) and plantations for biodiesel. | Mandatory for all operators. | With the new ISPO, all growers, including smallholders by 2025, and mills have to comply with the ISPO standards and get certified. |
| Certificates are issued by the ISPO Committee | Certificates are issued by a Certification Body (CB) | The issuance of ISPO certifications is now by accredited certification bodies, which makes it more independent. |
| The ISPO Commission is the sole body running ISPO under the Ministry of Agriculture | Establishment of an ISPO Committee that consists of multistakeholder representatives and of an ISPO Steering Committee that consists of relevant ministries | The new institutional set up shows better governance compared to the old one. However, for the ISPO Committee, the independent monitoring representative (civil society and community groups) is appointed by the Government and not self-selected. |
| There are no provisions for independent monitoring and public participation | Introduced the term "independent monitor" as part of the ISPO Committee. There are provisions for public participation in the certification process. | Although the term independent monitor is introduced, there is no independent monitoring function, mechanism nor safeguarding. The public can give input during the certification process and report infringements to the ISPO Committee, CBs and the Government. However, the implementing regulations do not provide any further details. |
| Complaints and appeals are addressed to the ISPO Commission with the procedures detailed. | Complaints and appeals are addressed to the CB, ISPO Committee or Steering Committee. Procedures are detailed and information is accessible to the public. | There is not much difference between the old ISPO and new ISPO in terms of the complaint mechanism. The new ISPO does not have provisions in place to ensure impartiality and no conflicts of interests in the handling of complaints. |
| No provisions on Free Prior Informed Consent (FPIC) | Under the criteria of land acquisition, FPIC is adopted as an indicator with several verifiers. | This is an improvement, although the method for verifying FPIC is based only on documents. |
| ISPO standard does not include transparency | Transparency is adopted as a new principle | This is an improvement that can address multiple issues on transparency, including raw material sources (supply chain transparency), prices, public information on companies and complaint handling. |

### The forest and palm oil moratoria

Currently, there are two moratoria in effect in Indonesia: the Moratorium on Primary Natural Forest and Peatland (the Forest Moratorium) and the Moratorium on the Suspension of Permits and Issuance of New Permits and Increase of Palm Oil Productivity (the Palm Oil Moratorium).

Although, subject-wise, both policies have different objectives, the goal remains the same – saving Indonesia's tropical rainforest and improving governance.

**The Forest Moratorium**

The Forest Moratorium was issued by President Susilo Bambang Yudhoyono (SBY) in 2011 in response to increasing deforestation and an environmental crisis in Indonesia.[o] It prohibits the clearance of primary forests and peatlands for palm oil, logging and pulpwood concessions within a set area – the Indicative Moratorium Map (Peta Indikatif Penghentian Pemberian Izin Baru, or PIPPIB) – which is updated on a six-monthly basis.

The policy initially applied for just two years, but has been extended several times. In 2019, the Forest Moratorium was permanently adopted,[p] with the map covering 66 million ha at that time.[26]

Despite its name, the moratorium does not cover all primary forests nor all peatlands. Some 38.4 million ha of primary forest (82 per cent) are inside the moratorium area, while up to eight million ha[q] of primary forest lie outside it.[27] Equally, some five million ha of peatland are within the moratorium area, while up to 6.8 million ha of peatland are outside.

The moratorium area covers land already protected under national law as classified under the Forest Estate. This includes all Conservation Forests (Hutan Konservasi, or HL) – protected areas such as national parks – and all Protection Forests (Hutan Lindung, or HL). These areas cover some 51.6 million ha (78 per cent) of the moratorium area alone.[28] The remaining areas covered by the moratorium consist of primary forest or peatlands outside the protected Forest Estate areas that do not already have business licences – 9.7 million ha of primary forest and 5.3 mllion ha of peat respectively. Crucially, palm oil concessions allocated in primary forests and peatlands before 2011 are excluded.

Since its enactment, some 1.2 million ha of forest are estimated to have been lost in the moratorium area.[29] While there is some evidence that forest loss is lower in concessions inside the moratorium, this trend is less prominent in palm oil concessions in recent years and forest loss has still occurred within concessions inside the moratorium area.[30] This is attributable to there being exemptions, areas exised over time and weak enforcement mechanisms.[31] The moratorium is a Presidential Instruction, which means it is not legally binding on Government departments or officials.

The loss of forest cover in the moratorium area did dramatically decrease from 533,000 ha in 2016 to 139,000 ha in 2018.[32] This reflects a wider trend in Indonesia, where deforestation has decreased from a peak in 2014-15 following an intense forest fire season in 2015.

While forest loss has decreased in the moratorium area of late, it is still not at zero and there are unfortunately still numerous exemptions[r] which allow for the issue of new permits within the moratorium area. Moreover, there will still be six-monthly reviews and revision of the moratorium map area (PIPPIB), which implies further changing or reduction of the moratorium area is possible.[33]

**Below:** Palm oil landscape.

## Indonesia's Forest Estate and forest cover

Indonesia classifies its land into Forest Estate (Kawasan Hutan) and non-Forest Estate (Area Penggunaan Lain, or APL). The Forest Estate is the area to be maintained as forest, although not all forest is inside the Forest Estate (see Table 2). The Forest Estate differs from the Government's Land Cover (Penutupan Lahan Tahun) dataset that classifies land, including whether it is primary forest or secondary forest, based on satellite imagery.

The Forest Estate is divided into five different categories, which specify how it can be used – Conservation and Protection Forests (HK and HL) are the most strictly protected, while Production Forests can be utilised for some activities (if HPT), converted to plantation forests (if HP) or converted for non-forestry (if HPK).

To use and clear the Forest Estate for non-forestry activities, such as palm oil plantations, the Government must first permit the area – normally a HPK area – to be released and it be re-classified as an APL area. Other areas can be released but this is a more complicated process.

**Above:** Forest cover inside concession in Indonesia.

Palm oil concessions, whether planted or not, exist both inside and outside the Forest Estate. An estimated 3.58 million ha of natural forests are allocated inside oil palm concessions.[34] In Papua alone, some 1.3 million ha of natural forests have been released for palm oil from the Forest Estate, of which 1.1 million ha remains as natural forests.[35]

**Table 2:** *Palm Oil Cover Based on Ownership*

| | Forest Estate (*Kawasan Hutan*) – million ha | | | | | | | | | | Non-Forest Estate | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Permanent Forest | | | | | | | | Non-Permanent | | | |
| | Protected Forests | | | | Production Forests | | | | | | | |
| | Conservation Forest (HK) | | Protection Forest (HL) | | Limited Production Forest (HPT) | | Permanent Production Forest (HP) | | Convertible Production Forest (HPK) | | Other Land Use (APL) | |
| **Forested** | **17.4** | **79%** | **24.0** | **81%** | **21.4** | **80%** | **17.8** | **61%** | **6.3** | **49%** | **7.2** | **11%** |
| **Natural forests** | | | | | | | | | | | | |
| Primary Forest | 12.5 | 57% | 15.9 | 54% | 9.8 | 36% | 4.7 | 16% | 2.5 | 19% | 1.5 | 2% |
| Secondary Forest | 4.8 | 22% | 7.8 | 26% | 11.3 | 42% | 9.7 | 33% | 3.7 | 29% | 4.9 | 7% |
| **Non-natural forests** | | | | | | | | | | | | |
| Plantation Forest | 0.1 | 0.5% | 0.3 | 1% | 0.4 | 2% | 3.5 | 12% | 0.0 | 0% | 0.8 | 1% |
| **Not forested** | 4.5 | 21% | 5.6 | 19% | 5.4 | 20% | 11.4 | 39% | 6.5 | 51% | 60.3 | 89% |

*Source: based on MoEF, 2020, The Status of Indonesia's Forests 2020. Table 2.1*

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**Above:** The local community of Seruat II tries to protect its land from land-grabbing by planting various kinds of crops such as rice, coconut and areca nut.

**Left:** Riverside in Seruat II village.

### The Palm Oil Moratorium

The Palm Oil Moratorium temporary suspends palm oil permits and mandates the evaluation of existing permits in the Forest Estate.[s] The Moratorium started in September 2018 and applies for three years. Specifically, it mandates eight stakeholders[t] to:

- suspend the issuance of new permits releasing areas from the Forest Estate for palm oil;
- evaluate palm oil permits that are, or were, in the Forest Estate area;
- overcome the issue of overlapping permits or palm oil plantations in the Forest Estate area;
- follow-up on the evaluation of permits;
- increase productivity.

The Moratorium is coordinated by the Coordinating Ministry of Economic Affairs which established a working team to report regularly to the President on a six-monthly basis. However, after three years of implementation, the Moratorium's achievements are still far below expectations.[36] At the national level, the working team has managed only to produce a map of Indonesia's palm oil cover (the area planted with palm oil plantations, whether legal or illegal), which covers 16.38 million ha.[u]

This map will be overlaid with the integrated thematic map produced by the One Map Policy and the process of resolving palm oil operations within the Forest Estate and overlapping land permits should then start. The results of the palm oil permit evaluation is key to determine corrective actions.

Unfortunately, until now little information is known about the implementation of the Palm Oil Moratorium, including nationwide permit evaluation. At provincial and district levels, just five local governments have responded to it by enacting various local policies to halt the issuance of palm oil permits and only West Papua province has conducted the permit evaluation.

### The One Map Policy

The One Map Policy was first issued in 2011 by President Susilo Bambang Yudhoyono and aims to address overlapping land claims which originate from different mapping methods and different definitions of land areas by various Government institutions.

The ambition of the One Map Policy is to have a single map and geospatial database integrating 85 thematic maps[v] with official base maps.[w] This initiative led to the establishment of Geospatial Information Agency (Badan Informasi Geospatial, or BIG), the sole agency authorised to provide the country's base maps, while 19 ministries and agencies are the custodians of and responsible for thematic data.

In 2016, Jokowi issued a Presidential Regulation No. 9/2016 to accelerate the implementation of the One Map Policy, targeting its completion for 2020. Currently, the One Map team has managed to compile all 85 thematic maps for all major islands and most have been integrated with base maps. The team found overlapping land use claims covering an area of 77.4 million ha, or 40.6 per cent of the total area of Indonesia, and has produced a base rule to resolve overlapping land use claims.[37]

Despite this progress, the process is still criticised for not being transparent and inclusive. It only uses data provided by Government institutions, leading to the exclusion of indigenous land maps which cover an area of up to 14 million ha.[38] Moreover, all the spatial data produced is still not accessible to public making the process untransparent and it difficult to resolve land conflicts.

The evaluation of permits is a neglected part of the palm oil moratorium. The lack of coordination and synergy between national and local governments has left local governments that have responded positively to the initiative unfacilitated by the national Government. The lack of transparency and weak participatory process under the palm oil morotorium has hindered real progress or understanding of the Moratorium as a tool for reform.

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## West Papua permit review – hope that its forests will be saved?

In 2018, a formal review process of the permits given for palm oil concessions began in West Papua. This was initiated under three instruments: KPK's National Movement to Save National Natural Resources (GNPSDA), launched in 2015;[39] the Manokwari Declaration (2018) declaring West Papua as a conservation province;[40] and the Palm Oil Moratorium (Presidential Instruction No. 8/2018).

The evaluation conducted by the government of West Papua in conjunction with KPK and an NGO Econusa encompassed 24 palm oil concessions covering 681,974 ha, of which only 41 per cent have been developed into palm oil plantations. The remaining areas in the concessions are mostly still forest and not yet cleared.

The evaluation found a range of violations and recommended that 12 concessions should have their permits revoked as of June 2021.[41]

Following further evaluation, by August 2021 the government of West Papua had started to revoke the permits of four oil palm concessions that have not yet begun operating. The remaining concessions which hold HGUs or have been operating were also found to have committed various violations, both in terms of legal aspects, such as unfulfilled permit requirements, and technical aspects, such as a failure to develop the land. These concessions are awaiting a decision by the government of West Papua.[42]

The permit review in West Papua could save approximately 335,241 ha of land from palm oil development, including forests that still exist in the concessions.[43]

What happens to the concessions if the permits are revoked is critical, especially those which are still highly forested. It is hoped the land will be returned to indigenous peoples and local communities, rather than new permits being issued to companies.

**Above:** Bird of Paradise (Cendrawasih) in Papua, Indonesia

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# Towards deregulation

Improving and reforming the current investment climate in Indonesia has long been a priority for the Government. In 2006, the President acceralerated the Capital Investment Bill[x] to streamline and increase investment in the coutnry, which subsequently became law in 2007.[y]

Under his first term (2014-19), President Jokowi further focused on legal reform and the restructuring and simplifing of regulations and procedures.[44] A deregulation policy begun in 2016 consisting of 13 policy packages and 204 draft regulations, 202 of which have been enacted to date. To overcome investment barriers, 3,032 local regulations and 1,500 decree letters at the ministerial level have been removed.[45]

Jokowi also launched the National Integrated One Stop Service (PTSPN) in January 2015, an online platform aiming to simplify business licensing. Subsequently, he established the Online Single Submission (OSS) – PTSP's successor – in 2018, which acceralerated the permit process by 600 per cent.[46]

The results speak for themselves – the World Bank's survey on the ease of doing business raised Indonesia's ranking from 120th in 2014 to 73rd in 2020. Yet the reforms did not stop there; in order to further increase investment and the ease of doing business, a number of requirements were to be massively simplified through the Omnibus Bill, otherwise known as the Job Creation Law (Undang-undang Cipta Kerja/UUCK).

However, the Government is considered to have gone off track by removing social and environmental safeguards as part of making invesment in Indonesia easier under its deregulation policies as even when these safeguards existed they were not sufficient to reduce the social/environmental problems. Similarly, the draft Palm Oil Bill, initiated in 2015, was touted to improve farmers' welfare and to sort out the licensing problems, but quickly came under fire for favouring corporates and undermining peatland protection.

One of the main issues which also continues to hinder the country is corruption and inefficient Government bureaucracy.[47] It is therefore considered that any improvements also need to be complemented by effective law enforcement and advancements within the institutions that support change for the better.

### The Job Creation Law (UUCK)/Omnibus Law

Jokowi announced the UUCK during his 2nd period inauguration speech on 20 October 2019. A taskforce for the UUCK was subsequently established in

**Above:** Protest on the Job Creation Bill.

## Controversies around passing the Job Creation Bill/Omnibus Bill

**05 OCTOBER 2020**
**Passed by Parliament**
Parliament passed the the Job Creation Bill (RUU Cipta kerja/RUUCK) into law – it becoming the Job Creation Law (UU Cipta Kerja/UUCK) – on 05 October 2020. Six parties agreed, one agreed with reservation (the National Mandate Party, aka Partai Amanat Nasional/PAN) and two parties rejected it (the Democratic Party, or Partai Demokrat/PD, and the Prosperous Justice Party, aka Partai Keadilan Sejahtera/PKS). As many as 257 parliament members out of 575 did not attend the plenary. It triggered controversy when the spokesperson of the Parliament, Puan Maharani, arbitrarily turned off the microphone when a member from the Democratic Party was still expressing their views. The process also witnessed interruptions by the Democratic and PKS Parties, with the Democratic Party even walking out of Parliament at one point.[54]

**13-22 OCTOBER 2020**
**At least five drafts**
There were at least five changes to the draft RUUCK from the original version that was firstly uploaded on the Parliament's official website. The public did not know which draft was going to be passed. The first was 1,028 pages,[z] the second 905[aa] the third 1,052,[bb] the fourth 1,035[cc] and the fifth was 812 pages.[dd]

**14 OCTOBER 2020**
**Law submitted to the State Secretariat (Setneg)**
After numerous changes to the pages, the UUCK was submitted by Parliament to the Ministry of State Secretariat (Kemensetneg). The submitted document was the 812-page version. However, after being returned by the Setneg, the number of pages had changed to 1,187.

**02 NOVEMBER 2020**
**Officially promulgated**
The President and the Minister of Law and Human Rights signed the UUCK.

December 2019 and by February 2020, the Bill was submitted to Parliament.

The UUCK revises, adds and removes a number of previous laws and regulations – it comprises 186 articles and affects 78 laws. The UUCK is dominated by four main topics: increasing the investment and business environment (39.78 per cent); land acquisition (13.98 per cent); ease, protection and empowerment of cooperative, micro, small and medium enterprises (10.77 per cent); and; the Government's investment and easing for national strategic projects (10.75 per cent).[48] One of the most affected areas is workers' rights, but the Law also has important ramificiations on environmental and social aspects.[49]

The fact that it covers many and various topics made it controversial and massively debated throughout Indonesia. It was considered it might harm society at large by weakening existing laws and regulations. The flawed drafting process and lack of transparency and participation also drew criticism. Many parts of society doubted that the content of the law could be understood, even by people with a legal background, because too many regulations were altered, removed or added at once.[50]

The law was passed on 05 October 2020, just six months after it was first discussed in Parliament. This is in stark contrast to other bills, such as the Indigenous Peoples Bill which was first debated in Parliament in 2013 and which has not yet been enacted despite a Constitutional Court ruling on customary forests.[51]

The COVID-19 pandemic was used by the Government to justify its hasty completion of the UUCK, which it said would serve as a stimulus to rebound the coronavirus-affected economy. The justificiation also included that the law is expected to create new jobs and tackle unemployment and poverty issues by improving investment and the ease of obtaining business permits.[52] However, it is undeniable that the lightning process the UUCK underwent, from discussion to being passed, involved a lot of interests, including those of the oligarchy.[53]

### Changes related to the agricultural and forestry sectors

The passing of the UUCK amends initiatives seeking to preserve forests and ensure sustainable palm oil management through making a considerable number of changes to the laws regulating the agricultural and forestry sectors.[ee]

- **The removal of the requirement to maintain at least 30 per cent forest area**
  Under Indonesian law there has been an obligation to maintain at least 30 per cent as forest area within a watershed and/or island area. In the UUCK, the minimum forest area is no longer specified, although the obligation to maintain some forest cover is still kept.

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**Above:** Oil palm plantations in East Kalimantan.

- **Removal of the requirement to have forest buffers zones around a lake, spring or river**
  The law has previously prohibited forest clearance around a lake, water spring, or river. This included prohibiting clearance 500m from a reservoir/ lakeside, 200m around a water spring in a swamp area and 100m either side of rivers. The UUCK removes all these provisions.

- **Government control of Forest Estate conversion process**
  Under existing laws, the Forest Estate in Indonesia cannot be converted unless its release is permitted. The law governs that any changes to Forest Estate areas having siginifcant impacts or strategic value can only be conducted after approval from the national parliament (DPR). The UUCK cancels the requirement for Parliament's approval, as the Government is now granted full authority and can determine the matter directly using a Government Regulation (PP).

- **Legalisation of operations within the Forest Estate**
  Companies are prohibited from operating within the Forest Estate area without the area first being released from the Forest Estate to become an APL area, but an estimated 3.37 million ha of palm oil plantations continue to occupy these areas. Under the UUCK, those operating within the Forest Estate who have a business permit (IUP) but do not yet have all necessary permits are now given three years to get the required permits and pay fines. This essentially allows for the legitimisation of these operations.[55]

- **Permission for corporates to fully use Protection Forests**
  Protection Forests (HL) can be used for three reasons: the general use of the area, the use of environmental services and collection of non-timber forest products. The law previously set forth that corporates can only utilise Protection Forests for their environmental services. However, the UUCK now allows corporates to use Protection Forests for all categories of use.

- **Land conversion for public interests and/or National Strategic Project (PSN), including the Food Estate**
  The UUCK has relaxed the requirements for converting land to agriculture by adding that such conversion can take place to support National Strategic Projects (PSN) and not only public interest projects. One of the National Strategic Projects is the rekindled Food Estate, to be developed in West Kalimantan, Central Kalimantan, East Kalimantan, North Sumatra, South Sumatera, Maluku and Papua, which is feared may lead to the clearing of millions of hectares of forest.[56]

Even protected forests, not just Production Forests, are threatened by the Food Estate, as the Minister of Environment and Forestry issued a ministerial regulation enabling Protection Forests (Hutan Lindung, HL) in the Forest Estate to be used for the food estate development, introducing a new term Kawasan Hutan Ketahanan Pangan (KHKP, or Food Sovereignity Forest Area), even though these areas would no longer be forested once cleared for crops.

- **Acceleration of land cultivation within two years**
  Previously, the law mandated that a concession must be cultivated by at least 30 per cent with three years and entirely within six years of being awarded. If such a condition could not be met, the uncultivated land is returned to the State. Under the UUCK, the cultivation of land must now be within two years.

- **Removal of requirement to procure 20 per cent of raw materials from own plantation area**
  The requirement for a mill to source at least 20 per cent of its raw materials from its own plantation area has been removed by the UUCK.

- **Criminal sanctions removed for businesses operating on customary land**
  Previously, a criminal charge could be imposed on business operators who deliberately operated within customary land without deliberating with communities and they could be sentenced to seven years' jail time and maximum fine of Rp5 billion. The UUCK deleted this provision and now such operators get only an administrative sanction, the highest of which is the revocation of the business permit.

- **Sanctions scrapped for officials who deviate from the permitting process**
  Even though the UUCK does not change anything regarding the awarding of a location permit, it removes Article 50 from Law No. 39/2014. This removal signifies that in future, any official who awards a permit which deviates from the proper purpose or violates the laws and regulations will not be subjected to sanctions as there is no prohibition for doing so.

- **Affirmation of social forestry**
  The UUCK affirms the use of the Forest Estate for social forestry.[ff] Social forestry was previously governed under a Minister of Environment and Forestry Regulation. This change provides a more stringent legal basis to implement the social forestry programme.

- **Affirmation on the prevention of forest fires**
  The UUCK provides for more stringent provisions regarding land fires by reiterating the permit holder's obligation to conduct fire preventive measures in their concession area.

- **Exception from criminal and administrative sanctions for communities inhabiting forests**
  The UUCK grants exception from criminal and administrative sanctions to communities which have been inhabiting forests for generations. The exception is applied on several conditions: the community must have lived in the location for at least five years; it must be registered within the forest area management policy; and those who have got either social sanctions or customary-based law sanctions are exempted from the administrative sanction. Despite the noble intention, this is unlikely to accommodate communities, given many indigenous communities' existence is not formally recognised.

**Risk-based permitting and changes under the OSS**

The UUCK has now mandated a change to risk-based permitting under the OSS (Table 3). Businesses in the low-risk and medium-risk sectors are no longer required to undertake an AMDAL. Only high-risk sectors are still required to undertake an AMDAL, which includes both the agricultural and forestry sectors where the area is above 25 ha in size, if they significantly affect the environment. The process is further simplified through a separate environmental permit (Izin Lingkungan) no longer existing, but this is integrated into the business license. Whereas previously environmental permits could be revoked, now that this permit no longer separately exists it may provide fewer grounds for environmental issues to be prioritised.

These concerns are further exacerbated by essential parts of the AMDAL also being removed, including the environmental baseline assessment and matching it with spatial plans, and public consultation now only engages the directly affected community, while the inclusion of environmental experts is optional, leading to worries of less public participation.

In addition, the sanctions are now merely administrative. For those who had been doing business without a permit, they would be sanctioned by being mandated to obtain the applicable business standards within a certain period. The previous regulations imposed fines and even criminal sanctions for those running businesses without any permit, but this is no longer the case.

## The Online Single Submission (OSS)

The Online Single Submission (OSS) policy started to take effect in July 2018[hh] as the Government's online platform aiming to simplify business licensing for investors through an electronic system. The OSS's precessdor – the PTSP or One Stop Service – had existed since 2014 and the OSS basically took on the same function. This simplified the permitting process to needing a Business Identification Number (NIB), environmental license and business license.

Since its introduction, the OSS has been highly criticised for many different reasons, including the contradiction to several current higher regulations.[ii] The environmental permit process conducted through OSS was one area that caused controversy because previous more stringent permit requirements were relaxed.

The environmental impact assessment (EIA, or AMDAL) used to serve as the main basis for determining whether it was suitable for a plantation business permit (IUP) to be awarded or not and used to be completed at the beginning of the process.

But this was changed so that companies must only fulfil certain commitments, including getting an environmental commitment permit, committing them to undertaking an AMDAL, before they can get a NIB. Once this is obtained, they can start some activities, such as land acquisition, hiring staff or purchasing equipment.[59] This is seen as a setback as social/environmental damage is no longer the basis of awarding the business permit and thus preventing damage is not necessarily afforded the same importance as before.

**Table 3:** *Risk-based permitting under the UUCK*

| Risk | Business Identifiation Number (NIB) Required | Standard Certificate Required (checklist stating have complied with relevant government regulations) | Business License Required | Environmental Requirements | When Commercial Activity Can Commence |
|---|---|---|---|---|---|
| Low | Yes | No | No | Environmental Management and Monitoring Willingness Statement Letter (SPPL). | Immediately after obtaining NIB |
| Medium-Low | Yes | Yes (self declared) | No | Require environmental management and monitoring efforts (UKL-UPL) if affect the environment.<br><br>If UKL-UPL is not required, only SPPL required. | For medium-low risk: Immediately after obtaining the NIB<br><br>For medium-high risk: must be verified by the relevant authorites prior to commencing any activity. |
| Medium-High | Yes | Yes (self declared with verification by relevant authorities) | No | | |
| High | Yes | No | Yes (verified by relevant authorities) | Require UKL-UPL, if affect the environment, but not significantly.<br><br>Require AMDAL if significantly impact the environment - applicant must apply for AMDAL to MoEF. | After the verification of fulfilment of the requirements under the business license. |

**Potential impacts**
The changes made under the UUCK are of concern to various stakeholders – including international investors who voiced concerns in an open letter to which the Ministry of Environment and Forestry (MoEF) responded[57] – as they appear to signal a move towards fewer environmental and social protections, with the following possible impacts.

- **More problematic permits may occur**
  Before the UUCK, illegal or non-procedural permit processes for palm oil plantation had always been a common occurrence, and it was very difficult to sanction officials, despite it being legally possible. Now that this legal instrument is removed, it is reasonable to suspect that such practices will grow.

- **Land brokers and land-grabbing may become more rampant**
  The UUCK now mandates a company to cultivate its land at the latest two years after the awarding of the land concession. If the area is not cultivated within such a period, it will be taken over by the State and will be managed by the Land Bank (Bank Tanah), which is a new instrument established by the Government. This change may trigger the emergence of land brokers/speculators and accerelate land-grabbing from indigenous peoples and local communities. The Land Bank will likely only exacerbate the existing disparity in land ownership as it will collaborate with investors to run projects that are 'land-thirsty'. Equally, the removal of criminal sanctions for companies operating on customary land may cause more land-grabbing.

- **Deforestation may increase**
  Multiple provisions under the UUCK may lead to decreased forest cover, including the removal of the requirement to retain 30 per cent forest area in an island/watershed; the removal of forest buffer zones around rivers and other water sources; the enabling of companies to use Protection Forests more; the Government being more in control of the Forest Estate conversion process; and the planned Food Estate programme which can overide the protection offered by the Forest Estate and Forest Moratorium. Such changes are feared to increase deforestation rates again.

- **Plantation-less mills may lead to land encroachment**
  The UUCK removed the requirement that palm oil mills have to have their own plantations to fulfill at least 20 per cent of raw material needs.[gg] This might motivate business actors to build mills without developing plantations. Plantation-less mills can create unfair competition and lead to the emergence of illegal palm oil plantations that are opened through forest encroachment and clearance, often done by burning.

  Two years ago, almost 80 per cent of Riau Tesso Nilo National Park, or 65,000 ha, were encroached. Forest clearance, caused by recurring forest fires, was done to create illegal palm oil plantations which supplied at least nine plantation-less palm oil mills in the area.[58] The UUCK opens up the possibility for such cases to reoccur.

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**Below:** Forest area being cleared inside PT IJG.

©Kaoem Telapak/EIA

**Above:** Job Creation Law (Omnibus Law) protests.

## The Draft Palm Oil Bill, 2015-19

A plan to develop a Palm Oil Bill (RUU Perkelapasawitan) was first initiated in 2015 and in 2016 a draft was submitted into the National Legislation Programme (Prolegnas) as a parliamentary initiative. It continued to be included as priority legislation within the Prolegnas in subsequent years from 2017-19.[60]

The draft Bill was stated to protect national interests by improving the welfare of farmers,[jj] increasing professionalism in the palm oil sector and to provide a way to sort out illegal plantations (e.g. those operating in the Forest Estate or without business permits, or HGUs).[61]

Ever since it was introduced, the draft Bill received criticism from both governmental ministeries and civil society. Objections came from the Ministry of Industry (Kemenperin) and Coordinating Ministry of Economic Affairs (Kemenkoperek), which considered the draft bill to overlap with the existing laws and regulations and believed it would make matters more complicated.[62] A loophole in one article in the draft Bill also become a signifcant concern as it seems to enable companies to operate on peatland, contrary to the current Primary Forest and Peatland Moratorium.[63] However, Parliament continued to persist in getting the Bill through.[kk]

According to civil society observations, there is only one article that specifically governs with regard to farmers in the bill – Article 29, which mentions facilitating farmers and smallholders to access land. Another article that mentions farmers actually only refers to the partnership with plantation companies. The Indonesian Palm Oil Farmers Association (APKASINDO) perceived that the draft Palm Oil Bill was contradictory with the existing regulations and, in fact, a number of articles in the draft Bill might cause more problems and harm to farmers.[64]

Instead, the draft Bill awards various privileges to companies, including tax breaks and duty relief[ll] and is therefore seen to prioritise the interest of corporates over farmers. This is mainly because the draft Bill places palm oil industry as a strategic commodity due to its large contribution to state revenue and job creation, stoking concerns that the Government will further facilitate the palm oil industry to increase Indonesia's economic growth.

To date, the draft Bill has not become law and is not included in the current priority Prolegnas, but it is awaited to see if it will return.

# Case studies

Kaeom Telapak went into the field to monitor two companies operating in West Kalimantan province. PT Inma Jaya Group (IJG), part of Pinehill Pacific Bhd, was found to be operating in the Forest Estate area and to have acquired permits in the wrong order, signed off by those who did not have authority to do so.

PT Sintang Raya (SR), an ISPO certified company and part of the Miwon Group, had permits signed by those with no authority. Conflict with the local community has been ongoing and, despite a Supreme Court Ruling seven years ago ordering the company to return land to the community, the company continues to operate on village land.

Both cases are not unusual within the palm oil sector. With weak enforcement and limited sanctions, incentives to operate within the law are often lacking and the permit process is open to corruption.

## PT Inma Jaya Group
### Irregular permitting and operations in the Forest Estate

PT Inma Jaya Group (IJG) is situated in Ketungau Hulu Sub-district, Sintang District, West Kalimantan.

Currently, PT IJG manages a palm oil concession area of 14,728 ha. PT IJG is a subsidiary of PT Makmur Jaya Malindo (MJM),[65] which in turn is part of the Malaysian company Pinehill Pacific Berhad (PinePac). PinePac is listed on the Kuala Lumpur Stock Exchange under the name of Benta Plantation Berhad since 1973.[66]

**Permit History**

- **2003:** the company started socialisation/ consultation with communities and obtained its Principal Permit (Izin Prinsip) covering an area of 20,000 ha.[mm]
- **December 2004:** obtained the Plantation Business Permit (IUP) from the local Forestry and Plantation Office.[nn]
- **January 2005:** Location Permit (Izin Lokasi) issued covering 15,400 ha, which was later on extended in April 2008 to cover approximately 12,400 ha.[oo]
- **May 2006:** company's Environmental Impact Assessment (AMDAL) was approved.

#### Irregularities in the permitting process

PT IJG was issued the Plantation Business Permit (IUP) before a Location Permit and Environmental Permit were in place, which is not allowed. The IUP was also issued by the local forestry and plantation office instead of the head of the regency (Bupati), violating regulations set forth by the Government.[pp]

#### Operations in the Forest Estate area

PT IJG is located in two areas: Production Forest (2,329 ha), part of the Forest Estate, and Non-Forest Area (Other Purpose Area/APL, 12,399 ha). Companies are not allowed to operate or clear forest areas within the Forest Estate without the area first being released by the authorities.

The Forest Estate land within PT IJG's area is still under the status of Production Forest, meaning there has never been any permit for it to be released for conversion.

Satellite image analysis shows land-clearing activity started in 2006 and reached its peak in 2012-13. The field visit in 2021 found a new encroached area covering 80 ha within the palm oil plantation of PT IJG that was located in the Forest Estate. It also found palm oil being cultivated on 50 ha of land outside of the company's concession area. Both of these are not permitted.

**Above right:** Various Landsat-8 Imagery showing how the forest landscape changed over time in forest area and non-forest area in PT IJG.

**Below right:** Ground truthing points in PT IJG.

# PT Sintang Raya
## Permit irregularities and community conflict

PT Sintang Raya (PT SR) is one of seven palm oil companies operating in Kubu Raya Sub-district, Kubu Raya District, West Kalimantan.

The company is an ISPO certificate-holder.[qq] It was first established in 2002.[rr] After obtaining the Cultivation Right (HGU) in 2009, it immediately changed its capital ownership status from a domestic investment into a foreign investment (PMA) company.[ss] Ever since, the majority shareholder of PT Sintang Raya has been Miwon Indonesia Group, which is a subsidiary of Miwon Group, a South Korean company belonging to the Daesang Corporation Ltd family.[67]

### Irregularities in the permitting process

There are a number of problems related to PT SR's permits.

**First**, the location permit extension was legally flawed:[aaa]

1) An extension of the location permit must be signed by a Bupati, but it was signed by the Vice Bupati.[bbb]
2) An location permit is supposed to only be extended if land acquisition has reached more than 50 per cent of the land area in the location permit within three years.[ccc] However, PT SR failed to acquire this land in that period,[ddd] so the location permit was not valid to be extended.[eee] Yet the documents show the land specified in the HGU decree letter was entirely acquired in 2008.

**Second**, PT SR's HGU was issued based only on the statement letters of six village heads, namely those of Seruat II, Seruat III, Dabong, Mengkalang, Ambawang and Sungai Selamat, and the land was handed over unilaterally without any involvement of the rights-holders or land owners. In other words, the land handover was not conducted upon agreement with the rights holder or any stakeholders associated with the sale/purchase of or damages/compensation for the land.[fff]

**Third,** the Plantation Business Permit (IUP) of PT SR had been issued before the EIA (AMDAL) was conducted.[ggg] This is undeniably a non-procedural permit issuance.[hhh] The Cultivation Plantation Business Permit (IUP-B) and Processing Plantation Business Permit (IUP-P) could only be issued after the EIA document was approved and the Environmental Feasibility Statement Letter and Environmental Permit were issued.

### Conflict with communities in Seruat II and Olak-olak villages

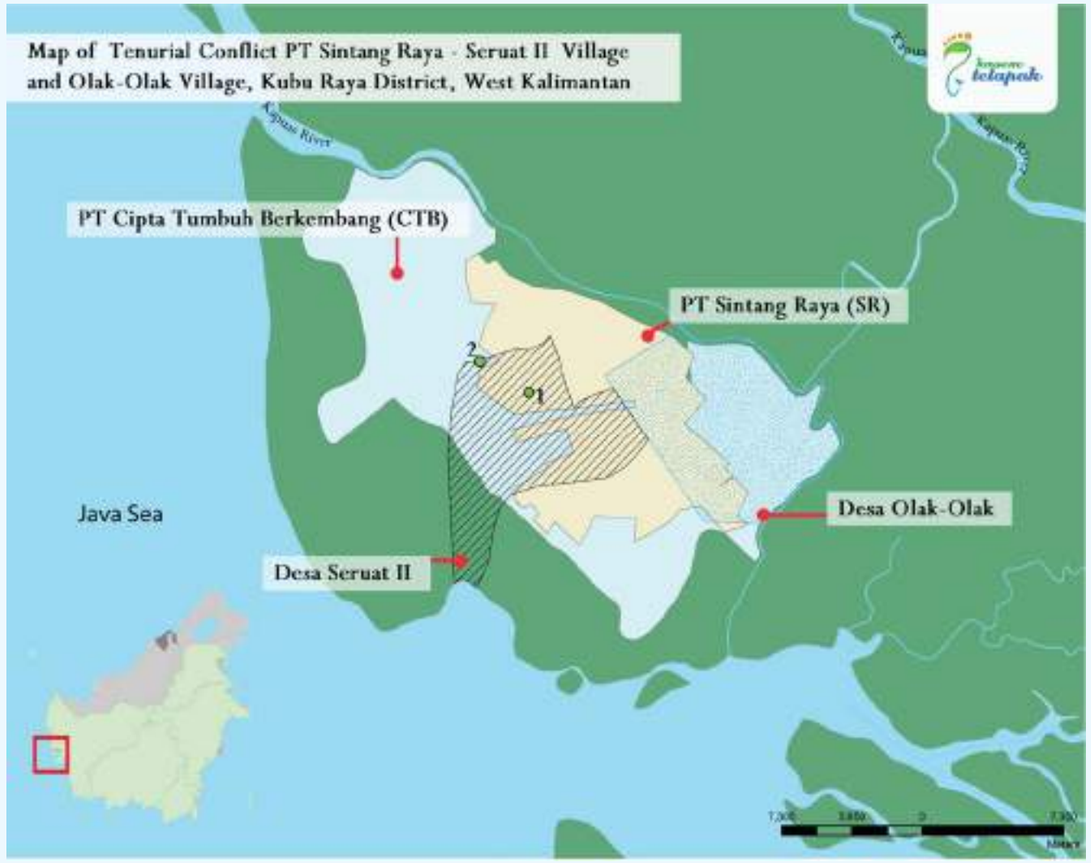
In total, PT Sintang Raya has had tenurial land conflicts with eight villages in Kubu Sub-district. However, Kaoem Telapak focused its investigation only on the two villages it visited, namely Seruat II and Olak-olak Kubu.

Since 2008-11, in Seruat II Village a total of 900 ha of land was originally reserved for village spatial plan development. However, 600 ha were opened for palm oil plantation despite the local community rejecting PT SR.

After PT SR began operating in Seruat II village, the local community suffered environmental impacts such as floods, drought and pests. Being frustrated because the local government did nothing to address the problem, the community took demonstration as an option. However, as a result, they were criminalised and intimidated, accused of burning the plantation during the demonstration, which led to the arrest of some local people.[68]

**Permit History**[tt]

- **2003:** obtained the Principal Permit (Izin Prinsip), covering 22,000 ha[uu]
- **2004:** received Location Permit (Izin Lokasi) covering an area of 20,000 ha.[vv] In less than one month, the company obtained the Plantation Business Permit (IUP),[ww] covering an area of 20,000 ha from the Pontianak District Government.
- **2004-06**: did not carry out any activities, which forced it to extend its location permit, as it is only valid for three years.
- **2007:** the location permit extension was issued by the Vice Bupati of Sintang[xx]
- **2008:** issuance of Environmental Impact Analysis (EIA/AMDAL)
- **2009:** obtained the Cultivation Rights (HGU) certificate[yy] covering 11,129.9 ha, which included seven villages.[zz]




In Olak-olak Kubu village, the conflict was caused by PT SR acquring 801 ha of land from PT Cipta Tumbuh Berkembang (CTB) - another palm oil company - without the local community knowing about it, although it was the plasma smallholders of PT CTB, working on 151 ha of plasma land.

In addition, another five ha of the local community's land in Olak-olak village were grabbed by PT Sintang Raya, although the village had never been part of the Decree Letter of PT Sintang Raya's HGU.

The Olak-olak Kubu community's struggle for obtaining its rights was won in the court,[iii] which stated that PT SR's HGU was null and void. The ruling was further strengthened by that of the High State Administrative Court (PTTUN) of Jakarta.[jjj] The Supreme Court's Ruling[kkk] revised and again strengthened the previous ruling and ordered the Head of Land Agency of Kubu Raya District to revoke the HGU Certificate in the village and to reissue its replacement after removing the five ha of land that belonged to the complainants. The Supreme Court also rejected the request for Judicial Review (PK) from PT Sintang Raya.[lll]

**Above:** The main road of PT SR.

However, to date the National Land Agency (BPN), through the Kubu Raya District Land Office, has not yet taken any measures to implement the ruling. At the time of writing, there is no updated information regarding PT SR's new HGU based on the Supreme Court's Ruling and PT SR still operates in Olak-olak Kubu village, more than seven years later.

# Consumer markets situation

Amid the current deregulation environment in Indonesia, consumer countries such as the UK, the EU and US[69] are developing regulations that will potentially apply stricter standards for the use of commodities within their territories.

### The development of due diligence in the UK

On 25 August 2020, the UK Government announced it would bring in new legislation to address deforestation.[70] Companies would be obliged to carry out due diligence on the products they intend to use in the UK to ensure UK supply chains are free from illegal deforestation.

Any business which does not comply with this standard or provision may be subjected to fines. The UK Government might also impose other civil sanctions on business actors/companies.

The due diligence obligation will only be applied for the most risky forest commodities,which is expected to include palm oil. Specifically, companies are obliged to:

1. collect information on certain risk exposure in their supply chain;
2. assess and take action to mitigate such risk and impact; and
3. make public a report on the actions taken.

The UK Government has responded to the consultation and has proposed amendments to incorporate the due diligence law into the UK Environment Bill.

Although it still focuses on illegality, it also expanded its scope to not only illegal deforestation but also by mandating that commodities must be produced in accordance with the respective national law regarding land ownership and land use. The proposal still has to undergo several processes before it is approved and there remains the possibility for further changes.

Indonesian civil society welcomed this turn of event, but since the Bill's scope is limited to illegal deforestation and land conversion, there is a growing anxiety that the regulation would not be able to stop all deforestation and land use conversion in Indonesia. Especially amid the growing trend of deregulation and loosening of regulations currently taking place in Indonesia, accepting forest-risk commodities based only on legality might lead to more deforestation.[71]

### The development of deforestation regulation in the European Union

The EU has admitted that they have contributed directly and indirectly to the deforestation and degradation of global forest by its massive consumption of agricultural, forestry, and other products. For instance, between 1990 and 2008, EU consumed one third of the globally traded agricultural products that were linked to deforestation and was responsible for 10% of the world deforestation that was linked to goods and services production.

And yet, global deforestation and forest degradation keep taking place at an alarming rate. The EU has put in place laws and regulations that address several causes of deforestation, but not deforestation as a whole. For instance, despite having the FLEGT Action Plan that helps it address illegal logging and contribute to strengthen forest governance, the Action Plan does not tackle deforestation caused by other causes, such as agricultural expansion.

To address this, the EU issued its EU Communication on Stepping Up EU Action and Restoring the World's Forests, which aims to reduce its consumption and promote the consumption of deforestation- and forest degradation-free products within its territory. Within this scope, the European Commission is committed to take additional demand-side measures through regulatory and non-regulatory means to increase the transparency of supply chain and minimise the deforestation and forest degradation risks associated with the commodities imported to EU.[72]

During the public consultation held between October-December 2020, Indonesian civil society submitted feedback which covered matters such as clarifying the definition of deforestation and land degradation, that a multi-stakeholders forum needs to agree on, a two-way supply chain monitoring scheme by producer and consumer countries and incorporating the financial sector as the subject of the policy, realising its role in financing plantations that supply raw materials through production, distribution and trading.[73]



# Implications for Indonesia's palm oil trade and climate change targets

Without improving the quality of Indonesian palm oil, it is feared the country's palm oil industry will not be able to catch up with increasing market standards. Equally, without further reducing deforestation, it is feared it will not be able to achieve the Paris Agreement targets. This could lead to negative sentiments about Indonesian palm oil that would make it hard to penetrate key markets. In the end, it would result in oversupply of palm oil in Indonesia's own market and the country may no longer be seen as pioneer in reform, as it has been in the timber sector.[74]

For Indonesia, oversupply of palm oil is potentially harmful. This is even more obvious when recalling that palm oil trade contributes significantly to Indonesia's non-oil and gas revenue. Although Indonesia might switch its palm oil oversupply to meet its domestic needs, such as through its biodiesel policy or by selling to less sensitive markets such as India and China, its image would suffer as one of the countries with the largest tropical forests in the world that has significantly succeeded in reducing its deforestation.

With the upcoming UN Climate Change Conference (CoP26) in late 2021, the protection of forests will be high on the agenda as part of the Paris Agreement and nature-based solutions.

Under Indonesia's first Nationally Determined Contribution (NDC), deforestation was targeted to be no more than 450,000 ha per year over the period 2013-20, a total of 3.15 million ha.[75] Reportedly deforestation in this period was over 3.5 million ha.

Indonesia has not raised its ambitions in its revised NDC, even though its first NDC is rated as highly insufficient.[76] Under its revised NDC, deforestation is set at 325,000 ha of deforestation for 2020-30, a further 3.25 million ha.[77] A maximum of 0.92 million ha is unplanned (illegal), whereas the remainder (2.3 million ha) is planned. This is expected to come in part from the millions of hectares of natural forests in concessions areas and from the 6.8 million ha of natural forests in Convertible Production Forests (HPK) that could be released from the Forest Estate and then deforested.[78]

On such a trajectory, Indonesia expects to reach eight million ha of deforestation by 2030 from a baseline of 2010, having already deforested some 4.8 million ha since then. This is seen as a significant further amount and has led to criticism that its deforestation ambitions are wildly off target.[79]

Only under its separate Low Carbon Scenario, compatible with the Paris Agreement, is its deforestation targeted to be reduced significantly, with a target of 4.82 million ha over 2011-30. Indonesia would need to halt all further deforestation of natural forests to meet this target for 2030.

**Below:** Community weighing their palm oil fresh fruit bunches to sell to middlemen.

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©Kaoem Telapak/EIA

# Conclusion and recommendations

In principle, good policies and proper implementation can generate great benefits to the economy, society and environment. In theory, Indonesia has already put in place sustainability policies that could achieve that, if the scope and enforcement of such policies were strengthened. The forest and pam oil moratoria are two initiatives that can help protect forests and address governance issues.

That the Forest Moratorium has been made permanent sends a signal of sustained political will by the Government, even though it is still not legally binding and contains exemptions that can defeat its intention.

Meanwile, the Palm Oil Moratorium that has been in place since 2018 does not yet show the expected results, especially the evaluation of existing permits and subsequent follow-up actions, apart from one province – West Papua. Three years is a short time to fully achieve the goals of the Palm Oil Moratorium, especially when there is a perceived lack of coordination among government bodies, as well as a lack of transparency and public participation.

However, reflecting on the current policy developments in Indonesia, serious doubts remain as to whether there will be improvements in governance. With the ongoing deregulation and focus on easing business investment in Indonesia, it is feared the Government's past efforts to improve the standards of responsible palm oil plantation governance could be underdone.

This is because deregulation, which is being undertaken through a series of laws and regulations, impacts the plantation sector and will likely weaken environmental and social safeguards. This includes that the Forest Moratorium can be overiden for National Strategic Projects, such as the Food Estate, that those operating illegally in the Forest Estate until now could be legalised rather than their permits reviewed and revoked and that ISPO will need to be revised again based on 78 laws changing under the UUCK (Omnibus Law).

Although deregulation has taken place, we firmly believe there are still concrete steps that can be taken to ensure the protection of the environment and social governance in Indonesia. These are presented in the following recommendations.

**Above:** Burnt forest in East Kalimantan, Indonesia.

**To the Government of Indonesia:**

- **Extend, improve and make permanent the Palm Oil Moratorium** through issuance of a regulation to allow time for the evaluation of existing permits and to halt all natural forest conversion
- **Upgrade the Forest Moratorium and Palm Oil Moratorium to Presidential Regulations** to make them legal requirements and more easily enforceable
- The Palm Oil Moratorium extension must be supported by a **concrete road map for implementation and sufficient budget** to ensure effective implementation and achievement of targets
- **Protect all remaining primary forests** by including them within Forest Moratorium area (PPIPBB)
- **Give greater protection of secondary forests** by including them in the Forest Moratorium or otherwise ensuring their protection
- **Carry out the evaluation of all palm oil permits** in all provinces and specify follow-up actions to ensure that all palm oil businesses are operating in areas that are in full compliance with laws and regulations
- **Revoke the permits of any concessions still within natural forests** and return land to be managed by local communities and/or indigneous peoples, or otherwise ensure it is protected
- **Enact Indonesia's Low Carbon Scenario**, which is compatible with the Paris Agreement, by halting all deforestation of remaining natural forests
- **Develop and implement a review and evaluation system for the UUCK** to regularly assess the implementation of UUCK, with a formal review every two years, and identify its impacts at an early phase to obtain critical information regarding whether the policy has run as expected and to foster further analysis to undertake improvement or policy changes
- **Revise the ISPO standard** and guidelines to be in line with relevant regulations after the enactment of UUCK and ensure the ISPO is not weakened. This must be conducted through a transparent and participatory process involving all stakeholders
- **Ensure that the ISPO institution runs properly**, including the independent monitoring function
- **Ensure that national strategic projects, such as the Food Estate, do not clear natural forests** and peatlands

**On specific case studies:**

- **Investigate PT IJG's permitting history** and its operation within the Forest Estate and outside its concession boundaries and revoke those areas still within the Forest Estate area
- **Revoke the Cultivation Rights Title (HGU) of PT Sintang Raya** and then reissue as a replacement according to the instructions of the Supreme Court Decision Number 550K/TUN/2013
- The ISPO Certification Body (Mutu Indonesia Strategis Berkelanjutan) must conduct a **special audit of PT Sintang Raya** to ensure its compliance

**To consumer countries:**

- **Establish robust and binding standards** that meet international standards by engaging multi-stakeholders and ensure sustainability, legality, no deforestation, transparency, fairness, respect of human rights, recognition of indigenous people's rights and protect workers
- **Adopt due diligence regulations** that apply both to operations within and outside your own markets and are not discriminatory to certain commodities or products
- **Build an independent platform** to identify and monitor companies' supply chains connected to deforestation and tenurial conflict and build a complaints mechanism accessible for all stakeholders as evidence of the system's transparency and accountability
- **Accommodate the financial sector** into the standards to prevent any further funding to the companies responsible for deforestation

# Footnotes

a. Natural forests include primary forests and secondary forests as classified by Indonesia.

b. Indonesia reports net deforestation in primary, secondary and plantations forests, whereas others typicallly report gross deforestation in natural forests only. See: MoEF, 2020, Status of Indonesia's Forests 2020.

c. For example, GFW reported 702,000 hectares of tree cover loss in natural forests in 2020 https://www.globalforestwatch.org/dashboards/country/IDN/?category=forest-change and Chain Reaction Research's analysis reported 192,229 hectares of deforestation in Kalimantan alone in 2020 https://chainreactionresearch.com/report/indonesian-moratoria-palm-oil-deforestation/

d. Primary forest loss as reported here is loss of intact and non-intact natural forests, which is broadly similar to Indonesia's natural forests (primary and secondary forests) https://wri-indonesia.org/en/blog/global-forest-watch-technical-blog-definition-and-methodology-2019-forest-loss-data-indonesia

e. Referring to the DG of Plantation (Ditjenbun) data

f. The area covered by palm oil plantations, regardless of whether legal or illegal, smallholder or company

g. Through Minister of Agriculture Regulation (Permentan) No.19/Permentan/OT/130/3/2011

h. Through Permentan No.11/Permentan/OT.140/3/2015

i. Desk-research conducted based on information available on the internet. The data was then aggregated based on the PnC ISPO in Permetan 11/2015, and cross-checked whether the infringement committed prior or post ISPO certification.

j. Through Decree (SK) of the Kemenkoperek No. 52/2016 and No.4/2017 through Decree (SK) of the Kemenkoperek No. 52/2016 and No.4/2017

k. FKMS is a civil society forum in Indonesia that consists of 30 organizations.

l. The nine principles were: 1) Legality of the plantation business/compliance to Indonesian laws; 2) Plantation management; 3) Protection of primary natural forest and peatland use; 4) Environmental management and monitoring/protection of environment through responsible plantation practices; 5) Responsibility toward the workers; 6) Social responsibility and economic empowerment of community/empowerment of smallholder, indigenous community and local community; 7) Enhancement of sustainable business/sustainable improvement; 8) Traceability and transparency; and 9) Respect to human rights.

m. Presidential Regulation (Perpres) No. 44/2020 on the Indonesian Sustainable Certification System (ISPO), consisting of 30 articles in 7 chapters.

n. Minister of Agriculture's Regulation (Permentan) No.38/2020 on the Implementation of Indonesian Sustainable Palm Oil Plantation Certification

o. Presidential Instruction No.10/2011 on the Suspension of Issuance of New Permit and Refinement of the Primary Natural Forest and Peatland Governance

p. Through Presidential Instruction (Inpres) No.5/2019 on the Suspension of the New Permit Issuance and Refinement of the Primary Natural Forest and Peatland Governance

q. The moratorium area includes all HK and HL areas that cover over 51 million hectares, of which 28.7 million hectares (56%) is primary forests. In addition, it covers 9.7 million hectares of primary natural forests in Production Forests and APL areas. This equates to 38.4 million ha of primary forest under the moratorium area, out of the total of 46.8 million hectares of primary forests in Indonesia. See: MoEF, 2020, Status of Indonesia's Forests 2020.

r. This would apply for: First, any application that has obtained the principal permit or forest area use for exploration prior to Inpres No.10/2011; Second, for implementation of national vital development, namely geothermal, natural oil and gas, power, and land for food sovereignty (food estate). The plants mentioned therein are paddy, corn, sugarcane, sago, cassava, and soy; Third, extension of forest use permit or forest area use permit; Fourth, ecosystem restoration; Fifth, activity relating to state's defense and security. Sixth, the evaluation route and temporary shelter for victims of natural disaster; Seventh, preparation of government center, government capital, as well as national, provincial, district and city government head offices; Eight, infrastructures that are part of national strategic project; and Ninth, public safety supporting infrastructure.

s. Inpres No.8/2018 on the Suspension and Evaluation of Palm Oil Plantation Permit and Increase of Palm Oil Plantation Productivity.

t. The Coordinating Minister of Economic Affairs, Minister of Environment and Forestry, Minister of Agriculture, Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency, Minister of Home Affairs, Head of Capital Investment Coordinating Agency, Governors, and Bupatis and Mayors)

u. Which is stipulated in the Minister of Agriculture's Regulation (Kepmentan) No. 833/KPTS/SR.020/M/12/2019

v. Maps containing a particular theme e.g. forests, plantations, agricultural areas, customary lands, etc.

w. Base maps contain seven layers: land cover, hydrography, hypsography (elevation and contours), buildings, transportation and utilities, administrative borders, and toponyms (names of places)

x. During the Reformasi era, Law No.1/1967 on Foreign Investment and Law No.6/1968 on Domestic Investment were merged under Law No.25/2007 on Capital Investment.

y. Law No. 25/2007 on Capital Investment

z. Entitled BALEG-RJ-20200605-100224-2372

aa. Entitled 5 OKT 2020 RUU Cipta Kerja - Paripurna (Job Creation Bill - Plenary)

bb. Entitled: 9 OKT @)@) RUU CIPTA KERJA bersih Pukul 8.32 (Bill - clean, 8.32 AM)

cc. Entitled RUU CIPTA KERJA - KIRIM KE PRESIDEN (Job Creation Bill - Send to the President

dd. Entitled RUU CIPTA KERJA - PENJELASAN (Job Creation Bill - Elucidation)

ee. In the forestry sector, laws affected by the UUCK are Law 41/1999 j.o. Law 1/2004 on Forestry (Paragraph 4 on Forestry Article 36) and Law 18/2013 on Prevention and Elimination of Forest Destruction (P3H) (Paragraph 4 on Forestry Article 37), while in the agricultural sector, and plantation sub-sector, the affected law is Law 39/2014 on Plantation.

ff. Social forestry is a government policy to resolve land conflict and give rights to communities to manage and use forests. It can include Community Forest (Hutan Rakyat) and Customary (Adat) Forest schemes.

gg. Article 45 of the Plantation Law

hh. The OSS came about in 2016, which was officiated in Presidential Regulation (Perpres) No.91/2017 on the Acceleration of Business Implementation. This mandated the creation of the OSS and its launch in 2018.

ii. Notably: Law No.25/2007 on Capital Investment and Law No.32/2009 on Protection and Management of Environment (PPLH).

jj. The bill defines a plantation farmer as any individual Indonesian citizen who operates a palm oil plantation business.

kk. Commission IV of the parliament was the most insisting party to pass the bill into a law. However, it remains unknown who were the individuals who initiated and drove the bill forward.

ll. Article 18 paragraph (4) states that the company will get the following faciilties: (2) tax deduction of legal person revenue through the deduction of net income until certain amount from the total amount of capital investment that is carried out for specific period of time; (b) exemption of or less duty for imported capital goods, machinery, or equipments for production that cannot be produced domestically; (c) exemption of or less duty for imported raw materials or supporting materials for production for specific period of time and specific conditions; (d) exemption or suspension of added value tax for imported capital goods or machinery or equipment for production purpose that cannot be produced domestically for specific period of time; (e) shrinkage or accelerated amortization; (f) leniency in land and building tax, particularly for certain area, region or location; and/or (g) product marketing support through certain relevant agency or institution in accordance with the laws and regulations.

mm. Through the District Chief Decree Letter (SK Bupati) No.525/0526/Ekbang

nn. Permit No. 525/1461/Dishutbun-IV/04

oo. Extension covered remaining area not yet cleared.

pp. specifically Minister of Agriculture Regulation (Permentan) 357/2002 on the Guidelines for Plantation Business Permit, which has been amended several times, with the latest one being the Permentan No.21/2017

qq. from PT Mutu Indonesia, that is valid from 4 April 2017 to 3 April 2022

rr. Through the company's deed of establishment No.26 of 22 March 2002, which was renewed in 2007 with deed No.12/5 December 2007. Based on such deed, PT SR obtained legitimacy from the Ministry of Law and Human Rights (Kemkumham) of the Republic of Indonesia dated 26 March 2008 No.AHU-14600.AH.01.01 Year 2008, and has been registered to the Company Registration Office of Pontianak City dated 13 September 2007, with Company Registration Certificate (TDP) Number 14.03.1.51.02380.

ss. Decree Number SP Data Perseroan AHU-AH.01.10-01761 dated 17 December 2009

tt. This summary of PT SR's permit was developed based on the court document, community document, and written report from CSO colleagues.

uu. No. 503/0587/I-Bappeda, dated 24 April 2003

vv. No. 400/02-IL/2004, dated 24 March 2004

ww. No. 503/0457/IIBappeda dated 1 April 2004

xx. No. 25/2007 on 22 January 2007

yy. On 5 June 2009 issued by the National Land Agency Number HGU9-HGU-BPN, RI-2009 dated 14 January 2009

zz. Seruat II, Seruat III, Mengkalang Jambu, Mengkalang Guntung, Sui Selamat, Sui Ambawang, and Dabong

aaa. As it breached two articles in the Minister of Agrarian Affairs' Regulation Number 2/1999

bbb. according to the Minister of Agrarian Affairs' Regulation (Permeneg Agraria)/Head of BPN No.2/1999 on Location Permit in Article 6 paragraph (2),

ccc. Under Permen Agraria No.2/1999 Article 5 paragraph (2) and (3) which specifies the following:
Paragraph (2): The land acquisition by the location permit holder must be completed within the timeframe of the location permit; Paragraph (3): If the timeframe of the location permit as referred to in paragraph (1) of land acquisition is not completed, the permit can be extended for 1 (one) year if the land reaches 50%.

ddd. Bupati's Decree No.400/02-IU2004)

eee. The evidence that PT SR failed to acquire more than 50% land from its location permit within three years as required can be seen on the BPN RI's Decree No.9-HGU-BPN RI-2009 dated 14 January 2009, which stated that:
the land to be acquired is under the title of State's land, which stands in 11,129.9 hectares area, and was obtained from community land submission without any compensation. SAs referred to in:

- Statement Letter of Seruat II Village Head dated 26 January 2008, Number 140/05/PEM;
- Statement Letter of Seruat II Village Head dated 26 January 2008, Number 140/03/PEM;
- Statement Letter of Dabong Village Head dated 26 January 2008, Number 140/032/PEM;
- Statement Letter of Mengkalang Village Head dated 26 January 2008, Number 140/041/PEM;
- Statement Letter of Ambawang Village Head dated 26 January 2008, Number 594/55/PEM;
- Statement Letter of Sui Village Head dated 26 January 2008, Number 140/05/PEM;

fff. This is contradictory with article 8 paragraph (1) of Permen Agraria No.2/1999 on location permit.

ggg. PT SR's IUP was issued on 1 April 2004, with Permit No. 503/0457/II/Bapeda that covered 20.000 hectares of land, and was issued by the Bupati of Pontianak. Whereas, the EIA Certificate was only issued in 2008, number 272 .

hhh. Under the provision in article 7 of Government Regulation No.27/1999 on EIA and Permentan No. 357/2002 on Guideline of Plantation Business Permit.

iii. Under the Ruling of State Administrative Court (PTUN) of Pontianak No. 36/G/2011/PTUN-PTK

jjj. No. 22/B/2013/PTTUN.JKT

kkk. No. 550 K/TUN.2013

lll. Through its Ruling No.152 PK/TUN/2015

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