

Deceased Estate: Illegal palm oil wiping out Indonesia's national forest



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Cover: PT Tunggal Perkasa Plantations - Jardine Matheson (formerly Astra Agro Lestari) - palm oil plantation in Lirik, Indragiri Hulu, Riau. 4 May, 2013.
S 0°15'37" E 102°11'40"
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EXECUTIVE SUMMARY

Indonesia's remaining forests are at the nexus of intersecting crises of dwindling biodiversity, climate change and Indigenous rights violations. Megadiverse and carbon rich, these forests are home to over 2,000 Indigenous communities for whom cultural identity and livelihood are bound up with the land. They have proven to be effective custodians of natural resources, but few enjoy legal recognition for their ownership of customary forests. Instead, the country's forests are at a growing risk of conversion to plantations, impacting the climate, natural biodiversity heritage and communities who rely on them.

Clearing for oil palm plantations has been the largest single cause of deforestation in Indonesia over the past two decades.¹ Such losses should have been minimised by the establishment of the national forest estate, which is a designation for areas intended to be managed permanently as forest.² It includes production forests, which are subject to limited economic activity, such as forest product extraction. It also covers forests for protecting watersheds and conservation forests, which include nature reserves and the country's national parks.

Oil palm plantations are illegal in the forest estate. Yet the analysis conducted by Greenpeace and TheTreeMap for this report found that by the end of 2019 there was a total of 3.12 million hectares (Mha) of oil palm planted inside Indonesia's forest estate. Of the total, half (1.55 Mha) are industrial³ oil palm plantations. We found at least 600 plantation companies with plantings of over 10 ha inside the forest estate.⁴ The remaining half of oil palm plantings inside the forest estate (1.56 Mha) are smallholdings.⁵

This means that of Indonesia's officially estimated⁶ total 16.38 Mha oil palm plantings, 19% are found inside the forest estate. Palm oil is being produced from plantings inside every category of forest estate including national parks, wildlife sanctuaries, and even UNESCO sites, across Sumatra, Kalimantan, Sulawesi, and Papua. Our analysis indicates that as of 2019, oil palm plantings in Indonesia's forest estate occupy 183,687 ha of land previously mapped as orangutan habitat, and 148,839 ha of Sumatran tiger habitat.

1 Austin, Kremen G., Amanda Schwantes, Yaofeng Gu, and Prasad S. Kasibhatla. 2019. 'What Causes Deforestation in Indonesia?' *Environmental Research Letters* 14 (2): 024007.

2 Forestry Law (1967) Articles 1 and 4; and Forestry Law (41/1999) Article 1(c) state the forest estate must be maintained as permanent forest.

3 Industrial or large-scale oil palm plantations are established by registered companies. They are a minimum of 100 hectares in size, and may be tens of thousands of hectares.

4 This figure excludes industrial plantations which are not owned by an incorporated company (*perseroan terbatas*) – if cooperatives and other non-corporate industrial plantations are included, the figure rises to 652.

5 Smallholder oil palm plantings are managed by individuals, families or small businesses operating without company registration. Ministry of Agriculture regulations treat plantings smaller than 25 hectares as smallholdings, while the new Environment Ministry regulations aimed at legalising smallholdings inside the forest estate apply a lower cutoff at 5 hectares in area.

6 Meaning the official estimate of area planted – not to be confused with plantings that are official in the sense of being legally permitted. Based on Decree of the Minister for Agriculture 833/2019 concerning the determination of Indonesia's oil palm cover area.

Forest crime scene investigation: Burned peat forest remnants, freshly planted with oil palm seedlings, near the Nyaru Menteng Orangutan Sanctuary west of Palangkaraya, Central Kalimantan. 27 Oct, 2015



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There has been a catastrophic failure of law enforcement to protect the forest estate. Large oil palm plantation groups have not been prosecuted, while mill owners and palm oil traders have also gone unpunished, despite a law against dealing in commodities produced from illegal plantings within the forest estate. Instead, between 2012 and 2020, three increasingly lenient amnesties have been issued, providing companies with an opportunity for retrospective legalisation for their activity inside the forest estate.

The first two amnesties were tempered with provisos and ministerial discretion. The third amnesty however, introduced along with the 2020 'Omnibus' Job Creation Law, raises the prospect of across-the-board retrospective legalisation for companies that have until now either ignored the law or been ineligible under the previous amnesties. According to our analysis, this last amnesty throws open the door to oil palm plantation companies occupying 665,945 ha of forest estate that were not previously eligible for retrospective legalisation.

A concerning number of companies certified under the Roundtable on Sustainable Palm Oil (RSPO) and Indonesian Sustainable Palm Oil (ISPO) schemes are involved. RSPO member plantation companies have a combined total of some 283,000 ha of oil palm planted in the forest estate. Greenpeace has identified almost 100 RSPO member companies that each have over 100 ha planted in the forest estate, while eight have over 10,000 ha each. Despite ISPO being a more recently established initiative, ISPO-certified companies have a total of 252,000 ha planted in the forest estate.

The above findings are despite both RSPO and ISPO requiring full compliance with all applicable national laws and regulations. ISPO certification specifically requires auditors to check for unlawful plantations in the forest estate. Nevertheless, over a quarter of the 735 companies reported to be ISPO-certified have plantings in the forest estate.

Besides unlawful operations inside the forest estate in general, protected areas are specifically off limits under the ISPO scheme.⁷ Nonetheless, we found there are 24 ISPO-certified palm oil concessions impinging on protected forest, including one company with a 4,306 ha overlap, and 17 companies overlapping with conservation areas, including one company with a 1,766 ha overlap.

The significant presence of ISPO-certified plantations in the forest estate jeopardizes the scheme's goals of curbing greenhouse gas emissions and raising international market acceptance of Indonesian palm oil.

The 2021 "code red for humanity" IPCC report states that after fossil fuel use, land use change including activities such as forest conversion for oil palm plantations, is the second greatest contributor to human-induced climate change. It estimates that 9-19% of total anthropogenic CO₂ emissions over the past decade resulted from land use and land use change.⁸

In that context, our report calculates conservatively that 104 million metric tons of carbon has been lost from primary forests converted to oil palm within Indonesia's forest estate between 2001-2019. This doesn't include losses from soil and peatlands. Land use change such as this is far and away the biggest contributor to Indonesia's greenhouse gas emissions.⁹ The goal of reducing emissions by 29% of the business-as-usual scenario by 2030 will be difficult to achieve if the same lack of law enforcement persists through to 2030 and beyond.

Greenpeace Indonesia urges the Indonesian government to uphold transparency and justice to protect the environment and Indigenous rights. Companies illegally operating oil palm plantations in the forest estate must face law enforcement, not enjoy amnesties. Ecological considerations must be incorporated into spatial planning, while independent smallholders must be assisted, ensuring sustainable livelihoods are achievable alongside improved biodiversity protection. The global community cannot rely on ISPO or RSPO certification to ensure palm oil is being produced and traded legally, let alone sustainably. Global financial institutions must stop providing funds to companies destroying Indonesia's forest estate.



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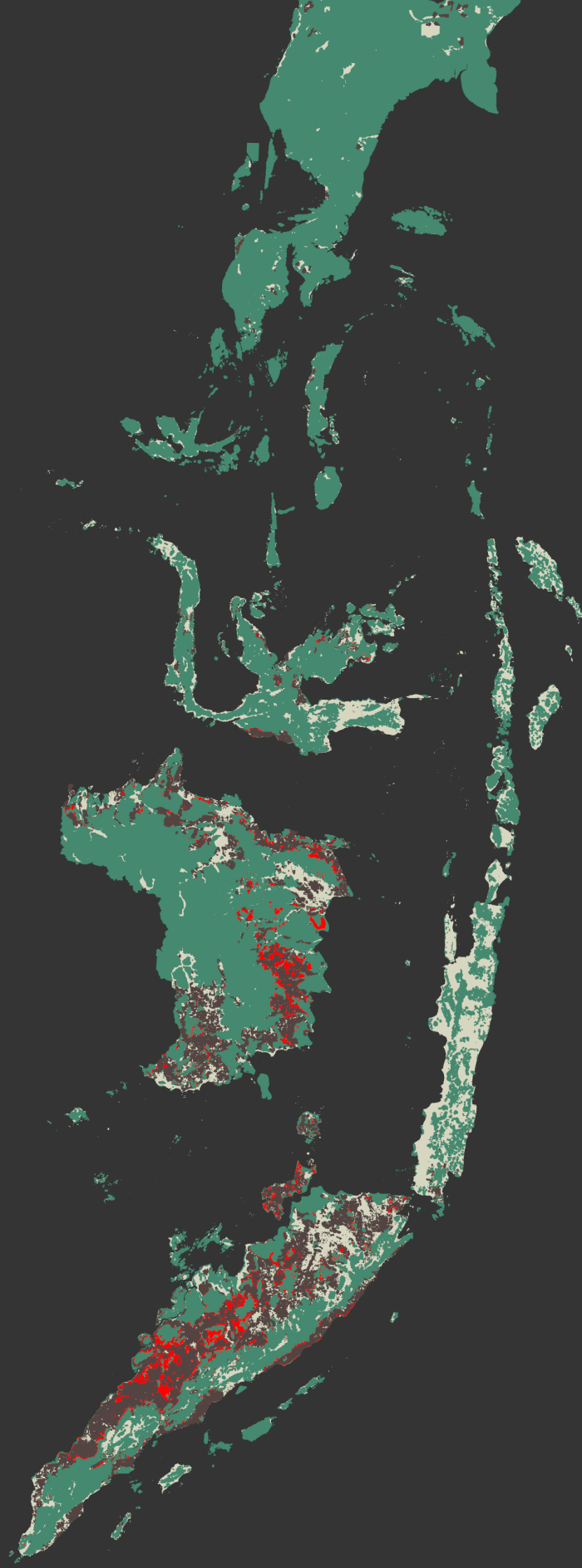
An elephant reveals itself inside Tesso Nilo National Park. This pristine peatland forest environment is threatened by irresponsible expansion of oil palm plantations. 29 September, 2011.

⁷ Criteria 3.7, 2020 ISPO Regulation.

⁸ IPCC, 2021. 'Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change' Cambridge University Press. See Chapter 5, p.5-6.

⁹ Grassi, Giacomo, Jo House, Frank Dentener, Sandro Federici, Michel den Elzen, and Jim Penman. 2017. 'The Key Role of Forests in Meeting Climate Targets Requires Science for Credible Mitigation'. *Nature Climate Change* 7 (3): 220-26.

Oil palm plantings within Indonesia's forest estate



- oil palm inside the forest estate
- oil palm outside forest estate
- forest estate (2020)

INTRODUCTION

Businesses involved in Indonesia's natural resources sector have long been adept at lobbying for land tenure expansion and other policies that favor their operations. This networking between tycoons and the political elite is a fusion of bureaucratic political power and economic power. After Indonesia's founding president Soekarno was ousted by Suharto over 1965–67, the nation became more open to both foreign and domestic investment, especially for the exploitation of its abundant natural resources. This new openness commenced with the enactment of the 1967 Foreign Investment Law, followed by the 1968 Domestic Investment Law. In addition to numerous ventures in the oil and gas sector, there was also a surge in investments in the timber industry and plantations, following the enactment of the 1967 Forestry Law.¹⁰

Suharto's authoritarian regime was characterized by corruption, collusion and nepotism, and although it also brought significant economic developments, dissent and protests were often brutally repressed. Suharto ran a sultanic oligarchy, where he sat atop the patronage pyramid and controlled the ambitions of all the other oligarchs. This embracing of capitalism realigned Indonesia's domestic social and economic structure, as a relatively small number of tycoons dominated the economy.¹¹ Suharto's regime collapsed amid a regional economic crisis in 1998 when his children's expanding business interests posed a direct threat to the property and wealth of the other oligarchs.¹²

During the 32 years of Suharto's so-called New Order regime, the forestry sector was developed solely to pursue economic value, serving as an export earner and to meet foreign debt payments. This resulted in the depletion of vast swathes¹³ of forests (in this report, the term 'forest' refers to natural systems, excluding intensively managed acacia, oil palm or similar agricultural plantings).¹⁴ Tycoons close to Suharto and those linked to his foundations were granted logging concessions throughout much of the country.

10 Nurjaya, I Nyoman. 2005. 'Sejarah Hukum Pengelolaan Hutan di Indonesia'. *Jurnal Jurisprudence* 2(1): 35–55.

11 Wirayudha, Randy. 2020. 'Oligarki Zaman Kuda Gigit Besi hingga Era Jokowi'. *Historia*. 5 November 2020.

12 Winters, Jeffrey A. 2011. *Oligarchy*. Cambridge University Press.

13 Prawesthi, Wahyu. 2016. 'Politik Kehutanan dalam Penegakkan Hukum Lingkungan dan Pengendalian Pengurangan Risiko Bencana'. *Jurnal Kajian Politik dan Masalah Pembangunan* 12 (1): 1781–1792.

14 Natural forests (or *hutan alam*) does not however exclude forests which are influenced by sustainable, low-impact Indigenous or local community use. See Dijk, Kees van and Savenije, Herman. 2010. *Oil palm or forests? More than a question of definition*. Policy Brief. Tropenbos International, Wageningen, the Netherlands.

Oil palm plantations also started to flourish during the New Order era, after the government encouraged their development through state-owned plantation companies. The area of oil palm plantations in Sumatra subsequently grew to 176,000 ha by 1967. The next prime location for their development was Indonesian Borneo (Kalimantan), which in the mid-1980s began to experience a rapid increase in the number of oil palm plantations, which covered 600,000 ha by the time Suharto's regime fell.¹⁵

During this period, many of Indonesia's wealthiest tycoons saw their fortunes soar, including some whose families still control much of the oil palm

sector today, such as the late Liem Sioe Liong (founder of the Salim Group), the late Eka Tjipta Widjaja (founder of Sinar Mas) and Sukanto Tanoto (founder of RGE Group).

After the fall of Suharto, the emerging global trend of biofuels was touted as a new engine of economic growth for Indonesia. It also put more pressure on the country's depleted forests. In line with the market policies of Eastern Europe, India, the Middle East and the United States, the rising use of biofuels and vegetable oils prompted the entry of significant investments in producing countries in Southeast Asia, Africa and Latin America.¹⁶

PT. Wana Sawit Subur Lestari palm oil concession near Tanjung Puting National Park, Central Kalimantan. 7 July, 2008

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15 Fachrizal, Andi, Jogi Sirait, and Aji Wihardandi. 2014. 'Kelapa Sawit, Antara Kepentingan Politik dan Tata Guna Lahan (Bagian I)'. Mongabay-Indonesia. 7 April 2014.

16 Colchester, Marcus, and Sophie Chao (Eds.). 2011. *Oil Palm Expansion in South East Asia: Trends and implications for local communities and indigenous peoples*. RECOFTC, FPP, Sawit Watch, and Samdhana Institute. See also, Colchester, Marcus, and Sophie Chao (Eds.). 2013. *Conflict or Consent? The oil palm sector at a crossroads*. FPP, Sawit Watch and TUK INDONESIA.

In Indonesia, several new oil palm business conglomerates emerged, led by individuals and families, increasingly arising from local elites. Despite having suffered significant losses during the 1997–98 regional financial crisis, conglomerates such as Sinar Mas and the Salim Group enjoyed a resurgence in growth through the oil palm plantation sector, which other conglomerates followed.¹⁷ Today, most of Indonesia's palm oil production is still controlled by some of its richest tycoons,¹⁸ many of whom are billionaires and also control vast cross-commodity empires, including timber and coal-mining businesses.¹⁹

Indonesia's post-Suharto policy of decentralization, manifested in regional autonomy legislation, has also spurred the expansion of the oil palm industry, especially in Sumatra, Kalimantan and, more recently, Papua.²⁰ Regional autonomy has given provincial officials authority to issue in-principle approval permits and location permits despite low resource capacity, often ignoring the principles of good governance and sustainable resource management. At the same time, investors continue to clear forest estate land with only these preliminary permits without fulfilling the legal requirement to have forest estate areas released by the Ministry of Environment and Forestry (and other permitting steps – see 'Summary of the oil palm plantation permitting process' below).²¹ Such actions are caused not only by maladministration but may also involve corruption.

Many forest corruption cases have been exposed, but fewer have been prosecuted. One involved a former governor of East Kalimantan, Suwarna Abdul Fatah. He was arrested in 2006, charged with receiving bribes for providing recommendations for the clearing of forests, purportedly for the development of oil palm plantations, by the Surya Dumai Group, a timber business controlled by Martias Fangiono alias Pung Kian Hwa.²² Suwarna's abuse of his authority resulted in state losses of IDR 346.82 billion and saw him jailed for four years.²³ In another case, the former governor of Riau province, Rusli Zainal, was jailed in 2014 for illegally issuing logging permits and other corruption offenses. His successor, Annas Maamun, was jailed in 2015 for accepting bribes to facilitate the removal of areas from the forest estate.²⁴ Such cases also ensnared the perpetrators of the bribery from oil palm plantation and timber corporations.²⁵

The Corruption Eradication Commission (KPK), through the National Movement to Save Natural Resources, conducted a study that found weak supervision in forestry management causes annual state losses of up to IDR 35 trillion from illegal logging, while unlicensed mining in state forests is causing the government to lose up to IDR 15.9 trillion in potential tax revenue.²⁶

Indications of state losses have also been found in a study by the KPK's Directorate of Research and Development, which noted that many in-principle approval permits and land cultivation right permits, issued for oil palm plantations, are not in accordance with land use designations and overlap each other.²⁷

17 Barr, Christopher. 2001. *Banking on Sustainability: Structural Adjustment and Forestry Reform in Post-Suharto Indonesia*. WWF Macroeconomics and CIFOR. See also, Borsuk, Richard, and Nancy Chng. 2014. *Liem Sioe Liong's Salim Group: The Business Pillar of Suharto's Indonesia*. Institute of Southeast Asian Studies.

18 TuK Indonesia. 2018. *Kuasa Taipan Kelapa Sawit di Indonesia*. TuK Indonesia.

19 See 'Indonesia's 50 Richest (2020 Ranking)'. Forbes Media LLC.

20 Unless specified otherwise, mentions of 'Papua' refer to both Papua and West Papua (*Papua Barat*) provinces.

21 Wibowo, Lukas R., Ismatul Hakim, Heru Komarudin, Dewi R. Kurniasari, Donny Wicaksono, and Beni Okarda. 2019. 'Working Paper 247: Penyelesaian Tenurial Perkebunan Kelapa Sawit Di Kawasan Hutan Untuk Kepastian Investasi Dan Keadilan'. CIFOR.

22 Schütte, Sofie Arjon, and Laode M. Syarif. 2020. 'Tackling Forestry Corruption in Indonesia – Lessons from KPK Prosecutions'. U4 Anti-Corruption Resource Centre.

23 Anti-Corruption Learning Center. 2018. 'Jerat Cukong Kayu Gelondong'. Pusat Edukasi Antikorupsi.

24 Supreme Court Decision No. 2819 K/Pid.Sus/2015, 4 February 2016.

25 Komisi Pemberantasan Korupsi. 2019. 'KPK Tetapkan Tiga Tersangka Baru Dalam Perkara Suap Terkait Dengan Pengajuan Revisi Alih Fungsi Hutan di Provinsi Riau Tahun 2014 (Press release)'.

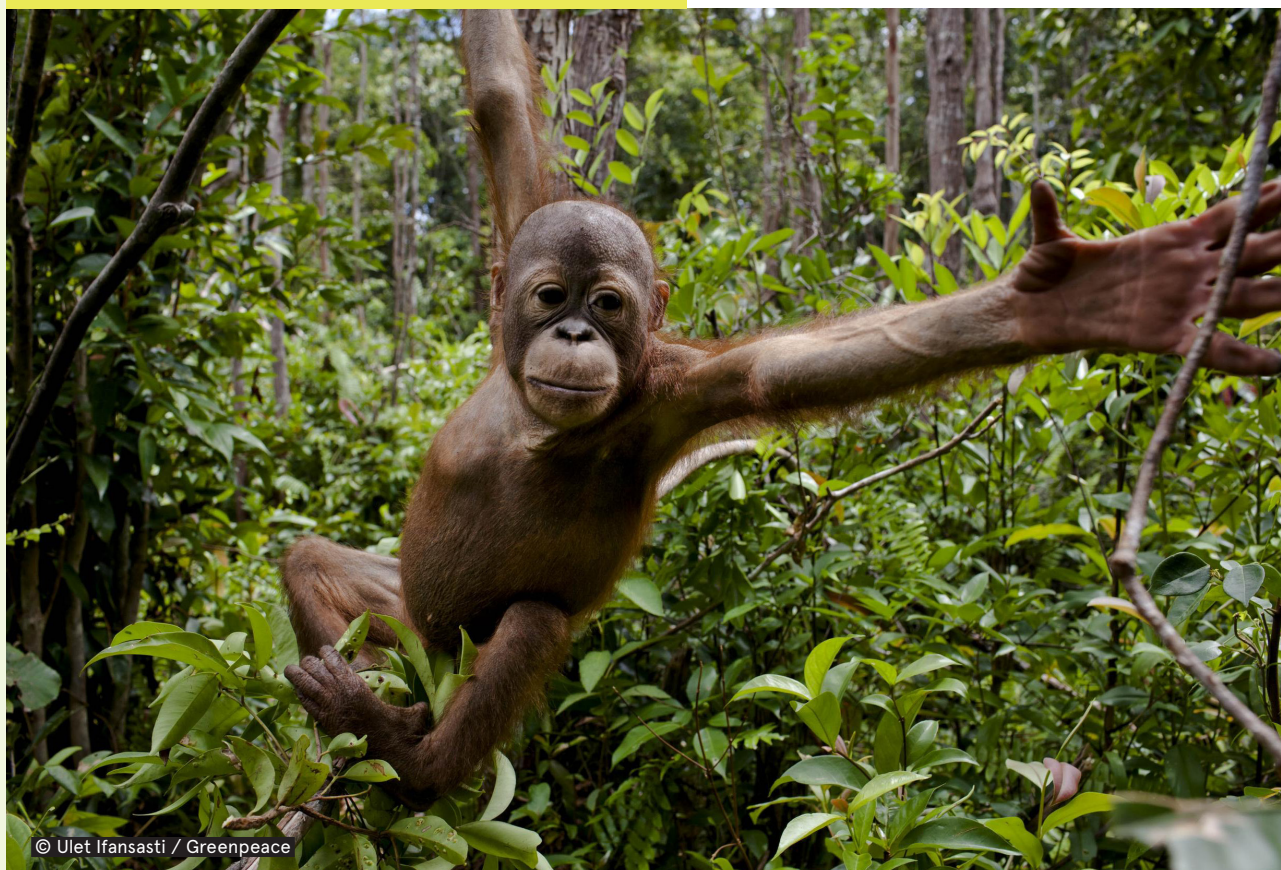
26 Anti-Corruption Clearing House. 2017. 'GN SDA: Sektor Kehutanan'.

27 Corruption Eradication Commission (KPK). 2016. *Kajian Sistem Pengelolaan Komoditas Kelapa Sawit*. KPK Directorate of Research and Development.

The Indonesian government has not responded to this mismanagement with a streamlined, integrated policy to improve the management of natural resources. On the contrary, the KPK has found that at least 13 of 27 regulations governing natural resource management policies are easily abused, allowing for corruption, which results in business licensing processes being rife with bribery, conflicts of interest, influence peddling, extortion and state capture.²⁸ In 2011, the Ministry of Forestry (as it was known before October 2014) and the Task Force for the Eradication of the Judicial Mafia revealed that 1,236 mining companies and 537 oil palm plantation companies in Central Kalimantan, East Kalimantan and West Kalimantan had been operating without permits for 10 to 15 years, causing potential state losses of IDR 311.4 trillion.²⁹

Despite widespread violations in forestry management, the government and law enforcement agencies have rarely responded with sanctions and prosecution. Instead, the government from 2012 to 2020 issued a series of opportunities for retrospective legalisation for illegal oil palm plantations in the forest estate, each being broader than the last. While they were not described as 'amnesties' in their respective legislative instruments (discussed below), we believe that this is the best term to describe the way they work. These amnesties were granted on the grounds that although many plantation companies were operating in violation of national law, they had gained approval of local authorities.

A baby orangutan at the Orangutan Foundation International Care Center in Pangkalan Bun, Central Kalimantan. Expansion of oil palm plantations is destroying their forest habitat. 14 September, 2013.



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28 Anti-Corruption Clearing House. 2017, op. cit.

29 Dabu, Petrus. 2011. '1.236 perusahaan tambang dan 537 perusahaan sawit beroperasi tanpa izin'. Kontan. 27 April 2011.



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Riau, Sumatra. Aman Saputra collecting oil palm fresh fruit bunches. His oldest child Suci (yellow shirt) is 11 years old. She helps her father in the field when not in school. Oil palm smallholder families sorely need legal certainty and government technical assistance to improve productivity and sustainability. 1 September 2008.

The most egregious examples of illegal oil palm plantings in the forest estate have been in Central Kalimantan and Riau provinces. These two provinces had not adjusted their spatial planning to be in harmony with the government's Forest Use Agreement Plans (Tata Guna Hutan Kesepakatan – TGHK). The TGHK process, begun in the 1980s, was Indonesia's first overarching forestry policy to map out definitive boundaries between the various categories of land under the control of the Ministry of Forestry.

In 2007, a new Spatial Planning Law mandated that spatial plans between all levels of government be carried out through a national policy, but the Constitutional Court in 2012 ruled the central government could not unilaterally designate forest estate boundaries. The national government responded with its policy of amnesties to tackle conflicting national forest estate maps and provincial spatial planning. The first amnesty was in 2012, which saw the amendment of Government Regulation 10 of 2010 on Change of Designation

and Function of Forest Areas, giving companies six months to apply to have their land released from the forest estate or for a forest land swap. In 2015, the same regulation was again amended, giving the illegal plantations a year to apply for forest release or land swap approval.³⁰ It also allowed plantations in protected and conservation forest areas to be legalised for a planting 'cycle' that can last for decades.

In 2019, environmental NGOs challenged the regulation at the Supreme Court, which invalidated the article allowing illegal plantations to continue operations for one planting 'cycle', but upheld the one-year amnesty.³¹

More recently, the 2020 'Omnibus' Job Creation Law altered provisions of the 2013 Law on Prevention and Eradication of Forest Destruction. These changes extended the grace period to three years and replaced penal sanctions with administrative penalties, opening the door for more forest estate to be controlled by companies.³² Environmentalists have warned the change to administrative sanctions could allow violators to evade legal responsibility and may even encourage them to repeat their actions.³³

Upon being re-elected for a second term in 2019, President Joko Widodo announced his intention to introduce an omnibus law on job creation.³⁴ He designed the Job Creation Law in consultation with his Coordinating Minister for Maritime Affairs and Investment Luhut Binsar Pandjaitan, Coordinating Minister for the Economy Airlangga Hartarto and Minister for State-Owned Enterprises Erik Thohir,

all three of whom are linked to businesses in the natural resources sector.³⁵ Also assisting in the design of the law were the president's political allies and entrepreneurs from the Indonesian Chamber of Commerce and Industry, some of whom are linked to coal, forestry and oil palm businesses.³⁶

The Job Creation Law met with strong public criticism and mass protests in the streets.³⁷ Environmental organisations, trade unions, students and religious groups argued it would reduce environmental and social protections. Investors also raised objections to the law, concerned it would facilitate and consolidate an oligarchy of ruling political and business interests.³⁸



30 Article 51(a) and 51(b) of Government Regulation No.60 of 2012 on the Amendment to Government Regulation No.10 of 2010 on Change of Designation and Function of Forest Areas (PP 60/2012).

31 Astuti, Indriyani. 2019. 'Pemerintah Harus Cabut Aturan Kawasan Lindung jadi Perkebunan'. Media Indonesia. 31 December 2019.

32 Article 3(1) and (2) of Government Regulation No.24 of 2021 on Procedures for Imposing Administrative Sanctions and Procedures for Non-Tax State Revenue from Administrative Fines in the Forestry Sector (PP 24/2021).

33 Indonesian Center for Environmental Law. 2020. 'Penyelesaian Keterlanjuran Kegiatan Usaha di Dalam Kawasan Hutan Pasca UU Cipta Kerja'. Seri Analisis #8. 24 December 2020: 11.

34 Wildan, Muhamad. 2019. 'Pidato Jokowi Perkenalkan Dua Omnibus Law Baru'. Bisnis.com. 20 October 2019.

35 Bersihkan Indonesia and Fraksi Rakyat Indonesia. 2021. Omnibus Law: Kitab Hukum Oligarki. WALHI.

36 *Ibid.*

37 *Ibid.*

38 Thomas, Vincent F. 2020. '35 Investor Global Surat Pemerintah: RUU Ciptaker Rusak Lingkungan'. Tirto.id. 6 October 2020.

Importance of Indonesia's forest estate

Indonesia's forest estate covers 64% of the nation's land area, and is of great social, economic and environmental importance. Official census figures put the number of people living in or around it at 8.6 million³⁹ of whom 35% rely on forest resources to supplement their livelihoods, including 18.5% for whom it is their primary source of livelihood.⁴⁰ In many cases their presence predates the declaration of their land as forest estate under the 1967 Forestry Law. In the case of Indigenous peoples, their occupation of forest areas predates the Indonesian state itself.

Much Indigenous land, crucial for traditional cultural life and livelihoods, is located within the forest estate.⁴¹ This need not always constitute a legal inconsistency with forest estate status, as under national law the forest estate can include both state forest (*hutan negara*) and customary rights forest (*hutan hak*).⁴² Unfortunately, the Indonesian state is making very slow progress in formally recognising the many tracts of Indigenous land, mapped by the Indigenous Peoples Alliance of the Archipelago (AMAN) as covering 11 Mha.⁴³ Legal recognition must be urgently resolved because forestry prohibitions can interfere with Indigenous peoples' unfettered enjoyment of their own land; but in the meantime at the very least forest estate regulations, if enforced, should provide de facto protection of their land from theft by outsiders and companies for conversion to oil palm plantations.

Indonesia's forest estate stores a tremendous amount of carbon both above ground and in the soil (see 'Carbon emissions..' section below). Indonesia is also one of the world's biodiversity giants due in large part to its mega-diverse tropical rainforests. The forest estate includes all categories

of conservation areas (apart from marine parks) and therefore, an important part of the country's most precious biodiversity.

The other forest estate categories also protect extremely high levels of biodiversity. From protected forest to production forest, even where it is 'secondary forest' after being subjected to timber extraction, high bird species counts may be maintained⁴⁴ and orangutans may still be resident.⁴⁵ A group of scientists, writing to the Indonesian government said "In our scientific view, habitats being considered 'degraded forests', including disturbed, logged, secondary, and other natural forest types, can be tremendously important for the protection of biodiversity and forest dwelling peoples, as well as for combating global climate change."⁴⁶

In a country with an annual dry/monsoon cycle, the forest estate performs a crucial role in maintaining natural hydrology, preventing disastrous floods and equally disastrous landscape dehydration. Where the forest estate is protected, most rainfall infiltrates the soil, and is either drawn up and transpired again by trees, replenishes groundwater or enters surface waterways over an extended period. Where forest cover is extensively removed, rainfall runs off more quickly, rapidly entering surface waterways and leading to inundation of areas which previously were rarely flooded. During the dry season, landscapes in Sumatra and Kalimantan, which were for millennia largely fire-proof due to their moist forest cover, are now subject to annual fires and haze, and every few years, catastrophic landscape fires which affect air quality across the whole region.

39 Statistics Indonesia (BPS) 2014 'Jumlah dan Persentase Rumah Tangga di Sekitar Kawasan Hutan yang Melakukan Perladangan Berpindah, 2004 dan 2014'

40 Supriadi, Agust. 2014. '6,8 Juta Rumah Tangga Di Hutan Tak Punya Kuasa Atas Hutan'. CNN Indonesia. 23 December 2014.

41 Safitri, Myrna A. (Ed.). 2011. Menuju Kepastian dan Keadilan Tenurial. Epistema Institute.

42 Constitutional Court decision No. MK35/PUU-X/2012

43 Chandran, Rina. 2021. 'Indonesia's Map Project Ignores Indigenous Land, Risks Conflicts'. *News.Trust.Org*, 31 March 2021.

44 Sodhi, Navjot S., Lian Pin Koh, Dewi M. Prawiradilaga, Darjono, Idris Tinulele, Dadang Dwi Putra, and Tommy Han Tong Tan. 2005. 'Land Use and Conservation Value for Forest Birds in Central Sulawesi (Indonesia)'. *Biological Conservation* 122 (4): 547–58.

45 Spehar, Stephanie N., and Yaya Rayadin. 2017. 'Habitat Use of Bornean Orangutans (*Pongo Pygmaeus Morio*) in an Industrial Forestry Plantation in East Kalimantan, Indonesia'. *International Journal of Primatology* 38 (2): 358–84.

46 Mongabay. 2010. 'Scientists Call upon Indonesia to Recognize Value of Secondary Forests'. Mongabay Environmental News. 18 November 2010.

Forest estate categories

There are three main categories within the forest estate, with different functions and degrees of environmental protection:⁴⁷

1. **Conservation forest** (*hutan konservasi*). Covering 22.1 Mha, no commercial development is permitted in this part of the forest estate. It consists largely of national parks (*taman nasional* – approximately 11 Mha),⁴⁸ strict nature reserves (*cagar alam* – 4.25 Mha) and wildlife sanctuaries (*suaka margasatwa* – 4.98 Mha). Other conservation areas forming part of the forest estate are nature conservation reserves (*kawasan pelestarian alam*), wildlife sanctuaries (*kawasan suaka alam*), nature recreation parks (*taman wisata alam*), game reserves (*taman buru*) and grand forest parks (*taman hutan raya*).
2. **Protected forest** (*hutan lindung*). This category covers 29.6 Mha and comprises forests important for protecting water catchments, sloping land at risk of erosion and other areas where forest clearing would be damaging; it is not available for plantations.
3. **Production forest** (*hutan produksi*). Under the Forestry Law, as part of the forest estate, production forest areas are intended to retain their function as forested areas.⁴⁹ Indonesia's production forest covers 68.8 Mha and is divided into three subtypes:
 - **Limited production forest** (*hutan produksi terbatas*) is considered environmentally sensitive and may not be cleared (for example for plantations) but may be subject to very limited selective logging. It covers 26.8 Mha.
 - **Permanent production forest** (*hutan produksi tetap*) is designated taking into account slope, soil type and other factors, and is available only for selective logging. It is the largest subtype, covering 29.2 Mha.
 - **Convertible production forest** (*hutan produksi yang dapat dikonversi*) is the only subtype which can be 'released' from the forest estate by the Minister for Environment and Forestry at the request of an oil palm plantation company. If the minister excises a tract of convertible production forest to be cleared for a plantation, the land is no longer part of the forest estate and becomes designated 'other use area' (*areal penggunaan lain*). It covers the smallest area at 12.8 Mha.



47 Figures from 'The State of Indonesia's Forests 2020' Ministry of Environment and Forestry, 2021.

48 MoEF in 'The State of Indonesia's Forests 2020' provides a figure of 16.2 Mha for National Parks, but this includes marine protected areas. The figure we mention here is obtained from the terrestrial conservation area total of 22.1 Mha less the totals for all other terrestrial conservation areas listed.

49 Article 1(c) of the 1999 Forestry Law / *Undang-undang no.41 Tahun 1999 tentang Kehutanan* states that the forest estate is an area to be maintained as forest; Article 1(g) states that production forest is a forest area with the primary function of producing forest products. The preamble states that forest "should be optimally retained, its supporting capacity should be sustainably maintained in a wise, transparent, professional and accountable manner".

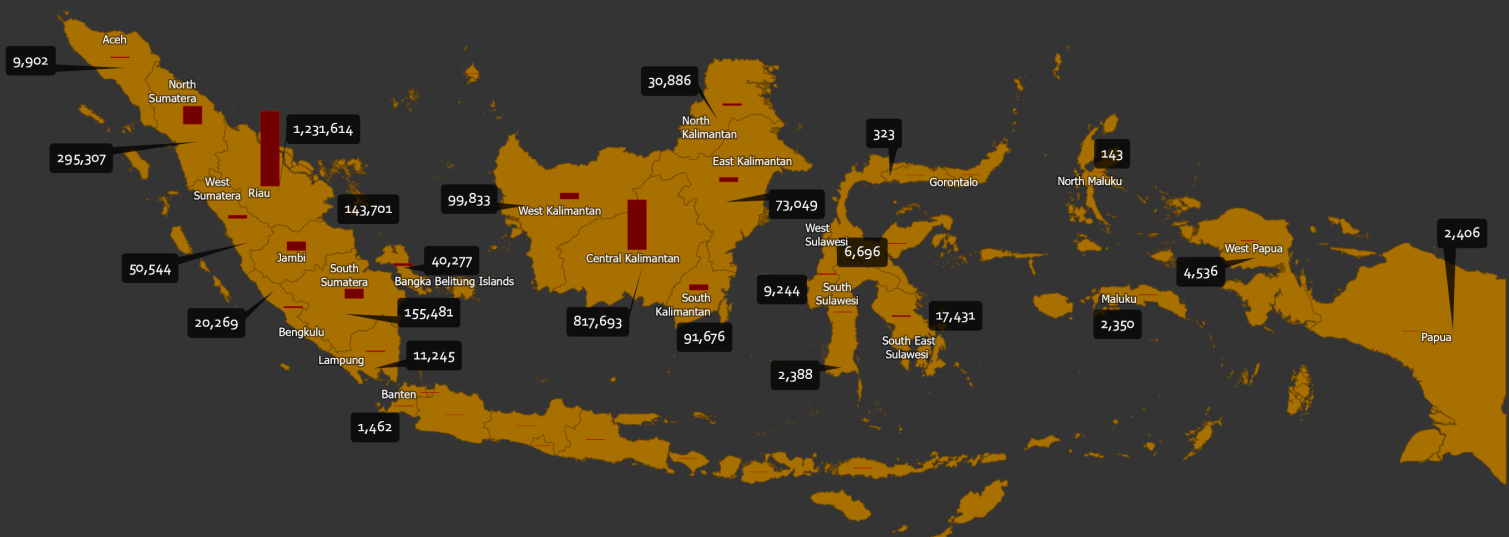
DISCUSSION OF FINDINGS

The analysis conducted by Greenpeace and TheTreeMap for this report found that by the end of 2019 there was a total of 3,118,804 ha of oil palm planted inside Indonesia's forest estate (*kawasan hutan*), in breach of national forestry law. Of the total, half (1,552,617 ha) are industrial oil palm plantations – and among the plantation companies,

there are more than 600 that each have over 10 ha planted inside the forest estate. The remaining half (1,566,187 ha) are smallholder oil palm plantings.

The 3.12 Mha of oil palm plantings inside the forest estate identified in this report make up 19% of Indonesia's total oil palm cover.

Oil palm plantings within Indonesia's forest estate, by province (figures in ha).



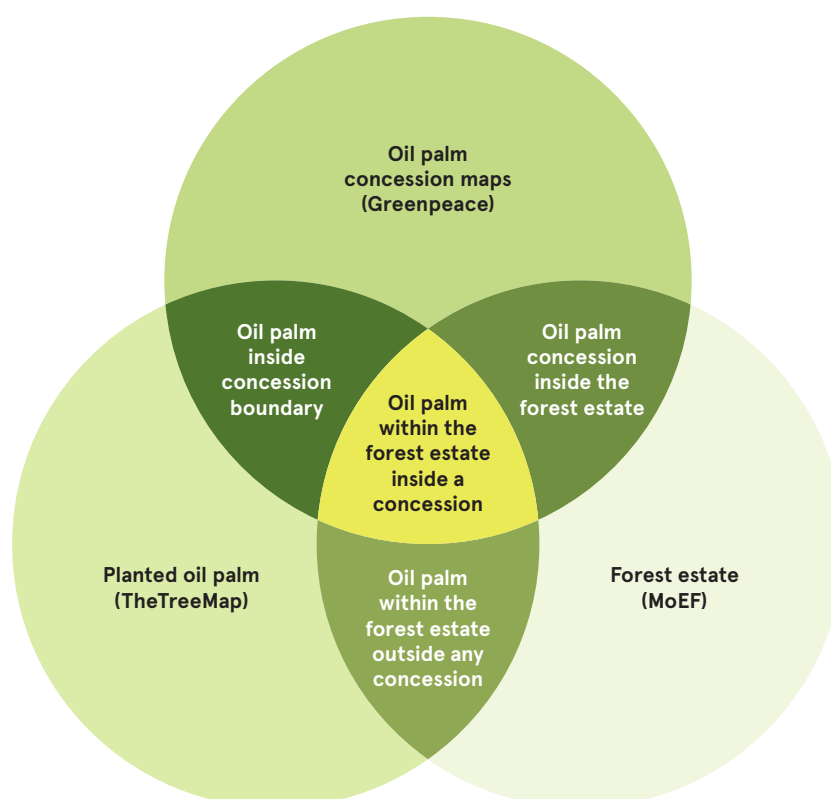
Nationwide, the forest estate was subjected to oil palm plantings according to the following breakdown by forest type:

- Conservation area (*hutan konservasi*) 90,200 ha
- Protected forest (*hutan lindung*) 146,871 ha
- Limited production forest (*hutan produksi terbatas*) 473,906 ha
- Convertible production forest (*hutan produksi yang dapat dikonversi*) 1,008,849 ha
- Permanent production forest (*hutan produksi tetap*) 1,398,978 ha

How this analysis was produced

For this report, Greenpeace compiled maps of industrial oil palm plantation concessions⁵⁰ and contracted geospatial experts TheTreeMap⁵¹ to produce a spatial analysis of oil palm plantings in Indonesia from the beginning of 2001 to the end of

2019. These were overlaid with the Indonesia forest estate map published by the Ministry of Environment and Forestry (MoEF), dated October 2020.⁵² For that reason, subsequent changes to the forest estate may not necessarily be reflected in this report.



Industrial oil palm plantations were distinguished from smallholder plantings through satellite image analysis.⁵³ Plantings arranged with contoured access roads (on sloping land) or in rectilinear grid patterns (in lowlands) are strongly associated with industrial

plantations, while smallholder plantings usually have 'mosaic' patterns of irregular shape, size and direction of access paths.⁵⁴ For further explanation of the spatial analysis methodology and data sources used, see Appendix 2.

⁵⁰ See Appendix 2, also see Greenpeace International's interactive mapping resource 'Kepo Hutan' (Curious About Forests).

⁵¹ <https://thetree.com/>

⁵² Ministry of Environment and Forestry, 2020. 'Kawasan Hutan'

⁵³ Gaveau, David, Bruno Locatelli, Mohammad Salim, Husnayaen Husnayaen, Timer Manurung, Adrià Descals, Arild Angelsen, Erik Meijaard, and Douglas Sheil. 2021. 'Slowing Deforestation in Indonesia Follows Declining Oil Palm Expansion and Lower Oil Prices'.

⁵⁴ Descals, Adrià, Serge Wich, Erik Meijaard, David L. A. Gaveau, Stephen Peedell, and Zoltan Szantoi. 2021. 'High-Resolution Global Map of Smallholder and Industrial Closed-Canopy Oil Palm Plantations'. *Earth System Science Data* 13 (3): 1211–31.

On 17 December 2019 the Minister for Agriculture issued a decree⁵⁵ putting the estimated total national oil palm coverage at 16,381,959 ha. The figure, arrived at by agreement with other government agencies (the Ministry of Environment and Forestry, Coordinating Ministry for Economic Affairs, Geospatial Information Agency and National Institute of Aeronautics and Space), is significantly higher than other official estimates. These have tended to be based on official records collected by local governments and often fail to count unofficial plantings. For example, also in December 2019, the Directorate General of Estate Crops (also from the Ministry for Agriculture) published data compiled with the help of the national statistics agency, Statistics Indonesia, which put the total oil palm cover at just 14,326,350 ha.⁵⁶

TheTreeMap, which provided data used in this report, collaborated with other non-government authors⁵⁷ to estimate total national oil palm coverage at 16.24 Mha, in very close agreement with the joint government agency estimate of 16.38 Mha.

The job of compiling plantation concession boundaries for analyses such as this report has been made more difficult due to the government's continuing refusal to publicly release this information. Minister for Agrarian Affairs and Spatial Planning Sofyan Djalil has blocked orders to do so by Indonesia's Supreme Court⁵⁸ and the Ombudsman,⁵⁹ claiming in 2019 that he was doing so in the national interest "and the national interest is the palm oil industry."⁶⁰

Earlier this year, the Jakarta Administrative Court published a further ruling reinforcing previous findings that plantation maps and data should be released, and the Ombudsman again urged the government to comply.⁶¹ Greenpeace Indonesia stands with Indigenous people, local community groups and other Indonesian NGOs in demanding transparency and condemning the government's secrecy that puts the interests of oligarchs ahead of the national interest.

The government's refusal to release crucial data makes our findings all the more relevant and they are outlined in detail below.

55 Decree of the Minister for Agriculture 833/2019, op cit.

56 Directorate General of Estate Crops - Indonesian Ministry of Agriculture, December 2019. 'Palm Oil - Tree Crop Estate Statistics of Indonesia 2018-2020'.

57 Gaveau, David, Bruno Locatelli, Mohammad Salim, Husnayaen Husnayaen, Timer Manurung, Adria Descals, Arild Angelsen, Erik Meijaard, and Douglas Sheil. 2021. 'Slowing Deforestation in Indonesia Follows Declining Oil Palm Expansion and Lower Oil Prices'.

58 Putusan MA no. 121 K/TUN/2017, Putusan MA no. 83 K/TUN/2014, Putusan MA no. 322 K/TUN/KI/2017 and see Helti Sipayung 'MA menangkan Walhi Bengkulu soal informasi HGU' Antara, 10 June 2016

59 Ombudsman Republik Indonesia. 2019. 'Ombudsman Minta Kementerian ATR Ungkap Data Kepemilikan Lahan'. (republished article) 21 February 2019.

60 Bayu, Dimas 'Tolak buka data HGU, Menteri Agraria beralih lindungi industri sawit' 6 March 2019 Katadata.







61 Jong, Hans Nicholas. 2021. 'Final Court Ruling Orders Indonesian Government to Publish Plantation Data'. Mongabay Environmental News. 10 June 2021.

RSPO-certified oil palm in forest estate

Our analysis finds that Roundtable on Sustainable Palm Oil (RSPO) member plantation companies have a combined total of 283,686 ha of oil palm illegally located in the forest estate, despite the RSPO Principles and Criteria insisting on compliance with all applicable national laws and regulations.⁶²

Greenpeace has identified eight RSPO companies with over 10,000 ha of illegal plantings each, and there are almost 100 RSPO member companies with over 100 ha planted in the forest estate. RSPO member palm oil producer groups with the greatest oil palm planted inside the forest estate are listed below.

Table 1. Top 25 RSPO member groups by total oil palm planted area inside the forest estate (ha).

No	Group	 Conservation Area	 Protected Forest	 Limited Production Forest	 Permanent Production Forest	 Convertible Production Forest	 Total Planted Area (ha)
1	Sinar Mas (GAR)	1,989	52	32,193	21,003	2,439	57,676
2	Wilmar			627	14,000	35,966	50,593
3	Musim Mas			2,672	2,400	31,409	36,481
4	Goodhope	157	390	3,013	23,865	6,776	34,201
5	Citra Borneo Indah				3,533	15,119	18,652
6	Genting	111	1,232	771	13,113	3,031	18,258
7	Bumitama			11	12,936	3,612	16,559
8	Sime Darby	37		120	7,119	5,119	12,395
9	Perkebunan Nusantara	18	37	10	1,482	4,406	5,953
10	Rajawali/Eagle High				952	3,873	4,825
11	United Plantations				2,889	1,739	4,628
12	Kuala Lumpur Kepong (KLK)				1,369	2,682	4,051
13	Royal Golden Eagle (RGE)/Asian Agri	683		359	1,524	1,334	3,900
14	Salim/IndoAgri		26		2,023	1,169	3,218
15	Cargill				1,590	650	2,240
16	Austindo Nusantara Jaya			218	1,724	1	1,943
17	Lyman				1,388		1,388
18	IOI				1,224		1,224
19	Rachmat/Triputra			342	102	765	1,209
20	Pasifik Agro Sentosa		216	4	423	248	891
21	Rachmat/Dharma Satya Nusantara (DSN)				484	85	569
22	Fangiono Family/First Resources		1	101	75	354	531
23	Kuala Lumpur Kepong (KLK) & Perkebunan Nusantara			529			529
24	SIPEF			169	149	19	337
25	Inti Nusa Sejahtera				207		207
Grand Total		2,995	1,954	41,139	115,574	120,796	282,458

⁶² RSPO Criterion 2.1 'There is compliance with all applicable local, national and ratified international laws and regulations.' This appears in both the current (2018) RSPO Principles and Criteria and the previous version (2013). The indicator for this criterion is 2.1.1 'Evidence of compliance with relevant legal requirements shall be available.' (2013 version) and 2.1.1 '(C) The unit of certification complies with applicable legal requirements' (2018 version).

There are also a number of RPSO member company concessions with 5 ha or more planted inside protected forest and conservation areas, as shown below.

Table 2. RPSO member company concessions with oil palm plantings inside protected forest and conservation areas (areas in ha).

No	Group	 Conservation Area	 Protected Forest	 Total Planted Area (ha)
1	PT Sinar Kencana Inti Perkasa – Sinar Mas (GAR)	1,766		1,766
2	PT Globalindo Agung Lestari – Genting	111	1,217	1,328
3	PT Inti Indosawit Subur – Royal Golden Eagle (RGE)/Asian Agri	683		683
4	PT Batu Mas Sejahtera – Goodhope		387	387
5	PT Tapian Nadenggan – Sinar Mas (GAR)	223		223
6	PT Mitra Aneka Rezeki – Pasifik Agro Sentosa		216	216
7	PT Agro Indomas – Goodhope	157		157
8	PT Agrolestari Mandiri – Sinar Mas (GAR)		50	50
9	PT Bumi Raya Investindo – Golden Plantation	37		37
10	PT Langgeng Muaramakmur (Block B) – Sime Darby	33		33
11	PT Perkebunan Nusantara IV (Block TIM) – Perkebunan Nusantara		32	32
12	PT Simpang Kiri Plantation Indonesia – MP Evans (MPE)		32	32
13	PT Jake Sarana – Salim/IndoAgri		26	26
14	PT Airlangga Sawit Jaya – Golden Plantation		25	25
15	PT Hilton Duta Lestari –		22	22
16	PT Perkebunan Nusantara XIII – Perkebunan Nusantara	18		18
17	PT United Agro Indonesia – Genting		15	15
Grand Total		3,028	2,022	5,050

RPSO's half-hearted response to breaches by IOI

RPSO's approach to the issue has been weak. The IOI Group's plantations in the peat landscape of Ketapang, West Kalimantan, were the subject of RPSO complaints dating back as far as 2010 and concerned encroachment into the forest estate by IOI's PT Berkat Nabati Sejahtera (PT BNS) plantation, among other issues.⁶³

IOI's consultants argued that its 2009 plantings in the forest were the result of local government mistakenly issuing a concession that year with boundaries that overlapped with the forest estate, writing: "Without knowing that their area was overlapped with Production Forest, PT BNS then performed land clearance for oil palm plantation on later identified as Production Forest area until November 2009."⁶⁴

63 RPSO Complaints Tracker – PT Sukses Karya Sawit, PT Berkat Nabati Sawit, PT Bumi Sawit Sejahtera, PT Sawit Nabati Agro (a subsidiary of IOI Corporation Berhad).

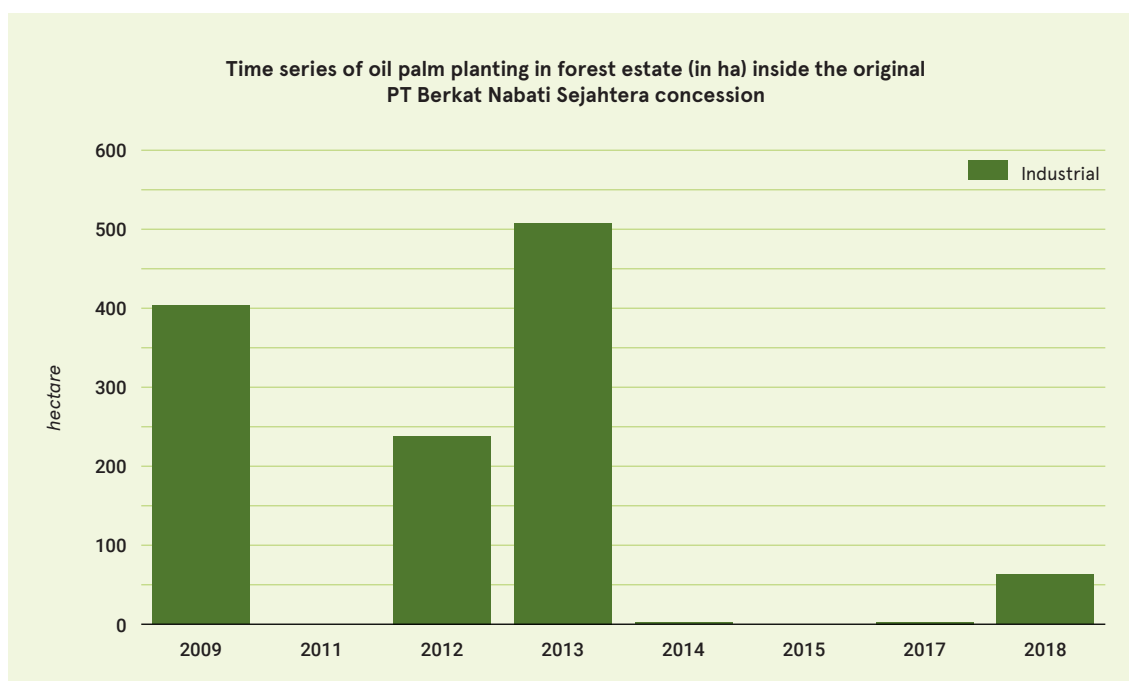
64 Aksenta report (commissioned by IOI Group) 2015 "Talking Sustainability: Seeking the Truth. Findings on the Aidenvironment Allegations to PT. BSS and PT. BNS." May 2015.

A government inspection in November 2009 reportedly confirmed PT BNS had encroached into the forest estate.⁶⁵ Greenpeace Indonesia's data indicates that forest estate areas within the boundary of PT BNS' original concession nevertheless continued to be planted in subsequent years – see time series below. Our current data indicates the land within PT BNS' original concession boundary contains 1,223 ha of industrial oil palm plantings inside the forest estate (permanent production forest) including 64 ha expansion as recently as 2018.

Prior to publication, Greenpeace provided IOI with a summary of these findings. In its reply, IOI wrote that "Since 2016, 797 ha from the 1,223 ha overlapped with forestland was already abandoned and excluded from PT BNS concession boundary" and that the remaining 426 had now been released

from the forest estate – although the company had not yet secured land cultivation right (HGU) over that area.⁶⁶

The RSPO considered in 2015 that PT BNS had breached RSPO Principles and Criteria for Sustainable Palm Oil Production by not possessing relevant permits and encroaching into forest land.⁶⁷ While it did temporarily suspend IOI in 2016 over the complaints relating to its Ketapang plantations,⁶⁸ it nevertheless closed the case in 2018⁶⁹ with the offending oil palm plantings appearing to remain in situ in images examined in the course of producing this report. Greenpeace believes that companies cannot simply abandon their responsibility for the ecological impacts of conversion of forest estate areas, and that the RSPO should not be complicit in certifying those responsible.



65 Aksenta 2015, op cit.

66 IOI Group. 2021. 'Clarification on concerns raised by Greenpeace' by email 10 October 2021.

67 RSPO 2015 'Preliminary Decision on IOI Ketapang Complaint', 28 September 2015.

68 RSPO 2016, 'Final Decision on IOI Ketapang Complaint Case' 14 March 2016.

69 RSPO 2018. 'Complaints Panel's Final Decision on the IOI - PT BSS, PT SKS and PT BNS Complaint', 12 July 2018.



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Fires in forest between two IOI oil palm concessions – PT Berkat Nabati Sejahtera and PT Bumi Sawit Sejahtera – in the Ketapang Peat Landscape, West Kalimantan. 3 December, 2015. S 2°54'22" E 110°41'1"

RSPO closes complaint on Genting Group despite plantings in forest estate

Genting Group was the subject of an RSPO complaint about three plantation companies it owns in Central Kalimantan: PT Susantri Permai, PT Kapuas Maju Jaya and PT Dwie Warna Karya. The RSPO closed the complaint in May 2019 on the basis that Genting had applied for forest release for the three plantations in 2016 under the terms

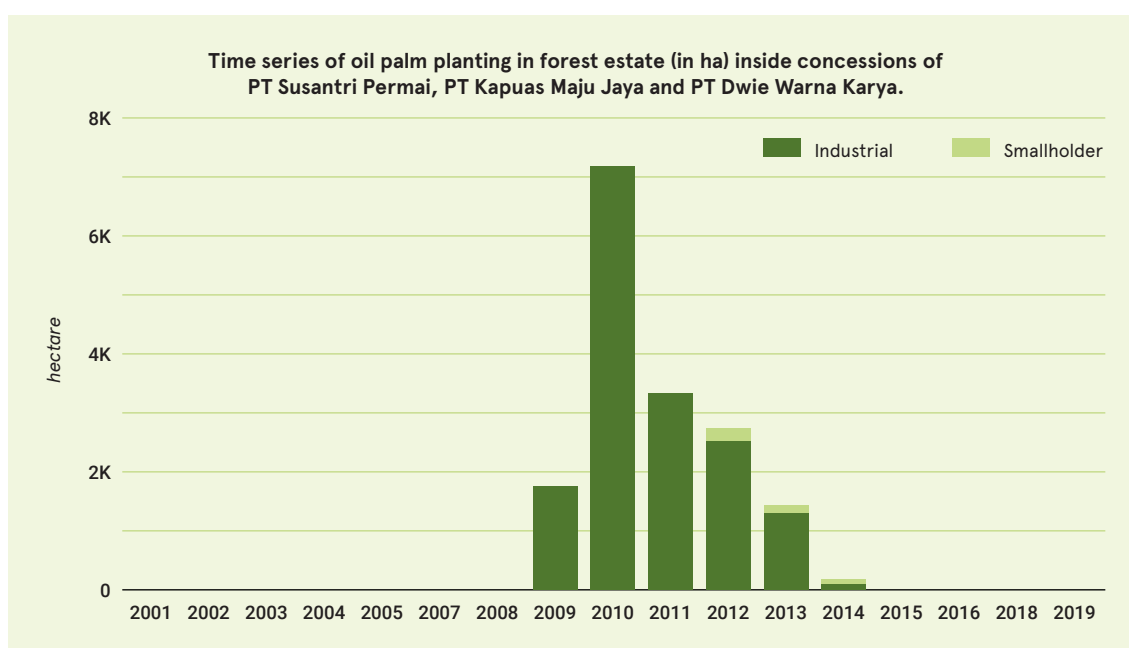
of the second (2015) moratorium.⁷⁰ Yet the bulk of the clearing inside the forest estate occurred well before this, during 2009–2012 as shown in the time series below. Most importantly, the MoEF had not then, and so far still has not, released the areas from the forest estate, despite Genting's request under the second moratorium.

⁷⁰ RSPO 2019. CP Decision Letter – PT Susantri Permai, PT Kapuas Maju Jaya, PT Dwie Warna karya. 4 Feb 2019

This means that under prevailing forestry law, the three companies' plantings inside the forest estate were unlawful at the time they were made, and they still remained unlawful when the RSPO closed the case.⁷¹

In addition to the three plantations considered in the RSPO complaint, Greenpeace's data shows Genting's PT Globalindo Agung Lestari has 1,217 ha of oil palm plantings in protected forest, and 111 ha in a

conservation area. In 2009 it was reported that PT Globalindo Agung Lestari cleared a section of forest where 80 wild orangutans had been reintroduced.⁷² Greenpeace wrote to Genting prior to this report, presenting the figures for planted area inside the forest estate mentioned above; in its reply the group did not dispute these figures, but said that "necessary steps have been taken to ensure that the companies are in compliance with the legal requirements".⁷³



ISPO-certified oil palm in forest estate

Among companies certified via the government's Indonesian Sustainable Palm Oil (ISPO) scheme, Greenpeace Indonesia has identified 131 companies that each have over 100 ha illegally planted in the forest estate (the top 25 are listed in Table 3). In all,

there are over 200 ISPO-certified companies with a total 252,202 ha planted in the forest estate. This suggests that over a quarter of the 735 companies reported to be ISPO-certified⁷⁴ have plantings in the forest estate.

71 The RSPO complaints panel noted that land cultivation right (Hak Guna Usaha - HGU) had also not been obtained, because forest release had not been granted.

72 Butler, Rhett. 2009. 'Rehabilitation Not Enough to Solve Orangutan Crisis in Indonesia'. Mongabay Environmental News. 20 August 2009.

73 Letter from Genting Plantations to Greenpeace Indonesia, 10 March 2021. The letter also stated that one concession we had attributed to Genting (PT Sepanjang Inti Surya Utama) was not part of the group; we have accordingly not included those figures in this report.

74 Figure from Dzulfihar Fathur Rahman, The Jakarta Post, June 7, 2021 'Palm oil: More than 750 ISPO certificates issued for producers as of last year'. The official ISPO website <http://ispo-org.or.id> was offline at time of writing.


Table 3. Top 25 ISPO-certified plantations by total oil palm planted area inside the forest estate (ha).

No	Company - Group Name	 Conservation Area	 Protected Forest	 Limited Production Forest	 Permanent Production Forest	 Convertible Production Forest	 Total Planted Area (ha)
1	PT Sawit Sumber Mas Sarana - Citra Borneo Indah				3,533	15,119	18,652
2	PT Tor Ganda - Torganda	21		687		17,548	18,255
3	PT Tunas Agro Subur Kencana - Best Agro Plantation				4,962	11,754	16,716
4	PT Tunggul Perkasa Plantations - Jardine Matheson (formerly Astra Agro Lestari)					10,484	10,484
5	PT Bangun Jaya Alam Permai (formerly PT Mitra Unggul Tama Perkasa) - Best Agro Plantation				6,346	3,237	9,583
6	PT Hamparan Masawit Bangun Persada - Best Agro Plantation				8	8,833	8,842
7	PT Karya Dewi Putra - Tanoto family/DTK Opportunity				7,823	550	8,372
8	PT Agro Indomas (CK) - Goodhope			708	2,576	4,760	8,044
9	PT Banyu Bening Utama - Darmex Agro					6,015	6,015
10	PT Perkebunan Musirawas Citraharpindo - Musirawas AND Asam Jawa JV			132	5,233	26	5,392
11	PT Berkat Sawit Sejati - Musim Mas	1,466			3,333		4,799
12	PT Tribakti Sari Mas - Tri Bakti Sarimas		2,905	185	14	1,583	4,688
13	PT Surya Sawit Sejati - United Plantations				2,889	1,739	4,628
14	PT Kencana Amal Tani - Darmex Agro					4,548	4,548
15	PT Harapan Hibrida Kalbar - Rachmat/Union Sampoerna Triputra Persada (JV between Rachmat and Union Sampoerna)				1,886	2,626	4,512
16	PT Graha Inti Jaya - Tianjin Julong		4,306		2	53	4,361
17	PT Kalimantan Sawit Kusuma -				4,307	51	4,358
18	PT Inti Indosawit Subur - Royal Golden Eagle (RGE)/Asian Agri	683		359	1,413	1,315	3,770
19	PT Citra Riau Sarana - Gama			1,133	119	2,470	3,722
20	PT Padasa Enam Utama -		498		1,058	2,037	3,593
21	PT Bersama Sejahtera Sakti (1) - Sime Darby	3			3,583		3,586
22	PT Karya Makmur Abadi - Kuala Lumpur Kepong (KLK)				783	2,603	3,386
23	PT Tapian Nadenggan - Sinar Mas (GAR)	223		222	2,027	636	3,107
24	PT Sajang Heulang - Sime Darby				549	2,409	2,958
25	PT Buana Karya Bhakti - GPS				2,547	231	2,777
Grand Total		2,396	7,709	3,427	54,990	100,627	169,149

As with RSPO, certification under the ISPO scheme requires adherence to all Indonesian laws and regulations.⁷⁵ In fact, the ISPO Regulation specifically requires a forest release permit or forest land swap in-principle approval where plantations are planned in production forest areas of the forest estate.⁷⁶ Protected areas, (such as those in other

categories of forest estate land, see explanation below), are off-limits under the ISPO scheme.⁷⁷ Nevertheless, we found there are 24 ISPO-certified palm oil concessions impinging on protected forest including one company with a 4,306 ha overlap. There are 14 ISPO-certified palm oil concessions inside conservation areas.

Table 4. Top 25 ISPO-certified plantations with oil palm plantings inside protected forest and conservation areas (areas in ha).

No	Company - Group Name	 Conservation Area	 Protected Forest	 Total Planted Area (ha)
1	PT Graha Inti Jaya - Tianjin Julong		4,306	4,306
2	PT Tribakti Sari Mas - Tri Bakti Sarimas		2,905	2,905
3	PT Sinar Kencana Inti Perkasa - Sinar Mas (GAR)	1,766		1,766
4	PT Rezeki Kencana - Tianjin Julong		1,672	1,672
5	PT Berkat Sawit Sejati - Musim Mas	1,466		1,466
6	PT Inti Indosawit Subur - Royal Golden Eagle (RGE)/Asian Agri	683		683
7	PT Padasa Enam Utama -		498	498
8	PT Steelindo Wahana Perkasa - Kuala Lumpur Kepong (KLK)		451	451
9	PT Kebun Ganda Prima - Salim/IndoAgri		268	268
10	PT Pasangkayu - Jardine Matheson (formerly Astra Agro Lestari)		267	267
11	PT Tapian Nadenggan - Sinar Mas (GAR)	223		223
12	PT Mitra Aneka Rezeki - Pasifik Agro Sentosa		216	216
13	PT Perkebunan Nusantara V (Sei Tapung) - Perkebunan Nusantara		184	184
14	PT Rebinmas Jaya - Delloyd Venture		166	166
15	PT Agro Inti Kencana Mas - Kencana Agri	162		162
16	PT Sepanjang Inti Surya Utama - Genting		161	161
17	PT Agro Indomas - Goodhope	157		157
18	PT Parit Sembada - Kuala Lumpur Kepong (KLK)		132	132
19	PT PP London Sumatra Indonesia (Suka Damai Estate) - Salim/IndoAgri	97		97
20	PT Foresta Lestari Dwikarya - Sinar Mas (GAR)		74	74
21	PT Agrolestari Mandiri - Sinar Mas (GAR)		50	50
22	PT Mitra Puding Mas - Anglo Eastern	43		43
23	PT Langgeng Muaramakmur (Block B) - Sime Darby	33		33
24	PT Simpang Kiri Plantation Indonesia - MP Evans (MPE)		32	32
25	PT Cahaya Pelita Andhika - Anglo Eastern		31	31
Grand Total		4,630	11,413	16,043

⁷⁵ Article 4(2)(a) Presidential Regulation Number 44 of 2020 on the Indonesian Sustainable Oil Palm Plantation Certification System

⁷⁶ Articles 3 and 4, Criteria 1.1.2; 2020 ISPO Regulation (Peraturan Menteri Pertanian Nomor 38 Tahun 2020 Tentang Penyelenggaraan Sertifikasi Perkebunan Kelapa Sawit Berkelanjutan Indonesia). The requirement is for a forest release permit in the case of convertible production forest, or forest land swap in-principle approval in the case of limited production forest or permanent production forest.

⁷⁷ Criteria 3.7, 2020 ISPO Regulation.

Widespread infringement of ISPO-certified plantations on the forest estate is concerning not least because the stated aims of the scheme include reducing greenhouse gas emissions and increasing international market acceptance of Indonesian palm oil.⁷⁸ Neither of these aims will be easy to achieve if the ISPO scheme does not impose sanctions against operations in the forest estate.

Article 24 of the ISPO presidential decree provides assurances that the public and other stakeholders may participate in the scheme, including the right to request and receive information on certifications.⁷⁹ Greenpeace Indonesia identified ten of the leading ISPO certification agencies that have signed off on around 30 certificates for companies operating in the forest estate. We contacted the agencies, requesting copies of the initial certification reports and regular audits.

Of the certification agencies which responded, all declined to provide the requested information. One stated that “we are still waiting for direction or a mechanism from the Agriculture Ministry or the National Accreditation Body of Indonesia regarding the limits of transparency for providing information to outside parties.”⁸⁰ Greenpeace also contacted a number of the plantation companies directly, but just one provided their certification documents. Copies of these request letters were sent to the ISPO Committee (in the Agriculture Ministry) and National Accreditation Body of Indonesia (KAN), but as far as we know they did not encourage the agencies or companies to provide the requested information as hoped.



In a new oil-palm plantation near Sungaihantu, in South Kalimantan, the skeleton of a tree is the last relic of the rainforest that once was. 23 July, 2009

78 Articles 3(b) and 3(c) Presidential Regulation Number 44 of 2020 on the Indonesian Sustainable Oil Palm Plantation Certification System

79 Article 24, Presidential Regulation Number 44 of 2020 on the Indonesian Sustainable Oil Palm Plantation Certification System.

80 PT Mutu Hijau Indonesia 2021. Letter No. 238.1/MHI/IX/2021 addressed to Greenpeace Indonesia dated 3 September 2021.

No transparency in ISPO certification of controversial Best Agro concessions

Greenpeace's analysis found that as at the end of 2019, Best Agro group had nine plantation companies with a total of 127,220 ha industrial oil palm plantings inside the forest estate, including 6,210 ha in protected forest and 539 ha inside conservation areas. Of these plantations, four are ISPO-certified: PT Hamparan Masawit Bangun Persada (PT HMBP),⁸¹ PT Tunas Agro Subur Kencana,⁸² PT Wana Sawit Subur Lestari,⁸³ and PT Bangun Jaya Alam Permai.⁸⁴

PT HMBP is accused by local Indigenous Dayak people in East Kotawaringin, Central Kalimantan, of stealing their land for illegal oil palm plantings outside its HGU area.⁸⁵ District head Wahyudi K. Anwar and the Indonesian National Human Rights Commission (Komnas HAM) reportedly supported the community's position with statements in 2010 and 2011 respectively ordering the company to relinquish the disputed land.⁸⁶ The police in East Kotawaringin, Central Kalimantan, however, chose to ignore the Indigenous peoples' complaint and act instead on the company's complaint, arresting Dilik Bin Asap and Hermanus Bin Bison from Penyang village on 17 February 2020. When land rights activist James Watt travelled to report the arrests to Komnas HAM, he too was arrested.

Hermanus' health deteriorated and he died in custody before trial, while Dilik was sentenced by the East Kotawaringin District Court to eight months in prison and James to 10 months, to great public outrage. The actions of PT HMBP are the subject of a letter of enquiry directed to its Commissioner Winarto Tjajadi, of Best Agro group's Tjajadi family,



81 ISPO Certificate No. MISB-ISPO/004

82 ISPO Certificate No. MISB-ISPO/007

83 ISPO Certificate No. MISB-ISPO/002

84 ISPO Certificate No. MISB-ISPO/001

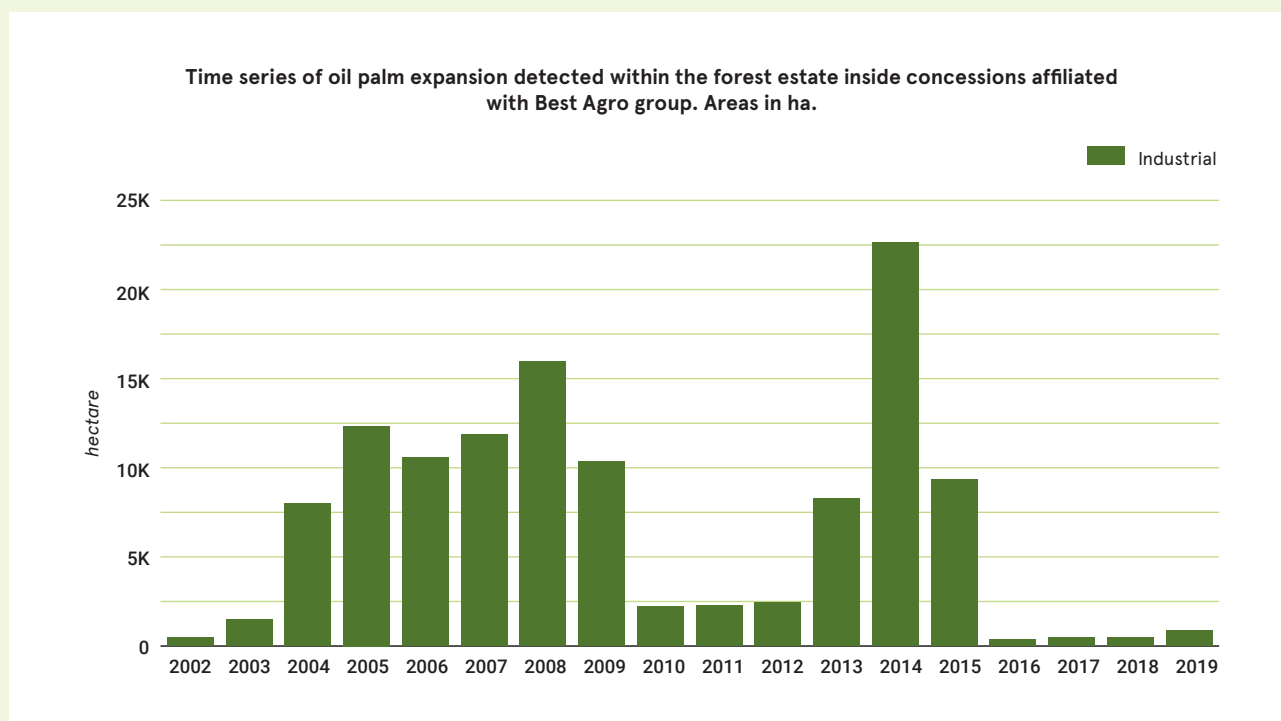
85 Nugraha, Indra, and Yusy Marie. 2020. 'Palm Oil Firm Has Farmers Jailed for Harvesting from Land It Stole from Them'. Mongabay Environmental News. 17 March 2020.

86 Walhi Kalteng. 2020. 'Perusahaan Sawit Asal Garap Lahan, Masyarakat Lakukan Panen Masal' February 6, 2020.

by the UN Special Rapporteur for the Rights of Indigenous Peoples and four other UN Special Rapporteurs.⁸⁷ Indicative of the rise of oligarchs in Indonesia, the Tjajadi family, which hails from the East Java capital of Surabaya, has been dubbed “Crazy Rich Surabayans” – a play on the novel and film Crazy Rich Asians – by the Indonesian media for lavish spending on wedding parties that spanned five continents, while Best Agro has been criticized for its environmental record, including the discovery of bullet-riddled orangutans on its plantations.⁸⁸

Concerned to see how ISPO certification could be issued given a history of conflict and when the plantations involved were apparently in breach of

forestry law, Greenpeace Indonesia wrote to the agency that provided the certifications for several Best Agro group concessions, PT Mutu Indonesia Strategis Berkelanjutan, requesting copies of the certification documentation. We received a reply saying: “we do not have the legal authority to deliver the data and/or information that you request.”⁸⁹ Greenpeace also wrote to Best Agro group requesting the information, but received no response. A copy of our request was cc’d to the head of ISPO, and the certifying agency also cc’d ISPO with a copy of their refusal; yet no response was forthcoming from the head of the ISPO scheme to encourage information to be released.



87 United Nations Office of the High Commissioner for Human Rights, 2020. Letter to Tjajadi, Ref no. AL OTH 63/2020. 7 September 2020.

88 Baskoro, Budi. 2020. ‘Sengketa Lahan Petani Sampit versus ‘Crazy Rich Surabaya’. Mongabay Environmental News (Indonesian version). 21 June 2020.

89 Letter from ISPO certification agency PT Mutu Indonesia Strategis Berkelanjutan dated 2 September 2021. Original text: “Perihal Permohonan Informasi Berupa Dokumentasi Sertifikat ISPO, bersama ini kami sampaikan bahwa kami tidak mempunyai kewenangan hukum untuk menyampaikan data dan/atau informasi yang Saudara minta.”

ISPO-certified plantation inside nature reserve, accused of land grabbing

The analysis prepared for this report indicates that ISPO-certified plantation company PT Agri Andalas is linked to 110 ha of oil palm plantings inside the Pasar Ngalam Nature Reserve in coastal Bengkulu, Sumatra. State-owned news agency Antara quoted a Bengkulu Natural Resources Conservation Agency official voicing concern in 2006 that much of the coastal conservation forest had been illegally cleared for oil palm plantings.⁹⁰ In March 2021, Antara reported a direct action by hundreds of local people accusing Agri Andalas of land theft.⁹¹ The protestors carried out their own symbolic planting inside the company's oil palm plantings, and vowed to continue their fight until the land is returned to community hands.

Greenpeace has contacted the agency which provided ISPO certification for PT Agri Andalas, but has not received a reply. We are unable to ascertain how certification was issued given the overlap with conservation areas and community land claims.

Corruption case ensnares ISPO-certified company staff covering up lack of permits

Golden Agri Resources subsidiary PT Binasawit Abadipratama (PT BAP) is ISPO-certified⁹² despite failing to fully comply with legal requirements for plantation operations, a prerequisite for an ISPO certificate. Greenpeace analysis shows part of the plantation is operating inside the forest estate – 736 ha planted in limited production forest, and 70 ha in permanent production forest (without a land swap permit from the MoEF). The company also does not hold land cultivation right (HGU) for its southern plantation area.

In 2018 members of the Central Kalimantan Provincial Legislative Assembly (DPRD) carried out desk and field investigations which confirmed that PT BAP was without these two permits, among other problems.⁹³ Just as a group of legislators was moving to publicise the breaches and preparing to call for law enforcement over the matter, PT BAP company officials were caught red-handed by the Corruption Eradication Commission in the act of handing over a IDR 240 million bribe to have the issue dropped.⁹⁴ Vice president director of Sinar Mas Agro, Edy Saputra Suradja; CEO of PT BAP, Willy Agung Adipradhana; and PT BAP legal director Teguh Dudy Zaldy were each fined and sentenced to one year and eight months' prison for their role in the bribery case.⁹⁵

Besides ISPO certification, PT BAP is also RSPO-certified. The plantation's operations inside the forest estate without all required land swap permits and HGU certificates, along with its corruption case, are the subject of an ongoing RSPO complaint investigation.⁹⁶

90 Antara News. 2006. 'Hutan Cagar Alam Wilayah Seluma Terancam Gundul'. 10 May 2006.

91 Antara Bengkulu. 2021. 'Ratusan Warga Duduki Lahan PT Agri Andalas Di Seluma'. 15 March 2021.

92 ISPO Certificate No. MUTU-ISPO/063

93 Central Jakarta District Court Decision No. 4/Pid.SUS-TPK/2019/PN.JKT.PST, 13 March 2019.

94 Jong, Hans Nicholas, and Indra Nugraha. 2018. 'Palm Oil Executives Arrested in Bribery Scandal in Indonesia'. Mongabay Environmental News. 30 October 2018.

95 Central Jakarta District Court, 13 March 2019, op cit.

96 Golden Agri-Resources Ltd (Respondent); Forest Peoples Programme & Elk Hills Research (Complainant). RSPO Complaint Reference RSPO/2020/04/IR

Locations affected

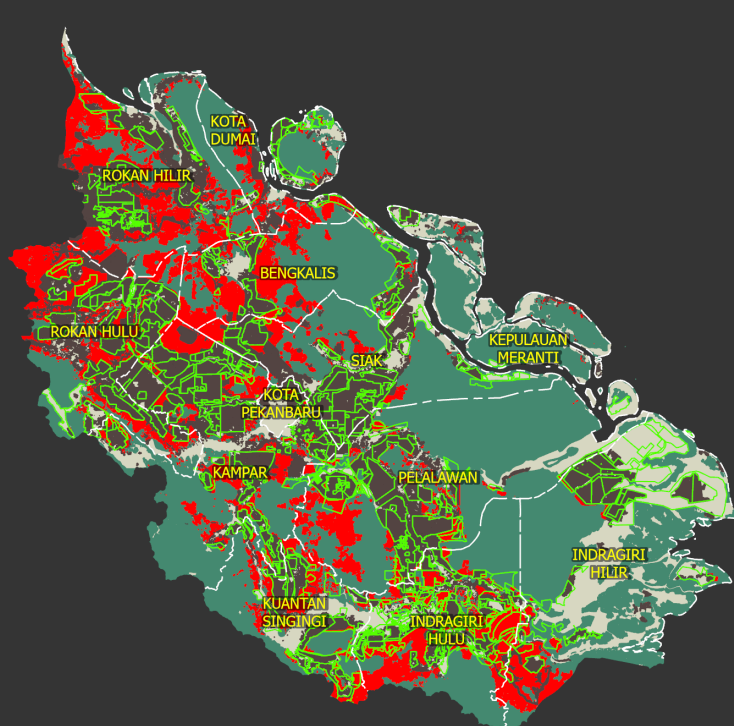
The top five islands where oil palm affects Indonesia's forest estate are, in order, Sumatra, Borneo (Kalimantan), Sulawesi, New Guinea (Papua) and the Bangka Belitung Islands. Sumatra (61.5%) and Kalimantan (35.7%) host the vast majority of oil palm inside the forest estate. These also happen to be the two islands which suffered the most deforestation over the past two decades, losing 4 Mha of forests each (within and outside the forest estate).⁹⁷

Within those islands, the provinces of Riau and Central Kalimantan had the greatest area of oil palm planted in the forest estate, at 1,231,614 ha and 817,693 ha respectively. These two provinces account for two-thirds of the national total.⁹⁸

Oil palm plantings within the forest estate, showing the island of Sumatra and the province of Riau.



The island of Sumatra



The province of Riau

oil palm inside the forest estate

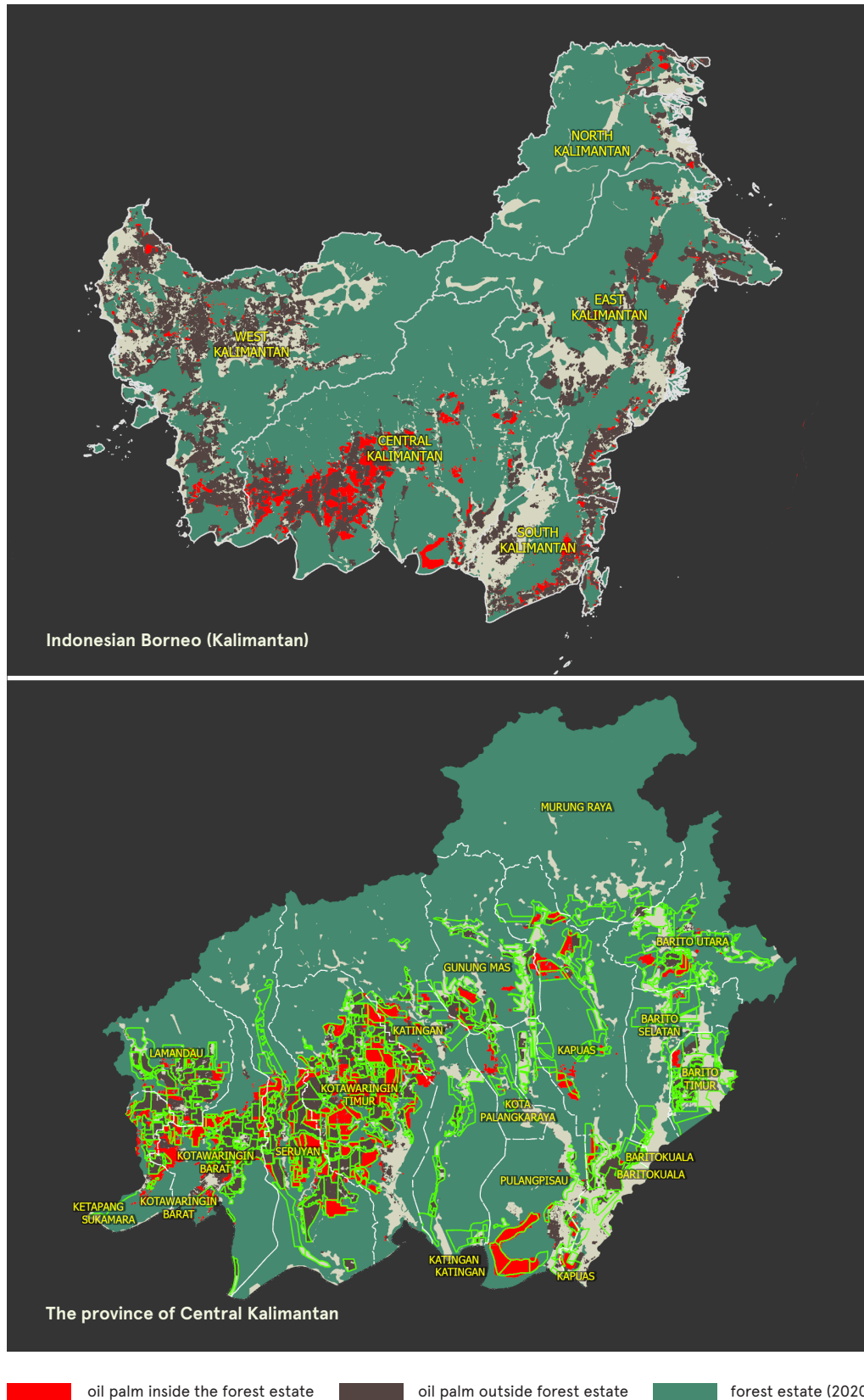
oil palm outside forest estate

forest estate (2020)

⁹⁷ Gaveau, David, Bruno Locatelli, Mohammad Salim, Husnaya Husnaya, Timer Manurung, Adria Descals, Arild Angelsen, Erik Meijaard, and Douglas Sheil. 2021. 'Slowing Deforestation in Indonesia Follows Declining Oil Palm Expansion and Lower Oil Prices'.

⁹⁸ 65.7%

Oil palm plantings within the forest estate, showing Indonesian Borneo (Kalimantan) and the province of Central Kalimantan

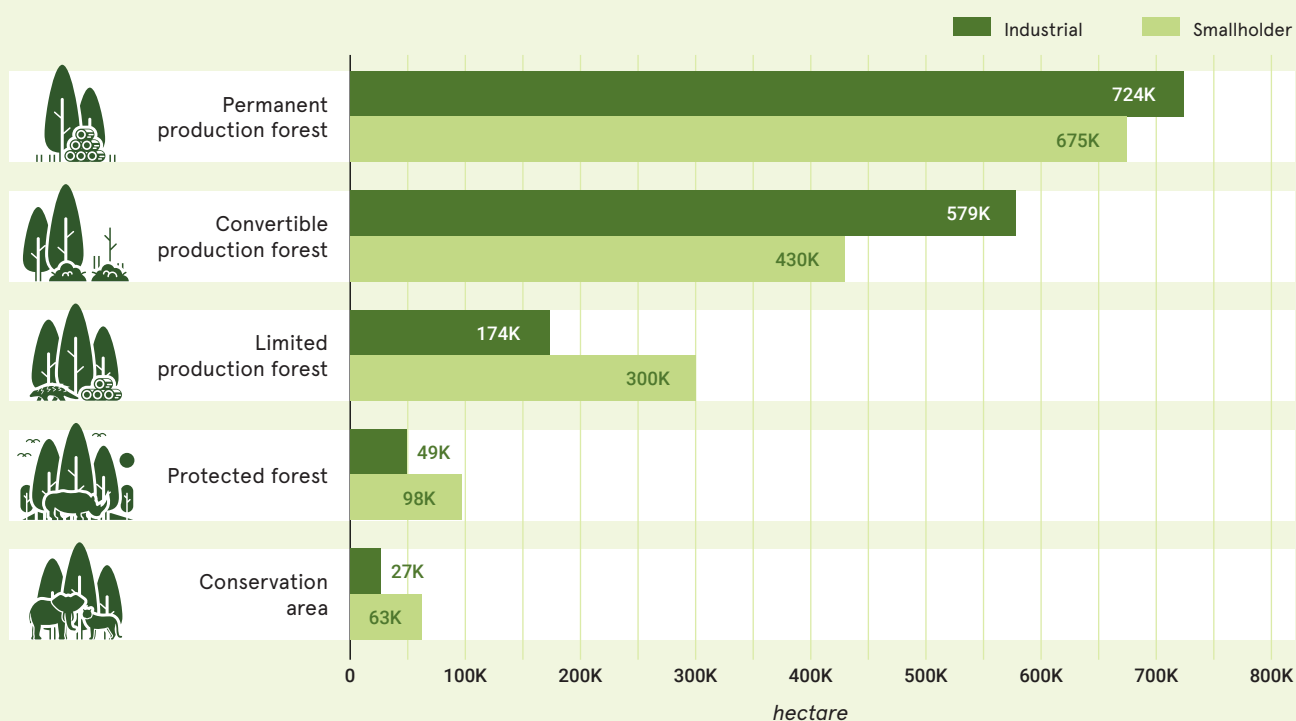


Industrial versus smallholder plantings

Industrial and smallholder plantings are almost equal across the overall forest estate, but there are differences in the pattern depending on forest category:

- In the areas designated as permanent production forest and convertible production forest, industrial plantations cover a wider area (1,302,243 ha) than smallholder plantings (1,105,584 ha).
- In protected forest and conservation areas, smallholder plantings (160,637 ha) cover twice the area of industrial plantations (76,436 ha).
- In limited production forest, smallholder plantings are also more widespread than industrial plantations (299,966 ha and 173,940 ha respectively).

Industrial and smallholder oil palm plantings by forest estate forest category



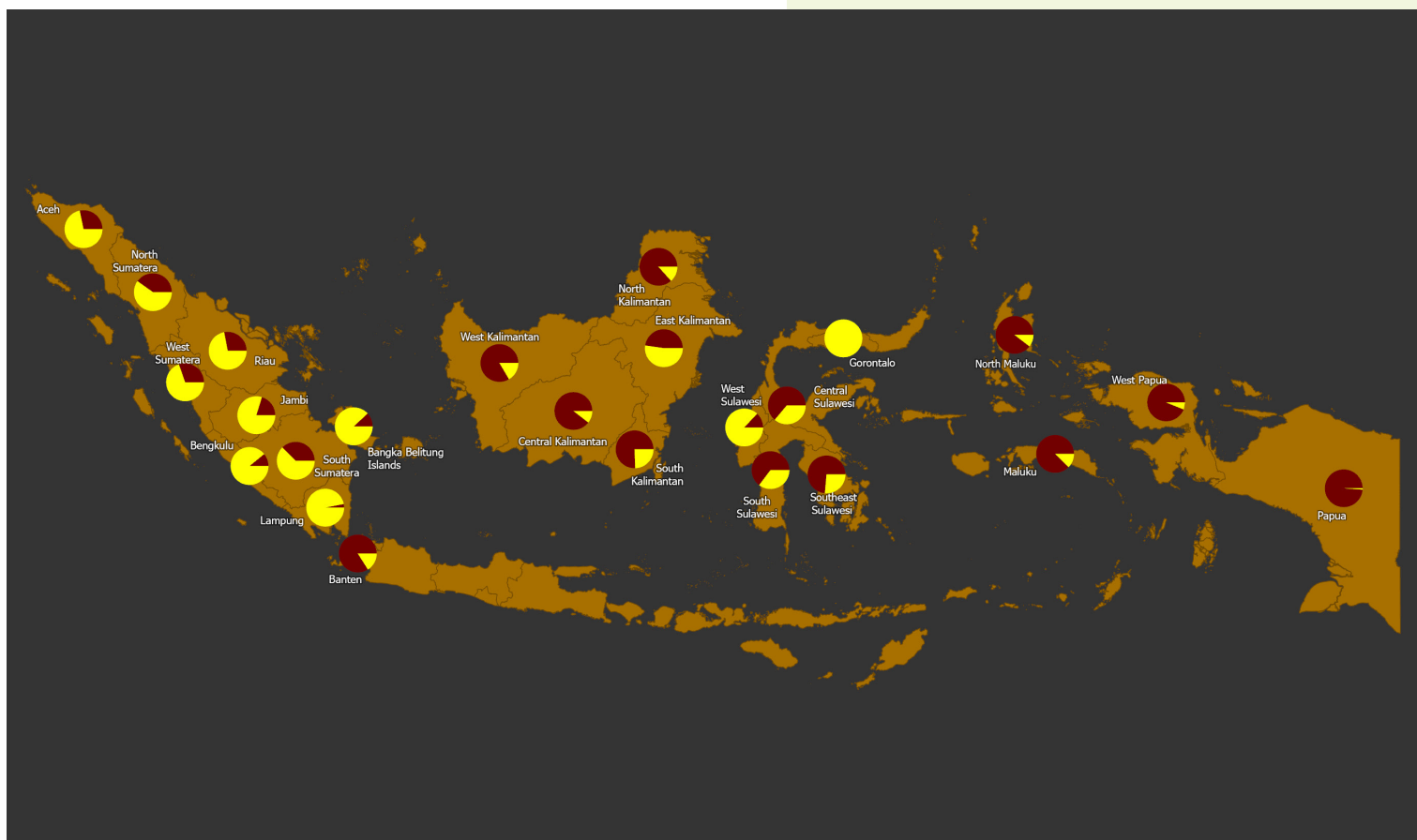
Bearing in mind that under the Forestry Law, palm oil companies have been able to apply for areas of convertible production forest to be released from the forest estate (see discussion in legal section below), then this may explain their predominance in this forest type. Companies may also have taken advantage of a lack of law enforcement to expand

plantations in other types of production forest, despite them not being eligible for forest release. With companies being granted massive land banks outside the forest estate, and expanding even into production forest, some smallholders may have planted in conservation areas for lack of other legal opportunities.

There are also differences in the proportion of industrial and smallholder oil palm plantings in the forest estate across regions:

- In Kalimantan there is over five times more industrial planting (946,450 ha) than smallholder planting (166,687 ha) in the forest estate.
- In Sumatra, the situation is reversed – smallholdings (1,346,610 ha) dominate over industrial (571,454 ha). This may be explained by the much greater overall number of smallholders in Sumatra, regardless of location in or out of the forest estate.⁹⁹
- In Papua, almost all oil palm planting inside the forest estate is industrial (96%), reflecting that the industry is only recently expanding there.

Oil palm plantings within Indonesia's forest estate, industrial plantations (red) vs smallholders (yellow)

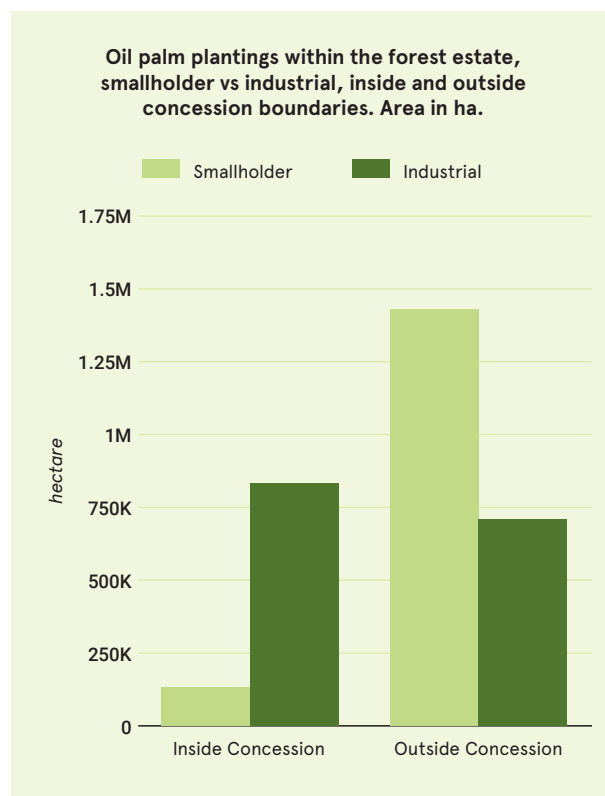


⁹⁹ According to Katadata quoting 2018 data published by the Agriculture Ministry in 2019. 'Jumlah Petani Sawit 2,67 Juta Kepala Keluarga | Databoks'. n.d.



Concession boundaries

Oil palm is planted illegally in forest estate land both inside and outside the boundaries of concession areas¹⁰⁰ issued by local governments. Illegal oil palm within the boundaries of such concessions is unsurprisingly dominated by industrial plantings, which make up 86% of the total 975,281 ha. Outside of concession boundaries however, industrial plantings make up just 33%, with smallholdings making up twice the area for a combined total of 2,143,523 ha. Following the introduction of the Job Creation Law, the door has been opened for companies to retrospectively legalise forest estate plantings outside of concession boundaries, as discussed below.



¹⁰⁰ The issuance of a concession is just one step in the permitting process, as explained in 'Summary of the oil palm plantation permitting process' below.

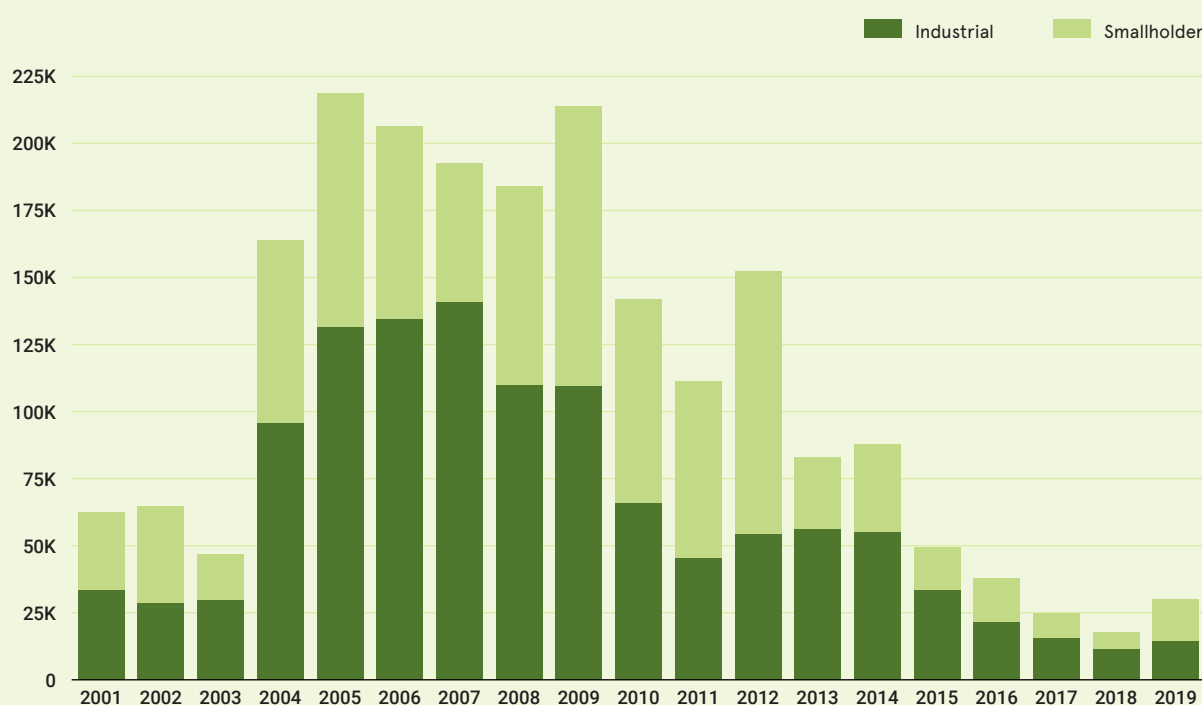
Annual expansion of oil palm plantings in the forest estate

The annual expansion rate of oil palm plantings inside the forest estate¹⁰¹ began rising sharply from 2004, reaching a peak of 219,000 ha per year in 2005. Further spikes in new oil palm planting were recorded in 2009 and 2012, tracking (with a one-year lag) crude palm oil prices, which peaked in 2008 and 2011.¹⁰²

The year 2012 was also when the first 'amnesty' was enacted (see section on amnesties below), providing companies with an opportunity to legalise their plantations by applying to have them released from the forest estate.

The rate of illegal oil palm planting within prospective plantation concessions paused its downward trajectory for two years following the first amnesty. If there is a connection, it may be that oil palm companies perceived the move as further evidence that the central government would not actively enforce forestry laws (see section 'Amnesties for illegal oil palm plantations in the forest estate' below). The rate of new illegal plantings in the forest estate began to fall again from 2015, which was the year Indonesia was struck by especially severe landscape fires triggered by intensely dry climatic conditions, which impacted the viability of oil palm plantations.

Annual expansion of oil palm plantings inside the forest estate, 2001–2019. Area in ha



101 Specifically, in concessions issued by local governments within the national forest estate but without forest release from the national government.

102 Gaveau, David, Bruno Locatelli, Mohammad Salim, Husnayaen Husnayaen, Timer Manurung, Adrià Descals, Arild Angelsen, Erik Meijaard, and Douglas Sheil. 2021. 'Slowing Deforestation in Indonesia Follows Declining Oil Palm Expansion and Lower Oil Prices'.

On the topic of timing of oil palm plantation development, observers have noted that permit issuance often moves in concert with the electoral cycle.¹⁰³ Following decentralisation reforms, Indonesian districts and provinces held 191 elections during four months in 2005.¹⁰⁴ Besides initial plantation permitting steps which require district head approval (location permit and business licence), applications for forest estate release or forest land swaps involve recommendations from the province's governor prior to submission to the

minister in Jakarta. Central Kalimantan NGO Save Our Borneo observed that these recommendations for forest release are often issued when politicians are in need of campaign support and funding. Save Our Borneo reported in 2010 that after a hiatus of several years, the province's governor signed 77 forest release recommendations and 125 forest land swap recommendations within a few days of the electoral commission opening candidate registrations for governor.¹⁰⁵



© Ulet Ifansasti / Greenpeace

Peatland forest freshly cleared by the palm oil company PT Agri Andalas in West Kalimantan. 3 December, 2015. S 78°42' 43" E 109°38' 36.609"

103 The Gecko Project. 2018. 'How Corrupt Elections Fuel the Sell-off of Indonesia's Natural Resources'. 7 June 2018.

104 Mietzner, Marcus. 2007. 'Local Democracy'. Inside Indonesia. 15 July 2007. <https://www.insideindonesia.org/local-democracy>.





105 Nordin & Save Our Borneo 2010. 'Pelepasan Kawasan Hutan Bertendensi Politis'.

Palm oil producer groups with the largest planted area inside the forest estate

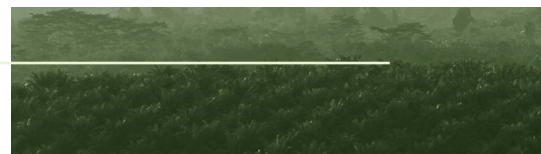
The top 25 palm oil producer groups by planted area inside the forest estate are shown below. There are four palm oil producer groups with around

50,000 ha or more of planted area in the forest estate: Best Agro, Sinar Mas (Golden Agri-Resources), Wilmar and Musim Mas.

Table 5. Top 25 palm oil producer groups by total oil palm planted area inside the forest estate (ha).

No	Group	 Conservation Area	 Protected Forest	 Limited Production Forest	 Permanent Production Forest	 Convertible Production Forest	 Total Planted Area (ha)
1	Best Agro Plantation	539	6,210	1,069	74,003	47,933	129,754
2	Sinar Mas (GAR)	1,989	127	40,462	25,501	4,885	72,965
3	Wilmar	5		627	14,002	39,104	53,739
4	Musim Mas	1,466	7	2,672	5,776	40,012	49,934
5	Citra Borneo Indah			3,565	9,886	32,149	45,600
6	Darmex Agro	770			3,021	41,489	45,280
7	Goodhope	157	390	3,013	23,865	6,776	34,202
8	Torganda	21		8,504		17,548	26,073
9	Tri Bakti Sarimas		3,847	5,349	1,307	8,380	18,883
10	Genting	111	1,393	775	13,113	3,031	18,422
11	Salim/IndoAgri	97	569	5,941	2,895	8,718	18,220
12	Perkebunan Nusantara	35	478	1,029	5,454	11,013	18,008
13	Jardine Matheson (formerly Astra Agro Lestari)	1	281	46	1,244	15,290	16,861
14	Tanoto family/DTK Opportunity				16,229	550	16,779
15	Bumitama		20	11	12,936	3,636	16,603
16	Sime Darby	37		120	7,261	5,152	12,570
17	Makin			5	7,231	4,106	11,342
18	Nurdin Tampubolon Corporation (NT CORP)				3,577	7,666	11,243
19	Tianjin Julong		5,980		3,157	1,905	11,041
20	Kuala Lumpur Kepong (KLK)		584	233	4,748	5,023	10,587
21	Bakrie	172	25		2,869	7,055	10,120
22	Central Cipta Murdaya (Murdaya Family)				10,082		10,082
23	TSH Resources			25	1,726	8,318	10,068
24	Gama	3	206	1,314	4,243	4,117	9,883
25	Dhanistha Surya Nusantara				391	8,871	9,262
Grand Total		5,403	20,116	74,762	254,514	332,727	687,522

Note: Attribution of individual plantation companies into producer groups is based on the Accountability Framework Initiative (AFI) – See Appendix 3.



Oil palm in conservation areas

This analysis has identified a total 90,200 ha footprint of oil palm plantings in forest estate designated as strict conservation areas (*hutan konservasi*). Nationwide, 24 provinces are affected, with the greatest area in the following dozen provinces:

Sumatra;

- Riau 38,827 ha
- South Sumatra 6,773 ha
- North Sumatra 6,514 ha
- West Sumatra 871 ha
- Jambi 3,844 ha
- Bengkulu 2,263 ha
- Bangka Belitung Islands 786 ha

Indonesian Borneo;

- Central Kalimantan 11,618 ha
 - East Kalimantan 9,980 ha
 - West Kalimantan 1,212 ha
 - South Kalimantan 5,509 ha
- and Central Sulawesi 950 ha.

Of oil palm inside conservation areas, industrial plantings dominate in Central Sulawesi, Papua, and Kalimantan's Central, West and South. Elsewhere, notably throughout Sumatra, there is a greater proportion of smallholdings inside conservation areas. The companies with the greatest area of plantings inside conservation areas are listed below.

Table 6. Top 25 companies with oil palm plantings inside conservation areas (planted areas in ha).

No	Company - Group	Planted Area in Conservation Area (ha)
1	PT Sakti Mait Jaya Langit - Mentari	4,490
2	PT Sinar Kencana Inti Perkasa - Sinar Mas (GAR)	1,766
3	PT Berkas Sawit Sejati - Musim Mas	1,466
4	PT Inti Gerak Maju -	828
5	PT Kaliau Mas Perkasa - Darmex Agro	770
6	PT Inti Indosawit Subur - Royal Golden Eagle (RGE)/Asian Agri	683
7	PT Kahayan Agro Lestari - Fri-El	650
8	PT Suryamas Cipta Perkasa - Best Agro Plantation	376
9	PT Mandiri Adi Jaya -	309
10	Koperasi Unit Desa (KUD) Lubuk Indah -	247
11	PT Tapian Nadenggan - Sinar Mas (GAR)	223
12	PT Multi Jayantara Abadi - Teladan Prima	217
13	PT Grahadura Leidongprima - Bakrie	172
14	PT Agro Inti Kencana Mas - Kencana Agri	162
15	PT Agro Indomas - Goodhope	157
16	PT Senabangun Aneka Pertiwi -	129
17	PT Globalindo Agung Lestari - Genting	111
18	PT Agri Andalas -	110
19	PT PP London Sumatra Indonesia (Suka Damai Estate) - Salim/IndoAgri	97
20	PT Bahaur Era Sawit Tama - Best Agro Plantation	89
21	PT Berkah Alam Fajarmas - Best Agro Plantation	74
22	PT Bandar Meriah -	69
23	PT Kurnia Luwuk Sejati -	66
24	PT Sinergi Perkebunan Nusantara -	49
25	PT Mitra Puding Mas - Anglo Eastern	43
Grand Total		13,353

Overleaf we list the conservation areas we have identified that contain palm oil plantations covering more than 100 ha.

Table 7. Conservation areas containing over 100 ha of oil palm plantings.

No	 Conservation Area Name	 Conservation Area Type	 Oil Palm Area (ha)
1	Tesso Nilo	National Park	16,362
2	Balai Raja	Wildlife Sanctuary	11,520
3	Sungai Barito	Nature Reserve and Sanctuary, Game Reserve	9,242
4	Dangku	Wildlife Sanctuary	9,100
5	Teluk Adang	Nature Reserve	5,048
6	PLG Sebangau	Wildlife Sanctuary	4,935
7	Teluk Kelumpang - Selat Laut - Selat Sebuku	Nature Reserve	4,567
8	Bentayan	Wildlife Sanctuary	4,141
9	Sultan Syarif Kasim (Minas)	Grand Forest Park	3,116
10	Karang Gading dan Langkat Timur Laut	Wildlife Sanctuary	2,726
11	Bukit Soeharto	Grand Forest Park	2,347
12	Sultan Thaha Syaifuddin	Grand Forest Park	2,256
13	Sebangau	National Park	1,924
14	Giam Siak Kecil	Wildlife Sanctuary	1,725
15	Holiday Resort	Nature Recreation Park	1,468
16	Kutai	National Park	1,422
17	Gunung Leuser	National Park, World Heritage	1,243
18	Gunung Melintang	Nature Recreation Park	1,117
19	Bangkiriang	Wildlife Sanctuary	802
20	Kerinci Seblat	National Park, World Heritage	717
21	Teluk Apar	Nature Reserve	708
22	Berbak	National Park, Ramsar Wetland of International Importance	691
23	Dolok Surungan	Wildlife Sanctuary	671
24	Sungai Batara	Nature Reserve	660
25	Sembilang	National Park, Ramsar Wetland of International Importance	629
26	Sungai Dumai	Nature Recreation Park	615
27	Rajo Lelo (Pungguk Menakat)	Grand Forest Park	540
28	Teluk Pamukan	Nature Reserve	520
29	Sei Ledong	Nature Reserve	470
30	Lati Petangis	Grand Forest Park	454
31	Gunung Maras	National Park	397
32	Pasar Talo Reg 94	Nature Reserve	355
33	Bukit Tiga Puluh	National Park	297
34	Hutan Pendidikan Tuwanwowi	Educational Forest (Nature Reserve)	256
35	Batang Pangean I	Nature Reserve	235
36	Bukit Barisan Selatan	National Park & Nature Reserve, World Heritage	230
37	Bukit Rimbang Bukit Baling	Wildlife Sanctuary	181
38	Sungai Bulan - Sungai Lulan	Nature Reserve	177
39	Selat Sebuku	Nature Reserve	172
40	Malampah Alahan Panjang	Wildlife Sanctuary	171
41	Air Hitam Reg 102	Nature Recreation Park	151
42	Gunung Mangkol (Bukit Mangkol)	Grand Forest Park	148
43	Rawa Aopa Watumohai	National Park, Ramsar Wetland of International Importance	147
44	Seblat	Nature reserve and sanctuary, game reserves	139
45	Gunung Menumbing	Grand Forest Park	129
46	Danau Dusun Besar	Nature Reserve	118
47	Bukit Dua Belas	National Park	116
48	Rawa Singkil	Wildlife Sanctuary	115
49	Sungai Kapuas	Nature reserve and sanctuary, game reserves	111

Examples from among them are:

- Teluk Adang Nature Reserve, a coastal reserve in East Kalimantan that contains a total of 5,048 ha of oil palm plantings, including 502 ha of industrial oil palm plantation.
- Gunung Leuser National Park, spanning Aceh and North Sumatra. As much as 1,243 ha of oil palm plantings are found in this park, part of a UNESCO World Heritage Site that is home to critically endangered Sumatran orangutans and what UNSECO says is "the longest list of birds in the world".¹⁰⁶
- Tesso Nilo National Park in Riau is famous for its superb biodiversity and was established to protect vital habitat for endangered tigers and elephants. However it has also gained international notoriety¹⁰⁷ for the many thousands of hectares which have been illegally converted into plantations, including oil palm plantings.¹⁰⁸ Conservation organisations say politically-connected local landholding elites are involved in organising extensive illegal oil palm conversion in the park.¹⁰⁹



Tesso Nilo National Park, Sumatra. Young oil palm planted inside the national park, where political connections trump legal protections at the expense of forests. 29 September 2013.

¹⁰⁶ See UNESCO. 2019. 'Gunung Leuser Biosphere Reserve, Indonesia'.

¹⁰⁷ The Years Project. 2014. 'Years of Living Dangerously' In particular actor Harrison Ford's visit to Tesso Nilo National Park.

¹⁰⁸ Environmental Justice Atlas, 2017. 'Oil palm expansion in the protected area Tesso Nilo, Indonesia' 1 June 2017.

¹⁰⁹ InfoSawit. 2017. 'Cukong Kelapa Sawit Kuasai 70% Lahan Tesso Nilo' 23 October 2017.

- Dangku Wildlife Sanctuary in South Sumatra was originally established in 1986 and is home to several species facing extinction including pangolin, sun bears and a small Sumatran tiger enclave, which conservation organisations hope to use to improve regional habitat connectivity.¹¹⁰ However, the area is now severely affected by encroachment including by industrial oil palm plantings.¹¹¹ Despite RSPO-certified plantation PT Berkat Sawit Sejati overlapping into Dangku's northern area, the RSPO recently closed a complaint case on the matter.¹¹²
- Sebangau National Park protects an important peat swamp ecosystem in Central Kalimantan, but is surrounded by oil palm plantations. Our analysis for this report indicates industrial plantings covering 1,787 ha have encroached right into the national park. Encroachment was reported to authorities by the Independent Forest Monitoring Network of Indonesia (JPIK) and Environmental Investigation Agency (EIA) in 2018.¹¹³
- Teluk Kelumpang, Selat Laut and Selat Sebuku ('Kelautku') Nature Reserve in South Kalimantan was established in 1979 and contains a diverse range of ecosystem types. Unfortunately our analysis shows encroachment of a total of 4,567 ha of oil palm plantings into the conservation area, of which 3,896 ha are industrial, the remainder smallholdings. A previous study has found as much as 10% of the park area consumed by oil palm plantations.¹¹⁴
- Gunung Melintang Nature Recreation Park in West Kalimantan contains 1,117 ha of (mostly industrial) oil palm plantings. Park staff have documented clearing and oil palm planting inside the park adjacent to a company concession.¹¹⁵
- Bangkiriang Wildlife Sanctuary in Central Sulawesi contains 802 ha of oil palm, including 634 ha of industrial plantings belonging to two companies. In 2014, activist Eva Bande was sentenced to four years' imprisonment for her part in community protests against the actions of a plantation company operating inside the wildlife sanctuary. Undeterred, community activists have continued to complain – but a government official has recently declined to take criminal proceedings against the company directors, and was quoted as saying: "Now we have the Job Creation Law, right? So, we'll give them administrative sanctions."¹¹⁶

Sungai Sembilang National Park in South Sumatra. This Ramsar Site (Wetland of International Importance) has 629 ha of oil palm encroaching inside its boundary as at end 2019. Photo 28 February, 2012.



110 Adhikerana, Asep S. 2020. 'Connecting Tigers' Habitats in A Multi-Use Landscape: A Case of Sembilang-Dangku Landscape South Sumatra', 1 December 2020.

111 Haris Suprpto. 2021 'Hutan Suaka Margasatwa Berubah Jadi Kebun Sawit' (Wildlife Sanctuary Forest Becomes Oil Palm Plantation), Sumsel Update. 18 October 2016.

112 RSPO. 2021. 'PT Berkat Sawit Sejati (a subsidiary of PT Musim Mas) – Complaint by Hutan Kita Institute (HaKI)'




113 EIA. 2018. 'The Loss of Our Forest and Peatland' 4 September 2018.

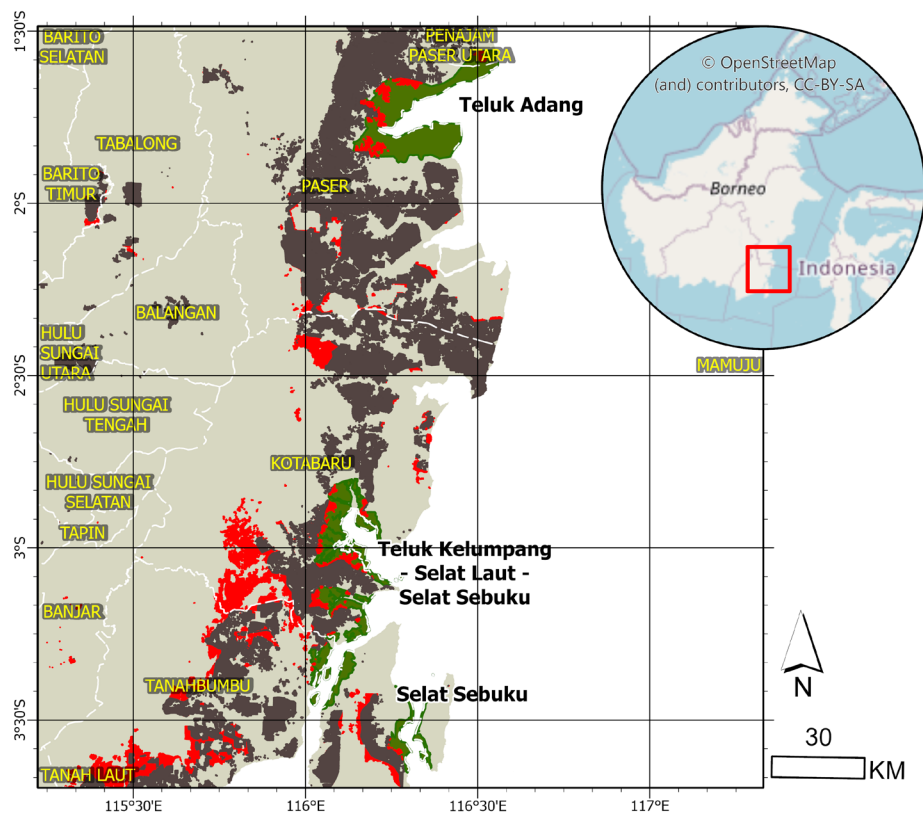
114 Suyanto, Lukito Andi Widyarto, Nikmat Hakim Passaribu, Ujang Acep, Suriansyah. 'Analysis of the uniqueness of physical form of the teluk kelumpang nature reserve which have high potential of biodiversity based on the satellite imagery.' J. Bio. Env. Sci. 10(6), 177-185, June 2017.

115 Kompas. 2012. 'Lagi, Perusahaan Kelapa Sawit Babat Hutan Konservasi'. KOMPAS.com. 6 January 2012.




116 Rusdianto, Eko. 2021. 'Konflik Dengan Warga Belum Usai, Kasus Sawit Di SM Bakiriang Selesai Lewat Kesepakatan Restorasi?' Mongabay.Co.Id. 15 April 2021. The original quote is "Kan sudah ada UU Cipta Kerja itu. Jadi, akan diberikan sanksi administrasi".

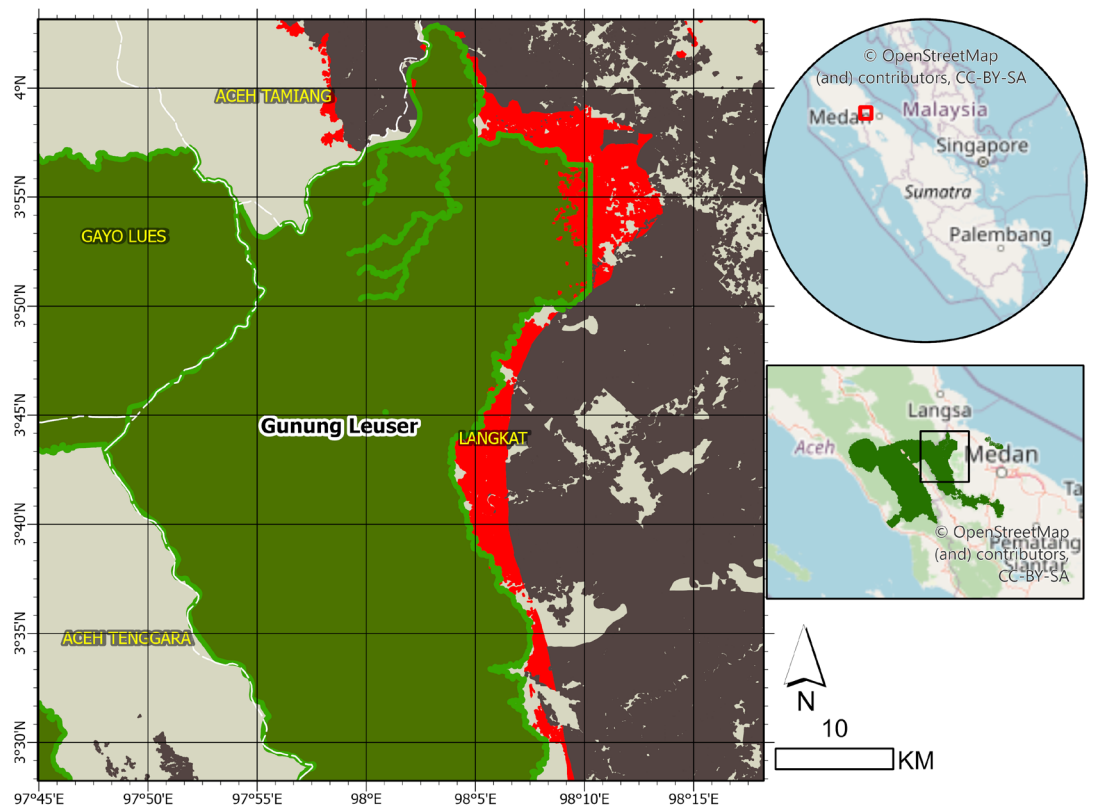
Map shows Teluk Adang and Teluk Kelumpang - Selat Laut - Selat Sebuku nature reserves with oil palm plantings inside the park boundaries.

-  oil palm plantation inside forest estate
-  planted areas outside forest estate
-  conservation area



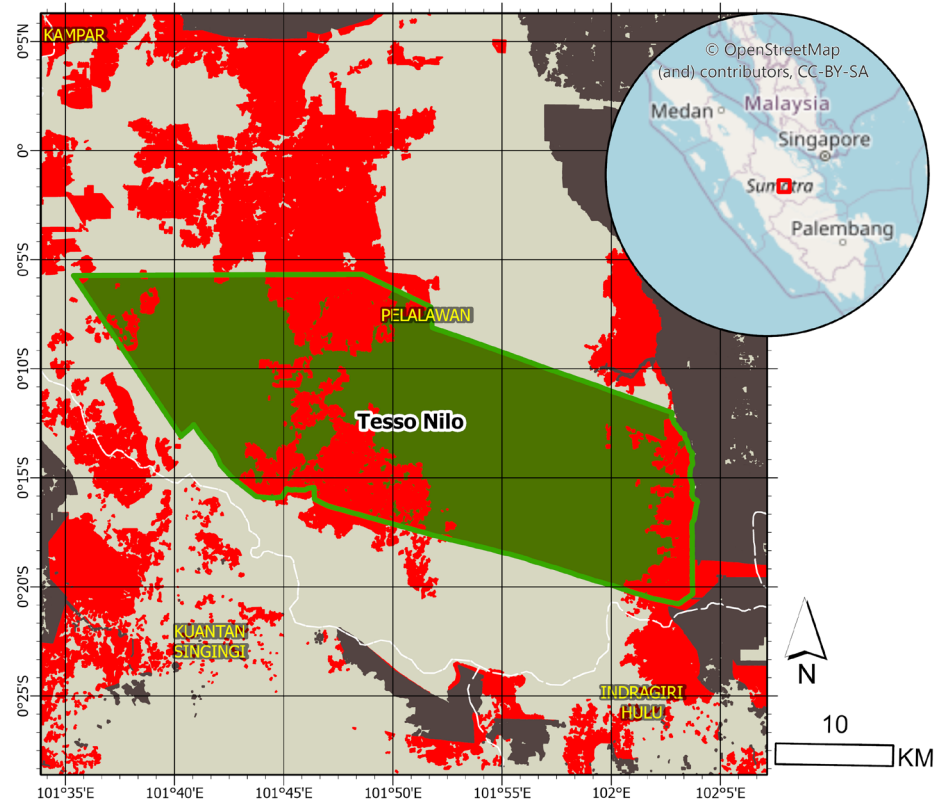
Map shows Gunung Leuser National Park with oil palm inside the park boundaries.

-  oil palm plantation inside forest estate
-  planted areas outside forest estate
-  conservation area







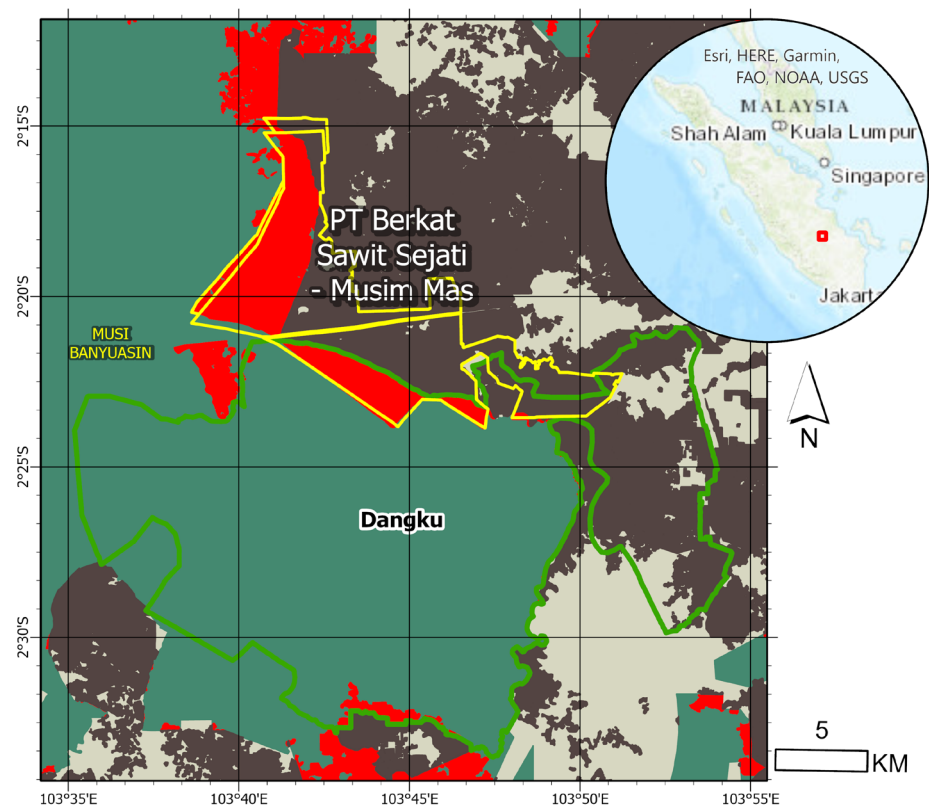
Map shows Tesso Nilo National Park with oil palm plantings inside the park boundaries.

-  oil palm plantation inside forest estate
-  planted areas outside forest estate
-  conservation area



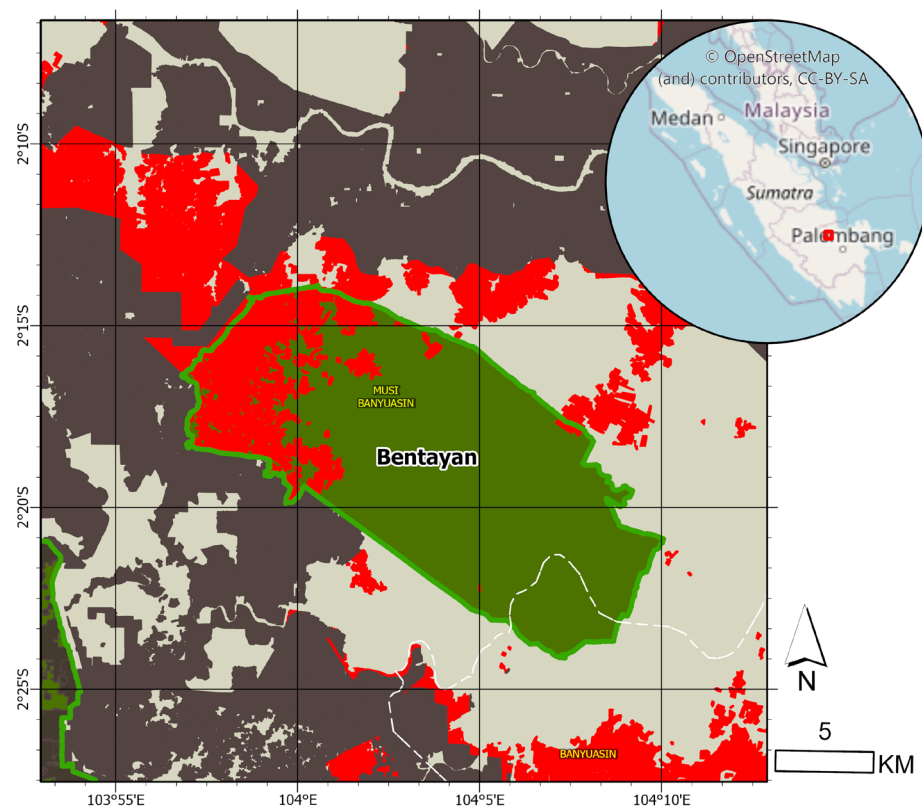
Dangku Wildlife Sanctuary is shown including overlapping oil palm plantings within the concession of Musim Mas Group's PT Berkat Sawit Sejati.

-  concession boundary - BPN and RSPO sources both shown
-  oil palm plantation inside forest estate
-  planted areas outside forest estate
-  conservation area



Map shows Bentayan wildlife reserve with oil palm inside the park boundaries.

- oil palm plantation inside forest estate
- planted areas outside forest estate
- conservation area



Oil palm in critical habitats: tigers, orangutan, elephants and others under threat

Palm oil plantations are eating into the scarce remaining living spaces available in Indonesia for species threatened with extinction. Where oil palm plantations are carved out of forests, much valuable biodiversity is directly lost.¹¹⁷ We have used the spatial analysis data from this report to calculate figures on habitat loss within the forest estate for some of Indonesia's much-beloved megafauna species: orangutan, tigers and elephants.

Besides total area of habitat loss, it is also important to consider habitat fragmentation. Piecemeal

intrusion of oil palm into the forest estate leads to death by a thousand cuts: fragmentation of previously contiguous tracts of forest condemns many plant and animal species to a steady decline.¹¹⁸ This can occur because of interrupted connectivity between remnants and 'edge effects': uncleared forest left standing beside oil palm plantations and along access roads suffers changes in light penetration, invasive species dispersal, microhabitat changes in wind, humidity and temperature, and vulnerability to fires.¹¹⁹

117 Fitzherbert, Emily B., Matthew J. Struebig, Alexandra Morel, Finn Danielsen, Carsten A. Brühl, Paul F. Donald, and Ben Phalan. 2008. 'How Will Oil Palm Expansion Affect Biodiversity?' *Trends in Ecology & Evolution* 23 (10): 538–45.

118 Uryu, Yumiko et al. 2010. 'Sumatra's Forests, Their Wildlife and the Climate, Windows in Time: 1985, 1990, 2000, and 2009'. WWF-Indonesia Technical Report Jakarta Indonesia.

119 Scriven, Sarah A., Graeme R. Gillespie, Samsir Laimun, and Benoît Goossens. 2018. 'Edge Effects of Oil Palm Plantations on Tropical Anuran Communities in Borneo'. *Biological Conservation* 220 (April): 37–49.

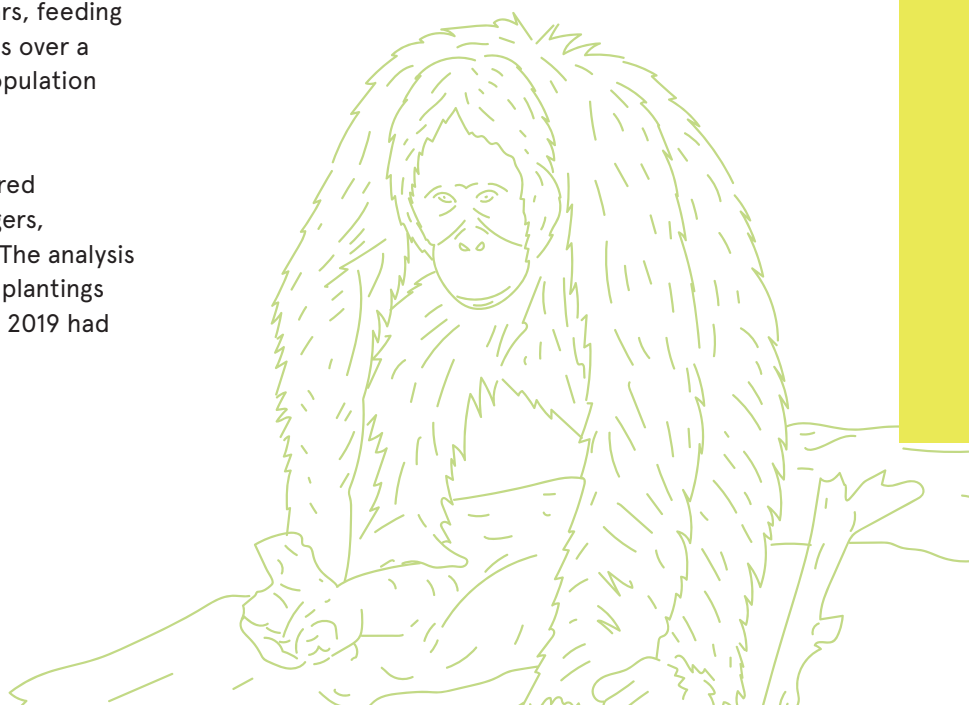
Oil palm's increasing inroads into the habitat of Indonesia's megafauna species also leads to increased conflict with humans, with injury and deaths on both sides, including retaliatory killings of wildlife.

Finally, ecological disruption results where oil palm intrudes into the forest estate. When forest conversion causes key species to disappear, or other species to benefit from the new monoculture plantings, a 'cascade' of sometimes surprising changes impacts plant and animal communities.¹²⁰ In oil palm plantations studied in Sumatra, conversion from rainforest was found to have a negative overall impact on biomass and biodiversity, despite a 'cascading' increase in soil microbe diversity due to fertiliser use.¹²¹ In another example, tree saplings in the understory of a protected forest were devastated when resident wild boars, feeding on fallen oil palm fruits inside plantations over a kilometer away, underwent a massive population boom.¹²²

Specific habitat loss figures for endangered megafauna species such as Sumatran tigers, orangutans and elephants are shocking. The analysis done for this report shows that oil palm plantings in Indonesia's forest estate at the end of 2019 had overrun mapped habitat¹²³ as follows:

Orangutan

- 183,687 ha of forest estate containing mapped orangutan (*Pongo spp.*) habitat¹²⁴ was converted to oil palm plantations by the end of 2019, according to our analysis. Expansion of industrial oil palm plantations has been one of the major causes of orangutan habitat loss over recent decades.^{125,126} Along with direct habitat loss, poaching of orangutans for the illegal pet trade is a major threat. A decade-long study in West Kalimantan found that orangutans inside Gunung Palung National Park were well protected, but that poaching occurred opportunistically in connection with forest clearing, most often for oil palm.¹²⁷



120 Estes, James A., John Terborgh, Justin S. Brashares, Mary E. Power, Joel Berger, William J. Bond, Stephen R. Carpenter, et al. 2011. 'Trophic Downgrading of Planet Earth'. *Science* 333 (6040): 301–6.

121 Barnes, Andrew D., Kara Allen, Holger Kreft, Marife D. Corre, Malte Jochum, Edzo Veldkamp, Yann Clough, et al. 2017. 'Direct and cascading impacts of tropical land-use change on multi-trophic biodiversity'. *Nature Ecology & Evolution* 1 (10): 1511–19.

122 Luskin, Matthew Scott, Justin S. Brashares, Kalan Ickes, I Fang Sun, Christine Fletcher, S. Joseph Wright, and Matthew D. Potts. 2017. 'Cross-Boundary Subsidy Cascades from Oil Palm Degrade Distant Tropical Forests'. *Nature Communications* 8 (1): 2231.

123 All categories of forest estate included: production forest, protected forest, and conservation areas – see boxed text.

124 Map sourced from: Utami-Atmoko, S. et al. 2017. 'Orangutan Population and Habitat Viability Assessment: Final Report'. IUCN/SSC Conservation Breeding Specialist Group.

125 Szantoi, Zoltan, Scot E. Smith, Giovanni Strona, Lian Pin Koh, and Serge A. Wich. 2017. 'Mapping Orangutan Habitat and Agricultural Areas Using Landsat OLI Imagery Augmented with Unmanned Aircraft System Aerial Photography'. *International Journal of Remote Sensing* 38 (8–10): 2231–45.

126 Jonas, Holly, Nicola K. Abram, and Marc Ancrenaz. 2017. 'Addressing the Impact of Large-Scale Oil Palm Plantations on Orangutan Conservation in Borneo'. International Institute for Environment and Development.

127 Freund, Cathryn, Edi Rahman, and Cheryl Knott. 2017. 'Ten Years of Orangutan-Related Wildlife Crime Investigation in West Kalimantan, Indonesia'. *American Journal of Primatology* 79 (11): 22620.

An orangutan drinks water using a plastic sachet as the area is covered by haze from forest fires at Salat island, Palangkaraya, Central Kalimantan. 23 September, 2019.



A solitary rainforest tree remains standing in a recently planted palm oil plantation on former orangutan habitat inside the PT Karya Makmur Abadi Estate II palm oil concession. PT KMA is a part of Bumitama Gunajaya Agro (BGA) Group. 24 February, 2014. S 1°55'46" E 112°26'7"

Elephant

- 18,504 ha of forest estate containing mapped elephant habitat¹²⁸ (includes 12,515 ha of mapped joint elephant and tiger habitat) was converted to oil palm plantations by the end of 2019. The population of Sumatran elephants (*Elephas maximus spp. sumatranus*) is thought to have halved in the wild since 1985, with forest loss the greatest threat to its survival.

Oil palm encroachment into conservation areas has been identified as a key danger for this critically endangered species.¹²⁹ Elephants are increasingly coming into serious conflict with people due to conversion of their habitat, including for oil palm plantations,¹³⁰ resulting in revenge killings or in their removal by government conservation officers.¹³¹

Sumatran elephants in Tesso Nilo National Park. The park has among the world's highest recorded plant diversity and supports key populations of critically endangered Sumatran elephants and tigers. It was designated a national park in 2004, but much of the natural forest in and around the Tesso Nilo has already been replaced by industrial pulp and palm oil plantations. 30 September , 2013. S 0°11'9" E 101°58'27"



© Ardiles Rante / Greenpeace

128 Map sourced from: Uryu, Yumiko et al. 2010. op cit.

129 Uryu, Yumiko et al. 2010. op cit.

130 Abdullah, Abdullah, Arman Sayuti, Hasanuddin Hasanuddin, Muzailin Affan, and Gaius Wilson. 2019. 'People's Perceptions of Elephant Conservation and the Human-Elephant Conflict in Aceh Jaya, Sumatra, Indonesia'. *European Journal of Wildlife Research* 65 (5): 69.

131 Gopala, A., Hadian, O., Sunarto, ., Sitompul, A., Williams, A., Leimgruber, P., Chambliss, S.E. & Gunaryadi, D. 2011. 'IUCN Red List of Threatened Species: *Elephas Maximus Ssp. Sumatranus*'. *IUCN Red List of Threatened Species*, 01 August 2011.

Tiger

- 148,839 ha of forest estate containing mapped Sumatran tiger habitat¹³² (includes 12,515 ha of mapped joint elephant and tiger habitat) was converted to oil palm plantations by the end of 2019. The wild population of critically endangered Sumatran tigers (*Panthera tigris sumatrae*) was put at approximately 600 individuals in the MoEF's 2020 State of Indonesia's Forests report.¹³³ Whereas in the past, poaching was considered the dominant threat to survival of the iconic big cats, the greatest force pushing them closer to extinction in the wild is now thought to be deforestation¹³⁴ with researchers voicing specific concern about the role of oil palm expansion into forest areas.¹³⁵

Forestry officials remove the body of dead Sumatran tiger found trapped in a snare on a PT Arara Abadi pulpwood concession. 1 July, 2011



132 Map sourced from: Uryu, Yumiko et al. 2010. op cit.

133 Ministry of Environment and Forestry, 2021, op. cit.

134 Goodrich, J., Lynam, A., Miquelle, D., Wibisono, H., Kawanishi, K., Pattanavibool, A., Htun, S., Tempa, T., Karki, J., Jhala, Y. & Karanth, U. 2015. *Panthera tigris*. The IUCN Red List of Threatened Species 2015:

135 Luskin, Matthew Scott, Wido Rizki Albert, and Mathias W. Tobler. 2017. 'Sumatran Tiger Survival Threatened by Deforestation despite Increasing Densities in Parks'. *Nature Communications* 8 (1): 1783.

There are of course many other less well-known species facing extinction because of conversion of their forest habitat to oil palm plantations. Few have heard of the East Sumatran banded langur (*Presbytis femoralis percura*), but researchers consider it critically endangered,¹³⁶ with habitat conversion for oil palm expansion identified as a primary threat.¹³⁷

Preventing further reduction and fragmentation of the forest estate, particularly conservation areas and contiguous tracts spanning varying elevations and ecosystems, is also important for keeping options open for future biodiversity conservation. Climate change is likely to force geographical shifts in the range of many threatened species; adaptive shifts will be difficult for less mobile species trapped in fragmented landscapes and unable to disperse.

Despite the impacts mentioned above, there is still a hopeful path forward if what remains of Indonesia's forest estate can be preserved. This should be combined with other strategies to rejuvenate and improve the productivity of smallholder plantations, directing any new smallholder plantings to non-forest or degraded areas with low conservation potential, and ensuring the identification and conservation of patches of forest inside industrial oil palm concessions using the High Carbon Stock Approach.¹³⁸ Modelling suggests that protecting forest fragments, such as those remaining in production forest areas for example, may assist gene flow between conservation areas¹³⁹ and enable

Bornean orangutans to cling to survival within landscapes that have already been substantially impacted by plantations – assuming conflict with humans can be reduced.¹⁴⁰

If enough of the forest estate can be retained, there is even the prospect of attempting to reintroduce species into the historical range from where they have been driven to local extinction. The newly described¹⁴¹ and critically endangered Tapanuli orangutan (*Pongo tapanuliensis*) is currently confined to a dangerously small upland forest enclave, where it faces threats including the Batang Toru Hydropower scheme,¹⁴² with a high likelihood of extinction within several orangutan generations. By examining historical accounts, researchers estimate the remaining population is confined to an area 5% of that which it enjoyed in the 1940s, when the species used to range across lowland swamp and dryland forest habitats.¹⁴³ The long-term viability of the species may depend not just on preventing threats in its current location but on re-establishing it in the range of ecosystems in which it evolved.¹⁴⁴

136 Ang, Andie, Dewi Imelda Roesma, Vincent Nijman, Rudolf Meier, Amrita Srivathsan, and Rizaldi. 2020. 'Faecal DNA to the Rescue: Shotgun Sequencing of Non-Invasive Samples Reveals Two Subspecies of Southeast Asian Primates to Be Critically Endangered Species'. *Scientific Reports* 10 (1): 9396.

137 Rizaldi, Rizaldi, Kurnia Ilham, Irvan Prasetyo, Zan Lee, Sabrina Jabbar, and Andie Ang. 2019. 'Preliminary Study On The Distribution And Conservation Status Of The East Sumatran Banded Langur *Presbytis Femoralis Percura* In Riau Province, Sumatra, Indonesia' 8 (December): 2019.

138 Rosoman, G., Sheun, S.S., Opal, C., Anderson, P., and Trapshah, R., eds. 2017. 'The HCS Approach Toolkit'. Singapore: HCS Approach Steering Group. Also see the High Carbon Stock Approach website.

139 Ancrenaz, Marc, Felicity Oram, Nardiyono Nardiyono, Muhammad Silmi, Marcie E. M. Jopony, Maria Voigt, Dave J. I. Seaman, et al. 2021. 'Importance of Small Forest Fragments in Agricultural Landscapes for Maintaining Orangutan Metapopulations'. *Frontiers in Forests and Global Change* 4: 5.

140 Seaman, Dave J. I., Maria Voigt, Greta Bocedi, Justin M. J. Travis, Stephen C. F. Palmer, Marc Ancrenaz, Serge Wich, et al. 2021. 'Orangutan Movement and Population Dynamics across Human-Modified Landscapes: Implications of Policy and Management'. *Landscape Ecology* 36 (10): 2957–75.

141 Nater, Alexander, Maja P. Mattle-Greminger, Anton Nurcahyo, Matthew G. Nowak, Marc de Manuel, Tariq Desai, Colin Groves, et al. 2017. 'Morphometric, Behavioral, and Genomic Evidence for a New Orangutan Species'. *Current Biology* 27 (22): 3487–3498.e10.

142 IUCN Section on Great Apes. 2020. 'Batang Toru Hydropower Project. Factcheck and References on Key Issues'. IUCN/SSC Primate Specialist Group; 2020

143 Meijaard, Erik, Safwanah Ni'matullah, Rona Dennis, Julie Sherman, Onrizal, and Serge A. Wich. 2021. 'The Historical Range and Drivers of Decline of the Tapanuli Orangutan'. *PLOS ONE* 16 (1): e0238087.

144 *Ibid.*

Oil palm in protected forest

Nationwide, we have found 146,871 ha of oil palm planted in protected forest (*hutan lindung*), in breach of forestry law. Protected forest is important for safeguarding water catchments, preventing erosion, and is a substantial store of carbon and biodiversity. The table overleaf shows the companies with the greatest area of plantings inside protected forests.

A family wades through the floods in Katingan Hilir, Katingan District, Central Kalimantan on 7 Sep, 2021. Floods submerged 15,439 houses in Katingan district, Central Kalimantan province, according to Indonesia's National Disaster Management Agency (BNPB). Local organisations pointed to forest clearing for plantations as a likely contributing factor in the floods.



Table 8. Top 25 companies with oil palm plantings inside protected forest (areas in ha)

No	Company - Group	 Planted Area in Protected Forest (ha)
1	PT Graha Inti Jaya - Tianjin Julong	4,306
2	PT Suryamas Cipta Perkasa - Best Agro Plantation	3,387
3	PT Tribakti Sari Mas - Tri Bakti Sarimas	2,905
4	PT Rezeki Kencana - Tianjin Julong	1,672
5	PT Bahaur Era Sawit Tama - Best Agro Plantation	1,620
6	PT Sakti Mait Jaya Langit - Mentari	1,571
7	PT Globalindo Agung Lestari - Genting	1,217
8	PT Tri Bakti Sarimas II - Tri Bakti Sarimas	941
9	PT Berkah Alam Fajarmas - Best Agro Plantation	915
10	PT Padasa Enam Utama -	498
11	PT Steelindo Wahana Perkasa - Kuala Lumpur Kepong (KLK)	451
12	PT Batu Mas Sejahtera - Goodhope	387
13	PT Indah Pontjan -	345
14	PT Karya Luhur Sejati - Best Agro Plantation	288
15	PT Riau Agrotama Plantation - Salim/IndoAgri	275
16	PT Kebun Ganda Prima - Salim/IndoAgri	268
17	PT Pasangkayu - Jardine Matheson (formerly Astra Agro Lestari)	267
18	PT Sinergi Perkebunan Nusantara -	234
19	PT Perkebunan Nusantara V (PIR Sei Siasam) - Perkebunan Nusantara	229
20	PT Mitra Aneka Rezeki - Pasifik Agro Sentosa	216
21	PT Mitra Sawit Kumala Abadi -	212
22	PT Perkebunan Nusantara XIII (Block Pleihari) - Perkebunan Nusantara	209
23	PT Perkebunan Nusantara V (Sei Tapung) - Perkebunan Nusantara	184
24	PT Rebinmas Jaya - Delloyd Venture	166
25	PT Sepanjang Inti Surya Utama - Genting	161
Grand Total		22,924

Carbon emissions from forest estate cleared for oil palm

Undisturbed (or 'primary') tropical forests contain high amounts of carbon, both above ground and in the soil. Oil palm plantations embody much less carbon both above and below ground,¹⁴⁵ so when primary forest is cleared to make way for oil palm, high amounts of carbon are lost. Clearing for oil palm plantations in disturbed (or 'secondary') forests – those that have been subjected to selective logging – emits a lesser, but still substantial amount of carbon into the atmosphere.¹⁴⁶

A thorough study by Guillaume et al¹⁴⁷ in Sumatra (Jambi province) recently estimated the carbon emissions resulting from typical forest conversion for oil palm plantations on mineral soil. The researchers did this by comparing the carbon stock found in rainforest (slightly affected by selective logging and non-timber rainforest product harvesting) with oil palm plantations (smallholder monoculture) in comparable physical conditions. Examining biomass both above and below ground, the study estimated that conversion from rainforest to oil palm plantation resulted in the net loss of 173.5 metric tons of carbon per hectare (173.5 Mg C/ha).

Guillaume et al's figure of 173.5 Mg C/ha is an important addition to knowledge about the carbon lost from Indonesia's forest estate through conversion to oil palm. It cannot necessarily be applied nationwide however, because in some locations conversion to oil palm will result in

significantly greater emissions – for example, on high-carbon peat soils (even in logged peat forest)¹⁴⁸ – while in other locations lower carbon stock forests will yield lower net carbon emissions.

In order to create a rough carbon loss estimate for this study, we began with averaged figures for above ground biomass (AGB) across primary dryland forest and primary swamp forest, in each of the five major islands discussed in this report, taken from Indonesia's 2015 National Forest Reference Emission Level submission to the United Nations Framework Convention on Climate Change (UNFCCC).¹⁴⁹ The carbon fraction was assumed to be 47% of AGB, following the 2006 Intergovernmental Panel on Climate Change (IPCC) Guidelines,¹⁵⁰ yielding the following island-specific forest carbon per hectare figures:

- Kalimantan – 128 Mg C/ha
- Sumatra – 115 Mg C/ha
- Maluku – 142 Mg C/ha
- Papua – 98 Mg C/ha
- Sulawesi – 115 Mg C/ha



145 Rahman, Niharika, Andreas de Neergaard, Jakob Magid, Gerrie W. J. van de Ven, Ken E. Giller, and Thilde Bech Bruun. 2018. 'Changes in Soil Organic Carbon Stocks after Conversion from Forest to Oil Palm Plantations in Malaysian Borneo'. *Environmental Research Letters* 13 (10): 105001.

146 The shortfall in soil organic carbon between forest and oil palm plantation becomes less significant half a century after conversion. Lucey, Jennifer, Fahmuddin Agus, Jane Hill, Peter van der Meer, Alterra Wageningen, and Glen Reynolds. 2014. 'Change in Carbon Stocks Arising from Land Use Conversion to Oil Palm Plantations'. Oil palm Research-Policy Partnership Network.

147 174 Mg C/ha. Guillaume, Thomas, Martyna M. Kotowska, Dietrich Hertel, Alexander Knohl, Valentyna Krashevskaya, Kukuh Murti Laksono, Stefan Scheu, and Yakov Kuzyakov. 2018. 'Carbon Costs and Benefits of Indonesian Rainforest Conversion to Plantations'. *Nature Communications* 9 (1): 2388.

148 McCalmont, Jon, Lip Khoon Kho, Yit Arn Teh, Kennedy Lewis, Melanie Chocholek, Elisa Rumpang, and Timothy Hill. 2021. 'Short- and Long-Term Carbon Emissions from Oil Palm Plantations Converted from Logged Tropical Peat Swamp Forest'. *Global Change Biology* 27 (11): 2361–76.

149 See Table 2 in Ministry of Environment and Forestry Indonesia, 2015. 'National Forest Reference Emission Level for Deforestation and Forest Degradation' Directorate General of Climate Change.

150 IPCC. 2006. 'Chapter 4: Forest land.' In S. Eggleston, L. Buendia, K. Miwa, T. Ngara & K. Tanabe (Eds.), *2006 IPCC Guidelines for National Greenhouse Gas Inventories*. (Vol. 4): *Agriculture, Forestry and Other Land Use*. Hayama: IPCC/IGES

These figures do not include below ground carbon losses, and are conservative by comparison with Guillaume et al's 173.5 Mg C/ha figure from Jambi study plots.

Having obtained island-specific forest carbon figures, we then used the primary humid tropical forests dataset published by the University of Maryland¹⁵¹ to calculate the area of primary forest cover converted to oil palm within Indonesia's forest estate during 2000–2019 for each island. This area of lost primary forest, which totalled 870,995 ha nationally, is more conservative than if we had also included areas of the forest estate that have been degraded and are now secondary forests.

Using each island's total, and the island-specific forest carbon figures, we arrived at a national estimate: 104 Tg (million metric tons) primary forest carbon lost to oil palm within Indonesia's forest estate between 2001–2019.

This is equivalent to 33 times the annual carbon emissions from powering all the homes in Jakarta,¹⁵² or 60% of the annual emissions of international aviation.¹⁵³

A Dayak Ngaju man tries to extinguish smouldering peatland inside the oil palm concession of PT Globalindo Agung Lestari in Mantangai, Kapuas district, Central Kalimantan. 12 Sep, 2019. S 2°29'21.64" E 114°34'39.61"



151 Turubanova, Svetlana, Peter V. Potapov, Alexandra Tyukavina, and Matthew C. Hansen. 2018. 'Ongoing Primary Forest Loss in Brazil, Democratic Republic of the Congo, and Indonesia'. *Environmental Research Letters* 13 (7): 074028.

152 Based on Indonesian government's emissions factors for electricity generation: ESDM, 2019 'Faktor Emisi Grk Sistem Ketenagalistrikan Tahun 2019' and Jakarta government electricity consumption figures: Sectoral Statistics Portal 'Perindustrian & Energi' 30 June 2020.

153 European Commission website 'Fossil CO₂ and GHG emissions of all world countries, 2019 report' Note that the figures provided there are CO₂ emissions and must be multiplied by 12/44 to convert to carbon equivalent.

INDUSTRIAL OIL PALM PERMITTING AND ILLEGALITY IN THE FOREST ESTATE

Indonesia's MoEF is responsible for managing and protecting most of Indonesia's designated forest areas, formalised in the post-colonial period via the 1967 Forestry Law¹⁵⁴ as the national 'forest estate' (*kawasan hutan*).¹⁵⁵ The general protection implicit in the 1967 law was strengthened in the subsequent 1999 Forestry Law, which makes explicit that plantations for commodities such as palm oil are illegal in the forest estate, providing penalties of 10 years' imprisonment and fines of up to IDR 5 billion (increased by amendment in 2020 to up to IDR 7.5 billion), equivalent to USD 350,000 (increased to USD 525,000).¹⁵⁶

In 2013 the Law on Prevention and Eradication of Forest Destruction was introduced in recognition of the continuing deforestation problem. In its preamble, the law states that "forest destruction,

especially in the form of unlicensed logging, mining and plantation development has caused state losses, damaged socio-cultural and environmental life, as well as driving global warming, to the extent that it has become a national, regional and international issue".¹⁵⁷ Under this 2013 law, the prohibition on plantations in the forest estate is set out more explicitly,¹⁵⁸ and transgressing plantation companies face administrative sanctions, permit freezing or cancellation and fines of IDR 20 billion–50 billion (USD 1.4 million–3.5 million) along with prison terms for company officers ranging from a minimum 8 years up to 20 years.¹⁵⁹ Criminal sanctions also apply to officers of companies that transport, process, trade or market plantation products – such as oil palm fresh fruit bunches or palm oil – encompassing fines of up to IDR 15 billion and prison terms of between 5–15 years.¹⁶⁰

154 Forestry Law (5/1967) / Undang Undang Nomor 5 Tahun 1967 tentang Ketentuan-Ketentuan Pokok Kehutanan

155 A successful legal challenge by Indigenous peoples in the Constitutional Court has established that customary forests (*hutan adat*) continue to belong to traditional owners, and are not therefore state forests. Such customary forests may still be classed as forest estate, since forest estate is considered to include both state forest (*hutan negara*) and forest subject to land claims (*hutan hak*). See Constitutional Court decision No. MK35/PUU-X/2012.

156 Forestry Law (5/1967) Articles 1 and 4; and Forestry Law (41/1999) Article 1(c) and Article 38 state that the forest estate must be maintained permanently as forest. Article 50(2)(a) [prior to 2020 revision, 50(3)(b)] prohibits encroachment on the forest estate. Prior to the 2020 amendment, Article 50(3)(e) prohibited the felling of trees in the forest estate without permission. Article 78 sets out criminal sanctions relating to these prohibitions.

157 Law on Prevention and Eradication of Forest Destruction (UU 18/2013) Preamble, paragraph (d). "bahwa perusakan hutan, terutama berupa pembalakan liar, penambangan tanpa izin, dan perkebunan tanpa izin telah menimbulkan kerugian negara, kerusakan kehidupan sosial budaya dan lingkungan hidup, serta meningkatkan pemanasan global yang telah menjadi isu nasional, regional, dan internasional;"

158 Law on Prevention and Eradication of Forest Destruction (UU 18/2013) Article 12; Article 17(2)(b).

159 Law on Prevention and Eradication of Forest Destruction (UU 18/2013) Article 18; Article 92(2). Fines may be increased by an additional one third for companies.

160 Law on Prevention and Eradication of Forest Destruction (UU 18/2013) Article 93(3). Fines may be increased by an additional one third for companies.

Note that although all of the forest estate (which includes national parks and other conservation areas) is legally protected from plantation development, there are also other areas legally protected from plantations, such as certain peat ecosystems.

If a company wishes to develop an oil palm plantation on land which is part of the forest estate, the law says it must apply to the Minister for Environment and Forestry to 'release' the area from the forest estate. This is possible in convertible production forest (*hutan produksi konversi*), and where the company first gains approval from local government, landowners (including Indigenous people) and via an environmental impact study. (See box for details of the permitting process.) Plantations in the forest estate without this 'forest release' or which are inside other non-convertible or conservation forest areas, are illegal, and are the subject of the data set out in this report.



Oil Palm plantation owned by PT Karya Makmur Bahagia (IOI Group).
17 May, 2009. S 01°33'59.3" E 112°42'49.8"



Summary of the oil palm plantation permitting process

The permitting process for plantations is complicated and involves obtaining a series of different permits, approvals and decrees from both local and central government, in a set sequence. For the sake of simplicity, this guide explains the main steps that were in force from 2007 until 2018. Similar steps were in place prior to 2007, including the requirement for the (then) Forestry Minister to release areas from the forest estate before plantations could be developed.¹⁶¹ In July 2018 the government overhauled the permitting system across all sectors by introducing the Online Single Submission process,¹⁶² which made several important changes not discussed below. Further changes were introduced in the 2020 Job Creation Law, which abolished the concept of an environmental permit.

- The first step for a company intending to develop a plantation was to obtain a location permit (*Izin Lokasi*), normally issued by a *bupati* (the head of a district),¹⁶³ which constituted a prospective allocation of land to the company. The land needed to be within an area where the district spatial plan allowed plantation development.¹⁶⁴ The location permit was valid for three years, and was renewable for a further year under certain conditions.¹⁶⁵ During this period the would-be plantation company was expected to obtain landholders' permission and the other permits it needed (detailed below), at which point it could apply for land cultivation right (*Hak Guna Usaha* – HGU) to secure its tenure for the lifetime of the plantation, and a location permit would no longer be needed.
- In-principle approval for a plantation business permit (*Izin Usaha Perkebunan* – IUP) was then issued at the district level. This approval signalled that the issuing authority was prepared to grant an IUP provided that the company met the requirements for this (see below).
- According to the 2014 Plantation Law the consent of Indigenous groups holding customary rights over land in the concession was also required before an IUP could be issued; this was to be given through a participatory decision-making process (*musyawarah*). Prior to 2014, the (2004) Plantation Law had also required Indigenous landowners' consent to be given via *musyawarah*, but did not state explicitly that this was a condition for an IUP.
- Where land within a prospective plantation concession fell within the forest estate, the MoEF (or until 2014 the Ministry of Forestry)¹⁶⁶ was therefore required to signal that it was prepared to release the land from the forest estate, thereby allowing its conversion to a plantation. The first stage in this process was the issuing of an in-principle approval letter.

161 Via instruments such as the Joint Decree of the Minister for Forestry, Minister for Agriculture and Head of the National Land Agency Number 23/VIII/1990 concerning Provisions for Release of Forest Areas and Granting of Cultivation Rights for Agricultural Business Development.

162 Introduced with Government Regulation 24/2018 concerning electronically integrated business licensing

163 If the location permit included land from two or more districts, then it had to be issued by the province's governor.

164 Government Regulation 15/2010 on Implementation of Spatial Planning Articles 160, 163(1)(b) and 165(1).

165 A one-year extension could be issued only if a company had fulfilled the regulatory requirement of obtaining land rights over more than 50% of the location permit area, per Article 5 of Regulation of the Minister for Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia 5/2015 concerning location permits. This requirement was also present in the previous version of this regulation (1999) and remains in force in later versions (2017, 2018, 2019) of the regulation.

166 Until 2014, there were separate ministries for forestry and the environment.

- Once the relevant levels of government had signalled their in-principle agreement, the company would engage consultants to prepare an environmental impact assessment (EIA), to be evaluated by a commission appointed by the district or provincial administration. This was a two-stage process, with approval being given first to the frame of reference (*Kerangka Acuan*), and then to a detailed impact assessment and management plan. If the commission approved the EIA, it then passed its decision on to the bupati, who issued an environmental permit (*Izin Lingkungan*).
 - The next key step was to apply for the plantation business permit (IUP) for which the company had already received in-principle approval. Under national law these were to be issued by the district government if located in a single district or the provincial governor if in more than one district. To obtain this vital document a company had to present an environmental permit and proof that the company met legal and administrative requirements.
 - Once the company had obtained its IUP, the MoEF could decide to release some or all of its concession area from the forest estate. In 2016 the rules changed and the land could be released if the company held an environmental permit, even if it had not yet obtained an IUP. Another important condition for forest release was that a physical boundary survey had to have taken place.
 - Land cultivation right (HGU) could be issued by the National Land Agency once the company held a valid IUP, its land had been released from the forest estate and it had presented proof that it had reached a settlement with landholders, including customary rights holders. This leasehold title gave a company the right to cultivate the nominated crop for 35 years with the possibility of an additional extension of 25 years, although there were conditions under which HGU could be revoked, including inactivity.
- Some companies chose to operate as if it were legal to run a plantation without HGU, claiming that an IUP was sufficient. This was contrary to a requirement in the plantation regulations from 2007 onwards that companies must secure land title (which for a plantation company could only be in the form of HGU),¹⁶⁷ and also to requirements in the Indonesian Sustainable Palm Oil (ISPO) standard, mandatory for industrial-scale plantation companies since 2015.¹⁶⁸ This was further clarified in 2015 by a decision of the Constitutional Court, which made it clear that both HGU and IUP were legal requirements.¹⁶⁹ Nevertheless, many plantations around Indonesia continued to operate without HGU.
- If a company cleared forest for a plantation, and wished to sell the timber, it had to apply for a timber utilisation permit (*Izin Pemanfaatan Kayu – IPK*) from the provincial Forestry Agency.¹⁷⁰

167 Article 34(a) in Regulation of the Minister for Agriculture 26/2007 concerning guidelines for plantation business licensing. The requirement to secure land title (which for a plantation company means HGU) is carried on in the later version of this regulation (Minister for Agriculture (2013), Articles 40(2) and 59) and was retained in amendments in 2016 and 2017.

168 Criterion 1.4, p.41, Regulation of the Minister for Agriculture 11/2015 concerning the Indonesian Sustainable Palm Oil (ISPO) certification system.

169 See Constitutional Court ruling in Decision No. 138/PUU-XIII/2015.

170 Regulation of the Minister for Forestry 14/2011 concerning timber utilisation permits.

Amnesties for illegal oil palm plantations in the forest estate

Where companies develop plantations in the forest estate, the government should ensure forest conservation goals are prioritised by enforcing legal sanctions. While there have been a handful of prosecutions for developing plantations in the forest estate, they are far outnumbered by cases where plantations have been ignored. And when it comes to downstream industry, Greenpeace has been unable to find any examples of legal enforcement against palm oil mills or palm oil traders dealing with the proceeds of illegal plantations in the forest estate.

Instead, the government provided a series of amnesties for companies to 'normalise' their illegal plantations and avoid administrative or criminal sanctions. This was based on the rationale that while some plantations were brazenly operating entirely outside of both local and national spatial plans and permitting regulations, a number of others were operating in a 'pseudolegal' space, and had been allowed to continue with the approval of local authorities despite violation of national laws.

Government inaction on illegal oil palm plantations culminated in a substantial capitulation in 2021, when in August plans were announced to legalise an estimated 1.2 million ha in Riau alone.¹⁷¹ Comments from officials in the province indicate that they plan to apply the new law to legalise all plantations across the board where possible, and to obtain payments from more problematic plantations before allowing them to continue operations for one planting cycle (see below).

Brief legal history of corporate oil palm plantations in the forest estate

The spread of oil palm plantations inside the forest estate came to pass via a power struggle between the central and provincial governments over authority and procedures for land permits. A failure during the first decade of the millennium to harmonise approaches at the national and regional levels, particularly in Riau and Central Kalimantan, gave rise to many plantations inside the forest estate which rest on locally issued spatial plans and permits, yet are illegal under national forest and plantation laws.

The introduction of a permanent forest estate via Indonesia's 1967 Forestry Law was followed by the national government's declaration and mapping of 142 million ha of the forest estate via 'Forest Use Agreement Plans' (known by the Indonesian term *Tata Guna Hutan Kesepakatan* – TGHK) from 1982–1983.¹⁷²

Some provincial governments pushed back against the central government's forest estate declaration. Notably in Central Kalimantan, where the central government's 1982 TGHK map had allocated 15.3 million ha as forest estate,¹⁷³ the provincial government produced its own spatial plans beginning in 1993, designed to allow a much greater area for forest conversion to uses including oil palm plantations.¹⁷⁴ The national government did not endorse the provincial government's competing maps; however the Ministry of Forestry's Planology

171 Arif Gunawan. 2021. 'Dinas LHK Riau Bakal Eksekusi 1,2 Juta Hektare Perkebunan Ilegal'. *Bisnis.com*. 25 August 2021.

172 Maryudi, Ahmad. 2015. 'The Political Economy of Forest Land-Use, the Timber Sector, and Forest Certification'. *The Context of Natural Forest Management and FSC Certification in Indonesia*, January, 9–34.

173 SK 759 Tahun 1982 tentang Tata Guna Hutan Kesepakatan (TGHK). This was introduced by the Ministry of Agriculture, which was the responsible agency prior to the creation of the Ministry of Forestry.

174 Setiawan, Eko N., Ahmad Maryudi, Ris H. Purwanto, and Gabriel Lele. 2016. 'Opposing Interests in the Legalization of Non-Procedural Forest Conversion to Oil Palm in Central Kalimantan, Indonesia'. *Land Use Policy* 58 (December): 472–81.

department felt pressured to compromise and in the spirit of decentralisation issued a letter in late 2000 (No.778/VIIIKP/2000) dealing with the issue in Central Kalimantan. The letter said that where the Central Kalimantan government's spatial plan designated areas as 'Production Development' (*Pengembangan Produksi*) or 'Residential and Other Uses' (*Kawasan Pemukiman dan Penggunaan Lain*) then a forest release letter from the minister would not be required for plantations.¹⁷⁵

Six years later on 12 September 2006, the minister revoked the Planology head's letter,¹⁷⁶ stating that the decision was effective retrospectively. By this time however, local district heads across Central Kalimantan had each issued scores of plantation permits within the forest estate without recourse to the Forestry Minister – who had now explicitly stated that the permits were unlawful.¹⁷⁷ Months of back and forth (consisting of seven letters) ensued over 2006–2007 between the Governor of Central Kalimantan and the Ministry of Forestry, with the former insisting that the province could continue with unilateral forest conversion to plantations, and the latter reiterating that only the ministry had the right to release land from the forest estate.¹⁷⁸

On 26 April 2007, a new Law on Spatial Planning (26/2007) was enacted, mandating the creation of harmonised spatial plans between all levels of government. In Central Kalimantan, the Governor acknowledged the new law on 3 July 2007 by

instructing district heads (*bupati*) to halt further issuance of permits inside the forest estate pending formal resolution of the spatial planning conflict between central and provincial governments (via letter No.522.11/1089/EK).

During the following years, a handful of prosecutions were launched by the Ministry of Forestry and the National Police against plantation companies which relied on local spatial plans to continue operations inside the forest estate.¹⁷⁹

In 2011, a group of plaintiffs made up of business and local government interests from Central Kalimantan responded by petitioning the Constitutional Court to resolve the conflict between local and national forest plans (Case No. 45/PUU-IX/2011). They argued, and won, the case that the central government could not unilaterally designate forest estate boundaries, particularly where existing property rights were affected. The Constitutional Court delivered this judgement on 21 February 2012, meaning the national government therefore had to change tack and reach an accommodation on conflicting national forest estate maps and provincial spatial planning. It attempted to do this via the first amnesty introduced later the same year, as discussed below.

175 Setiawan, Eko N., Ahmad Maryudi, Ris H. Purwanto, and Gabriel Lele. 2017. 'Konflik Tata Ruang Kehutanan Dengan Tata Ruang Wilayah (Studi Kasus Penggunaan Kawasan Hutan Tidak Prosedural Untuk Perkebunan Sawit Provinsi Kalimantan Tengah)'. *BHUMI: Jurnal Agraria Dan Pertanahan* 3 (1): 51–66.

176 Via Decision No. 575/Menhut-II/2006.

177 Setiawan, Eko N., Ahmad Maryudi, Ris H. Purwanto, and Gabriel Lele. 2016, op. cit.

178 Galudra, Gamma, Meine Van Noordwijk, S. Suyanto, I. Sardi, and Ujjwal Pradhan. 2011. 'Hot Spots of Confusion: Contested Policies and Competing Carbon Claims in the Peatlands of Central Kalimantan, Indonesia'. *International Forestry Review* 13 (December): 431–41.

179 Setiawan, Eko N., Ahmad Maryudi, Ris H. Purwanto, and Gabriel Lele. 2016, op. cit.

First amnesty – 2012

The first amnesty was created on 6 July 2012 by the issuance of Government Regulation Number 60 of 2012 (PP 60/2012) amending Government Regulation (PP 10/2010) on Change of Designation and Function of Forest Areas. This amendment introduced transitional articles into Indonesia's forestry law framework, creating a six-month opportunity (until the beginning of 2013) for companies to apply to the Minister for Forestry for 'convertible production forest' (*hutan produksi yang dapat dikonversi* – HPK) land included in their plantation licences to be released from the forest estate.¹⁸⁰ Companies operating plantations in 'permanent production forest' (*hutan produksi tetap* – HP) or 'limited production forest' (*hutan produksi terbatas* – HPT) were given a six-month opportunity to propose a forest land swap arrangement which, if approved by the minister, was to be carried out within a two-year time limit.¹⁸¹

These applications were allowed under the specific conditions that (a) local government had issued a plantation licence; and (b) the licence was issued in accordance with regional spatial plans created independently of the national government, prior to the Spatial Planning Law (26/2007), which was intended to ensure joint local and national spatial planning.

The terms of the first amnesty simply provided a six-month window during which companies that met the specified criteria could apply to the minister; and based on such applications forest release could be issued at the minister's discretion.¹⁸² There is no language in the regulation (PP 60/2012) nor its explanatory memorandum (*penjelasan*) that gives rise to a right, nor even an expectation, that forest release would necessarily be granted.

More importantly, there is no provision in the regulation which allows companies to continue to operate indefinitely inside the forest estate after submitting an application under the regulation, while awaiting a decision.

180 PP 60/2012 Article 51A

181 PP 60/2012 Article 51B

182 PP 60/2012 Article 51A (2) reads 'Berdasarkan permohonan sebagaimana dimaksud pada ayat (1) Menteri dapat menerbitkan pelepasan kawasan hutan.' and similarly Article 51B (3) reads 'Dalam hal pemohon telah menyediakan lahan pengganti sebagaimana dimaksud pada ayat (2), Menteri dapat menerbitkan pelepasan kawasan hutan.'

Second amnesty – 2015

By 2015, illegal plantations in the forest estate remained a widespread reality. On 28 December 2015 the regulation on Change of Designation and Function of Forest Areas was again amended, this time via Government Regulation Number 104 of 2015 (PP 104/2015), to create a second amnesty. Now, illegal plantations within the forest estate (again in production forests) were allowed double the grace period – a year to apply to the minister for forest release or forest land swap approval (until the end of 2016).¹⁸³

The second amnesty brought not only an extended deadline, but also widened its scope: now plantations in protected forest and conservation forest areas could be legalised.¹⁸⁴ Plantations in these protected areas were still not permitted indefinitely, but could be allowed to continue business operations for one planting ‘cycle’ before ending operations – which for oil palm, can mean a period of around 30 years. As with the first amnesty, these provisions applied under the specific condition that a local government had issued a plantation licence in accordance with regional spatial plans created prior to the 2007 Spatial Planning Law.

In 2019, NGOs Walhi and Perkumpulan Bantuan Hukum Kalimantan filed a suit for judicial review of PP 104/2015, arguing that its provisions created legal uncertainty and unfairly benefited the operators of illegal oil palm plantations. Later that

year, the Supreme Court upheld part of the lawsuit, finding that PP 104/2015 Article 51(2) – which allowed illegal plantations to continue operations for one planting ‘cycle’ within protected forest and conservation forest areas – was legally invalid.¹⁸⁵

The court left standing the one-year amnesty which had given companies until the end of 2016 to apply for their plantations in production forest to be legalised. Again however, there is no provision in the second amnesty regulation which allows companies to continue to operate indefinitely inside the forest estate after submitting an application under the regulation, while awaiting a decision.

The law requires that only ‘unproductive’ convertible production forest (HPK) be released from the forest estate.¹⁸⁶ To this end, it is clear in the Forestry Law, as well as the subsequent first and second amnesty regulations, that changes to the forest estate, which includes forest release or forest swap at the request of a plantation company, require preliminary research and recommendation by a team with suitable ‘scientific authority’ appointed by the Minister.¹⁸⁷ This and other language in PP 104/2015 underlines that approval of forest release or forest land swap applications under the first and second amnesty are not a foregone conclusion.¹⁸⁸



183 PP 104/2015 Article 51(1)

184 PP 104/2015 Article 51(2)

185 Supreme Court Decision No. 77 P/HUM/2019, 13 December 2019.

186 Except in provinces where no more unproductive production forest remains – PP 104/2015 Article 19(1).

187 The requirement is in Forestry Law (41/1999) Article. 19(1) ‘Changes in the designation and function of forest areas are determined by the Government based on the results of integrated research.’ (Perubahan peruntukan dan fungsi kawasan hutan ditetapkan oleh Pemerintah dengan didasarkan pada hasil penelitian terpadu.), with further elaboration in the Explanatory Memorandum: ‘Integrated research is carried out to ensure the objectivity and quality of research results, therefore research activities are carried out by competent government institutions with scientific authority together with other related parties.’ (Penelitian terpadu dilaksanakan untuk menjamin objektivitas dan kualitas hasil penelitian, maka kegiatan penelitian diselenggarakan oleh lembaga Pemerintah yang mempunyai kompetensi dan memiliki otoritas ilmiah (*scientific authority*) bersama-sama dengan pihak lain yang terkait.). Provisions with similar language are included in both the first and second amnesty regulations. For example, PP 104/2015 Article 1(18) reads ‘Integrated research is research conducted by competent government institutions with scientific authority together with other related parties.’ (Penelitian Terpadu adalah penelitian yang dilakukan oleh lembaga pemerintah yang mempunyai kompetensi dan memiliki otoritas ilmiah (*scientific authority*) bersama-sama dengan pihak lain yang terkait.)

188 For example in Article 50, which discusses cases where a decision has not yet been made on applications under the previous amnesty.

Third amnesty – 2020 onwards – the ‘Omnibus’ Job Creation Law

Lobbying by resource industries continued during these years, culminating in the pro-business ‘Omnibus’ Job Creation Law (UU 11/2020), passed despite massive public opposition in late 2020. The Job Creation Law altered provisions in numerous existing laws, including the Law on Prevention and Eradication of Forest Destruction (UU 18/2013). Among other changes, two new provisions relating to prohibited activities within the forest estate were created.

The first new provision (in the form of Article 110A inserted into UU 18/2013) covers business activities inside the forest estate – such as oil palm plantations – which are in breach of forestry laws, and were already operating prior to the Job Creation Law’s enactment and hold a business permit. In this regard it is similar to the first two amnesties issued in 2012 and 2015. However, not only does the Job Creation Law provide a third grace period, with a still-longer duration of three years after its enactment (until 2 November 2023), but the penal sanctions which previously applied have been replaced with purely non-criminal sanctions of an administrative fine and/or permit cancellation.

The Job Creation Law then goes even further: it provides additional leniency which was absent from the first two amnesties, via a new provision (Article 110B) inserted into the Law on Prevention and Eradication of Forest Destruction (UU 18/2013). To qualify for the first two amnesties, companies that had plantings in the forest estate had to have preexisting local government permits to be allowed to have their concessions removed from the forest estate. Now, under Article 110B, if plantation activities are being carried out in the forest estate,

even without a business permit based on local spatial plans, criminal sanctions are eschewed in favour of a temporary halt to operations until an administrative fine is paid. ‘Coercive action’ is only taken if it is not paid.

Furthermore, where the first and second amnesties said the minister ‘may’ issue forest release for illegal plantations in the forest estate, the third amnesty says the minister ‘issues’ forest release after payment is received.¹⁸⁹ It appears that ministerial discretion has been removed, and that under the third amnesty, applications to legalise plantations inside the forest estate can only be temporarily rejected by the minister, in cases where technical and administrative requirements cannot be verified.¹⁹⁰

According to our analysis, via Article 110B this third amnesty opens a new door for 665,945 ha of forest estate to be handed over to companies that were not previously eligible for retrospective legalisation.¹⁹¹

It is hardly surprising that these provisions have been widely condemned for condoning illegal plantations in the forest estate.¹⁹² Lawmakers – many of whom apparently did not read the draft Job Creation Law before passing it along political coalition lines – have subsequently decried the administrative sanctions approach as insufficient deterrent to companies, given the financial gains to be made outweigh possible fines, and expressed scepticism that companies will pay the fines in any case.¹⁹³

189 PP 24/2021 Article 26

190 PP 24/2021 Article 22 – as long as an application is within the 3-year amnesty window.

191 We calculated this from the area of industrial oil palm plantings located outside concession boundaries, within all three types of production forest – ie. excluding protected forest and conservation areas. These plantings totalling 665,945 ha must now be legalised if permits are issued by local governments. See legal analysis below.

192 Arumingtyas, Lusia. 2020. ‘Omnibus Law “Jalan Mulus” Legalkan Pelanggaran Investasi Sawit Dalam Kawasan Hutan?’ Mongabay Environmental News. 29 October 2020.

193 Jong, Hans Nicholas. 2021. ‘Indonesian Omnibus Law’s “Whitewash” of Illegal Palm Oil Shocks Its Architects’. Mongabay Environmental News. 10 May 2021.

Implementing regulations pave way for forest conversion

The Job Creation Law was followed a short while later in 2021 by dozens of implementing regulations, including the following related to forestry:

- Environment and Forestry Ministerial Regulation (PermenLHK 7/2021) on Forestry Planning, Changes in Forest Area Designation and Function, and Use of Forest Areas;¹⁹⁴
- Government Regulation (PP 43/2021) on Settlement of Inconsistencies in Spatial Planning, Forest Areas, Permits, and/or Land Rights;¹⁹⁵
- Government Regulation (PP 22/2021) on Implementation of Environmental Protection and Management;¹⁹⁶
- Government Regulation (PP 23/2021) on Forestry Administration;¹⁹⁷ and
- Government Regulation (PP 24/2021) on Procedures for Imposing Administrative Sanctions and Procedures for Non-Tax State Revenue from Administrative Fines in the Forestry Sector.¹⁹⁸

These latter two regulations clarify the application of the new Law on Prevention and Eradication of Forest Destruction Articles 110A and 110B and provide for detailed approaches to legalise plantations in the forest estate, depending on whether permits are held in accordance with local spatial plans, and the forest designation (eg. protected forest and conservation forest, production forest).

Under Article 110A of the Law on Prevention and Eradication of Forest Destruction, if a plantation is inside the forest estate:

- and **does not** have a forestry permit (i.e. forest estate release or forest land swap);
- but **does** have a location permit and/or plantation business license issued in accordance with local spatial plans¹⁹⁹ before the Job Creation Law (2 November 2020),

then it must:

- pay monies to the government for 'Forest Resource Provision' (*Provisi Sumber Daya Hutan – PSDH*) and 'Reforestation Fund' (*Dana Reboisasi*); and
- apply for the missing ministerial permission.

If the plantation is within forest estate type:

- Production Forest – the minister should grant forest estate release;²⁰⁰
- Protected Forest and Conservation Forest – the minister should grant permission for the plantation to continue²⁰¹ for one planting cycle, specified as a maximum of 15 years since planting began, after which time the land must be relinquished. Further oil palm planting/replanting is prohibited, and a '*jangka benah*' rehabilitation period applies, involving planting timber species in between existing oil palm plantings (see below).²⁰²

194 Peraturan Menteri LHK No 7 Tahun 2021 tentang Perencanaan Kehutanan, Perubahan Peruntukan Kawasan Hutan Dan Perubahan Fungsi Kawasan Hutan, Serta Penggunaan Kawasan Hutan

195 Peraturan Pemerintah Nomor 43 Tahun 2021 tentang Penyelesaian Ketidaksesuaian Tata Ruang, Kawasan Hutan, Izin, dan/atau Hak Atas Tanah

196 Peraturan Pemerintah Nomor 22 Tahun 2021 tentang Penyelenggaraan Perlindungan dan Pengelolaan Lingkungan Hidup

197 Peraturan Pemerintah Nomor 23 Tahun 2021 tentang Penyelenggaraan Kehutanan

198 Peraturan Pemerintah Nomor 24 Tahun 2021 tentang Tata Cara Pengenaan Sanksi Administratif dan Tata Cara Penerimaan Negara Bukan Pajak yang berasal dari Denda Administratif di bidang Kehutanan.

199 PP 24/2021 Article 4(1)

200 PP 24/2021 Article 26(a)

201 PP 24/2021 Article 26(b)

202 PP 24/2021 Article 28

Under Article 110B of the Law on Prevention and Eradication of Forest Destruction, if a plantation is inside the forest estate:

- and **does not** have a forestry permit (i.e. forest estate release or forest land swap);
- and **does not** hold a location permit and/or plantation business license issued in accordance with local spatial plans before the Job Creation Law (2 November 2020);

and it is **less** than 5 hectares in size and owned by someone resident for at least 5 years at that location²⁰³ (ie, a local smallholder) – then resolution is available through:

- redrawing the forest estate boundary;²⁰⁴ or
- participation in agrarian reform scheme (*tanah objek reforma agraria* – TORA);²⁰⁵ or
- participation in a social forestry scheme (*perhutanan sosial*).²⁰⁶

Or if it is **larger** than 5 hectares (i.e. an industrial-scale plantation) then it must:

- pay an administrative fine; and
- secure a location permit and/or plantation business permit and apply for the missing ministerial permission to operate in the forest estate before 2 November 2023. Note that under the first two amnesties, industrial plantations such as these (i.e. without preexisting permits based on local spatial plans) had no right at all to apply for retrospective legalisation.

If the plantation is within the forest estate types:

- Production Forest – the minister should permit forest use for one planting cycle of a maximum 25 years since plantings began;²⁰⁷
- Production Forest, where there is another entity holding a valid forestry permit overlapping the plantation area – the minister should facilitate the forestry permit holder to cooperate with the plantation owner for one planting cycle (in this case, specified as a maximum period of 25 years since plantings began). The cooperation requires planting timber species in between existing oil palm plantings (as part of the jangka benah rehabilitation period – see below).²⁰⁸ No further oil palm planting is permitted, and the forest estate area must be relinquished after the 25 year period is over.
- Protected Forest and Conservation Forest – the land must be relinquished to be returned to its forest estate function.²⁰⁹

The explanatory memorandum for PP 24/2021 explains jangka benah as “the period required to reach the desired forest structure and ecosystem function”.²¹⁰ Academics and NGOs promoting the scheme tout it as a rehabilitation strategy, involving a stepwise transition back from monoculture oil palm towards more diverse communities of plant species in forest estate areas which had been illegally converted. Originally envisaged as a way of accommodating community oil palm plantings inside the forest zone, it was unexpectedly extended to industrial scale plantations during the flurry of new regulations making up the third oil palm amnesty.

203 PP 24/2021 Article 41(1)

204 PP 24/2021 Article 42(1)(c)

205 PP 24/2021 Article 42(1)(b)

206 PP 24/2021 Article 42(1)(a)

207 PP 24/2021 Article 36(1)(a), Article 37(2)

208 PP 24/2021 Article 27(4)(a)

209 PP 24/2021 Article 36(1)(c)

210 PP 24/2021 Explanatory Memorandum, Article 28(3)(a) “Yang dimaksud dengan ‘Jangka benah’ adalah waktu yang dibutuhkan untuk mencapai struktur Hutan dan fungsi ekosistem yang diinginkan sesuai tujuan pengelolaan.”

If this approach is hijacked by unscrupulous palm oil producing companies, there is a risk it could legitimise industrial-scale conversion of natural forest, with all its irreplaceable biodiversity, to a radically impoverished plant community of oil palm with interplanting, and the eventual categorization of such a landscape as 'forest'.²¹¹ On the other hand, if it is applied to areas of the forest estate that were already deforested years prior to being planted with oil palm, it would improve diversity over simple oil palm monoculture plantations.

Later, in September 2021, after the issuance of the implementing regulations discussed above, the 'Palm Oil Moratorium' was allowed to come

to an end. The government had in September 2018 imposed the moratorium on new plantation permits in an effort to reduce deforestation while attempting to raise production from existing plantations. The philosophy behind the two approaches is very different; the Job Creation Law approach acts largely to condone oil palm in the forest estate, and does nothing to prevent new oil palm licensing, unlike the moratorium. Yet government officials were quoted saying the Job Creation Law and its regulations "have automatically replaced the mandate of the oil palm moratorium that has expired."²¹²



A drone image shows smoke rising from the burning peatland forest within the oil palm concession of PT Globalindo Agung Lestari (GAL) in Mantangai, Kapuas district, Central Kalimantan. PT GAL is part of the group of the Malaysian company Genting Plantations Berhad. 12 September, 2019. S 2°29'7.12" E 114°34'46.03"

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211 The issue is discussed in Dijk, Kees van and Savenije, Herman. 2010. *Oil palm or forests? More than a question of definition*. Policy Brief. Tropenbos International, Wageningen, the Netherlands.

212 Asia News Network, . 2021. 'Indonesia Jobs Law Unfit to Replace Palm Oil Ban, Activists Say', 23 September 2021.

The legal approach to 'smallholder' plantings in the forest estate

During the period 2012–2020, the national government prioritised business interests with a forgiving approach to illegal industrial-scale plantations in the forest estate. The preamble and official explanatory memorandum (*penjelasan*) of PP 60/2012 makes it clear that the purpose of the first amnesty was to provide 'legal certainty' for plantation businesses; while smallholder plantings by local communities were not accommodated.²¹³ Under Ministry of Agriculture regulations, plantations under 25 ha are considered smallholdings that are not required (nor eligible) for plantation business licences,²¹⁴ and do not meet the criteria of the first and second amnesty schemes.

A key problem highlighted by academics and activists is that since Indonesia's declaration of forest estate over wide areas of the country via early TGHK Forest Use Agreements, the central government did not promptly negotiate forest estate borders based on actual conditions and pre-existing land use and ownership claims.²¹⁵ Indigenous land ownership predates the existence of the Indonesian state, so any spatial planning disputes should be resolved by recognising those prior and continuing rights above all others. Also, the settlements of many non-indigenous forest dwelling communities in Indonesia predate the designation of their respective areas as forest estate.

When it comes to smallholders with oil palm plantings in the forest estate, there are now a few options for resolving the issue, depending on how it arose. In some cases, it may be appropriate for oil palm smallholders to be accommodated by adjusting the forest estate boundary. Unlike the

Ministry of Agriculture's definition of a smallholding as 25 ha or fewer, the Environment and Forestry Ministry's regulations deem plantings of under 5 ha to be smallholdings.²¹⁶ Under the third amnesty introduced in 2020, smallholdings can be legalised via agrarian reform (*Tanah Obyek Reforma Agraria*) and/or social forestry schemes.

There is no official data on how many oil palm plantings fall within the new 5 ha limit for legalisation as local smallholdings. Some studies have attempted to gain a picture of the size distribution of smallholdings. One study, reported by Yayasan Kehati found that of 471 oil palm smallholdings in the vicinity of a surveyed village in East Kalimantan, 148 were larger than 5 ha.²¹⁷ In another study, Yayasan Kehati used data from drones and landsat imagery to estimate the extent of oil palm inside the forest estate of Kotawaringin Timur district, Central Kalimantan, to be 280,579 ha. Of that amount, 49,273 ha lacked any permits from the local government. The study identified 1,202 planted areas of under 5 ha (totalling 1,529 ha – an average of 1.3 ha each). Meanwhile, there were 466 plantings of over 5 ha, totalling 47,745 ha. This means that while the overwhelming majority of smallholdings (72%) were under 5 ha in size, a small number of larger holdings made up a large proportion (96%) of the total area of unlicensed plantings.²¹⁸

213 Setiawan, Eko N., Ahmad Maryudi, Ris H. Purwanto, and Gabriel Lele. 2017. Op. cit.

214 Regulation of the Minister for Agriculture 26/2007 on Guidelines for Plantation Business Licensing, Article 5. The article is retained in the 2013 version of the regulation.

215 Fay, Chip, Martua Sirait, and Ahmad Kusworo. 2000. 'Getting the Boundaries Right Indonesia's Urgent Need to Redefine Its Forest Estate'. ICRAF Southeast Asia.

216 Law on Prevention and Eradication of Forest Destruction (UU 18/2013) (as amended by the 2020 Job Creation law) Article 110B.

217 Suradiredja, Diah. 2021. 'Strategi Percepatan Penyelesaian Kebun Sawit Di Kawasan Hutan'. Yayasan Kehati (presentation delivered on Aug 28, 2021).

218 Suradiredja, Diah. 2021. op cit.

219 Jelsma, Idsert, G. C. Schoneveld, Annelies Zoomers, and A. C. M. van Westen. 2017. 'Unpacking Indonesia's Independent Oil Palm Smallholders: An Actor-Disaggregated Approach to Identifying Environmental and Social Performance Challenges'. *Land Use Policy* 69 (December): 281–97.

Similarly, a study of oil palm smallholdings in Rokan Hulu district, Riau, found that holdings of less than 3 ha made up the majority of smallholdings, but only about one-fifth of the total smallholder planted area. The researchers observed that for social and economic reasons, family smallholders tend to develop plantations near existing settlements and where infrastructure is already more advanced, and that “[s]mallholders pioneering development in ecologically significant and sensitive peat- and forestlands are often economic and political elites whose operations more closely resemble that of corporate plantations than family farms.”²¹⁹

These findings from Kalimantan and Sumatra support observations by local NGOs operating in those regions that many larger oil palm plantings which are being treated by local governments as comprised of family ‘smallholdings’ are in fact not owned by individual farming families,²²⁰ but are parts of a larger whole amounting to substantial plantations controlled by politically-connected local landholding elites sometimes known as ‘*cukong*’.²²¹ These landholding elites, who unlike genuine smallholders are more likely to live off site, create investments of larger plantings masquerading as smallholdings, registering oil palm plantation areas under multiple names.²²² This is presumably done in order to fall below the 25 ha plantation regulation threshold above which regulations and taxation become more onerous, and in some cases to provide anonymised income streams for their political patrons.

Gulat Medali Emas Manurung of the Indonesian Oil Palm Farmers Association (Apkasindo) argues that legalisation should be extended to plantings up to 25 ha belonging to these landholding elites.²²³ Gulat, himself convicted²²⁴ for delivering a IDR 2 billion bribe intended to have his and others’ oil palm plantations removed from the forest estate in 2014, wants the amnesty extended to investors who are “planters who do not live near their business, in the sense that the owners only visit once in ten days and their plantings are tended by workers.”²²⁵ As seen from the figures earlier in this section, this push to have investors’ informal plantations treated as smallholdings has the potential to legalise even larger expanses of illegal plantings inside the forest estate besides those already provided for under the third amnesty.

Regardless of ownership, encroachment on forest estate by smallholder oil palm plantings is usually reliant on nearby industrial-scale plantations and officially licenced mills belonging to palm oil companies, without which an oil palm smallholding is not logistically feasible. Operators of these mills are aware when fresh fruit bunches they process come from plantings within the forest estate, and local NGOs on occasion report this illegal trade to police.²²⁶ But in the absence of law enforcement, there is little incentive for them to exclude this source from their supply chain.

220 Eyes on The Forest 2018 “‘Legalisasi’ perusahaan sawit melalui Holding Zone dalam Rancangan Peraturan Daerah Rencana Tata Ruang Wilayah Provinsi Riau (RTRWP) 2017-2037’.

221 Wahyudi, Arif. 2017. ‘Ini Perusahaan Sawit & Milik Cukong Di Kawasan Ilegal Dalam Ranperda RTRW 2017-2037’. Gagasanriau. 20 October 2017.

222 Glenday, Skye, and Gary Paoli. 2015. ‘Overview of Indonesian Oil Palm Smallholders Farmers: A Typology of Organizational Models, Needs, and Investment Opportunities’. Daemeter.

223 Dwi Susetyo, Pramono. 2021. ‘Solusi Menyelesaikan Sawit Rakyat Di Kawasan Hutan’. Forest Digest. 19 October 2021.

224 Anti-Corruption Court at the Central Jakarta District Court, Decision No. 116/PID.Sus/TPK/2014/PN.JKT.PST.

225 Yonela, Satria. 2021. ‘Selesai 2 Tahun 4 Hari, Gulat Medali Emas Manurung Berhasil Sandang Gelar Doktor’. Cakaplah. 20 September 2021. The original quote is “pekebun yang tidak berdomisili disekitar usaha kebunnya tersebut dalam artian kata, pemiliknya hanya datang sekali per 10 hari dan kebunnya tersebut dijaga oleh pekerja.”

226 InfoSawit – Indonesian Palm Oil Magazine. 2018. ‘35 Perusahaan dan 15 Cukong Terbukti Langgar UU P3H, Rambah Hutan di Riau’, 3 March 2018.

Scant evidence of government and companies resolving illegality

Greenpeace Indonesia made a freedom of information request asking the MoEF for details of companies which requested forest release under the first and second amnesties (from 2012–2020). The data requested included companies which had forest release granted, and those that were rejected. Unfortunately the data provided (by MoEF in January 2021) was incomplete, so we cannot report how many companies applied under the first and second amnesties.²²⁷ Also missing was information on which applications were refused.

We are able to report, however, that MoEF listed a total of 63 companies which were granted forest release over plantations located in convertible production forest areas based on applications under the first and second amnesties. Of those, all were for oil palm plantations, and 42 were issued since October 2014, during the tenure of the current Minister for Environment and Forestry.

Whilst the number of companies which applied for forest release for existing plantings is yet to be made public, the 63 companies granted release is a small number compared with the 367 companies which Greenpeace has discovered with substantial (> 5 ha) plantings in convertible production forest. This seems roughly congruent with data from the Coordinating Ministry for Economic Affairs that reportedly found there were forest estate release applications underway in 2019 covering 576,983 ha, but with a greater area of 2,548,000 ha of illegal oil palm plantations where there was no legalisation process underway.²²⁸

In 2019, President Joko Widodo issued a Presidential Instruction on a 2019–2024 National Action Plan on Sustainable Oil Palm Plantations. This directive instructed the Minister for Environment and Forestry to resolve cases of oil palm plantations in the forest estate.²²⁹ It also instructed the Minister for Agriculture to ensure improved legal compliance by plantation owners.²³⁰ Greenpeace's findings suggest that these executive orders are yet to be successfully carried out. The Presidential Instruction also includes a directive to the Coordinating Minister for Economic Affairs to produce six-monthly progress reports,²³¹ but freedom of information requests to the ministry in 2020²³² and 2021²³³ failed to secure evidence that these reports are being produced, despite a mandate to involve stakeholders in the initiative.²³⁴

227 MoEF 2021. Reply letter dated 29 January 2021; list attached to reply.

228 Arumingtyas, Lusia. 2020. Op cit.

229 Article 4(b), 2019 Presidential Instruction Number 6 of 2019 on the 2019–2024 National Action Plan on Sustainable Oil Palm Plantations

230 Article 3(c), Presidential Instruction Number 6 of 2019 / Inpres 6/2019

231 Part 4, subclause (a) Presidential Instruction Number 6 of 2019 / Inpres 6/2019

232 Greenpeace FOI request dated 29 September 2020 (emailed). Greenpeace follow up complaint letter dated 01 December 2020.

233 Greenpeace FOI request (resubmitted), dated 04 June 2021.

234 Part 3, Presidential Instruction Number 6 of 2019 / Inpres 6/2019

Company responses on the illegality of these overlaps

Prior to publication of this report, Greenpeace Indonesia individually contacted a number of companies whose oil palm plantings overlap with the forest estate, to offer them the opportunity to comment on our findings. Seventeen companies signed a joint reply²³⁵ claiming that they had “complied with the prevailing Indonesian laws and regulations on *land permit usage for oil palm plantations*” (our italics) – a wording which appears carefully crafted to avoid claiming compliance with all relevant law, in particular including forestry law.

The joint reply claims the companies operating oil palm plantations within the forest estate did not “deliberately” create the illegality (or “issue associated with oil palm plantations located within the forest zones” as they put it). This may have been correct in the early years for some plantations where the Forestry Ministry had temporarily waived the requirement for forest release (such as in Central Kalimantan during 2000–2006). However, it is misleading in other cases and after that period, where companies deliberately continued operating instead of complying with the law prohibiting plantation operations on forest estate. In such cases, plantation companies have been knowingly operating on the basis of local government-issued business permits, which only ever covered the first half of the full permitting process – they never provided a legal basis for operating inside the forest estate.

By providing only a blanket reply claiming legality, companies did not address the specific findings that applied to them; including specifics on whether/when they applied for relief under the amnesties and what the outcomes were.



235 Indonesian Palm Oil Companies, 2021. 'Joint Letter' Letter to Greenpeace Indonesia, 9 March 2021. Signed by PT. Api Metra Palma (Medco Agro), PT. Austindo Nusantara Jaya Tbk, PT. Bumitama Gunajaya Agro (Bumitama Agri Ltd.), PT. Dharma Satya Nusantara Tbk., PT. Eagle High Plantations Tbk., PT. Mulia Sawit Agro Lestari, PT. Musim Mas, PT. Pasifik Agro Sentosa, PT. Sampoerna Agro Tbk, PT Tolan Tiga Indonesia (SIPEF), PT. Triputra Agro Persada, Genting Plantations Bhd., Golden Agri Resources Ltd., Kuala Lumpur Kepong Bhd., Minamas Plantation (Sime Darby Plantation Bhd.), Wilmar International Limited.

Failure to enforce law against company breaches

Greenpeace, along with many others, strongly believes that legal action should be taken by the central government against businesses operating illegally in the forest estate. Yet there have been very few criminal cases lodged (see brief summary of cases below). Environmental and community groups have on numerous occasions reported specific cases, demanding legal action against companies operating illegally in the forest estate. The Kalimantan Legal Aid Association (LBH Kalimantan) reported at least 13 West Kalimantan companies in 2017 to the MoEF, including companies operating inside protected forest, conservation areas, and national park land, but no legal action was taken against them over the following years.²³⁶

The introduction of the three rounds of amnesties is no legal reason why cases could not have been or should not be brought against companies that have continuously operated without valid forest release. The amnesties provided the opportunity, but not the obligation, for the MoEF to legalise plantations inside the forest estate under certain circumstances (explained above). Where plantations were not granted forest release, their operations remained illegal.

The amnesties nevertheless proved disruptive and perhaps confusing to police investigators. According to a paper co-authored by an official of the MoEF's Directorate General of Law Enforcement, which also refers to an interview with a "senior police officer",

the introduction of the PP 60/2012 amnesty directly impeded preparations which were underway by the ministry and police for law enforcement against a number of companies.²³⁷

Along with plantation companies that never applied for forest release at all, those palm oil companies that did apply under the first (2012) or second (2015) amnesties, but which several years later had still not been granted legalisation, should all have been subjected to administrative or criminal sanctions. The several cases discussed below, where such prosecutions succeeded, demonstrate that courts have shared the view that it is illegal to continue operations without forest release or forest land swap.

As mentioned earlier, the Supreme Court in 2019 struck down as invalid the second amnesty provision, which purported to allow illegal plantations to continue operations for one planting 'cycle' within protected forest and conservation forest areas. Yet despite an MoEF official saying that "the ministry will take the necessary steps" in the wake of the ruling, no prosecutions are known to have been launched since then.²³⁸

236 Thea, Ady. 2019. 'Rugikan Masyarakat, PP Fungsi Kawasan Hutan Digugat ke MA'. *Hukumonline.com*. 2 October 2019.

237 Setiawan, Eko N., Ahmad Maryudi, Ris H. Purwanto, and Gabriel Lele. 2017. Op cit.

238 Reuters. 2019. 'Indonesia's Top Court Bars Plantation Activity in Protected Forests', 31 December 2019.

Characteristics of successful prosecutions

One of the small number of companies that have been prosecuted is PT Kahayan Agro Lestari (PT KAL). PT KAL has oil palm plantings in the forest estate in Kapuas district, Central Kalimantan, totalling 1,213 ha, of which 650 ha are in a conservation area and the remainder are production forest. A prosecution was undertaken by the district attorney's office in 2013 for illegal use of forest estate,²³⁹ resulting in a two-year prison sentence and a fine of IDR 1 billion for PT KAL director Tommy Delsy (upheld in 2017 after several appeals).²⁴⁰

Prison terms were also delivered to officers of Central Kalimantan palm oil companies PT Sumur Pandanwangi (PT SPW) in 2014 and PT Susantri Permai (PT SP) in 2015 for their plantation operations inside the forest estate. PT SPW had applied for legalisation of its oil palm plantings inside convertible production forest (over 300 ha) and permanent production forest (over 3,000 ha) via the first amnesty on 4 September 2012, but continued operations without waiting for the ministry's forest release and land swap permits.²⁴¹ PT SP similarly held some permits from local authorities, and had applied for a ministerial forest release permit but had continued to operate its plantation inside the forest estate without being issued the permit.²⁴²

Greenpeace was able to identify only a handful of prosecutions involving illegal oil palm planting by companies inside the forest estate, and among them there is often another element which encouraged prosecution, such as planting outside concession boundaries (PT Mentobi Mitra Lestari in 2014)²⁴³ or contested land ownership (PT Prima Anugrah Makmur in 2010).²⁴⁴

In the cases mentioned above, plantations were owned by 'small fish' operators; despite wide areas planted inside the forest estate none of the politically influential major oil palm producer groups are known to have been prosecuted. There has also been little if any legal action against mill owners and palm oil traders, who also tend to be larger, well-connected companies. This is despite the Law on Prevention and Eradication of Forest Destruction prohibiting them from processing or trading oil palm fresh fruit bunches or crude palm oil produced from illegal plantings within the forest estate.²⁴⁵



239 Palangkaraya High Court Decision No. 64/PID.SUS/2013/PT.PR, 23 January 2013.

240 Supreme Court Decision No. 201 PK/Pid.Sus/2017, 11 December 2017.

241 Palangkaraya High Court Decision No. 20/Pid.B/2014/PT PLK, 24 March 2014.

242 Supreme Court Decision No. 538 K/Pid.Sus/2015, 8 September 2015.

243 Palangkaraya High Court Decision No. 26/Pid.B/2014/PT PLK, 10 June 2014.

244 Supreme Court Decision No. 1581 K/Pid.Sus/2011, 22 January 2014

245 Law on Prevention and Eradication of Forest Destruction (UU 18/2013) Article 93(3).

Very few corruption prosecutions

Lack of transparency and chronic corruption pervade forestry sector licensing.²⁴⁶ A 'permit broker' specialising in assisting companies to navigate Forestry Ministry bureaucracy estimated in 2014 that obtaining a forest release permit for a 10,000 ha oil palm plantation can cost IDR 2-3 billion in unofficial payments.²⁴⁷ Yet with the exception of the now infamous cases involving former governors Annas Maamun and Suwarno Abdul Fatah, there have been few significant corruption cases involving permitting in the forest estate. Of the six forestry sector licensing cases brought by the KPK from its first case in 2004 up to 2018, half involved palm oil plantations.²⁴⁸

Transport of oil palm fruit by truck from PT Inti Indosawit Subur, an oil palm plantation owned by Asian Agri, the palm oil division of the RGE group. A recent WWF investigation documented trade from illegal oil palm plantations in Tesso Nilo National Park to the RSPO-certified PT Inti Indosawit Subur mill. 6 May, 2015.



© Kemal Jufri / Greenpeace

246 Setiawan, Eko Novi, Ahmad Maryudi, and Gabriel Lele. 2017. 'Tipologi Dan Kerawanan Korupsi Sektor Kehutanan Di Indonesia'. *Jurnal Ilmu Kehutanan* 11 (2): 142-55.

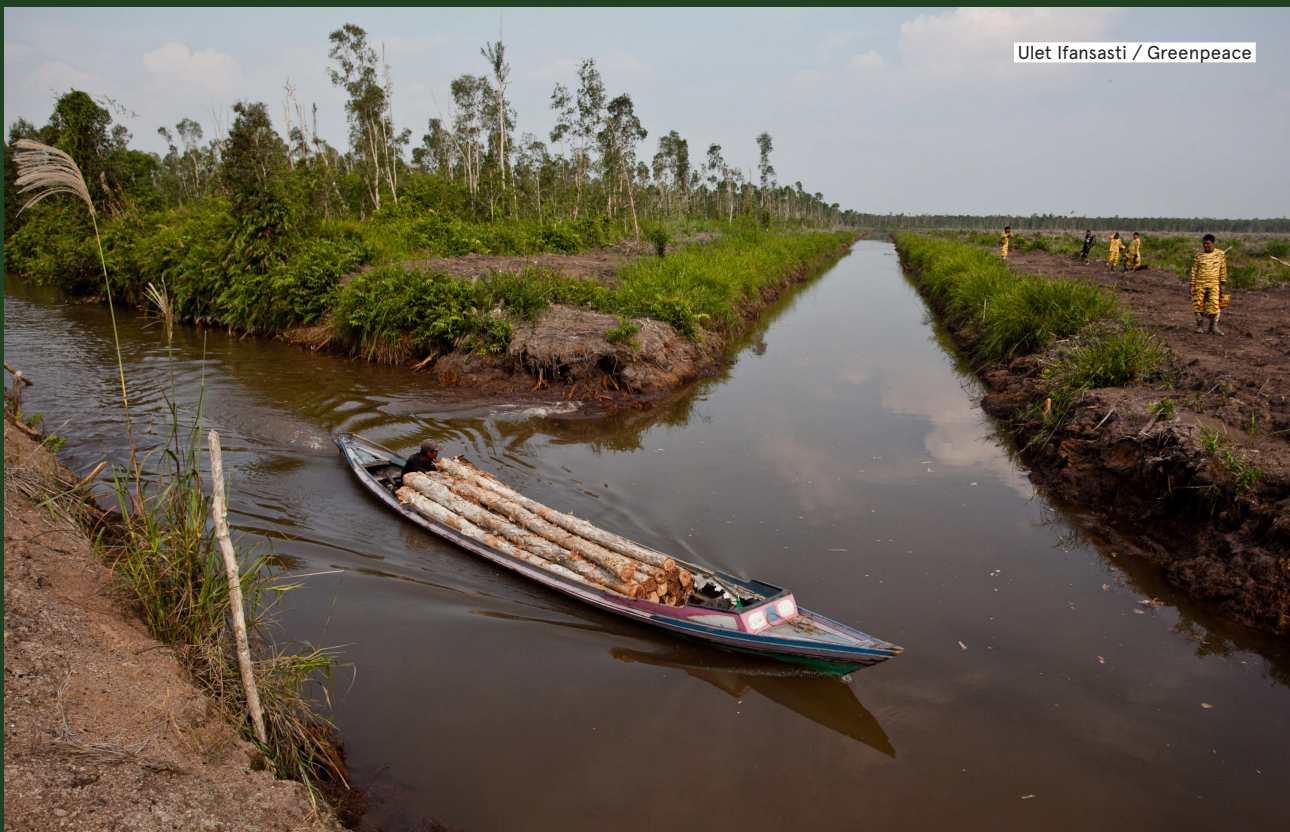
247 Setiawan, Eko N., Ahmad Maryudi, Ris H. Purwanto, and Gabriel Lele. 2016. *Op. cit.*

248 Schütte, Sofie Arjon, and Laode M. Syarif. 2020. 'Tackling Forestry Corruption in Indonesia - Lessons from KPK Prosecutions'. U4 Anti-Corruption Resource Centre. 2020.

RECOMMENDATIONS

Palm oil companies have long benefited from weak law enforcement by carrying on and even expanding illegal plantation operations in the forest estate. The series of increasingly broad forest estate amnesties have benefited oligarchic interests at the expense of environmental protection and the rights of Indigenous peoples. Certification schemes such as ISPO and RSPO are failing to ensure palm oil is

produced and traded legally and sustainably. Meanwhile, the movement for social and ecological justice is hindered by the government's refusal to publicly release oil palm concession data and maps, as well as its failure to enforce beneficial ownership disclosure law, and oligarchs' use of secrecy jurisdictions and tax havens.

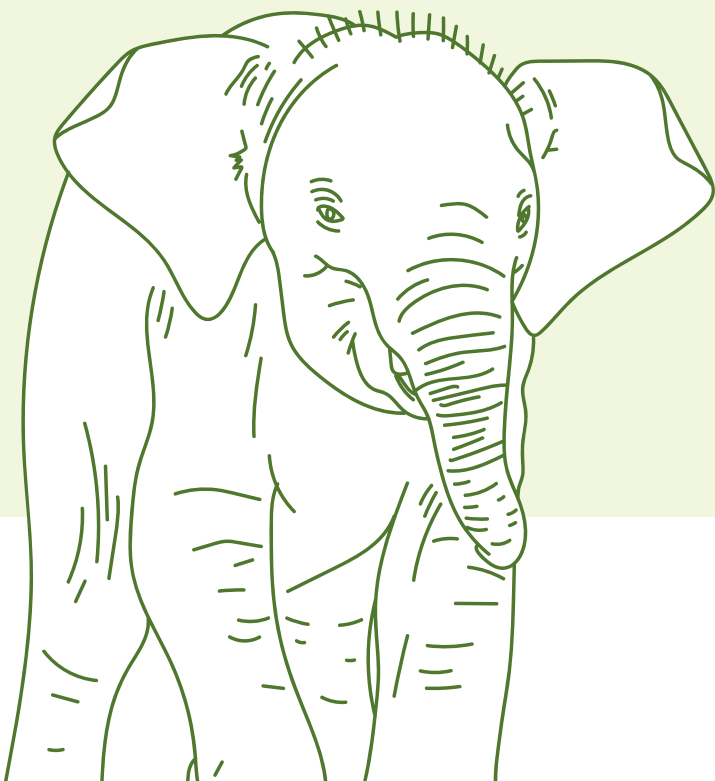


Ulet Ifansasti / Greenpeace

Activists dressed in tiger costumes look at boats loaded with logs floating down a canal in PT. Graha Inti Jaya Manusup palm oil plantation in a concession area, during a campaign to protect Indonesian forests from destruction. 20 September, 2012.

Dismantle the oligarchy, uphold Indigenous rights and ecological justice

- Expose and end oligarchic influence on the Indonesian government, starting by enforcing compliance with beneficial ownership declaration rules, enforcing forest protection law and revoking the 'Omnibus' Job Creation Law.
- End tax amnesties, which benefit concession holders and potentially enable tax avoidance. Pursue tax evaders who are hiding wealth in offshore tax havens.
- Publicly release complete data on concessions including ownership, maps, plantation business permits (IUP), and land cultivation right (HGU). Ensure transparency in the One Map scheme and all information systems relevant to forest estate and land licensing.
- Clarify the definition of independent smallholders and the land area they can manage. Provide independent smallholders with legal certainty (access to smallholder plantation registration certificates – *Surat Tanda Daftar Budidaya*) and ensure further assistance with their plantation management.
- The government must move faster to recognise Indigenous rights in the forest estate as a means of conflict resolution, taking into account their history and socio-cultural relationship with the forest before the intrusion of oil palm into their customary lands. Remedies must be provided in the form of restitution, compensation, rehabilitation and restoration of their rights and the environment, carried out in accordance with the principle of Free, Prior and Informed Consent (FPIC).
- No amnesty or retrospective legalisation for companies that have breached the law by operating illegally inside the forest estate.
- Government and companies must rapidly map land and the distribution of oil palm fresh fruit bunches sourced from independent smallholders to clarify palm oil mills' supply chains and crude palm oil (CPO) marketing routes.



Law enforcement to tackle climate crisis

- Ministry of Environment and Forestry must commit to prosecuting companies that continue to operate unlawfully in all categories of the forest estate. A top priority for law enforcement must be companies operating oil palm plantations inside conservation areas and protected forest.
- The next priority should be law enforcement against companies that took advantage of previous weak government oversight of the forest estate to operate plantations in permanent production forest and limited production forest, despite these areas being ineligible for forest release.
- The Ministry of Agrarian Affairs and Spatial Planning (ATR)/National Land Agency (BPN) must evaluate spatial planning instruments to ensure greater reliance on expert ecological advice during permit issuance in order to ensure biodiversity-critical habitat is protected and restored.
- The Indonesian Ombudsman must investigate potential maladministration at the ministries responsible for forestry and plantations, in connection with the issues raised in this report.

Restore forest estate

- Restore natural ecosystems in forest estate areas illegally occupied by companies, at companies' expense. Ensure future management is in accordance with environmentally and socially appropriate spatial planning policy.
- Implement clear regulatory and budgetary assurances that monies paid to the government as 'Forest Resource Provision' (*Provisi Sumber Daya Hutan*) and 'Reforestation Funds' (*Dana Reboisasi*) are actually expended on restoring damaged forest estate areas.

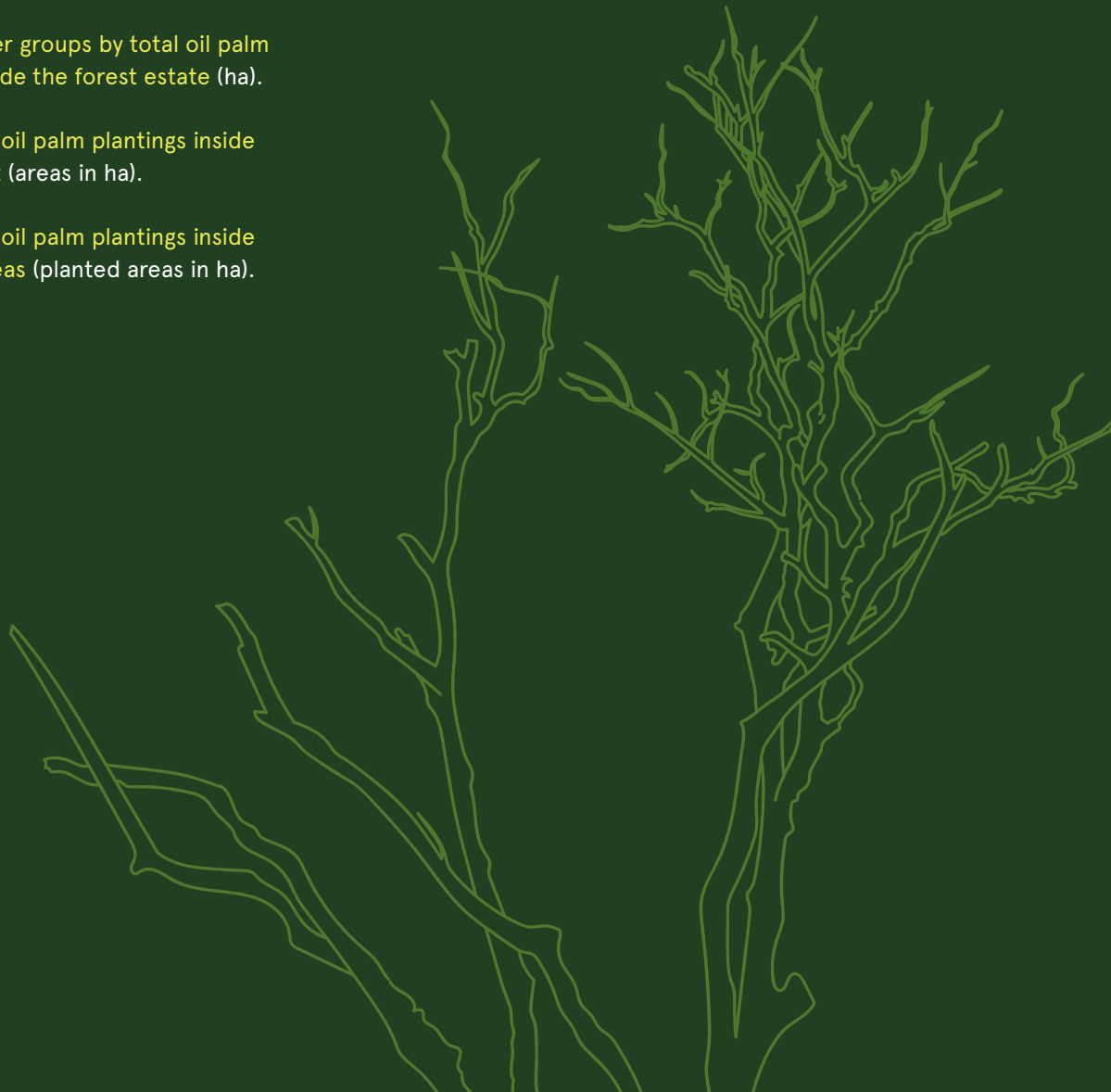
Financial and global community

- Both Roundtable on Sustainable Palm Oil (RSPO) and Indonesian Sustainable Palm Oil (ISPO) schemes are failing to ensure palm oil is being produced and traded legally, let alone sustainably. They cannot be relied upon by overseas consumers concerned about their role in the global chain that leads to deforestation.
- Banking institutions must stop providing funds to companies operating illegally inside the forest estate.
- We call on Indonesia's Financial Services Authority (OJK) to evaluate and if necessary impose sanctions on banking and finance institutions that provide funds to palm oil companies proven to be operating illegally in the forest estate.



APPENDIX 1: ADDITIONAL TABLES

- RSPO member groups by total oil palm planted area inside the forest estate (ha).
- ISPO-certified plantations by total oil palm planted area inside the forest estate (ha).
- Palm oil producer groups by total oil palm planted area inside the forest estate (ha).
- Companies with oil palm plantings inside protected forest (areas in ha).
- Companies with oil palm plantings inside conservation areas (planted areas in ha).



APPENDIX 2: SPATIAL ANALYSIS METHODOLOGY AND DATA SOURCES USED

Identifying industrial versus smallholder oil palm plantings

Industrial oil palm plantations were distinguished from smallholder plantings through analysis of satellite images.²⁴⁹ Plantings arranged with contoured access roads (on sloping land) or in rectilinear grid patterns (in lowlands) are strongly associated with industrial plantations, while smallholder plantings usually have 'mosaic' patterns of irregular shape, size and direction of access paths.²⁵⁰

Concession boundaries and ownership

Indonesian oil palm concession mapping is based on the best available concession maps compiled by Greenpeace and other NGOs, with reference to a variety of corporate or official government sources. The identities of the plantation companies that are the immediate owners of each concession come from permit documents.

The Indonesia Oil Palm Concessions Map - November 2020 is the result of a data consolidation process initiated by Greenpeace.²⁵¹ The oil palm concessions map undergoes continuous updating and review, whereby data is integrated and analysed using all relevant source datasets. Sources include, but are not limited to the following:

249 Gaveau, David, Bruno Locatelli, Mohammad Salim, Husnayaen Husnayaen, Timer Manurung, Adrià Descals, Arild Angelsen, Erik Meijaard, and Douglas Sheil. 2021. op. cit.

250 Descals, Adrià, Serge Wich, Erik Meijaard, David L. A. Gaveau, Stephen Peedell, and Zoltan Szantoi. 2021. op. cit.

251 see Greenpeace International's interactive mapping resource 'Kepo Hutan' (Curious About Forests).

Methodology for defining concession boundaries

Government sources:

- State Forest Release for plantation map, MoEF, 2010 till 2020.²⁵²
- *Hak Guna Usaha* (HGU; land cultivation right) map, Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Kemen ATR/BPN), downloaded 2018.²⁵³
- *Izin Usaha Perkebunan* (IUP; plantation business permit) maps, Plantation Agency at district (*Kabupaten*) level (only certain districts and years where available)

Company data:

- Oil palm concession map, RSPO, 2017 - present.²⁵⁴
- Concession boundary maps from palm oil companies' reports and websites.

NGO and other sources:

- Plantation business map, Matapapua.org, 2018.²⁵⁵
- Papua palm oil atlas (Atlas Sawit Papua), Pusaka, 2015.²⁵⁶
- Sawit, fire, deforestation and conflict map, Sawitwatch, 2018.²⁵⁷
- Palm oil plantation concessions map, WWF Indonesia, 2009.²⁵⁸
- Work block maps, Jikalauhari, 2018.²⁵⁹

Greenpeace has created a consolidated palm oil concession layer by overlaying source data layers then checking and correcting for topological errors using GIS software. This is done on an individual concession basis as well as on a provincial basis. The different spatial data sources integrated during the consolidation process are all weighted with equal relevance.

Limitations

Accurate and detailed maps showing the locations and boundaries of concessions, and data on the ownership of plantation companies, are not readily available in Indonesia. Despite ongoing efforts by Greenpeace and other NGOs to press companies and the government to release this data, progress has been extremely limited.²⁶⁰ As a result, the best available data, while correct as far as Greenpeace is aware, is certainly far from complete. Producer groups and prominent companies which feature in Greenpeace reports are routinely provided with the opportunity to comment prior to publication, and asked to provide their official concession data. Very few have done so, and in a joint reply to questions sent prior to this report, 16 companies referred to a 2020 letter from the National Land Agency that claims companies are not allowed to share their HGU maps in shapefile format.

252 MoEF, 2020 State Forest Release for plantation map data (downloaded per 2020). In 2010 State Forest Release for Plantation was available in KML format. From 2011 to 2020 we used MoEF online map called "Pelepasan Kawasan Hutan untuk Budidaya Pertanian dan Non Kehutanan Lainnya" previously called "Pelepasan Kawasan Hutan untuk Perkebunan".

253 HGU updates since 2018 have been incorporated. Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Kemen ATR/BPN), downloaded 2018.

254 RSPO 'GeoRSPO' mapping site.

255 Matapapua 2018.

256 Pusaka, 2015. 'Papua palm oil atlas (Atlas Sawit Papua)'.

257 Sawitwatch, 2018. 'Sawit, fire, deforestation and conflict map'.

258 WWF Indonesia, 2009. 'Palm oil plantation concessions map'.

259 Jikalauhari, 2018. 'Work block maps'.

260 Jong, Hans Nicholas. 2021. 'Final Court Ruling Orders Indonesian Government to Publish Plantation Data'. Mongabay Environmental News. 10 June 2021.

APPENDIX 3: PLANTATION OWNERSHIP AND PALM OIL PRODUCER GROUP ATTRIBUTION METHODOLOGY

There is no publicly available database containing full details of Indonesia's plantation concessions and the groups that control them. Many concessions do belong to formally established, stock-listed companies with conventional parent-subsiary structures that list their subsidiaries and/or estates more or less comprehensively on their websites or in their annual reports – sources on which this report has based its characterisation of these as groups, supplemented by information taken from permit documents and elsewhere.

However, other concessions have much less straightforward ownership and control, belonging to complex networks of companies owned by individuals or families whose links are not (or only in part) publicly acknowledged. In some cases a well-known, high-profile company may have a cluster of clandestinely linked 'shadow companies' in addition to its acknowledged plantation subsidiaries; in others there is no single ultimate parent company and the group consists largely of privately held companies, not listed on any stock exchange. Different family members may be the

ultimate shareholders in different companies, or parts of the group may be held offshore, rendering the ultimate owner unknowable. In other cases named legal shareholders may be nominees, where arrangements exist with other beneficial owners that have not been publicly disclosed.

It is necessary to take a broad view of what constitutes a group, going beyond straightforward ownership links to include other forms of control (financial, managerial, operational or other). This must be done to get around these ways in which unscrupulous owners obscure their ownership of plantation operations engaged in forest destruction, which they may do in order to avoid compromising the market access of their publicly acknowledged subsidiaries.

The compositions of a number of these less straightforward groups, and the rationale behind the interpretation of them (in general terms and individually) is set out by the Accountability Framework Initiative (AFI). This defines a corporate group as:²⁶¹

261 The Accountability Framework initiative (AFI) 2020. 'Terms and Definitions'

The totality of legal entities to which the company is affiliated in a relationship in which either party controls the actions or performance of the other.

Factors that are used to determine whether a company is part of a broader corporate group include:

Formality of relationship: *Is there formal ownership, such as through an investment holding structure?*

Declared as a group: *Has the group publicly declared the companies are linked?*

Family control: *Are the companies owned or run by members of the same family?*

Financial control: *Are there contractual or other financial arrangements that indicate one party controls the performance of another?*

Management control: *Is there extensive overlap in officials between companies?*

Operational control: *Are landholdings under a group's operational control?*

Beneficial ownership: *Is ultimate ownership hidden in offshore companies or by the use of nominees?*

Shared resources: *Do companies share a registered address, land or other physical assets, or provision of company functions or services?*

A concession company is considered declared as a member of a group if this declaration originates from the company itself, such as a company's annual reports or statements to a stock exchange, its official website or its annual communication of progress to the RSPO. For all companies mentioned in this report where no such declaration exists, official Indonesian (and where relevant Malaysian and Singapore) company registry profiles have been obtained and analysed.

Indonesian company registry profiles include current and historical names and addresses for shareholders and company officers (directors and commissioners), and company address details. There is a slim possibility that very recent changes in ownership or officers may not have been detected, if they took place since Greenpeace last acquired the profile. References to an individual's role as director, commissioner and/or shareholder of these companies is based on information contained in these profiles, as is information about the official addresses of companies and their officers.

Where concession companies are not declared as part of a group, and registry profiles do not show it to be a formal subsidiary by shares of a known group company, discovered evidence is considered to evaluate whether the other AFI indicators are met. Examples of such discovered evidence are where a company:

- Is associated with a group in statements by individuals who work for or closely with the company, eg employment details on LinkedIn profiles and Facebook and Instagram posts of company employees/owners
- Shares an official or local office address with companies belonging to a group
- Has significant overlap of directors/ commissioners or other personnel in management positions with other companies belonging to a group
- Exhibits signs of apparent family connection with the group, for example through shared addresses and/or family names of individuals listed as shareholders or company officials
- Appears in media reports as linked to a group (greater weight is given to articles where an identified company spokesperson is quoted or which contain a press release, as opposed to articles where names/owners are merely mentioned by the reporter)
- Apparently conducts recruitment jointly with companies belonging to a group
- Appears to be part of a group based on field documentation (eg signs in or adjacent to plantations bearing company logos, testimonies from workers)
- Shows evidence of sufficiently significant financial investment by a member of a group to indicate a degree of control by that group

The task of establishing the structure and extent of an informal group is a complex one, as evidenced by the wide range of potential sources listed above, and the results obtained must inevitably be considered as potentially incomplete. In particular, many of the informal producer groups frequently restructure the ownership or management of their plantation companies – perhaps in part to obscure their true control. The work of mapping their structures is therefore ongoing.

Where group attributions in this report are based on discovered evidence, it is because several independent items of evidence have been discovered that show a strong case for association based on the AFI definition above. There may of course be some uncertainty around the exact nature of this association in such cases – the aim is to establish the basis for control between companies and therefore we refer to group association rather than narrow concepts of legal ownership through shareholdings.

Prior to publication Greenpeace Indonesia contacted a number of companies discussed in this report to offer them the opportunity to comment on our findings, including our conclusions on group association where relevant. Responses received are linked to in text or are available on request.

All mentions of 'Greenpeace' in this report refer to Greenpeace Indonesia, unless otherwise stated.





Ulet Ifansasti / Greenpeace

Kingfisher in Tanjung Puting National Park, Central Kalimantan. The longterm survival of biodiversity within national parks can depend on the habitat connectivity of the wider landscape in which they are located. The buffer areas around this park have suffered from oil palm expansion. 10 September, 2013.

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