

## 'Can't see the people for the trees'

Assessment of the free, prior and informed consent agreement between Sumalindo and the community of Long Bagun, district of Kutai Barat, East Kalimantan province (Indonesia)



FPIC Working Papers,  
Pokja Hutan Kaltim and  
Forest Peoples Programme

June 2007



Forest Peoples  
Programme

***'Can't see the people for the trees'***  
***Assessment of the free, prior and informed consent agreement between Sumalindo and the community of Long Bagun, district of Kutai Barat, East Kalimantan province (Indonesia)***  
***Case study: Pokja Hutan Kaltim (East Kalimantan Working Group on Forests) 2005 – 2006***

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June 2007, Pokja Hutan Kaltim and Forest Peoples Programme, Moreton-in-Marsh

*'Can't see the people for the trees'* – *Assessment of the free, prior and informed consent agreement between Sumalindo and the community of Long Bagun, district of Kutai Barat, East Kalimantan province (Indonesia)* was first published in 2007 by Pokja Hutan Kaltim and Forest Peoples Programme. This is the second in a series of working papers issued by the Forest Peoples Programme which explore the practical experiences of indigenous peoples seeking to exercise their right to Free, Prior and Informed Consent. Others in the series include: *Free Prior and Informed Consent: Two Case Studies from Suriname* by Forest Peoples Programme; *El Punto de Inicio: Libre Determinacion* by Racimos de Ungurahui; and *Making FPIC Work: Challenges and Prospects for Indigenous Peoples* by Forest Peoples Programme

Our thanks to SwedBio for its support for this programme of work.

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Original: Bahasa Indonesia      *'Habis Manis Sepah Di Buang'* – Melihat Keberadaan Kesepakatan Dini Tanpa Paksaan Antara Sumalindo dan Masyarakat Long Bagun Kutai Barat Kalimantan Timur

Cover photograph:                  Dayaks in newly opened shifting cultivation plot in the Upper Mahakam, Kutai Barat, East Kalimantan, Indonesia

Photographer:                        Pokja Hutan Kaltim

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## Acronyms

AMAN	Aliansi Masyarakat Adat Nusantara (Indonesian national indigenous peoples' organisation)
DFID	Department for International Development (of the UK Government)
EKWGF	Pokja Hutan Kaltim (East Kalimantan Working Group on Forests)
FM/CoC	Forest Management/Chain of custody
FPIC	Free, prior and informed consent
FPP	Forest Peoples Programme
FSC	Forest Stewardship Council
HPH	Logging concessions
NGO	Non-governmental organisation
SLJ	Sumalindo Lestari Jaya
SKSHH	<i>Surat Keterangan Sahnya Hasil Hutan</i> (Official Timber Transport Document)
TNC	The Nature Conservancy
WALHI	Friends of the Earth–Indonesia

# 1 Introduction

As one of the world's main timber-producing countries, Indonesia needs to assure the market that its timber originates from sustainably managed forests. So far the European market is convinced that Indonesia's forests are not sustainably managed and do not fulfil the FSC (Forest Stewardship Council) principles and criteria of forest stewardship.

Indigenous people in Indonesia – and in this particular case the Dayak in Kalimantan – claim that most logging concessions (HPH) lie within the boundaries of their customary land. This is a source of potential conflict which should not be underestimated.

Pilot projects conducted by TNC (The Nature Conservancy) and DFID (Department for International Development) to establish a legality standard for timber have largely ignored social aspects. Similarly, the FSC team which carried out the inspection in 2003 did not fully consult with the affected communities.

According to TNC/DFID the timber legality verification system has been tested in the field and is ready to be tested on a larger scale and the FSC even issued a certificate of sustainable forest management at the time the present study was under way.

Local people have not been appropriately involved in the assessment nor in the development of the legality standard. The lack of communication between the local communities and the forest authorities has already caused considerable and protracted social conflict.

Pokja Hutan Kaltim, an East Kalimantan forest activist group, has been observing the development of the timber legality standard and its verification system as well as FSC's certification process of the Sumalindo logging concession since June 2003. At the time, Greenpeace claimed that Sumalindo was selling illegally harvested timber in European markets.

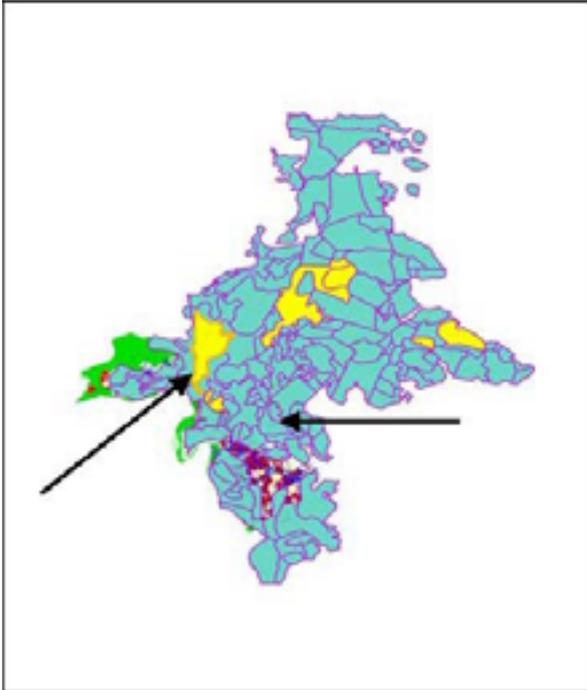
Pokja Hutan Kaltim has found evidence that the field-testing of the legality verification and chain of custody system as well as the FSC assessment were carried out without appropriate dialogue with the people of Long Bagun where the company has been operating for 25 years. Several local leaders have told Pokja Hutan Kaltim that local communities do not want to be ignored but want to participate in the process for developing policies that will directly affect their customary forests.

## Purpose of the study

Based on the situation described in the previous section, Pokja Hutan Kaltim and the local communities agreed to conduct a series of joint activities in order to:

- 1 Meet with affected communities in Long Bagun and document their opinion regarding the HPH operations within their customary area;
- 2 Develop recommendations for the government and other stakeholders involved in developing the system with regard to free, prior, and informed consent (FPIC).

## Study area



In administrative terms, the sub-district of Long Bagun belongs to the Kutai Barat district in the province of East Kalimantan. It lies in the Upper Mahakam, 700 km to the North West from Samarinda, the capital of East Kalimantan.

Getting there from Samarinda may take approximately 32–40 hours on regular passenger river boats. Another possibility is to travel to Melak, the capital of Kutai Barat district, by 18-seater plane (approximately 45 minutes) or by car (approximately 8–10 hours) and then continue by speedboat for another 6 hours.

The concession area of Sumalindo Long Bagun borders with four villages: Batu Kelo, Long Bagun Ulu, Long Bagun Ilir and Batu Majang.

## **2 Indigenous people in the Upper Mahakam – a historical overview**

Dayak people have lived along the Mahakam River for many generations. According to local tradition, their customary lands are passed on from generation to generation.

Land-use rights within the community are allocated according to agreed ancestral norms: a family or an individual may obtain the right to clear a certain patch of primary forest within the customary territory as long as no other community members have previously been given this right. The individual or family who first clears a patch of primary forest secures the exclusive right to further use the land for agriculture, gathering forest products or hunting.

Most inhabitants of what are now different villages in administrative terms told the Pokja Hutan Kaltim research team that they still identify with the old village and not as separate villages.

### **Long Bagun Ulu village**

The village of Long Bagun Ulu is considered to be the origin of two other villages, Long Bagun Tengah and Long Bagun Ilir. There are no reliable data regarding the recognition of Long Bagun Ulu as a village in administrative terms. According to local oral history, the settlement has existed for over 100 years. The people of Long Bagun Ulu belong to the Ma' Asa ethnic group, a subgroup of the Dayak Bahau.

The Bahau originally lived in the area of Apo Kayan plateau and then migrated along different rivers until they reached the mouths of the rivers Payang and Boh (where Long Bagun now is) and further downstream until they eventually settled on the bank of the river Mahakam.

This migration process lasted several years during which they marked the different places they passed. These marks were the basis for establishing the boundaries of their customary area with regard to other villages.

### **Batu Kelo village**

An outstanding feature of Batu Kelo village is that it consists of two parts, the 'settlement' area and the 'original' area. The first is located between the villages of Long Bagun Ulu and Long Bagun Ilir, while the so-called 'original' area lies on the left riverbank of the Mahakam, close to Riam Undang rapids. The inhabitants of Batu Kelo are descendants of the Ot Danum people in Central Kalimantan. They migrated to the Mahakam area during the 40s and 50s. Later, they moved to where Long Bagun Tengah now is because it was more accessible. The move was inspired by a group of migrants from Tiong Ohang who passed through their village during the 70s and assisted by a logging company operating in the area of Batu Kelo at the time.

The people of Long Bagun Ulu allowed them to settle where the village of Long Bagun Tengah now is. This area is only used for housing. For all other purposes, they use their customary area which according to *adat* law<sup>1</sup>, stretches from Batu Kelo, down to the rapids known as Riam Burung until the river Akah and the area around the Mahakam. It goes as far as the mouth of the river Boh, upstream of the river Mubong and inland it borders with Long Pahangai and Mahak.

### **Long Bagun Ilir village**

The founders of Long Bagun Ilir village were a group of Dayak Aoheng who migrated from Tiong Ohang during the 1970s. They first settled in Batu Kelo above the Riam Udang rapids. They found that Batu Kelo was too difficult to access and during a village meeting they decided to move to Long Hurai which seemed more accessible. This never happened. According to Valentinus Tingang, one of the first migrants at the time, the head of the subdistrict of Long Bagun opposed this and said they were not allowed to move there but should move to Long Bagun instead. They held another meeting and agreed to move to Long Bagun. The people of Long Bagun Ulu agreed to this and welcomed them with open arms. As a sign of their welcome, the people of Long Bagun Ulu agreed to hand over some of their customary land so that the migrants from Tiong Ohang could build their houses where the village of Long Bagun Ilir now is.

The newcomers were also granted customary land-use rights for all the land between the left bank of the river Sebnut up to the hill of Batu Ayau.

Many different ethnic groups live in Kutai Barat district. While some areas within the district have remained quite homogenous in ethnic terms, there are areas with a high degree of ethnic diversity. As opposed to what is considered common knowledge, the Dayak are not the only 'indigenous' people of East Kalimantan. There are also the Kutai people. They live along the Mahakam River and are descendents from the subjects of the late Sultan of Kutai. Other ethnic groups such as the Bugis and the Banjar can also hardly be considered 'foreigners' any more, since they have lived in East Kalimantan for several centuries. They have acquired individual land property rights in many places.

### **Batu Majang village**

The village of Batu Majang lies on the right bank of the river, opposite the village of Long Bagun Ilir. Batu Majang has a similar history to that of Long Bagun Tengah and Long Bagun Ilir in that its inhabitants originally migrated from other areas. In the case of Batu Majang, as in many other places in the upper Mahakam area, they belong to the Kenyah people and originally there were representatives of two different subgroups, the Uma' Tukung and the Uma' Baka from the Apo Kayan plateau. At present there are only descendants from the Uma' Tukung in Batu Majang since most of the Uma' Baka have moved to Berau district.

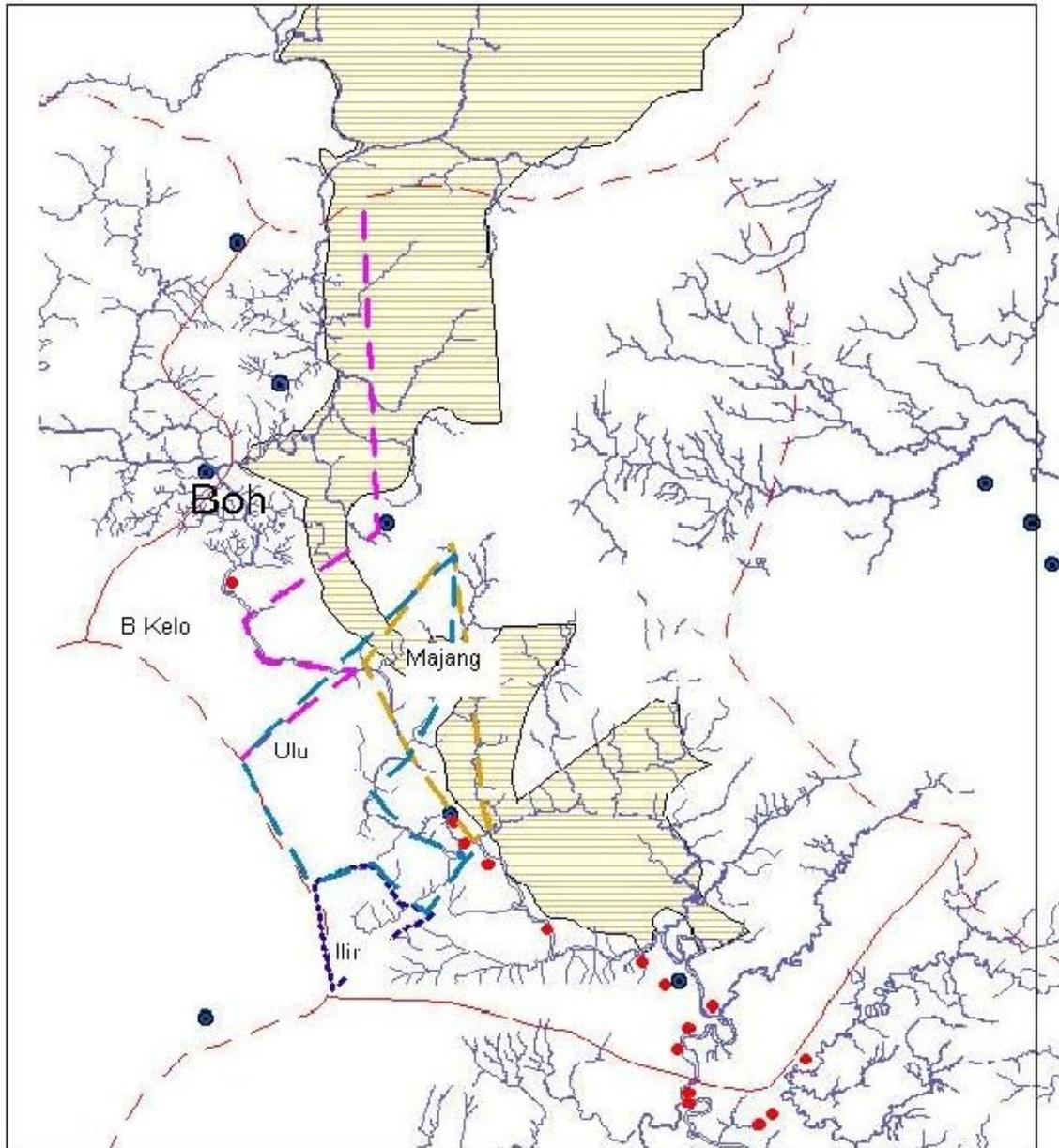
Batu Majang and Sumalindo have become synonymous, since the company's base camp and stockpiles are located within the boundaries of the village of Batu Majang.

Although at present Sumalindo does not carry out any logging within the area of Batu Majang, it is here that the company has its log pond to temporarily store the logs from the mouth of the river Boh (also known as km 82).

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<sup>1</sup> *Adat* is a very commonly used term in Indonesia with wide meaning that refers to the body of custom and belief, religious observances and rituals, cultural values and shared wisdom, lore and intellectual inheritance, customary law and institutions of self-governance that are held by a people. The simple gloss in English, 'custom' or 'customary', does not really capture the deeper, manifold meaning of the term in Indonesian. *Adat* is enshrined in the constitution and acknowledged in other formal laws of the Republic of Indonesia.

The people of Mahak (Malinau district) often come to Batu Majang to shop – not only because Batu Majang is the closest market for them but also because Sumalindo runs a bus line for them once a week. The trip from Mahak to Long Bagun takes quite a long time because it requires an overnight stay at the Sumalindo camp at km 122. Even so, this is faster and cheaper than travelling to the capital of Malinau district.



Sketch map of the four villages

### 3 Overview of the local customary land rights system

For the Dayak the land is not just some sort of material property but rather an expression of both economic and social prosperity since the customary land of a community has economic and spiritual values.

As explained in the previous section, the customary land rights system has been in place for a long time and is respected by the local people for whom it is a communal aspect of their lives.



Dayaks sowing crops in recently cleared and burned garden

Within the community it is clear that any community member may be granted permission to clear a patch of forest to use it as arable land, for collecting forest products or for hunting, as long as the area has not previously been claimed by anyone else.

Within the customary land-use system there is an area which is set aside for new community members who need it as a basis of their livelihoods, for instance if people migrate from a different village as was the case of Long Bagun Ilir in the past.

When speaking of their customary land, the people of the Long Bagun area use the terms *lepuun* (Kenyah), *tulepuun* (Aoheng), or *hang tana* (Bahau). This is not very different from the term *lembo* or *simpukng* used by other Dayak people who live along the Mahakam.

#### **Adat institutions and decision-making system**

Kutai Barat district legally recognises the existence of *adat* (customary) institutions up to the village (*kampung*) level. The *adat* institutions co-exist with the village administration and the Badan Perwakilan Kampung (BPK, Village Representative Body). Compared to other institutions at village

level, the *adat* institutions have more specific functions and responsibilities within the *kampung* governance system. While the village administration mainly takes care of administrative issues, the *adat* institutions mainly deal with moral issues. For instance, the *adat* institutions play an important role in determining the organisation and timing of the agricultural cycle. Another more specific example is that the *adat* institutions act as mediators in cases of domestic conflict.

The members of the *adat* community live according to *adat* law. *Adat* law covers all aspects of life, such as marriage, death, birth, land issues, and aspects of everyday life. *Adat* law is valid as long as it is accepted by the people it applies to. Sometimes it is also linked to spiritual aspects such as the belief that ancestral spirits support the community and punish those who break *adat* law.

When dealing with problems or conflicts the head of the community (*kepala adat*) takes into consideration the advice from the other customary leaders (*pemuka adat*) and the community elders (*tetua adat*) as well as precedence from previous cases in order to establish the fine or sanctions to be imposed on the guilty party.

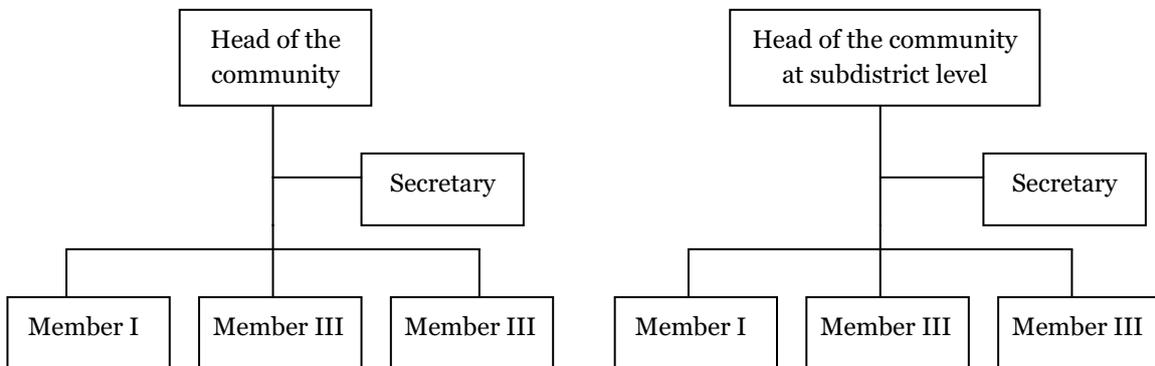
Before a case can be considered by the *adat* institutions, the petitioner has to pay a white plate and the amount of approximately IDR 20,000 (approximately GBP 1), as well as name witnesses. The accused also has to pay a white plate to signal his/her agreement to the processing of the case by the *adat* court. The money paid is used to cover the operational expenses of the *adat* institutions in enforcing the *adat* law.

The *adat* institutions follow a series of rules which are also respected by the members of the *adat* communities in the different villages. Traditionally *adat* rules and laws were not written down but have been conveyed orally from generation to generation. However the process of passing on knowledge regarding *adat* laws to the next generation is [becoming increasingly] difficult so that only some community members know enough about them. In the long run, this will gradually erode the identity of these *adat* communities. This concern is often mentioned in village meetings facilitated by the Pokja Hutan Kaltim team.

Most positions within the *adat* structure are hereditary and passed on from one generation to the next within certain families considered to be descendants from 'blue-blooded' families and to have profound knowledge of the *adat* law and system.

From an organisational point of view, the *adat* institutions are led by the head of the community (*kepala adat*), a secretary, and three members. They are all expected to have leading qualities and knowledge about *adat* and *adat* laws.

## Structure of the adat institutions at village and subdistrict level



Structure of the adat institutions at village level

Structure of the adat institutions at subdistrict level

The Head of the community at subdistrict level is described in local language as he who '*Pemuntung but buyung pemula ajakng lihang*', and the Secretary as he who '*Jut batang pekalukng jungkau batang petanaq*'. He acts as note taker and is in charge of arts and cultural issues. The Member I '*Mantiq nyeremiq*' takes care of adat laws related to death and life, Member II '*Tatau nyerimpan*' is in charge of genealogy and history, and Member III '*Puntu gadikng puntu balau*' acts as treasurer.

The formal administrative institutions usually play an important role in decision-making and in solving conflicts but the adat institutions are often called to intervene in particularly complicated cases which relate to village matters. Traditionally this would involve holding a village meeting but according to information obtained through interviews with local people this is not very common any more.

In a more practical context, as for instance a company operating within the customary area, the adat institutions play an important role as those who know best the location and extension of the customary area. Companies usually know this but they tend to deal with the formal administrative institutions only – such as the village head, the Village Representative Body (BPK), and the youth association (Karang Taruna) – because this is more convenient for them. As a result, there are often land conflicts between the different villages because the parties involved in a negotiation do not know about the boundaries of the customary areas between the different villages.

## 4 HPH Sumalindo Lestari Jaya is 'not sustainable'

After more than 25 years of activities in the Long Bagun area, Sumalindo continues to open up new cutting blocks. According to the people of Long Bagun, Sumalindo is not interested in re-harvesting cutting blocks around Long Bagun because most of the forest has already been logged and is degraded.

The clearing of new cutting blocks every year for more than 25 years is synonymous with forest destruction and timber trade. No aspect of Sumalindo's operational system so far points towards sustainability.

The people of Long Bagun use a system of shifting cultivation and say that their system is more sustainable because they can return to a certain plot of land seven to eleven years after first clearing it.

During the last three to four years, Sumalindo has been operating in Malinau district after destroying the forest around Long Bagun.

According to a local leader, given the environmental impacts, there is no such thing as a sustainable logging company in the Upper Mahakam – and a company which is only partly sustainable or which just pretends to be sustainable should not be given a certificate of sustainability.

While a logging company will just move on to clear other forests once the forest in a certain area is destroyed, it is the local communities who will have to face the consequences. Already with normal water levels, the prices for basic goods in the Upper Mahakam are three times those in Samarinda; in the case of floods or droughts, they are even five times higher.

### Sumalindo's chain of custody (CoC)

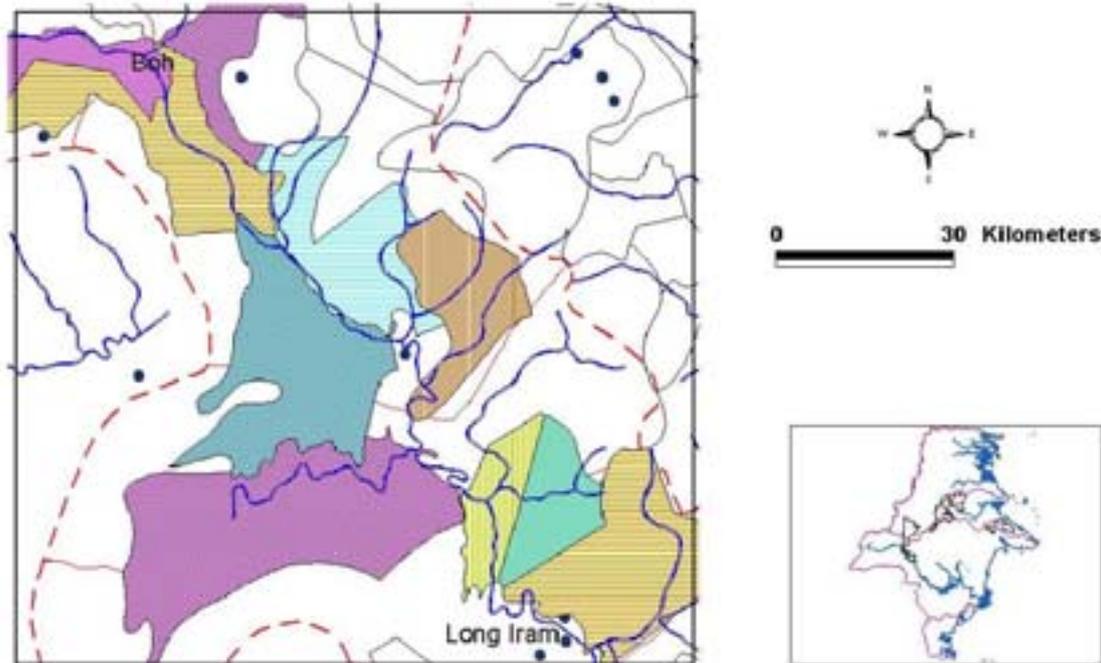
The concept of a chain of custody (CoC) implies that every single piece of timber being sold in the market or reaching the consumer can be traced back to its origin.

Companies who wish to market their timber in international markets such as Europe, Japan and the US, are keen to be CoC certified. This is because the end consumers in these markets demand that the products they buy use wood free of environmental and social problems. A CoC certificate has become a pre-requisite to access these markets. Research carried out by Pokja Hutan Kaltim shows that Sumalindo is indeed keen to fulfil these requirements because it would allow them to charge higher prices for their timber than they charge now.

Based on discussions attended by the research team, Sumalindo was very keen to ensure that the certification process ran smoothly. However, in practice the process was flawed from the start – extending from the planning stages which were firmly controlled by Sumalindo, especially when it came to defining the criteria and indicators, to the process of informing and involving the local communities, particularly with regard to the final assessment and the meetings at village level.

According to SmartWood's public summary document on Sumalindo as of January 2006, 'The CoC assessment for a joint FM/CoC certification candidate is limited to the SLJ-II forest gate only. In this assessment the go-between log pond at Long Iram was considered as the SLJ-II "forest gate". Arguably, this could also be the log yard/log pond within the concession (km 82). But the use of an SKSHH [*Surat Keterangan Sahnya Hasil Hutan* (Official Timber Transport Document)] is too expensive due to the small volumes that can be rafted from km 82.'

## From Boh to Long Iram



Sumalindo did not explain about the distance between km 82 and Long Iram. According to the people living in the area around km 82, also known as Muara Boh, this is where the logs are transferred from the trucks to the river. It takes five to seven days for a small raft of logs to arrive at Long Iram.

According to the TGHK map (*Tata Guna Hutan Kesepakatan* – Agreement on Forest Use Plan) issued by the ministry of forestry, there are ten different logging concessions (HPH) between Muara Boh and Long Iram

The joint report by Pokja Hutan Kaltim, Walhi (Friends of the Earth–Indonesia) and Greenpeace provided to SmartWood in January 2005 already described how logs from different concessions get mixed between Muara Boh and Long Iram. This is so because the current in this part of the river is so strong that it is common for rafts to shed logs along the way.

The report even mentioned the existence of logs of unclear origin, indicating that Sumalindo stockpiles logs from areas other than its own cutting blocks.

The same SmartWood document states that 'according to SLJ-II representatives, it has capacity to harvest approximately 120,000 cubic meters, although with recent additional equipment failures and company efforts to recalculate (re-tooling) harvest plans, SLJ-II may harvest significantly less than that, approximately 70,000 to 90,000 cubic meters.'

According to official records of the East Kalimantan forestry service (Dinas Kehutanan), Sumalindo submitted plans to harvest a total timber volume of 300,000 cubic meters in 2005.

This data show that Sumalindo planned to harvest timber beyond the company's cutting blocks.  
***How can such a company receive FSC certification for its chain of custody?***

## 5 Opportunities for renegotiating the concession boundaries, enclave or profit sharing

Interviews and meetings conducted at village level by the Pokja Hutan Kaltim team have shown that the local communities are keen to negotiate the concession's boundaries and to reassess the potential of their land. According to the villagers, if a company wants to start activities in their area, usually the community leaders call a village meeting. These meetings are only used to inform the community that the company has already received a permit from the government and the relevant authorities. Those present in the meeting are pressed to sign the attendance list without knowing that this will be later used as a 'proof' of their consent to an agreement supposedly reached during the meeting.



Community meeting to discuss the SLJ II forest management system with Pokja Hutan Kaltim

The communities often do not realise that they have been deceived until the company starts to work on the ground. It is then too late to re-negotiate and this often causes conflicts such as the one that recently emerged between PT Sumalindo unit V and the people of Ujoh Bilang village.

Based on discussions with several groups of community members from the four villages of Long Bagun, the following issues should be clarified in case of a re-negotiation:

- What has the company already done in their area?
- How much forest has already been cleared in terms of land area?
- How much timber has already been harvested in terms of volume?
- What will the local people receive as long as the company operates in their area?

- Are there opportunities for the local people to receive a share of the profit, be it as partners, workers or in any other way?

The local communities also want to be involved in the operational planning and they want to receive a report on the results of the company's operation in their area. This is considered to be particularly important because they feel that so far they have not received any reliable information.

Just like indigenous peoples in other places, the people of Long Bagun want their customary rights to be recognised and respected by outsiders. At the same time they realise that their adat culture and governance system have been severely eroded. The colonial authorities and the government during the post-colonial era have tended to regard these indigenous governance systems as a threat to their power. Countless policies have contributed to destroying the cultural fabric of indigenous peoples and stripping their governance systems of their power. The indigenous people of Long Bagun hope to find supportive partners who can help them rebuild their adat system.

## **The communities' experience so far:**

### ***With regard to the village development programme***

- The people of Long Bagun say that they have received no support from the company, despite the fact that Sumalindo's forest village development programme includes a plan to provide clean water to the villages. A water tank has been installed and also pipes leading to the different houses. However, the project was never completed and has never worked. By now, some of the installations are already damaged.
- Another component of the village development programme is a boat to take the village children to school. So far this has consumed approximately IDR 70 million (approximately 3,400 GBP) out of the village development programme's funds. The boat broke down years ago and has not been used since. According to a community leader from Batu Majang who once attended a meeting on the progress of Sumalindo's village development programme, the school boat is still reported as an ongoing component of the company's programme. In fact, schoolchildren actually spend IDR 10,000 (approximately 0.5 GBP) on transportation.
- One of the brochures that Sumalindo has handed out in the villages states that the company has a very good relationship with the local communities and that it has built a school for the village children. However, several community members have stated that the wooden building cannot be used because it is in a very bad shape.
- Pokja Hutan Kaltim has received information from a village leader who had to wait for over a year to have his house connected to the electric power supply. The connection was only made shortly before he was asked to join a meeting in the district's capital Melak during the certification process in 2003. In other words, Sumalindo wanted to influence him so that he would speak favourably about the company.
- One community member from the village of Mahak in Malinau district reported that they approached the company to discuss their difficulties in accessing Long Bagun from Mahak. These difficulties had already led to some conflict. The company provided a logging truck as a means of transportation. At present the transportation available is one company truck, one commercial vehicle operated by a so-called cooperative owned by one of Sumalindo's contractors and one public transport vehicle belonging to the subdistrict of Boh.
- To reach the area of Mahak all vehicles must stop at Sumalindo's base camp, also known as km 122. Everyone needs to have a travel permit issued by their village authorities and these permits are checked at each post along the road. Controls at km 122 are the most rigid, particularly for outsiders who do not live in any of the local villages. The subdistrict of Long Bagun has issued a circular stating that outsiders who are not local residents are not permitted to stay in the area of Long Bagun for more than a week.

- Sumalindo once posted a sign in the local rubber gardens of Long Bagun claiming that these were one of the results of the company's village development programme. The people of Long Bagun opposed this claim because they have cultivated these rubber gardens without any help whatsoever from the company and the sign was eventually removed.
- Also in Long Bagun Ilir Sumalindo once claimed the local rubber gardens as a result of their village development programme during the visit of the company's evaluation team. However, the local communities opposed this because the rubber gardens were entirely the result of their work and had nothing to do with the company's village development programme. Apart from that, the company presents the fulfilment of their obligations towards the local communities as if they were charity programmes, including the village development programme.

***With regard to payment of compensation and 'fees'***

This remains a complex and contested issue. So far the company insists on applying the government's tables for calculating compensation payments. Meanwhile the local communities are looking for other alternatives. However, their bargaining position is weakened by these government regulations. In the case of Long Bagun Ulu, Sumalindo agreed to a compensation payment of IDR 2 billion (approximately 100,000 GBP) under the condition that some of it would be paid in kind as part of the village development programme. The funds were to be used to provide a clean water system and to develop the village infrastructure. The actual value of the payments made in kind remains unclear and was not made transparent to the community. According to their perception, most of the current village infrastructure is still the result of another company's village development programme, HPH Roda Mas, which used to work in the area.



The contested log pond

Since early 2005, Sumalindo and the people of Ujoh Bilang have been arguing about the company's logging operations. The problem is that Sumalindo is working in an area which lies between the two villages of Ujoh Bilang and Batu Majang and the people of Ujoh Bilang claim that the company only informed the other village and not them. The people of Ujoh Bilang are holding on to approximately 3,000 cubic meters of wood felled within their village boundaries and they are claiming a compensation payment of IDR 100,000 (approximately 5 GBP) per cubic meter.

This issue nearly caused an open conflict regarding the boundaries between the two neighbouring communities. A solution to the conflict was found once a delegation from Batu Majang checked and confirmed that the timber being held by the people of Ujoh Bilang had indeed been logged beyond the boundaries of Batu Majang. At this point Sumalindo stopped its activities there and withdrew all its operational units from that location.

Most companies which start operations within the boundaries of villages do not engage in the kind of dialogue that the local communities would expect. Instead, the companies base their approach on 'positive'<sup>2</sup> law, so that local people do not know how to defend their rights, even though they know that they have a right to the land now being used by the company. During the discussions held in the course of compiling this report, the communities stated that they want the companies to be involved and they want the companies to be transparent. This should apply to the whole process from the planning stages to the final result, covering aspects such as the mapping process, the report on the results of the timber cruising, the agreement with the communities on the annual operational plan, etc.

At present, the opposite is the case: all that is left to the local communities is to feel the consequences of the companies' operations, such as the increased risk of flooding during the rainy season and the high prices for basic goods during the dry season caused by difficult transportation due to reduced river depth.

### **Community involvement in the field-testing of the timber legality verification system by TNC/DFID and in the FSC certification process by SmartWood**

When looking at examples of how the local communities are being involved in the company's sustainable forest management, there was not much for the Pokja Hutan Kaltim team to document because the local communities do not understand the procedures or have not received any information at all about them.

According to the findings of Pokja Hutan Kaltim, the local people have received hardly any information on the process of developing the timber legality verification system. At the beginning of the process in Melak district, the leader of the team developing the system promised that meetings would be held in all villages bordering with the Sumalindo concession area but this did not happen.

According to a community representative who attended the meeting in Melak, there never were any village meetings in the Long Bagun area to discuss the development of the timber legality system. The Pokja Hutan Kaltim team recently attended a meeting in Samarinda. There were only very few representatives of local communities present. One of them claimed that his house had only been connected to the electric power supply provided by Sumalindo because he had agreed to come to the meeting.

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<sup>2</sup> 'Positive law' (*hukum positif*) is the term used in Indonesia to apply to government laws derived from executive decisions or decision of the legislature(s). Indonesia has a 'plural' legal system and also recognises to a limited extent the validity of 'customary law' (*hukum adat*), with which positive law is contrasted.

## **The free, prior, and informed consent (FPIC) process from the community perspective**

One important aspect mentioned by all communities interviewed by Pokja Hutan Kaltim was that the FPIC process should take place in the village. If outsiders want to operate in the village, they should come to consult with the community. The most important issues to be agreed upon are the intended purpose as well as the company's rights and responsibilities, in particular the compensation to be paid to the community for using their land.



River transport is a vital means of communication for the villagers: they feel the logging operations have caused river levels to vary with more floods and low water periods than before. Both impede river travel.

The community members interviewed by Pokja Hutan Kaltim say that so far this has never been done. Even in the cases where the communities have received reports on the company's logging activities, this has only happened after considerable pressure from the communities to receive such reports.

### ***Proposed steps:***

- 1 Expression of good faith: At the beginning of the process, the company should approach the community leaders to announce their wish to work in the area. This intention should then be presented in a village meeting which would also be an opportunity for the community to officially welcome the outsiders as their guests.
- 2 Joint planning: Local people must be involved in the planning because they are the ones who know which part of their land can be used for logging and which area is used by the community or needs to be protected and must not be felled.

- 3 Selection of logging area: Even if the company has already received a permit by the government this does not mean that it can start work immediately. In order to avoid future conflicts, all elements of the community and the company should jointly determine the area of operations.
- 4 Other agreements: Prior to any activity the community and the company need to agree on other important issues such as environmental issues, compensation payments, local workers, health issues, etc.
- 5 Forest management operations should be discussed and agreed with the communities.
- 6 Monitoring and evaluation: In order to prevent future conflict, an appropriate monitoring and evaluation system must be in place to ensure that both parties abide by their mutual commitments and fully implement their agreements.

According to the local people, hardly any of the HPH operating in the area has proof of a true agreement with the communities affected by their logging operations, particularly regarding their customary rights. The customary rights and other management rights of the local communities must be clearly recognised and the local communities must be involved in any process affecting their customary land and their environment.

## 6 Recommendations

- 1 The rights of indigenous people who have lived in the area for generations must be recognised and respected
- 2 Social aspects must be a central element of all forest policies in order to avoid protracted conflict.
- 3 Policies affecting the livelihoods of indigenous peoples must be developed/revised with their participation.
- 4 For FPIC-based decision-making to work as it should, participatory discussions must involve the government, companies, and local communities and cover the following steps: Expression of good faith, Joint planning, Selection of logging area, Other agreements, Forest management operations, Monitoring and evaluation.
- 5 A multi-stakeholder body coordinated by the local government (*Pemerintah Daerah*) should be in charge of mediating and facilitating the conflict resolution process between the local communities and the companies already operating on their customary land.

### **This report was compiled by:**

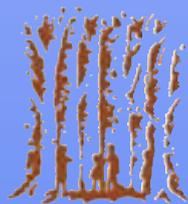
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Indonesia is one of the world's main timber-producing countries and is keen to assure the market that its timber originates from sustainably managed forests in harmony with the local peoples.

Pokja Hutan Kaltim (the 'East Kalimantan Working Group on Forests') has been observing the development of the timber legality standard and its verification system, as well as the Forest Stewardship Council (FSC) certification of the PT Sumalindo Lestari Jaya logging concession since June 2003. This is the report of the case study into the local indigenous people's experiences with Sumalindo.



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