

National Updates on Agribusiness Large Scale Land Acquisitions in Southeast Asia

Brief #2 of 8: Republic of Indonesia

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Source: <http://geography.about.com/library/cia/blcindonesia.htm>

Country facts

Total area: 910,931.32 km²
Population: 237,641,320
Neighbouring countries: Malaysia, Timor-Leste, Papua New Guinea, Philippines, Australia
GDP per capita (2012): 33.3 million rupiah (USD \$3,563)
National Income per capita: 9.5 million rupiah (USD \$924)
Main exports: oil and gas, coal, wood products, palm oil, cocoa, rubber
Main imports: machines and mechanics, iron and steel, automotive products, organic chemicals, plastics and plastic products, chemical fertilisers
Agricultural workforce (% of pop): 38.9%

Government policies and targets for agribusiness expansion

Indonesia is a country abundant in natural resources, whose economy has heavily depended on the export of minerals, fuels (oil, coal and gas) and agricultural products since the early seventies. Mining and agriculture represented 6.23% of national income in 2012 and are expected to remain key sources of national economic growth. The agricultural sector alone accounted for an estimated 14.44% of the GDP in 2012, a figure which is projected to increase in 2013.

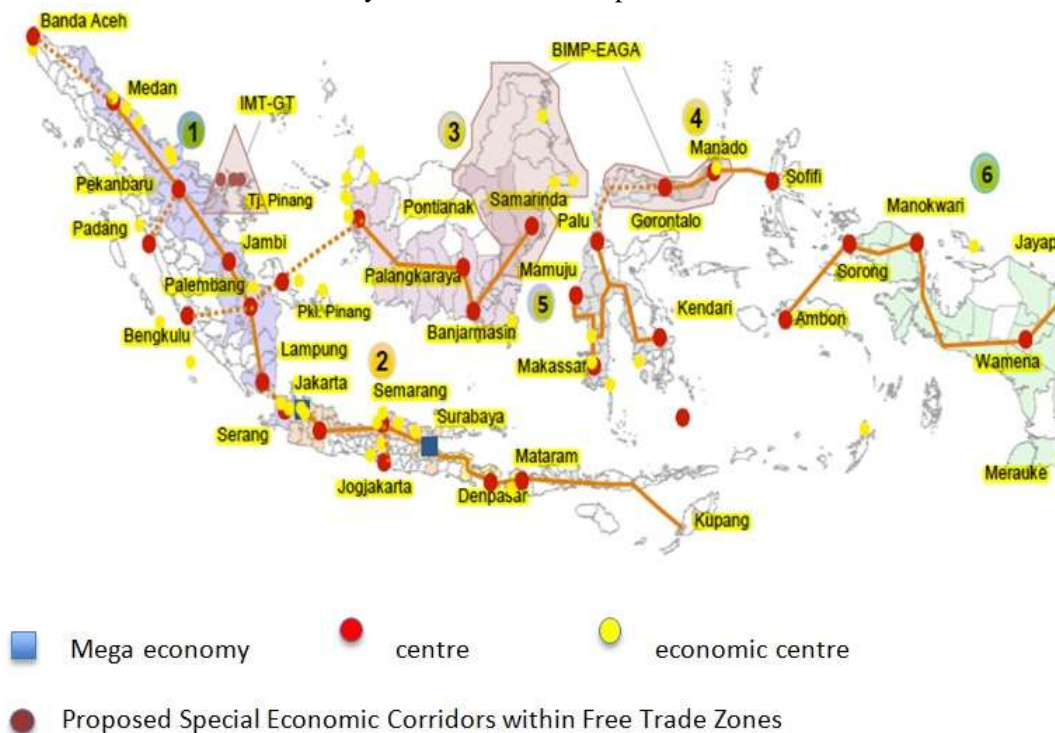
Domestic investment in agriculture in the period of 2010 to 2014 is expected to increase by 45.9% (464.9 trillion rupiah) while foreign investment is

expected to increase by 22.9% (199.9 trillion rupiah). This development in the agricultural sector could potentially create employment for 45.4 million citizens in 2014.

The Government of Indonesia, through its Ministry of Agriculture, has developed a policy framework to facilitate investment in the agriculture sector. Following the development of

the road map for the Master Plan on Acceleration and Expansion of Indonesian Economic Development (MP3EI), the Ministry of Agriculture has developed six main economic corridors for the agricultural sector, three of which are dedicated to boosting the development of oil palm plantations in the provinces of Papua, Sumatra and Kalimantan.

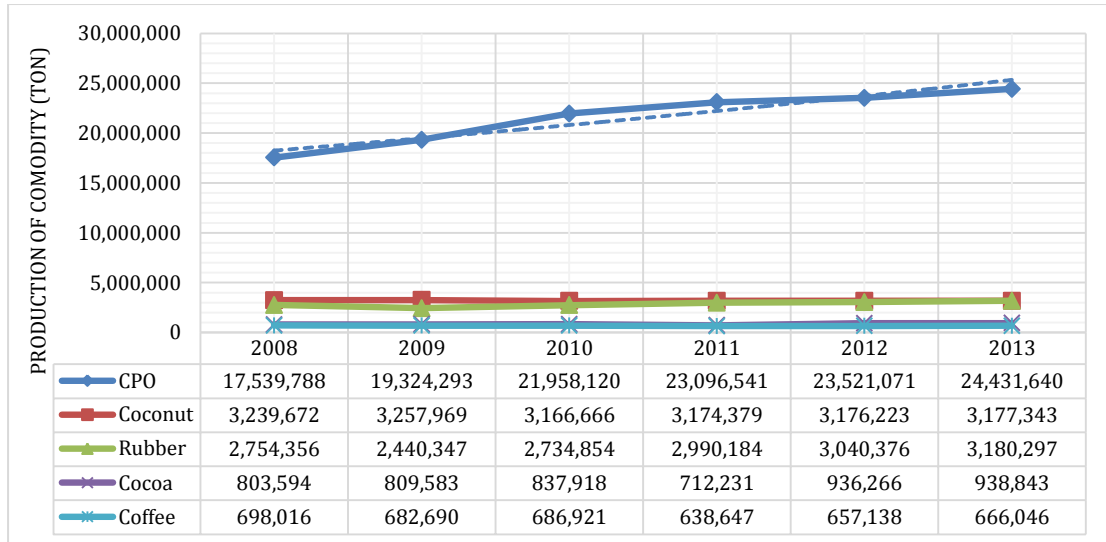
Six priority economic corridors
Commodity base/territorial competitive sectors



1. Sumatra Economic Corridor
2. Java Economic Corridor
3. Kalimantan Economic Corridor
4. Sulawesi – North Maluku Economic Corridor
5. Bali – East Indonesia Economic Corridor
6. Papua – Maluku Economic Corridor

15 plantation crops will be prioritised as part of the bid to boost agribusiness and develop the country's market competitiveness, according to the Ministry of Agriculture's strategic

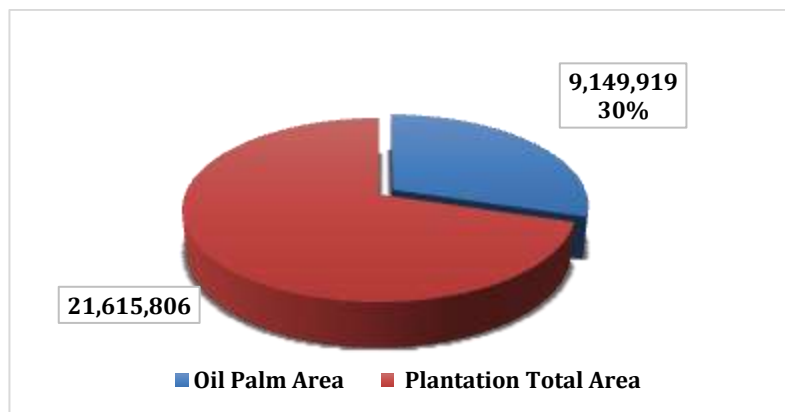
planning for 2010 to 2014. At the top of this list is oil palm, plantations of which are expected to increase at a rate of 5.22% per year, with a total production of 28.4 million tonnes in 2014.



Growth in production of key agricultural crops (2008 – 2013)

In order to implement the plan above, 21.6 million ha of land will be allocated to plantation development in 2013, of which 9.1 million ha will be

allocated for oil palm plantations, with expected expansion to 12 million ha in 2014.



Oil palm plantation coverage in relation to total plantation area

The targets for land conversion to agribusiness plantations suggest that forest conversion will most likely increase in the near future, a trend which various sources suggest is already underway. From 2007 to 2011, the Ministry of Forestry issues 576 conversion licenses for a total of over 1.5 million ha of land to agribusiness companies.¹ The largest areas of conversion were located in Riau (approximately 1.5 million ha) and

Central Kalimantan (652,326 ha). Forest conversion increased to about 8 million ha in 2012, of which 4 million ha has now been abandoned. 2 million ha of this abandoned land was under Business Operating Permit (HGU) title.

In 2011, 292 companies were granted licenses for Natural Forest (HPH) over a total of 23.41 million ha. These concessions were projected to bring returns of 306.99 billion rupiah (USD

\$19.9 million), but in reality, returns have been much higher, in the sum of approximately 7.381 trillion rupiah. The biggest forest concession areas are located in Kalimantan, where they cover approximately 10.67 million ha, granted to 168 companies.

Problems with land acquisition

Lack of recognition of rights to land

Broadly speaking, the right to land is guaranteed by the Constitution and is supported by the Basic Agrarian Law No. 5 of 1960. The Constitution provides a more socially-anchored approach to land ownership, as enshrined in Article 33.3, placing in the hands of the State the power to utilise land for the greatest benefit to its people. Similarly, the Basic Agrarian Law, which to date is the only law which provides a framework on the recognition of land rights, reflects a social approach to land ownership, however it contains only very general provisions on collective rights to land, notably, the collective rights of indigenous peoples to their customary lands. Instead, the State delegates land to indigenous communities through the issuance of implementing regulations, such as Presidential Decrees. Thus despite normative recognition of customary land (*ulayat*) rights in the Basic Agrarian Law, very few implementing regulations have been developed to secure indigenous peoples' rights to land. As such, the persistent principle of eminent domain in relation to land and land rights facilitates the allocation of large-scale concessions by the government to companies for agribusiness development.

Land conflicts

In order to help boost national economic growth, government policies since at least 2010 have sought to encourage business- and investment-friendly conditions for agribusiness and other private sector companies, both domestic and foreign. One consequence of increased government decentralisation has been an increase in deforestation rates as well as the ill-regulated issuance of licenses over large areas of land for conversion to plantations, particularly oil palm plantations.

Government policies supporting the practice of large-scale land acquisition by private sector entities for plantations and other forms of agribusiness activities have concomitantly led to an increase in land conflicts. No single reference exists for the number of land conflicts ongoing across the country, but both governmental and non-governmental sources report that the trend is on the rise. The National Land Agency (BPN) recognised in 2012 that there were around 8,000 land conflicts in Indonesia. According to a report launched by legal and human rights organisation HuMa in 2012, 282 land conflicts occurred in 98 regencies/municipalities within 22 provinces across the country.²

The highest number of land conflicts took, or are taking place, in Kalimantan and Sumatra and involve plantation companies. Overall, around 2 million ha of land are under dispute, of which 1.7 million ha constitute disputes over forest areas. An earlier report by the National Consortium on Agrarian Reform (KPA) recorded 198 conflicts over 963,411.2 ha of land. The National Human Rights Commission of Indonesia (Komnas

HAM) has recorded an increase in complaints against companies since 2010, as well as an increase in land conflicts between individuals/communities and companies, in particular large-scale plantation operators.

Year	Number of complaints	Land-conflict related complaints
2010	1,119	N/A
2011	1,068	354
2012	1,126	446

Reported escalation of conflict into violence has usually been the result of a combination of more complex and deep-rooted land tenure insecurities and competition. In many cases, such conflict finds its roots in the very initial stages of company operations. Other sources of conflict include the following:

- 1) Unclear mechanisms of land acquisition by private entities, sometimes exacerbated by bureaucratic corruption at the local level

An example of this is the escalation of conflict into violence in three different locations in Lampung Province (Sumatra) towards the end of 2010. In the case of Mesuji, the community of Sri Tanjung village only found out that their land had been allocated for oil palm and timber plantations when the companies arrived with local officials to being the acquisition process. Without prior consultation having taken place, this community and others were forced to accept compensation for the land lost, and a promise that they would be employed to work in the plantations. They were also promised a Nucleus Estate Smallholder (NES) scheme.

A number of documents later gathered by the government Joint Fact-Finding Team (TGPF) suggested that corruption had taken place in this process, as a result of which conflict has sparked frequently throughout 1994 to 2012, when violence re-erupted and local communities burned down oil palm trees and company offices. This was followed by a clash between the communities and the mobile brigade police unit (BRIMOB), a tragic outcome of which was several casualties and the criminalisation of certain local community leaders.³

- 2) Absence of Free, Prior and Informed Consent (FPIC) in the entire process of land acquisition

In most cases, lack of respect for and implementation of FPIC has been a root cause of ensuing land conflicts. Where prior consultation does not take place, communities lack the necessary information to make informed collective decisions, and have little choice but to accept company-driven agreements and offers. The acquisition of community lands is often facilitated by the bribing or coercion of village heads and community leaders.⁴

A notable example of the violation of the right to FPIC is the Merauke Integrated Food and Energy Estate (MIFEE) in Papua Province, where consultation is routinely failing to take place, and where customary modes of negotiation and decision-making are being manipulated by companies to facilitate large-scale land acquisition, with little benefits accrued to the indigenous Malind peoples.

- 3) Lack of clear and official spatial planning both at the national and local levels

Spatial planning should ideally be carried out as an open and transparent process in which local communities are properly consulted and invited to participate at all stages. Furthermore, the spatial plan itself should ideally be a publicly available document. In practice however, neither of these conditions are being met.

- 4) Overlapping designation/allocation of areas for different purposes, partly as a result of disparate and ill-coordinated sectoral approaches to natural resource use and management and policy making

Large-scale land acquisition for agribusiness expansion has left countless local communities and indigenous peoples landless. A number of cases also suggest that local communities end up being poorer after ceding their land to companies.⁵ Where compensation is paid, terms and amounts tend to be dictated by the company (sometimes jointly with the government) rather than negotiated fairly and openly with the communities.

In many cases, the location permits (*izin lokasi*) issued by the local government are used as a pretext by companies to forcefully evict local communities from the concession area, as was the case in the concession of PT Buana Artha Sejahtera, a subsidiary of Sinar Mas in Central Kalimantan. The local community of Biru Maju village saw their lands grabbed and converted to oil palm plantations, and offers of compensation were only made to them after their village and small-scale agricultural plots had been destroyed.⁶ This case and many others have led to Indonesia being reported to the United Nations by civil society organisations for violations of human rights, including land rights.

Land conflicts between local communities/indigenous peoples and companies are often followed by the criminalisation of community members as well as the organisations and individuals supporting them to defend their rights and seek remedy. According to a report by KPA, 156 peasants were detained as result of land conflicts in 2012.⁷ The Indonesia Peasants Union recorded 76 cases of criminalisation in the same year.

Law No. 18 of 2004 on Plantations, in particular Articles 27 and 41, has often been used to criminalise peasants and smallholders. Despite the revocation of these provisions by the Constitutional Court in 2011, the criminalisation of rights defenders has continued, justified by the application of the Penal Code. In such cases, the criminalised individuals are accused of stealing, damaging or inciting harm to plantation property. A recent case of criminalisation is that of Anwar Sadat, a local Friends of the Earth Indonesia (Walhi Indonesia) leader in South Sumatra who was charged with seven months' imprisonment for his struggle in the land conflict with PTPN VII Cinta Manis.

Another newly adopted law on the prevention and eradication of forest destruction contains a number of provisions whose scope and definition on the destructive actions against forest areas can potentially be interpreted to criminalise indigenous peoples living within the forest. This law has been criticised by a broad range of human rights NGOs, including the National Alliance of Indigenous Peoples (AMAN) and Walhi, who plan to file a constitutional review against the said law.

Human rights framework as it applies to agribusinesses

The post-1998 political transition in Indonesia has opened up a new chapter for the protection of human rights, in part being achieved through constitutional and legal reform. Indonesia is party to 8 major human rights conventions: the Convention against Torture (ratified through Law No. 5 of 1998); the Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Right of the Child; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Elimination of Discrimination Against Women; the Convention on the Rights of People with Disabilities and; the International Convention on the Rights of Migrant Workers and their Families. The protection of rights is also guaranteed through Law No. 39 of 1999 on Human Rights, which reiterates the rights enshrined in the Universal Declaration on Human Rights.

While earlier attention to the protection of rights in Indonesia was heavily focused on the protection of civil and political rights, due to the repressive regime under the New Order, a growing body of literature points to a development in social, economic and cultural rights, including in relation to recognition of the rights of indigenous peoples. The Constitutional Court has played a key role in this regard. Established in 2001, the Constitutional Court has jurisdiction over the violation of rights as guaranteed by the Constitution, and provides an avenue for citizens to bring up and seek remedy for such violations. Substantial jurisprudence has emerged from this body for the strengthening of protections for human rights of individuals and communities in the face of non-State actors, including corporations. While earlier case law focused on questions of the constitutionality of privatisation of services (such as electricity and water), later jurisprudence has focused and problematised the issue of collective rights, such as indigenous peoples’ land rights and right to manage coastal areas, as part of their right to life under Article 28A of the Constitution.⁸

Selected provisions in Indonesian law that guarantee individual and collective land rights

Law	Recognition of rights
Constitution of 1945	Art 18 (2) The State recognises and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.
UU No. 5 of 1960 (Basic Agrarian Law)	Art 2.4 The implementation of the above mentioned right of control by the State may be delegated to the autonomous region and <i>adat</i> Law Communities Art 3 The implementation of ‘Hak Ulayat’ (customary rights over land) shall be based on the unity of the nation and shall not be in conflict with higher regulations

Law No. 32 of 2004 on Local Government	Art (9) on the protection of individual rights over the land Ps 2 (9) State recognises and respects indigenous peoples and their traditional rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia. Ps 203 (3) The appointment of the Chair of the village in indigenous communities and their traditional rights, as long as these remain in existence and are recognised, shall be governed by indigenous law as stipulated by bylaws in accordance with the government regulation
Law No. 18 of 2004 on Plantations	Art 9(2) Recognises the existence of indigenous peoples' rights and their customary law

However, the implementation of the said normative constitutional and legal framework has fallen short of protecting and recognising such rights in practice. This is due to both the issuance of laws and policies which contradict the said provisions, as well as the lack of implementing regulations to apply the said constitutional and legal guarantees.⁹

Examples of the former include Forestry Law No. 41 of 1999, Law No. 18 of 2004 on Plantations, Law No. 4 of 2009 on Minerals and Coal and Law No. 27 of 2007 on Management of Coastal Areas and Small Islands. Particularly relevant to agribusiness expansion is Forestry Law No. 41 of 1999, which fails to recognise *adat* law by incorporating forest controlled by indigenous peoples into State forest.

Overlaps and contradictions in national and international law have in turn led to competing claims, misuse and manipulation of laws and regulations by parties in conflict, as has been the case in land conflicts in Lembata, Eastern Indonesia.¹⁰

In response to these legal irregularities, civil society organisations have filed constitutional cases to the

Constitutional Court, which has demonstrated a progressive stance in its commitment to upholding and strengthening human rights, a promising sign for the near future. However, a lot more work needs to be done to ensure that new laws produced comply with international human rights instruments that Indonesia has signed or ratified.

Strengthening the recognition of indigenous peoples' rights to land

In recent years, the Constitutional Court has demonstrated a strong commitment to strengthening protections for the rights of indigenous peoples to their customary lands. A case in point is the decision of 2010 on the constitutional review of Law No. 18 of 2004 on Plantations. A petition was filed by four local community leaders who had suffered criminalisation when seeking to reclaim land grabbed from them by oil palm companies.¹¹ The leaders asked the court to revoke two articles in the law whose definition was obscure and therefore prone to misinterpretation and manipulation by plantation companies. One of these was the application of criminal sanction of up to five years' imprisonment for 'any

action deemed to be disturbing the operation of the plantation'. This ignored the fact that often, conflict arose after companies grabbed land from local communities without their consent or under unfair terms of agreement.¹²

In its decision, the Constitutional Court supported the recognition of indigenous rights to land and prohibited the application of both articles pending research on the existence of *adat* law. It also judged that allegations of criminal conduct (such as illegal occupation) against indigenous peoples and local communities could only be made once comprehensive information on the history of land tenure of the land in conflict had been carried out.

Another important case decision also contributed to the revocation of Article 1(6) in Law 41 of 1999 on Forestry which defines customary forest of indigenous peoples as State forest.¹³ This definition, according to the decision of the Court, discriminated against indigenous peoples as land title holders, leading to tenurial insecurity and insecure access to forest resources for their livelihoods.¹⁴ The Court's decision was followed up with the issuance of a Forestry Ministerial letter, containing technical guidance on the implementation of the said decision. In particular, the letter gave authority to the Ministry of Forestry to decide on the status of customary forest, as long as it was recognised in bylaws based on the study conducted by a specially appointed team. However, no further details had been provided with regards to the membership of this team at the time of writing.¹⁵

Strengthening the application of FPIC in strategic planning, zoning and management of natural resources

Another recent decision of the Constitutional Court in relation to a case made against Law No. 27 of 2007 on the Management of Coastal Areas and Small Islands has led to a strengthening in the application of the principle of FPIC in the development of strategic planning, zoning and management planning for coastal areas and small islands. Prior to this, the absence of consideration given to local and indigenous communities as key actors in the aforesaid activities, had led to two major problems. First is the silencing of community voices such that they are unable to agree or disagree to planned activities. Second is the lack of consultation over policy-making, which both is and leads to, the violation of their rights. The Court further asserted in relation to this case that the absence of participation of customary communities in such processes was tantamount to unequal treatment and was against the right to development as guaranteed in the Constitution.

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Endnotes

¹ *Buku Statistik Kehutanan* 2011.

² Widiyanto et al 2012 *Outlook Konflik Sumber Daya Alam dan Agraria 2012*. Pusat Database dan Informasi HUMA.

³ Although the conflicts that took place in the three locations in Lampung were shared by specific local contexts, similar patterns of escalating conflict have been reported in other parts of the country as a result of unclear and ill-regulated mechanisms through which private companies are allocated land, as well as the overlap of allocated concession permits. A special Joint Fact-Finding Team was established by the government to investigate the situation but its recommendations have yet to be implemented and the conflict was ongoing at the time of writing. For further information see *Laporan TGPF Mesuji*.

⁴ See Marti 2008.

⁵ Mardiyah 2012: 108 – 111.

⁶ For further information see PILNET 2013.

⁷ Solidaritas Perempuan 2013.

⁸ See for instance *Constitutional Court Decision Number 3/PUU-VIII/2010*

Concerning Judicial Review of Law No. 27 of 2007 regarding the Management of Coastal Areas and Small Islands.

⁹ For instance, Law No. 39 of 1999 contains a normative framework but no related implementing regulation has been produced.

¹⁰ See Safitri 2011.

¹¹ The constitutional review was submitted by, among others, Andi Vitalis and Japin, who were victims of land grabbing in West Kalimantan. Both were criminally charged based on the allegation of disturbing the operations of the plantation company in question.

¹² In the Andi and Japin case, for instance, the company (PT BAS) cleared land and forcefully evicted indigenous communities from their customary lands soon after obtaining their location permit from the local government.

¹³ The petition was submitted by AMAN in 2012. See *PUTUSAN Nomor 35/PUU-X/2012*.

¹⁴ *Constitutional Court Decision No. 35/PUU-X/2012*. pp. 175 – 178.

¹⁵ *Ministerial circular letter No S.E.1/Menhut-II/2013 on Constitutional Court Decision No. 35/PUU-X/2012*, issued on 31st May 2013. The letter also provides that should customary forest no longer exist, the right to exploit the forest shall be returned to the State and the status of the customary forest will be that of State forest.