

Preliminary findings from a Review of the Jurisdictional Approach initiative in Seruyan, Central Kalimantan, Indonesia



Case study June 2020 | Marcus Colchester¹, Emil Kleden² and Djayu Sukma³

The district of Seruyan in Central Kalimantan is one of four pilot Jurisdictional Approaches to certification announced by RSPO.⁴ Since 2018, Forest Peoples Programme and Yayasan Masyarakat Kehutanan Lestari have been engaging with the local government of Seruyan to clarify how the JA in Seruyan will address the challenge of land disputes in the province.

The investigation in Seruyan was focused on understanding how the jurisdictional approach in Seruyan plans to:

- Recognise customary land rights
- Ensure self-representation by indigenous peoples and local communities
- Respect the right to Free, Prior and Informed Consent (FPIC)
- Resolve land disputes and
- Accommodate community values, livelihoods, food security and viewpoints in High Conservation Value / High Carbon Stock land use planning.

Background

RSPO has developed a voluntary standard for the ‘sustainable’ production of palm oil (or fresh fruit bunches in the case of small and medium producers) that goes beyond what is required by law in many countries. RSPO member producers’ compliance with this standard is verified through 3rd party audit and the issuance of certificates by accredited Certification Bodies. One of the main challenges for jurisdictional approaches to palm oil certification is to clarify how compliance with the RSPO standard will be incentivised and enforced for **non-RSPO members** within the jurisdiction. In effect, this is a process of translating a voluntary standard into mandatory requirements within the jurisdiction’s policy, legal and institutional systems. In Seruyan context, this has been a topic of active consideration since the District announced its commitment to apply the RSPO standard in 2016. Discussions about how to address key issues such as FPIC in the State’s legal and institutional frameworks are taking place accordingly at the State level.

At the time that Seruyan and other jurisdictions – such as the Malaysian State of Sabah and the Indonesian province of South Sumatra – first announced their plans to achieve jurisdictional certification, RSPO had not published any system for ensuring compliance, verification and certification of non-RSPO-member producers. Consequently, the jurisdictional pilots such as that in Seruyan have been seeking to develop their own systems without a template against which to measure progress and towards which to target their efforts. While the jurisdictional approach initiatives are home-grown affairs, the somewhat piecemeal nature of JA pilots to date can thus be, at least partly if not largely, explained by the lack of clear leadership from RSPO.



Village meeting and interview backed by extensive community documentation

After RSPO members raised concerns about this gap, the RSPO Board agreed on the need to establish a Jurisdictional Approach Working Group (JAWG), which is now in the process of developing a Jurisdictional Certification Systems Document (JCSD) in consultation with RSPO members.⁵ Forest Peoples Programme is a member of RSPO and of JAWG and has carried out these reviews of the JA pilots in order to make better informed inputs to JAWG and JCSD. FPP’s studies were designed to complement the review undertaken by the consultancy New Foresight, which was commissioned by RSPO to review the RSPO JA pilots as an input to JAWG.⁶

This engagement has been facilitated by the Indonesian NGO Inovasi Bumi (Inobu). Forest Peoples Programme’s engagement has also been advised by the lawyer, and land tenure and social conflict specialist, Asep Firdaus of Saphir Associates.⁷

This work was funded under Forest Peoples Programme’s Focus on the Frontline funded by NICFI, the Climate and Land Use Alliance and FPP’s core funds. Parallel investigations were carried out of the Jurisdictional Approach projects in Kapuas Hulu, West Kalimantan, Indonesia, Sabah State in Malaysia and the Amazon area of Ecuador. A more detailed report bringing together all the findings is planned for later in 2020.

The Jurisdiction Approach in Seruyan

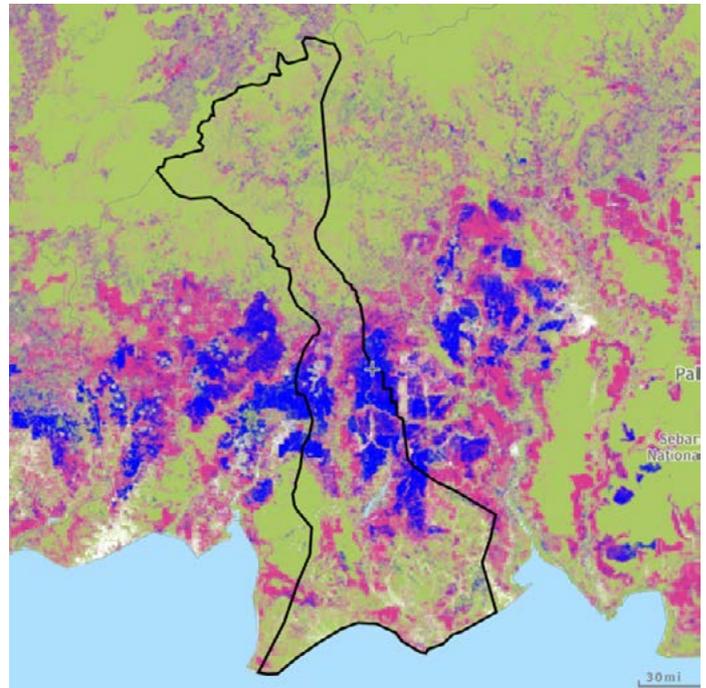
Central Kalimantan Province, on the southern coast of Indonesian Borneo, has been undertaking legal reforms in accordance with international human rights laws and the standards of the Roundtable on Sustainable Palm Oil (RSPO) for over 10 years now. Decrees by the Governor have required adherence to the High Conservation Value system – which goes beyond what planters are required to protect under national law – and the provision of smallholdings to local communities by oil palm investors, equivalent to 20% of their planted estates. The Province has also embarked on a process of registering a hierarchy of customary leaders and providing preliminary recognition of customary rights areas (SKT-Adat - Surat Keterangan Tanah Adat).⁸

In the district of Seruyan, the District government plans to go further and bring all the palm oil producers into compliance with the RSPO Principles and Criteria (P&C). For a district that has over 320,000 ha of oil palm, that is a big challenge. The initiative is being supported by RSPO, the UN Environment Programme, Unilever and by Inobu (Inovasi Bumi), an independent non-profit research organisation.⁹ The initiative does have the advantage that many of the bigger plantation companies operating in the district are already RSPO members, including Wilmar, Indofood, Sinar Mas and Goodhope. On the other hand, some of the other large companies in the district have controversial reputations – having cleared large areas of forest, planted extensively on peat, and destroyed large areas of orangutan habitat.

One of the key targets of Seruyan's Jurisdictional Approach is to encourage the certification and sale of Certified Sustainable Palm Oil (CSPO) by the district's smallholders, who include both indigenous people and settlers. The two main challenges that the smallholders face is demonstrating the legality of their land holdings and showing that they are complying with the RSPO's requirements for setting aside areas of High Conservation Value and High Carbon Stock forests.



Seruyan District was once densely forested but has lost most of its forests. Logging operations continue in the headwaters while much of the central and southern parts of the district has been leased to oil palm companies



Global Forest Watch screenshot of forest clearance (pink) and oil palm planting (blue) in Seruyan

Making sure palm oil production in Seruyan complies with the RSPO standard is made doubly challenging as the officially-required government land use plan for Seruyan is not completed or approved, which means the boundaries of areas officially classed as 'forest' and 'areas for other use' (APL) are unclear. By law, oil palm plantations can only be established outside 'forests'. Recently the RSPO, with the help of Inobu, sponsored a visit to the district by a team from Sabah, where a Jurisdictional Approach is also being piloted, in order to exchange experiences.¹⁰

One of the puzzles for all Jurisdictional Approaches that are trying to apply voluntary requirements is how these are made mandatory on land users, which have not voluntarily subscribed to the standards. In the case of Seruyan, and following the lead of the Province, the district government accepts this has to be done by passing district level laws, which set out the requirements for land users and give authority to district officials to enforce the law.



Workshop to Review Conflict Resolution Decrees in Seruyan, May 2019, with district, sub-district and village officials, with FPP, YMKL and Inobu

This approach is especially relevant to the other major ambition of the Plantations Department in Seruyan, which is to resolve the very numerous land conflicts between the local communities and indigenous peoples and the oil palm companies. According to the Plantation Department there are 300 land conflicts in Seruyan, some of them violent. FPP and YMKL engagement with the local government was designed to help elucidate how this challenge may be addressed building on the initiatives of Inobu and the local government who have drafted four, Regent Decrees, (*Peraturan Bupati*) designed to address these problems.

The first draft decree establishes a process to register all the conflicts and document the nature of the disputes. The second draft decree sets out a procedure to respect the right to Free, Prior and Informed Consent. The third draft decree provides for mediation of intractable disputes and the fourth draft decree provides a procedure for restitution and rehabilitation. These draft decrees are designed to provide the means for a legally enforceable, 'scaled up' and coordinated system for conflict resolution across the district. During the latest workshop it was suggested that amendment of the drafts is advisable to ensure consistency with the 2018 version of the RSPO P&C, especially in order to ensure that communities can choose how they are represented, and to provide anonymity and protection of claimants in line with RSPO's requirements on human rights defenders.



Companies like Best Agro have planted extensively on peat

Case study: Tanjung Hanau

To deepen our understanding of the situation in Seruyan, FPP and YMKL, assisted by Inobu, carried out two field visits to the community of Tanjung Hanau to explore realities on the ground. The first investigation, in May 2019, was undertaken independently by the NGOs, while the second, in October 2019, was carried out in company with local government officials and included short workshops with the companies involved.

Tanjung Hanau is a Dayak village on the banks of the Seruyan River, not far upriver from Kuala Pembuang on the south coast of Indonesian Borneo, that has been where it is since at least the 1930s. Although the residents say that the majority of them are Dayak – ‘about 95%’ – they are mostly Muslims. Their conversion to Islam happened a long time ago but many of the residents still retain a knowledge of the omens and spirits recognised by their ancestors. They say they are ‘Dayak-Banjar’ as they have become Muslim but retain Dayak customary law with regard to their lands and some other matters. Within the administrative village (*desa*) there are now 200 families distributed in three RT, including about 15 Javanese. Some of the people in the village are Pesisir (coastal people), people of mixed Banjar and Dayak descent, who are also referred to as Dayak Pantai (‘Beach Dayak’).

Under customary law, the community has collective ownership of their territory (*wilayah*), which they refer to as *tanah ulayat*. Until recently, they lived by shifting cultivation, fishing and the collection of forest products such as native rubber (*jelutong*), rattan (*rotan*), a bark used for insect repellent (*gembor*) and timber. They also hunted in the forests and grew tree crops such as durian, rubber and resin trees. State-imposed logging and oil palm concessions and conservation zones now threaten this mode of life.

On the western end of the village territory there is the Tanjung Puting National Park which prohibits the peoples’ use of that area, which they used to use for hunting and gathering. Within the village territory, logging was undertaken by the company by PT Bina Semata in the 1990s.

In 2004, the oil palm company, PT Sawit Mas, entered the village and began taking over lands on the east side of the Seruyan river for oil palm. PT Sawit Mas is a member of the Musi Rawas Group. Despite remonstrations from the community, no *plasma* (smallholder scheme) has been provided. The company now has a holding of 10,000 ha and has a processing mill just outside the *desa*. The company took a lot of land without compensation, although some lands, to which the village head issued SKT (letters of land information), were sold to the company. One individual from whom we collected detailed testimony alleges that the company took 8.4 ha of his customary land, which was planted with rubber and some smallholder oil palm, but was paid nothing for his land. His family also has claims to 24 ha, which they asked the village headman to recognise by issuance of SKT. They allege that the headman asked for IDR 34,000,000 for issuing the letters, which they refused. This land was also incorporated into the plantation without compensation.

The imposed and manipulated land market is contrary to custom:

We hold our lands by custom but the government says it is State land, and then – just like that – cat! (chop!) – it is handed out by the village head as an SKT and is passed to the camat and then - cat! – it’s transferred to the company. But this is collective land that should not be privatised.

The interviewees allege that there are self-interested (*oknum*) elements in the village who profit from this grey land market, which is seeding disputes within the community, while the land grabs are undermining the local people’s livelihoods, based on shifting cultivation and forest products like *jelutong* and *gembor*. They also note that, when they have objected, PT Sawit Mas has brought in the mobile police brigade (BriMob) to intimidate the community.

‘They promised us plasma in 2007, but until now, nothing!’

In 2006, another company, PT Rim Kapital, a subsidiary of Goodhope, an RSPO member, began operations just behind PT Sawit Mas, but so far the company has only taken 200 ha. of *desa* land. Then, in 2007, on the other side of the village, PT Wana Sawit Subur Lestari II, a member of the Best Agro group, commenced operations.¹¹ It too has established a mill to the north of the village territory. The villagers claim that this company has planted 1,850 ha outside its permit area (on Tanjung Hanau lands and also on lands of other *desa*). Again, no *plasma* was provided, even though this is required by the provincial and national laws. ‘They promised us *plasma* in 2007, but until now, nothing!’ noted one interviewee. In public, the companies claim they are providing *plasma* but the community members contest this. According to the government officials implementing the Jurisdictional Approach, in fact only 2 out of 36 companies operating in the district have yet provided *plasma*, as required by the law.

Land acquisition by the companies has generated numerous conflicts. The communities were told that, as the companies had an IUP, the people had no right to object. In some cases, the companies took over shifting cultivation farmlands (*ladang*), rubber gardens and important livelihood areas without paying any compensation at all. This led to objections.

Not all lands were acquired without any negotiations. In some areas the community strongly resisted their lands being taken, which led the village leadership to assert that these areas were privately owned and the village headman then issued SKT to various villagers so the lands could be sold to the company, although through contested arrangements. This was how Wana Sawit Subur Lestari II took over privatised lands around the important village fishing lake of Danau Sehak, which was completely taken over by the company and is now invisible. Land purchases were for as little as IDR 250,000/ha, rising to IDR 500,000/ha and even IDR 1,500,000/ha. Latest demands are for IDR 3,000,000/ha.¹²

'A lot of people have come from Medan, they get all the better paid jobs, not us.'

Other community lands have also been taken over in the teeth of community objections, in at least one case – for which photographic evidence was provided – the company brought in police armed with sub-machine guns to accompany company excavators when they came to clear contested land.

In acquiring the communities' lands, the provision of information to the communities has been minimal. No participatory mapping was carried out. No AMDALs were provided. No signed agreements were made or shared. There are no maps provided. The interviewees blame both the companies and the government for their misfortunes. 'It is not just the companies who are to blame, the government is also our enemy for giving out these permits' said one resident.

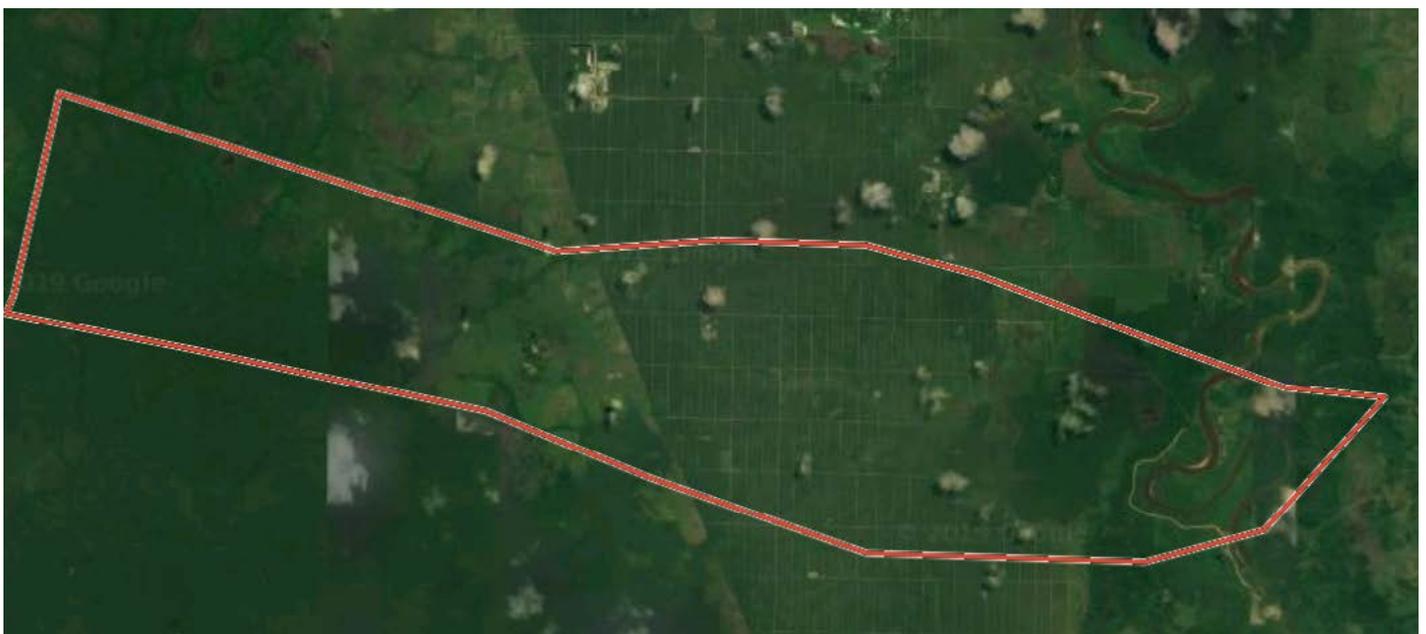
Due to the loss of land, and access to forest resources and fish – 'everything has now gone (*bilang*)', said one villager. '*semua habis!*' ('everything's finished!') – most or many of the villagers now work for the palm oil estates for very low wages (they allege as low as IDR 55,000 for a 7 hour day, some even less). Some women report working for even less, getting IDR 40,000/ ha to manually clear plantations of weeds. However, the estates have also brought in many other people to take more skilled work in the companies. 'A lot of people have come from Medan' said one woman 'they get all the better paid jobs, not us'.

In 2009, Wana Sawit Subur Lestari II cleared an area of farmland planted with pineapples, again without community consent, which led to community members entering the site and pulling up the seedlings (and setting them aside for the company) and replanting the area with their own crops. The company reported the matter to the local police who came in and arrested six of the people who had objected to the land-grab. They were jailed for 6 months. Since then several other landowners in the area have taken up their claims with the company and the local authorities, providing signed testimony and sketch maps to show the extent and boundaries of the areas taken.

A village team, Tim Sembilan, (Team 9), did take the communities' concerns to the government to the regent (*bupati*) in a meeting in Seruyan Raya but there were no minutes of the meeting and nothing resulted. The villagers feel that they were not well represented. 'That team was not independent, nor neutral, and was made up of 'pro-sawit' people, so they were not forceful in pressing our demands' noted one spokesman. 'If any investigation was done, they just went to the company and maybe they got an 'envelope' (*amplop* – ie hush money), and so nothing happened.'

In 2015, the regional government issued an SKT-Adat recognising the collective rights of the community of Tanjung Hanau to 3,300 ha of land on the west side of the river over an area surveyed with GPS points. However, although the villagers know that this area substantially overlaps the areas planted by PT Wana Sawit Subur Lestari II they are unsure if the area is within the companies HGU or not as they are provided with no information by the company. 'All this land belongs to us. I will reject oil palm until they provide our 20% share as *plasma* land', said one resident.

'If any investigation was done, they just went to the company and maybe they got an 'envelope' and so nothing happened.'



Screenshot of Tanjung Hanau from Googlemaps. Best Agro's estate straddles the village's lands

There are other concerns too. Two villagers, known to be opposed to the oil palm development, were in the forest collecting *gembor* and *jelutong*, and were reported by the company, arrested by the police and charged with trying to kill orangutans. They denied the accusation and so were taken to Bogor in Java where one was tested with a lie detector which upheld his profession of innocence. The other was then allegedly punched and hit repeatedly by the police on the side of the head until he was deaf in one ear, in an effort to make him confess to the crime, but he also resisted. Since the police were unable to prove the case, the two villagers were instead charged with illegal possession of firearms – even though they claim that they were not carrying guns when arrested. They were sentenced to 20 and 24 months respectively in July 2018. After they were sentenced, their cases were raised by relatives with the National Secretariat of the NGO WALHI (Friends of the Earth Indonesia) and then investigated by WALHI’s provincial chapter (WALHI Kalteng) the same year accompanied by two American investigators. At the time of our field visits, WALHI has yet to report the results back to the community.

In sum, the disputes with the palm oil companies include allegations of:

- Land taken without payment and by force
- Lands purchased through falsified or contested individualised SKT
- Nugatory payments for lands
- No provision of *plasma* (smallholdings)
- Lands cleared outside IUP
- Planting on peat and in wetlands and lakes
- Low wages
- Destruction of the environment
- Criminalization of community members for defending their lands and continuing to use their resources.

The principle demand of the community is that they should be assured of at least 5 ha per family for their livelihoods, and *plasma* should be provided in accordance with the law, starting with the 1,850 ha that Wana Sawit Subur Lestari II company has opened up outside its concession. ‘There should also be compensation for the destruction of the environment’ said one woman. ‘Any solution must involve both the companies and the government’, noted one villager.

While welcoming the new RSPO Jurisdictional Approach certification initiative to resolve the land conflicts, some of the community members that we interviewed are sceptical if this will be effective. ‘We have taken our complaints to all levels of government’ noted one member who had been criminalised for defending his lands. ‘We have taken our concerns up with the regent (*bupati*), the sub-district head (*camat*), the village headman (*KaDes*), and with the local plantations officials (*Dinas Perkebunan*) and the local environment and forestry officials (*Dinas KLHK*), but so far they have not taken our concerns seriously.’

‘They already know about our concerns, so how will documenting them all again make any difference?’ asked one sceptic. They note that exactly the same kinds of problems are being faced by three other administrative villages in the same sub-district, namely Bahaur, Paring Raya and Parang Batang, and one other, Banua Usang, in neighbouring Seruyan Hilir sub-district. Even so, after being asked if they minded if we submitted our report to the government and RSPO, all those interviewed agreed we should. ‘If they want to come and check the details, that will be fine. We can then verify to them what we have said to you.’

Interim Conclusions

The District Government of Seruyan has made important progress in identifying some of the main challenges to the production of certifiable sustainable palm oil from non-RSPO companies and small and medium growers. The Seruyan district government recognises the need for regulatory reform to make RSPO requirements enforceable. Some gaps remain which need to be addressed in future. These include:

- Mechanisms for recognising the extent of customary rights
- Amended regulations to allow self-representation and protect human rights defenders
- Development of a mechanism for filing and adjudicating complaints and appeals (by both communities and companies)
- Clarification of the governance, incentives and enforcement systems that will require, encourage and oblige compliance with the RSPO standard
- Procedures for involving communities in land use planning to ensure the protection of HCVs and HCS forests.

Endnotes

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4. At various times, RSPO has announced four jurisdictional approach pilots to date: Sabah State in Malaysia (ongoing), South Sumatra in Indonesia (later withdrawn), Seruyan District in Central Kalimantan, Indonesia (ongoing and the subject of this study), and the Amazon region of Ecuador (ongoing).
5. JCSD consultation draft 2019 and revised consultation draft 2020
6. New Foresight 2019
7. The authors would like to thank Bernadinus Steni of Inobu for his invitation to collaborate in this work and the Inobu team, including Greg, Fadli and Dana for assistance in the field. The findings and opinions expressed in this report are those of the authors alone.
8. Problematically SKT-Adat vest title in individual leaders on behalf of their communities. It remains unclear whether lands allocated for smallholdings should come from inside or outside company concessions.
9. Some of the initial work in Seruyan was inspired by the US NGO, Earth Innovation: <http://inobu.org/press-release-central-kalimantans-seruyan-district-leading-a-global-initiative-for-supporting-sustainable-palm-oil-production-update-from-the-rspo-annual-meeting/>
10. <https://rspo.org/news-and-events/news/rspo-facilitates-knowledge-exchange-for-smallholders-in-kalimantan>
11. The Ijin Lokasi of WSSL II for an area of 14,200 ha was issued on 1 February 2007 and replaced a previous Ijin Lokasi issued in 2004 for 19,500 ha provided to PT Karisma Unggul Sentral Tama Cemerlang.
12. Current exchange rate is about IDR14,000 for US\$1. This means the company was acquiring lands for as little as US\$18 per hectare (2.4 acres) but the community is now demanding up to US\$214 per hectare.

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