

APPENDIX

This Appendix provides details supporting the allegations in Forest Peoples Programme’s and Elk Hills’ Complaint regarding the land-use violations and related criminal bribery undertaken by Golden Agri Resources (“GAR”) in Indonesia’s Central Kalimantan province.

Apparent violations of Indonesian land-use laws at all 8 of GAR’s concessions in Central Kalimantan, totaling more than 75,000 hectares. Based on our research, GAR appears never to have obtained the proper permits for its eight oil palm concessions in Central Kalimantan, with the result being that over 50 percent of these concessions’ acreage encroaches unlawfully into Indonesia’s protected Forest Zone. The concessions comprise 140,858 hectares of land, and based on our review of government records and maps of the Forest Zone, over 75,000 hectares are located in the Forest Zone—meaning that GAR never obtained the required environmental permits from the Indonesian Ministry of Forestry to operate oil palm plantations for this land. In Section I below, we provide a brief overview of Indonesian permitting law, tables indicating the apparent extent of GAR’s encroachment on the Forest Zone (i.e., lack of required permits), and satellite imagery of two of the concessions demonstrating that they have been deforested despite the lack of required permits.

Criminal bribery of provincial officials to curtail inspections and investigations relating to environmental compliance. Last year, multiple GAR officials were convicted after the Indonesian Anti-Corruption Commission (“KPK”) brought prosecutions for bribes these officials paid to provincial government members in Central Kalimantan. These bribes were paid after provincial officials discovered GAR’s lack of required permits at one of its concessions (PT Binasawit Abadi Pratama), and the bribes’ purpose was to end any investigation or public hearing regarding these violations. The bribes were orchestrated by three GAR officers, who were each sentenced to over one year in prison. According to court documents and local reporting, the bribes were approved by GAR leadership. In Section II below, we discuss the bribery scheme and subsequent convictions in more detail.

Our legal analysis shows that GAR’s likely land-use violations are punishable under Indonesian law. Section III provides an overview of the relevant questions of Indonesian law, including recent rulings by Indonesia’s high courts confirming that the types of violations at issue in the Complaint are serious violations of Indonesian law. The Appendix concludes with a Supplemental Legal Memorandum discussing relevant statutes, regulations, and court decisions, to serve as a reference and to anticipate and repudiate legal defenses GAR is likely to raise.

The severity and scale of GAR’s violations identified in the Complaint far exceed violations for which the RSPO has suspended members in the past. The RSPO should impose the same sanction here, as well as any other appropriate sanction to punish GAR and deter it from future violations. Suspending GAR from the RSPO until it remedies its unlawful behavior is the most appropriate way to ensure that RSPO members—particularly those as large and economically powerful as GAR—will adhere to the sustainability standards at the core of the RSPO’s mission. Simply put, the facts documented in the Complaint and this Appendix make clear that **GAR should not be entitled to the significant reputational and economic benefits that accompany RSPO membership until it remedies its unlawful and environmentally harmful behavior.**

I. OVERVIEW OF INDONESIAN PERMITTING LAW AND GAR'S VIOLATIONS

A. Overview of Permitting Regime for Land Located in Indonesia's Forest Zone

Land in Indonesia is divided into private land and State land. Private land is privately owned by individuals, corporations, or other entities and can generally be used for any lawful purpose. State land is all land that is not private land, and the Indonesian government has classified State land into two categories: (1) Forest Zone (*kawasan hutan*), and (2) areas for other land uses (*areal penggunaan lain* or “APL”).¹

Under the governing law, most notably the Basic Forest Law (No. 41/1999), Forest Zone land is divided into several categories, such as Conservation Forests, Protection Forests, and Production Forests. The restrictions on various categories of Forest Zone land vary, and land can be reclassified from one type of forest to another, pursuant either to changes being made under the auspices of the spatial planning process, or in the case where a discrete area of land is released from the forest zone by the Ministry of Environment and Forestry (“MOEF”), the national government body responsible for overseeing the Forest Zone. The government has also set up a time-bound mechanism whereby oil palm concessions that have already cleared areas of forest within the Forest Zone may, after the fact, apply for permission and receive off-sets for that land by acquiring an equivalent amount of non-deforested APL land elsewhere, with the understanding that the newly acquired land will then be added back into the Forest Zone. *So long as an area is located within the Forest Zone, it is unlawful to deforest that land, to plant oil palm there, or to begin oil palm production.*

Given its importance to proper conservation of Indonesia’s national resources, the permitting regime Indonesia has installed for Forest Zone land is a crucial legal procedure that oil palm growers must adhere to in order to legally begin production. Specifically, before operations may begin at a potential oil palm plantation located in the Forest Zone, there are six permits that the operating company generally must acquire:

¹ See generally Banjade et al., *Tenure Reform in Indonesia: When? What? Why?* at 2-4, Ctr. For Int’l Forestry Research (Dec. 2016), available at t.ly/xPDre.

Table 1: Overview of Oil Palm Plantation Permitting Regime

No	Name of permit in Bahasa Indonesia	Name of permit translated into English	Governmental entity which issues the permit	Level of government occupied by that entity	Unit may still be in the Forest Zone?
1	Izin Lokasi	Location Permit	District Plantation Office with signature from the District Head*	District	Yes
2	Izin Lingkungan	Environmental Permit	District Environment Office	District	Yes
3	Izin Usaha Perkebunan (IUP)**	Plantation Business Permit	District Plantation Office with signature from the District Head*	District	Yes
4	SK Pelepasan Kawasan Hutan	State Forest Release Letter	Minister of Forestry	National	No
5	Hak Guna Usaha (HGU)	Right to Cultivate Land	Badan Pertanahan Nasional (BPN) or National Land Agency	National	No
6	Izin Pemanfaatan Kayu (IPK)	Timber Utilization Permit	Provincial Forestry Office	Province	No

* In some cases, for example for oil palm plantations that straddle two districts, Izin Lokasi and IUP may instead be granted by the governor of a province, with advice from the provincial plantation office.

** Known also as “Izin budidaya” or permission to cultivate. This permit includes a plan for the preparation of land (penyiapan lahan), which may include the clearing of forests, if the land is forested.

As Table 1 demonstrates, the first three required permits—the Location Permit, the Environmental Permit, and the Plantation Business Permit—may all be obtained from the relevant District authority while the land is still in the Forest Zone. In fact, these three permits *must* be obtained before MOEF can release the land from the Forest Zone. The fourth permitting requirement listed in Table 2, the State Forest Release Letter, is the action taken by the MOEF that actually releases land from the Forest Zone. ***Only the national government can release Forest Zone land in this manner; neither district nor provincial governments have the authority to do so.***

The final two permits—the Business Use Permit (HGU), and the Timber Utilization Permit (IPK)—can only be obtained after the State Forest Release Letter; that is, these permits can only be issued to land concessions that are no longer located in the Forest Zone.²

In short, for a concession located in the Forest Zone, a company may not deforest the land or begin oil palm production until all of these permits is obtained.

² See generally Casson et al., *Large-scale plantations, bioenergy developments and land use change in Indonesia* at 42-43, Ctr. for Int'l Forestry Research (2014), available at t.ly/gj28j.

B. GAR Failed to Obtain Key Permits Required Under Indonesian Law

Table 2 provides a list of GAR's eight oil palm concessions in Indonesia's Central Kalimantan province, along with their sizes.

Table 2: GAR's Central Kalimantan Concessions

No.	Name of GAR oil palm concession	Area (ha)
1	Aditunggal Mahajaya	5,582
2	Agrokarya Primatestari	22,651
3	Agrolestari Sentosa	19,476
4	Buana Adhitama	15,246
5	Binasawit Abadi Pratama	37,740
6	Buana Artha Sejahtera	8,897
7	Mitrakarya Agroindo	22,909
8	Tapian Nadenggan	8,357
Total		140,858

Table 3 displays the extent to which these eight concessions encroach on Forest Zone land. *As noted in Section I.A above, it is unlawful to operate an oil palm plantation on such land.*

Table 3: Encroachment into the Forest Zone by GAR's Central Kalimantan Concessions

No	Name of GAR concession in Central Kalimantan province	Category of Production Forest that is being encroached upon	Area (ha) of encroachment
1	Aditunggal Mahajaya	Production Forest	1,974
2	Agrokarya Primatestari	Production Forest for Conversion	93
2	Agrokarya Primatestari	Production Forest	2,646
2	Agrokarya Primatestari	Protected Production Forest	6,920
3	Agrolestari Sentosa	Production Forest for Conversion	1,973
3	Agrolestari Sentosa	Production Forest	10,017
4	Buana Adhitama	Production Forest for Conversion	2,382
4	Buana Adhitama	Production Forest	3,549
5	Binasawit Abadi Pratama	Production Forest	1,153
5	Binasawit Abadi Pratama	Protected Production Forest	16,688
6	Buana Artha Sejahtera	Protected Production Forest	8,280
7	Mitrakarya Agroindo	Production Forest	6,479
7	Mitrakarya Agroindo	Protected Production Forest	5,352
8	Tapian Nadenggan	Protected Production Forest	8,357
Total			75,863

As these Tables make clear, according to public records, more than half of the total area of all of GAR’s concessions in Central Kalimantan is on Forest Zone land, which demonstrates that the abuse by GAR is systematic and widespread. Based on the records we evaluated, there is no GAR concession in Central Kalimantan Province that does not encroach in part or in full upon the Forest Zone.

For two of these eight concessions—PT Binasawit Abadi Pratama (“PT BAP”) and PT Buana Artha Sejahtera (“PT BAS”)—we confirmed these conclusions by overlaying maps of the concessions on government land use maps, and by evaluating satellite imagery showing that they have been deforested. Figures 1 and 2 are maps of PT BAP and PT BAS, respectively, demonstrating the extent to which they encroach on Forest Zone land. Only those areas shown in yellow—“Areas for Other Uses”—have been excised from the Forest Zone; the rest of the concessions have not.

Figure 1: PT BAP's Overlap with Forest Zone

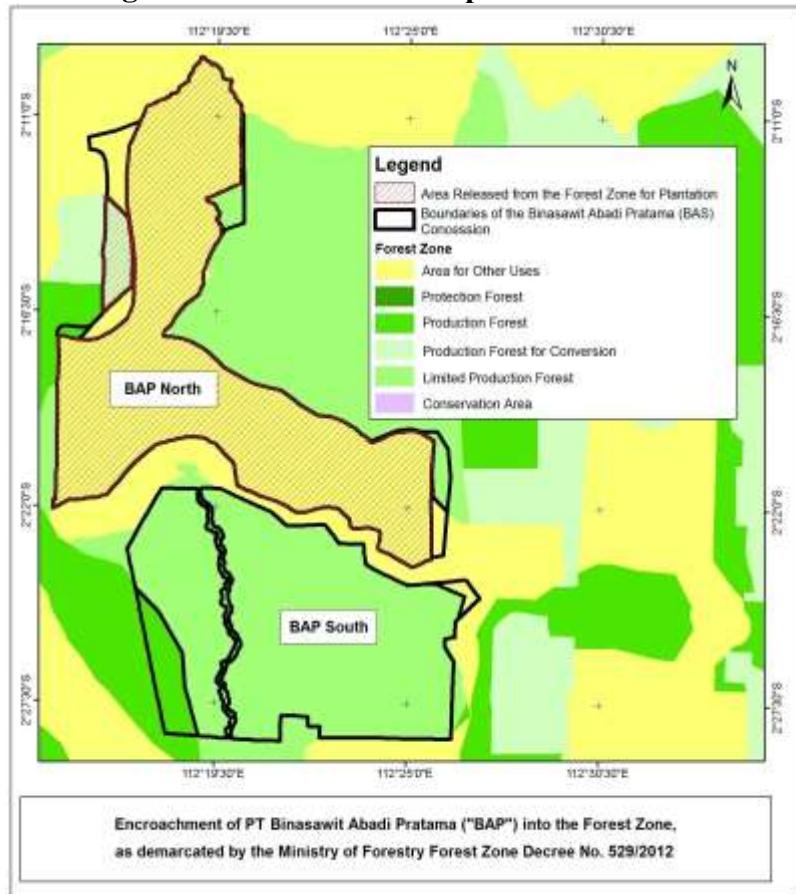
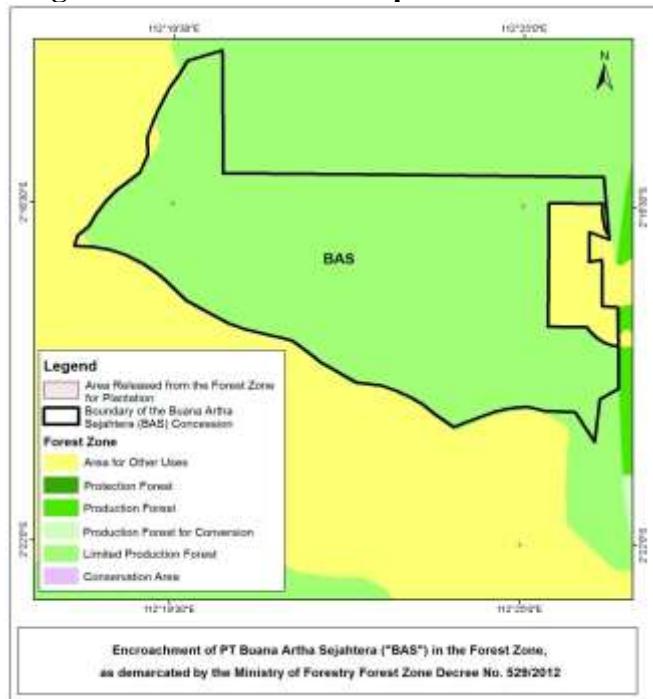


Figure 2: PT BAS's Overlap with Forest Zone



These figures demonstrate that for nearly all of the PT BAS concession and for the portion of the PT BAP concession known as “BAP South,” neither GAR nor its predecessors ever obtained the permits necessary to excise the relevant areas from the Forest Zone. With respect to BAP North, which was excised from the Forest Zone in 1996, neither GAR nor its predecessors ever obtained the IPK from the provincial government, another permit that is required before an oil palm plantation may operate.

These findings have been confirmed by court records recently obtained from the conviction of GAR and Commission B officials. During its initial review of GAR records, provincial officials determined that PT BAP had never obtained either the HGU or IPK permits, as well as a third permit (Izin Pinjam Pakai Kawasan Hutan, relating to the borrowing and use of Forest Zone land). Subsequently, provincial officials conducted an on-site inspection, during which they concluded that GAR had also failed to obtain a State Forest Release Letter (also referred to as an IPKH permit) that would allow for the land to be released from the Forest Zone.³

Below is a summary of the permitting history for both concessions:

Table 4: Permits secured and not secured by BAP and BAS

No .	Type of permit	PT Binasawit Abadipratama (BAP)		PT Buana Artha Sejahtera (BAS) (7,000 ha)
		BAP North (20,153 ha)	BAP South (17,221 ha)	
1	Izin Lokasi (Location Permit)	1994	1996 & 2006	2004 & 2009
2	Izin Lingkungan (Environment Permit)	1997	2006	2006
3	IUP (Plantation Business Permit)	2000	2005 & 2006	2005
4	SK Pelepasan Kawasan Hutan (State Forest Release Letter)	1996	Never	Never
5	HGU (Right to Cultivate Land)	1997 & 2004	Never	Never
6	IPK (Timber Utilization Permit)	Never	Never	Never

Note: Areas of each of the concessions (and their blocks) varied widely from license to license. The areas given in the table above are the ones stated by the most recent permit issued for each concession.

Thus, for the entirety of both concessions, GAR never obtained the final IPK permit that is required for operating an oil palm concession. And more seriously, for BAP South and PT BAS, **GAR never obtained the preliminary permits necessary to have these areas excised from the Forest Zone, nor an HGU permit permitting oil palm plantation operations.**

³ [Case of Edy Saputra Suradja, Page 41](#)

Figures 3 and 4, on the following two pages, are satellite images that demonstrate the extent to which these two concessions have been deforested since the 1990s, despite the lack of legal authority to do so.

Figure 3: 1994 Satellite Image of PT BAP and PT BAS

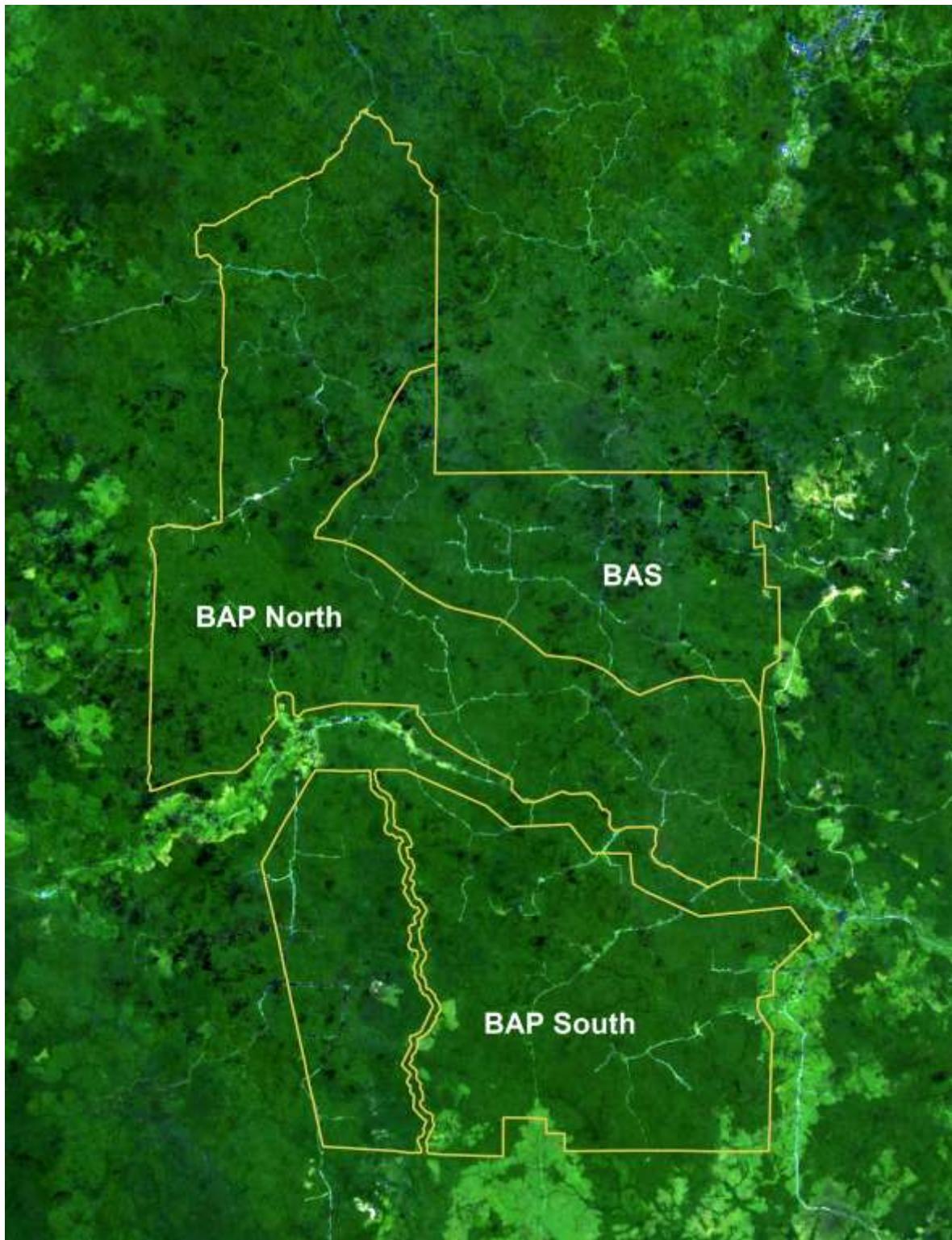
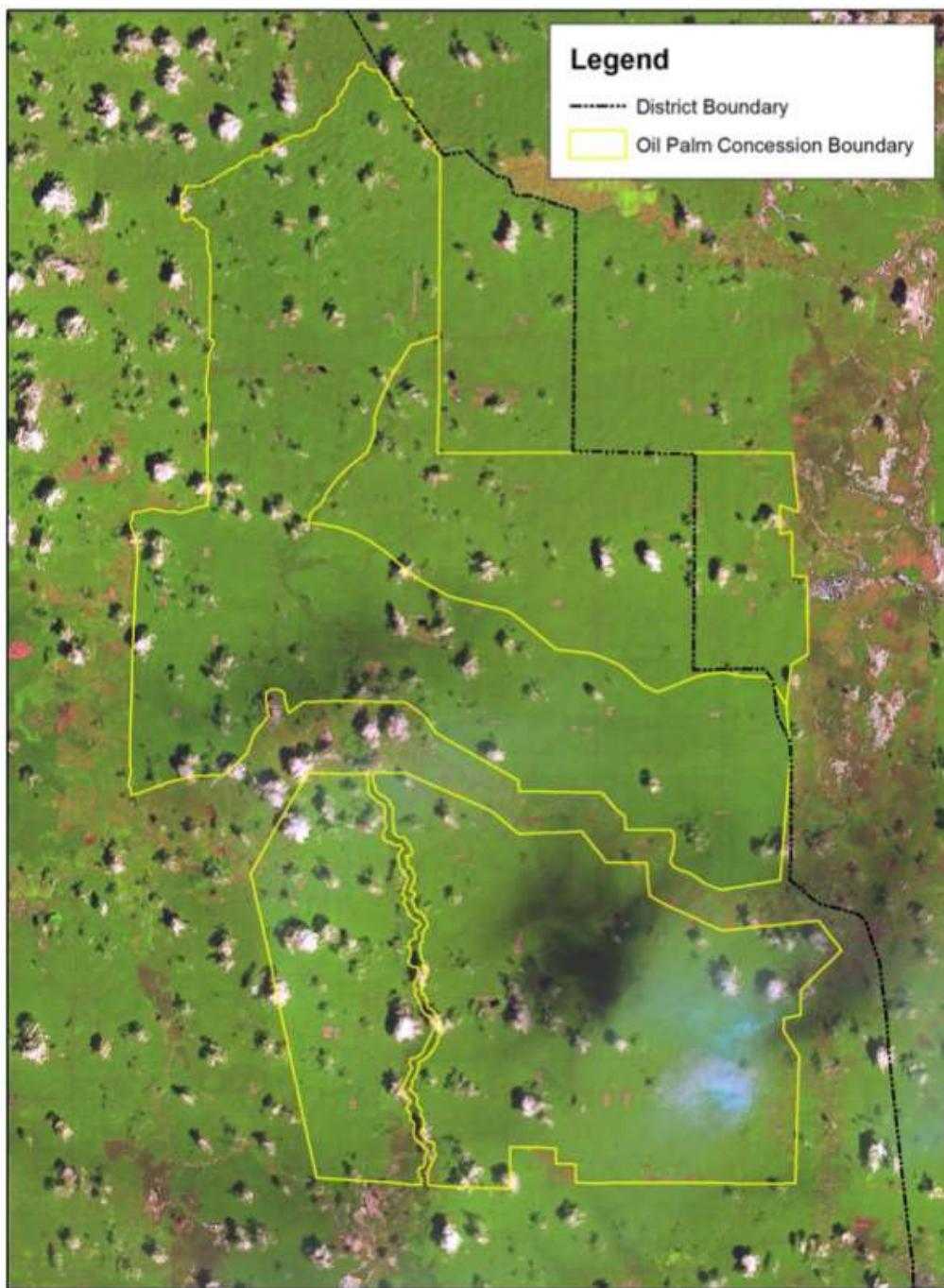


Figure 4: 2018 satellite photograph shows PT BAP and PT BAS planted in palm oil and crisscrossed with roads



In Figure 3, which was taken in 1994, one can see that the entirety of both concessions is covered in forest, as Forest Zone land is intended to be. Figure 4, by contrast, which was taken

in 2018, shows that both concessions have been deforested, and that a grid of man-made roads has been constructed throughout the concessions.

C. GAR Has Failed to Remedy its Ongoing Permitting Violations, Despite Being Given the Opportunity to do so by the Indonesian Government

In operating oil palm plantations on its Central Kalimantan concessions without proper permitting, GAR appears to have exploited ambiguities in Indonesian law, purporting to be acting pursuant to permits issued by the provincial government in Central Kalimantan. But these permits never had the force of law, and, in any event, the ambiguity was resolved by the national government in 2012, and GAR appears to have taken insufficient action to remedy these violations in the intervening years. *Section III below provides an in-depth legal analysis of these legal issues*, including two recent rulings—one from the Indonesian Constitutional Court in 2015 and one from the Indonesian Supreme Court in 2019—confirming that activities such as GAR’s are unlawful. However, we provide here a brief history of the relevant events.

Throughout the entire period at issue in this Complaint, the only authority that could excise land from the Forest Zone has always been the national government—namely, the Ministry of Environment and Forestry (“MOEF”). Yet despite this, there was a period in the 1990s and early 2000s in which various provincial governments, including Central Kalimantan, purported to grant permits to allow deforestation of Forest Zone areas. Specifically, between 1993 and 2007, the Central Kalimantan provincial government produced a series of provincial spatial plans that purported to reclassify vast areas of the Forest Zone as non-forest public lands (*i.e.*, as APL). The MOEF never accepted or approved these plans, meaning that they never were legally valid.

While plantation owners and operators—particularly large sophisticated companies like GAR—should have known that the permits issued by the province were legally insufficient to excise an area from the Forest Zone, the MOEF recognized in the early 2000s that companies may have relied on the provincial government’s pronouncements. To address these legal uncertainties, the national government passed a law in 2007 that made it clear that the provincial government did not have authority to reclassify forest land as non-forest without the approval of the MOEF. *See Law 26/2007 (“2007 Spatial Planning Law”)*. Thus, ever since 2007 it has been made clear to all stakeholders that any pronouncement as to zoning issued by the provincial government that conflicted with the national government’s spatial plan was null and void.

Moreover, in 2012 the national government amended its prior forestry regulations to give companies that had unlawfully deforested Forest Zone land the opportunity to have that land reclassified and therefore remedy any past permitting violations. *See Government Regulation of The Republic of Indonesia No. 60 of 2012 dated 6 July 2012 regarding Amendment to Government Regulation No. 10 of 2010 regarding Procedures for Change of Forest Areas and Functions (“Regulation 60/2012”)*. Under Regulation 60/2012, plantation businesses were given six months to submit a request that affected land be released from the Forest Zone. For Forest Zone land that was Convertible Production Forest (the least protected category of forest land), the MOEF could grant the request without any need for further action by the company. But for more protected areas of Forest Zone land, such as Permanent Production Forest and Limited

Production Forest, the company was required to offer “replacement land”—land that would be converted into protected forest to offset the improperly deforested Forest Zone land. Only if the MOEF approved the land exchange would the Forest Zone land that the company had improperly deforested be reclassified to allow for continued production.

As noted above, the vast majority of BAP South and of PT BAS are “Limited Production Forest,” meaning that this land could only be released under Regulation 60/2012 if GAR submitted an application identifying offsetting land that would replace this land as production forest. But we have found no evidence that GAR submitted this application or offered to offset the improperly deforested portions of BAP South. If, as we suspect, GAR never submitted this application, operations on BAP South are unambiguously in violation of the Forestry Laws permitting requirements.

With respect to PT BAS, GAR appears to have made an effort to identify 8,133 hectares in offsetting land that would serve as a replacement for limited production forest occupied by PT BAS. However, according to report ASA-3 on PT BAS submitted to RSPO by RSPO-accredited auditors PT Mutuagung Lestari (see Table 1, above), the then-Governor of Central Kalimantan endorsed the substitution of 5,396 hectares of the proposed 8,133 hectares put forward by PT BAS. Assuming this means this portion of BAS was properly reclassified—although we note that national forest records do not reflect that, as discussed in Section I.A above—this would mean that 2,737 hectares of PT BAS still remain in the Forest Zone.

Given that the 2007 law and 2012 offset program eliminated any ambiguity relating to the Central Kalimantan’s prior representations about zoning status, GAR cannot validly claim to be relying in good faith on this ambiguity. Thus, with respect to those portions of BAP South and PT BAS not excised pursuant to the offset program, an Indonesian court would not accept such reliance as a defense to prosecution. In fact, in 2014, the Indonesian Supreme Court upheld a criminal conviction against the director of a palm oil company that had operated on deforested land and failed to obtain the proper permits under Regulation 60/2012. *See* 771 K/Pid.Sus/2014. The Court rejected the defendant’s argument that he relied in good faith on the prior ambiguity, and the Court found that the defendant’s failure to follow the procedures provided for in Regulation 60/2012 meant he could be prosecuted for his ongoing permitting violations.

In summary, while GAR may have previously been able to point to conflicting statements from the provincial and national governments about what land could be deforested as an excuse for its permitting violations, Regulation 60/2012 put to rest any such a defense. Given that it appears that GAR has taken no action to offset the improperly deforested land in BAP South, and failed to do so for a significant portion of PT BAS, ***GAR’s ongoing permitting violations are illegal under Indonesian law and could be the subject of criminal prosecution.***

II. GAR OFFICIALS WERE CONVICTED OF BRIBERY RELATING TO THE PERMITTING VIOLATIONS DESCRIBED IN THE COMPLAINT

In part to ensure that GAR’s land-use violations and environmental degradation would not come to light, the company bribed local officials in Central Kalimantan to stop any investigations or public hearings into this unlawful conduct. In October 2018, the Indonesian Anti-Corruption Commission (“KPK”) arrested three GAR executives and four government officials during a sting operation where the bribe was set to occur. The KPK confiscated the intended bribe of IDR 240 million cash.⁴ According to KPK, the purpose of the bribe was to ensure government officials would overlook the lack of land-use permits at PT BAP (specifically, the lack of the HGU permit, discussed above in Section I) and to suppress media coverage of waste violations by GAR, as well as to halt any attempt to investigate or hold public hearings surrounding pollution around Sembuluh Lake.⁵

In September 2018, the Central Kalimantan Parliament (“DPRD”) held a plenary meeting where allegations of pollution in Lake Sembuluh were lodged against seven palm oil companies including PT BAP—GAR’s subsidiary that operates the concession bearing the same name (discussed in Section I). The DPRD agreed to conduct oversight through Commission B, one of four DPRD commissions tasked with representing the chamber in the area of Natural Resources of Central Kalimantan Province.⁶ Commission B then scheduled a meeting at PT BAP’s shared offices with Sinar Mas in Jakarta for September 27, 2018. Prior to the meeting, Commission B discovered that PT BAP had been in violation of numerous laws apart from its pollution—including the lack of an HGU permit, as well as other permitting violations. Commission B then recommended an in-person inspection of GAR’s operations in Central Kalimantan from 3 October to 6 October.⁷

After the inspection, Commission B concluded GAR had been operating without the proper permits (HGU, IPPH, IPKH, IPK) at PT BAP, had no scheme to properly compensate community members by providing them with small holdings (known in the industry as a “plasma” scheme), operated palm oil operations inside the Forest Zone, planted oil palm on riverbanks, and had been responsible for the pollution of Lake Sembuluh, contrary to PT BAP’s insistence that this could not be possible due to the operation’s distance from the lake.

Afterwards, Commission B released its findings to the public and the press began to pick up the story. On October 16, as a public hearing regarding PT BAP’s activities was being

⁴ *Indonesia arrests executives of palm oil firms in bribery probe*, Reuters (Oct. 28, 2018), available at <https://www.reuters.com/article/us-indonesia-corruption-sinar-mas-agro/indonesia-arrests-executives-of-palm-firms-in-bribery-probe-idUSKCN1N2097>

⁵ *The Corruption Eradication Commission Criticizes At Least Sinar Mas Officials*, Valid News (Mar. 6, 2019) (translated to English by Google Translate), available at <https://www.validnews.id/KPK-Dikritik-Tuntut-Minimal-Petinggi-Sinarmas-ooQ>.

⁶ <https://www.dprd-kaltengprov.go.id/dewan-bidang-tugas-komisi>

⁷ Commission B was accompanied by five agencies that were tasked with investigating each allegation in Central Kalimantan; The Dinas Perkebunan (Plantation Agency), Dinas Kehutanan (Forestry Service), Dinas Lingkungan Hidup (Environmental Agency), Dinas Penanaman (Planting Agency) and Modal dan Pelayanan Terpadu Satu Pintu (Single Window Licensing Agency). These agencies, directed by Commission B, verified all allegations that the Commission alleged in addition to new ones.

scheduled, BAP and Commission B members continued to meet privately, and PT BAP pushed the Commission to stymie public hearings and overlook PT BAP's illegal activities. Punding Ladewiq H. Bangkan, Secretary of Commission B, then requested a payment of Rp. 240,000,000 on behalf of the Commission members in order to end the investigation and any potential public hearing. After the meeting, Edy Saputra Suradja, Vice President Director of GAR Subsidiary and palm oil producer PT SMART Tbk, requested the funds from the President of Sinar Mas (a GAR-related entity) and Head of Upstream Operations at GAR, Jo Daud Dharsono.⁸ Dharsono agreed to pay the bribe, subject to conditions: that the Commission guarantee in writing that it would put out a press release "correcting" the media reports alleging that PT BAP was responsible for the pollution of Lake Sembuluh; that no public hearings would be held; and that all other violations would be ignored.

On October 19, PT BAP's legal manager Teguh Dudy Zaldy telephoned Borak Milton, chairman of Commission B, to let him know that the payment had been approved by GAR leadership. While Milton did not provide a written guarantee to the conditions, he issued a verbal assurance that the conditions would be met. On October 24, Commission B officials traveled to Jakarta and scheduled a meeting with PT BAP officials to exchange the cash. On October 26, the final meeting between Commission B and GAR officials took place, and KPK officials arrested those involved while money was being exchanged. All the GAR officials at the exchange were arrested. Jo Daud Dharsono, who was not at the exchange but was allegedly involved in authorizing the payment, remains President of Sinar Mas and Head of Upstream Operations at GAR.

In March 2019, three GAR executives who were responsible for PT BAP's operations⁹—Edy Saputra Suradja,¹⁰ Willy Agung Adipradhana, and Teguh Dudy Zaldy¹¹—were sentenced to prison for one year and eight months and fined IDR 100 million for their participation in this bribery scheme. Willy Agung Adipradhana was CEO of PT Binasawit Abadi Pratama, the GAR subsidiary that operated PT BAP's oil palm plantation, and he had been with the company since 1994. Edy Saputra Suradja was the Vice President of Sinar Mas Agro and had been with the company since 2004. Teguh Dudy Zaldy was the legal manager for PT BAP since 2013. While their titles indicate that they worked at these GAR-related entities, GAR has admitted that each was a GAR official as well.

In July 2019, two Central Kalimantan government officials, Borak Milton and Punding Ladewiq H Bangkan, were sentenced to five years in prison, fined IDR 200 million, and had their rights to elected office revoked for three years following their release.¹² Two other

⁸ [Golden Agri-Resources 2018 Annual Report](#)

⁹ While local reporting described these individuals as officials of Sinar Mas, a company closely related to GAR, GAR subsequently acknowledged in a press release that these individuals were GAR officials. See Press Release, *Response by Golden-Agri Resources regarding the decision of the Jakarta Corruption Court* (Mar. 16, 2019), available at https://goldenagri.com.sg/wp-content/uploads/2019/03/Statement_Jakarta-Corruption-Court-Decision_GAR.pdf.

¹⁰ [Tipikor Court \(Indonesian Court for Corruption Crimes\) Decision, Case Number 4/Pid.Sus-TPK/2019/PN Jkt.Pst](#)

¹¹ [Tipikor Court \(Indonesian Court for Corruption Crimes\) Decision, Case Number 3/Pid.Sus-TPK/2019/PN Jkt.Pst](#)

¹² [Tipikor Court \(Indonesian Court for Corruption Crimes\) Decision, Case Number 32/Pid.Sus-TPK/2019/PN Jkt.Pst](#)

government officials, Edy Rosada and Arisavana, were sentenced to four years in prison, fined IDR 200 million, and had their political rights revoked for three years following their release.¹³

The fact that GAR officers were bribing local government officials on behalf of the company and its related entities represents a standalone violation of RSPO Principles, which require that RSPO members comply with all local laws. See RSPO Criterion 1.2 (“The unit of certification commits to ethical conduct in all business operations and transactions.”); RSPO Criterion 2.1 (“There is compliance with all applicable local, national, and ratified international laws and regulations.”). These violations are directly relevant to GAR’s RSPO certification, moreover, because the corruption the KPK uncovered was orchestrated with the intent and purpose to facilitate GAR’s other illegal activity, including the land-use and environmental violations described above. Moreover, that the bribes were conditioned on Commission B falsely rebutting media reports regarding BAP’s pollution suggest that another motive for the scheme was to deceive the public, GAR’s suppliers and customers, and other parties, such as the RSPO itself, that might take action in light of those reports. Thus, while certain individuals have been duly convicted under Indonesian law, ***the RSPO should take these corrupt activities into account when deciding how to remedy GAR’s misconduct in what was shown by the courts to be a centrally managed scheme to bribe officials and deceive stakeholders.***

¹³ [Tipikor Court \(Indonesian Court for Corruption Crimes\) Decision, Case Number 31/Pid.Sus-TPK/2019/PN Jkt.Pst](#)

III. LEGAL ANALYSIS

To assist with the RSPO's evaluation of the issues of Indonesian law at issue in the Complaint, we provide the below analysis of two recent Indonesian court rulings that clarify the illegality of operating an oil palm plantation without *all* relevant permits. The Appendix then concludes with a Supplemental Legal Memorandum to serve as a reference to the relevant statutes, regulations, and court decisions. The Supplemental Legal Memorandum also anticipates certain defenses from GAR, and explains why each would fail under the proper analysis of Indonesian law, particularly in light of the two recent court decisions.

These two rulings from Indonesia's highest courts—one issued in 2015 and one issued in late 2019—have reinforced the illegality of oil palm plantations located in the Forest Zone, and closed the final loopholes to which such oil palm companies had resorted in order to maintain their operations.

The first loophole was closed by a Constitutional Court ruling in 2015. The court ruled that it was no longer sufficient for oil palm companies to *only* have Plantation Business Permits (IUP), which are easily obtained from district level plantation authorities, and which are basically comparable to a business license allowing one to conduct palm-oil business in a specified area. The court ruled that companies *also* need to have a Business Use Permit (HGU), which are essentially a long-term lease to use lands for a defined purpose (fixed-term, but extendable, certificated land use, allowing the owner to use the land for agricultural purposes). The latter are considerably more difficult for oil palm concessions located inside the Forest Zone to secure, because of the extensive requirements applied by the National Land Agency. Prior to the Constitutional Court ruling, Law 29/2014 sought to legalize IUP-only oil palm plantations with the unctuous stipulation that oil palm plantations were required to possess “Plantation Business Permit (IUP) and/or cultivation rights (HGU).” With Indonesia Constitutional Court Decree No. 138/2015, the words “and/or” in the phrase, “Plantation Business Permit (IUP) and/or Business Use Permit (HGU),” were changed to a single word, “and.” ***As a result of the ruling, would-be oil palm plantations are now required to present both plantation business permits (IUP) and Business Use Permits (HGU) before they may undertake the clearance of natural forests and plantation operations.***

The second loophole was closed in a late 2019 Supreme Court ruling, which struck down a provision in a Presidential Regulation that had given a free pass to plantation companies operating illegally inside the Forest Zone. Under Indonesian law and regulation, palm oil companies can hold IUP, and in fact other preliminary permits, for locations inside certain Forest Zones, but these serve as preliminary steps for them to process the removal of the location from a Forest Zone. In other words, these preliminary permits are just part of the process, which culminates in a HGU, and are not by themselves sufficient to allow the actual felling of natural forests and/or planting of oil palm until the area is in fact removed from the Forest Zone and a HGU is issued. The Supreme Court ruling, delivered at the end of 2019, was the culmination of a legal challenge filed against a controversial provision of a 2015 Presidential Regulation which allowed companies with plantation permits for concessions illegally located within the Forest Zone *to continue operating until the end of their crop cycles.* In light of the fact that oil palm has a life cycle of up to 30 years, this meant that oil palm estates could temporarily and illegally

occupy the Forest Zone far into the future. *The Supreme Court has now struck down this provision, meaning plantations operating without both an IUP and an HGU are currently in clear violation of Indonesian law.*

Taken together, this pair of Constitutional and Supreme Court rulings have closed what are probably the final two loopholes to which oil palm companies operating inside the Forest Zone have resorted, in order to maintain their operations. *They make clear that, if the Complaint's allegations are true, GAR is unambiguously in violation of Indonesian law, and therefore is in violation of RSPO Standard 2.1.*

The Supplemental Legal Memorandum that follows was prepared by an Indonesian lawyer. It is meant to serve as a reference to the relevant legal provisions, as well as to be a response to anticipated defenses GAR may raise to the activities identified in the Complaint.

SUPPLEMENTAL LEGAL MEMORANDUM

A. Background

Considering that:

- Over a period of a decade-and-a-half, the Central Kalimantan provincial government deliberately produced a series of environmentally adverse provincial spatial plans which had no final basis in law. These plans proposed that vast areas of Forest Zone be reclassified as non-forest public lands (APL). Central Kalimantan produced three such provincial spatial plans: the first in 1993, the second in 1999, and the third in 2003.
- The Ministry of Forestry's national spatial plan (TGHK) never accepted any of these three environmentally unsound provincial spatial maps.
- In July 2007, the governor of Central Kalimantan issued instructions to district governments to stop issuing permits in areas classified as Forest Zone according to the Ministry of Forestry's TGHK, until the dispute was settled.
- In 2012, the Ministry produced a national forest map, which limited APL in Central Kalimantan to only 17.8 percent of the total land area of Central Kalimantan province. Unlike the province's spatial plans, the Ministry's 2012 map had the force of law, and was released under Ministry of Forestry Decree No. 529 of 2012.
- The provincial government in 2015 issued a provincial spatial plan (RTRWP) which also set aside the same 17.8 percent of the province as APL, thus finally bringing the provincial spatial map in line with the national government's spatial planning map.
- However, during a 1.5 decades of lawlessness between about 1993 and 2007, agencies of the government of Central Kalimantan resolutely pretended that their series of spatial plans had the force of law and issued hundreds of permits for agricultural activities inside the Forest Zone.

B. Laws and Regulations

1. Decree of the Minister of Agriculture No. 759/Kpts/Um/10/1982 dated 12 October 1982 ("**TGHK 1982**")
2. Law No. 24 of 1992 dated 13 October 1992 regarding Spatial Planning ("**1992 Spatial Planning Law**")
3. Law No. 41 of 1999 dated 30 September 1999 regarding Forestry, as amended by Law No. 19 of 2004 ("**Forestry Law**")
4. Law No. 26 of 2007 regarding Spatial Planning ("**2007 Spatial Planning Law**")
5. Head of Forestry and Plantation Planning Agency Letter No. 778/VIII-KP/2000 dated 12 September 2000 regarding The Consideration for the Release of Forest Area for Plantation ("**778/VIII-KP/2000**")
6. Letter No. S.575/Menhut-II/2006 dated 11 September 2006 regarding the Revocation of Letter of Head of Forestry and Plantation Planning Agency No. 773/VIII-KP/2000 ("**S.575/Menhut-II/2006**")
7. Indonesian Constitutional Court Decision No. 45/PUU-IX/2011 dated 9 February 2012 regarding the petition for Judicial Review of Law No. 41 of 1999 regarding Forestry as amended by Law No. 19 of 2004 regarding the Stipulation of Government Regulation in Lieu of Law No. 1 of 2004 regarding Amendment to Law No. 41 of 1999 regarding Forestry ("**45/PUU-IX/2011**")
8. Government Regulation of The Republic of Indonesia No. 60 of 2012 dated 6 July 2012 regarding Amendment to Government Regulation No. 10 of 2010 regarding Procedures for Change of Forest Areas and Functions ("**60/2012**")
9. **Forest Estate Decree for Central Kalimantan No. 529/2012** dated 25 September 2012;
10. **RTRWP Perda No. 5/2015** dated 3 August 2015;
11. Supreme Court Decision No. 771 K/Pid.Sus/2014 dated 7 November 2014 ("**771 K/Pid.Sus/2014**")
12. Central Kalimantan High Court Decision No. 20/PID.SUS/2014/PT.PR dated 18 March 2014 ("**20/PID.SUS/2014/PT.PR**")
13. Palangkaraya District Court Decision No. 448/Pid.Sus/2013/PN.PL.R dated 3 July 2014 ("**448/Pid.Sus/2013/PN.PL.R**")
14. Law No 18 of 2004 regarding Plantations ("**Plantation Law**")
15. Law No. 32 of 2009 regarding Environmental Protection and Management ("**Environmental Law**")
16. Indonesian Criminal Code ("**ICC**")

C. Queries and Answers

1. **At what risk would a company be legally if it obtained permits between 1993 and 2007 based on the spatial plans produced by the province during those years that were never legalized at the federal/central government level?**

A company still relying¹⁴ on permits issued prior to 2007, on the basis of provincial spatial plans which have not been accepted by the Ministry of Forestry, that are located in what is at this time zoned as forestry areas by the Ministry of Forestry, would be in violation of encroaching on the forestry estate, and of carrying out the various prohibited activities that it has conducted, and continues to conduct, therein, specifically:

Under Article 50 paragraph (3) of the Forestry Law, every person is prohibited from, with the penalties for "anyone whomsoever intentionally violating" as set out in Article 78:

- a. *exploit and or use and or occupy forest areas illegally;*
[imprisonment of maximum 10 (ten) years and penalty of maximum Rp 5,000,000,000.00 (five billion rupiah);]
- b. *encroach on forest areas;*
[imprisonment of maximum 10 (ten) years and penalty of maximum Rp 5,000,000,000.00 (five billion rupiah);]
- c. *fell vegetation in forest areas at radius or distance of:*
 - 1. 500 (five hundred) meters from perimeter of dams or lakes;
 - 2. 200 (two hundred) meters from perimeter of springs and right and left sides of rivers in swamp areas;
 - 3. 100 (one hundred) meters from right and left sides of flyers;
 - 4. 50 (fifty) meters from right and left sides of tributaries;
 - 5. Two times of valley depth from valley edge;
 - 6. 130 (one hundred thirty) times of difference of the highest tide and lowest tide from beach line.
[imprisonment of maximum 10 (ten) years and penalty of maximum Rp 5,000,000,000.00 (five billion rupiah);]
- d. *forest burning;*
[imprisonment of maximum 15 (fifteen) years and penalty of maximum Rp 5,000,000,000.00 (five billion rupiah);]
- e. *fell vegetation or harvest or collect forest produces in the forest illegally;*
[imprisonment of maximum 10 (ten) years and penalty of maximum Rp 5,000,000,000.00 (five billion rupiah);]
- j. *mobilize heavy and or other equipment commonly or reasonably alleged to be used to transport forest produce in forest areas without any consent of competent authorities;*
[imprisonment of maximum 3 (three) years and penalty of maximum Rp 5,000,000,000.00 (five billion rupiah);]
- k. *bring in any devices commonly used to fell, cut or split trees in forest areas without any consent of competent authorities;*

¹⁴ Irrespective of validity of the permits issued by the province and/or region, which at this point in time are more of a historical peculiarity, S.575/Menhet-II/2006 reintroduced the requirement to obtain a permit (*Izin Pelepasan Kawasan Hutan*) from the Ministry of Forestry to transfer the area in question from being zoned as forest to being zoned as non-forest. And although the legal certainty of this could be, and was, argued at the time, 60/2012 combined with Forest Estate Decree for Central Kalimantan No. 529/2012, and eventually Central Kalimantan's acquiescence with RTRWP Perda No. 5/2015, unequivocally require the Ministry of Forestry's permission (*Izin Pelepasan Kawasan Hutan*) to transfer the area in question from being zoned as forest to being zoned as non-forest in order to be legally compliant when operating within such area.

[imprisonment of maximum 3 (three) years and penalty of maximum Rp 1,000,000,000.00 (one billion rupiah);]

Article 78 of the Forestry Law further imposes harsher penalties on corporations, and their management, committing such violations, and allows produce and equipment involved in the violation to be seized by the state:

- (14) *In case the criminal act as referred to in Article 50 paragraphs (1), (2) and (3) is committed by and or in the name of a corporate body or company, suit and criminal sanction shall be imposed upon their management, whether individually or collectively plus 1/3 (one third) of imposed imprisonment/sanction;*
- (15) *Any forest produce obtained from criminal act and violation and or equipment including means of transportation in use in committing crime and or violation as referred to herein shall be seized for the benefit of the State.*

As noted above, there historically existed significant legal uncertainty regarding licenses issued by the provinces and/or regions prior to 2007, with provincial government initially relying on its own spatial plans and disregarding Ministry of Forestry zoning of forest areas on the basis of the 1992 Spatial Planning Law which arguably¹⁵ granted authority over forestry spatial planning to the provinces.

Although the Forestry Law, in 1999, reemphasizes the Ministry of Forestry's purview over forest areas, the Ministry of Forestry recognized the reliance on provincial spatial plans in 2000, but later revoked its recognition in 2006 effectively returning Central Kalimantan to TGHK 1982. The subsequent 2007 Spatial Planning Law removed the mention of provincial authority over forestry zoning, and instead created a hierarchy of spatial plans (with the national spatial plan being at a higher tier than the provincial spatial plan).

This was followed with a constitutional challenge to the uncertainty of the entirety of the above-described situation, which prevailed in 45/PUU-IX/2011, to which the central government responded with 60/2012, by providing a path to legal certainty for those affected, and Forest Estate Decree for Central Kalimantan No. 529/2012 setting out forestry zoning under which less than the entirety of Central Kalimantan was zoned as forest. Ultimately this ended with Central Kalimantan and the Ministry of Forestry coming to an agreement on forestry zoning in the form of RTRWP Perda No. 5/2015.

Ultimately, 60/2012 removed the possibility of relying on pre-2007 provincial and/or regional government permits located in forestry areas, as defined by the Ministry of Forestry, and RTRWP Perda No. 5/2015 cemented a point in time from which the Central Kalimantan government and the Ministry of Forestry are in agreement on forestry zoning. Under the most generous of interpretations (60/2012 states that the 6 month period to apply to normalize one's forestry status starts from 6 July 2012) the 6 month period to apply to

¹⁵ However, this is in conflict with the more specific authority over forestry issues granted to the Ministry of Forestry (and its prior incarnations), and therefore, at best, would provide the provincial governments with an opportunity to provide input into the zoning of forestry areas, rather than to take over authority over the area of forestry zoning in its entirety.

normalize one's forestry status started on 3 August 2015, with the subsequent 2 year period to provide replacement land, if required based on the type of forest, starting upon the receipt of a positive response to such a request. Considering this timeline, a company still relying on permits issued prior to 2007, on the basis of provincial spatial plans which have not been accepted by the Ministry of Forestry, that are located in what is at this time zoned as forestry areas by the Ministry of Forestry, would be in violation.

778/VIII-KP/2000 essentially states¹⁶ that:

"With respect to area reservation for plantation cultivation business development in the Production Development Area (KPP) and the Settlement and Other Use Area (KPPL) based on the harmonization between the Provincial Spatial Layout Plan (RTRWP) and the Forest Land Use Agreement (TGHK) of Central Kalimantan (Decision of the Governor of Central Kalimantan No. 008/965/IV/BAPP dated May 14, 1999, the process of release of forest areas is no longer required"

S.575/Menhut-II/2006, which revoked 778/VIII-KP/2000, states¹⁷ that:

"The results of harmonization between Provincial Spatial Layout Plan (RTRWP) and Forest Land Use Agreement (TGHK) of the Central Kalimantan Province stipulated by the Governor of Central Kalimantan by Decision No. 008/965/4/BAPP dated May 14, 1999 cannot be made reference and guideline in determining the forest area status because it has not been followed up by Decree of the Minister of Forestry regarding Designation of Forest Areas."

60/2012, as an amendment of 10/2010, following the successful constitutional challenge of 45/PUU-IX/2011, allows those who have relied on 778/VIII-KP/2000, or *de facto* altogether disregarded the Ministry of Forestry and followed the guidance of the Central Kalimantan provincial government, a path to bring their plantations in compliance with the Ministry of Forestry:

Article 51A

1. *Plantation business activities whose licenses are issued by the Regional Government based on the Provincial or District / City Spatial Planning stipulated before the enactment of Law No. 26 of 2007 regarding Spatial Planning, but based on Law No. 41 of 1999 regarding Forestry as amended by Law No. 19 of 2004 the area is a forest area with a function of convertible production forest [hutan produksi yang dapat dikonversi / HPK], the permit holder within a maximum period of 6 (six) months from the entry into force of this Government Regulation must submit a request for release of forest area to the Minister.*
2. *Based on the application as referred to in paragraph (1) the Minister may issue the release of the forest area.*

Article 51B

¹⁶ As quoted from 45/PUU-IX/2011

¹⁷ As quoted from 45/PUU-IX/2011

1. *Plantation business activities whose licenses are issued by the Regional Government based on the Provincial or District / City Spatial Planning stipulated before the enactment of Law No. 26 of 2007 regarding Spatial Planning, but based on Law No. 41 of 1999 regarding Forestry as amended by Law No. 19 of 2004 the area is a forest area with a function of permanent production forest [hutan produksi tetap / HP] and / or limited production forest [hutan produksi terbatas / HPT], the permit holder within a maximum period of 6 (six) months after the enactment of this Government Regulation must submit an application for exchange of forest area to the Minister.*
 2. *The exchange as referred to in paragraph (1) shall be done by providing a replacement land within a period of not more than 2 (two) years since the application as referred to in paragraph (1) is approved.*
 3. *In the event that the applicant has provided a replacement land as referred to in paragraph (2), the Minister may issue the release of the forest area.*
- 2. If a palm oil company cleared forest and developed plantations on land consistently inside the Forest Zone according to the central government's TGHK, would an Indonesian legal tribunal exonerate the company because it relied on Central Kalimantan's representations (from 1993 to 2007) that these areas should legally be considered APL, according to the series of provincial government RTWRP, and were therefore OK to clear and plant upon?**

An Indonesian tribunal should not exonerate a company which relied on Central Kalimantan's representations with regards to non-forestry zoning. Specifically, the Indonesian legal system is highly unlikely to recognize equitable estoppel against the government (in this case the central government), particularly after 60/2012 provided a path to normalize one's forestry status that has been affected by prior legislative uncertainty.

There have been a number of cases that have considered the effect of reliance on 778/VIII-KP/2000, with the companies/accused universally failing to prevail in Indonesian courts.

Of historical note is that the cases begin with 45/PUU-IX/2011, a Constitutional Court Decision in which the Regional Government of Kapuas Regency successfully challenged certain aspects of the Forestry Law in light of the on-the-ground situation in Central Kalimantan at the time.¹⁸ The decision emboldened the plantation companies, but has failed to provide a sufficient basis for them to rely on to succeed in their specific cases due to the fact that 45/PUU-IX/2011, in relation to the issues being discussed herein, essentially required legal certainty, rather than allowing Central Kalimantan to disregard Ministry of Forestry zoning.

Specific to plantation companies which operated under reliance on 778/VIII-KP/2000, legal certainty has been provided by 60/2012 (which provides a process to normalize one's forestry status - but the deadlines for which have already expired at this time¹⁹), and therefore this line of argument would no longer have potential.

¹⁸ All areas of the Central Kalimantan Province were included in forest areas, including government offices.

¹⁹ 60/2012 states that an application has to be submitted within 6 months of its issuance, and, if required based on the type of forest, replacement land has to be provided within 2 years of the application being approved. Therefore, even

Although there is no binding precedent under Indonesian law, lower level courts are likely to follow decisions by the Supreme Court, since otherwise their decisions will, or at least theoretically should, eventually be overturned.

The Supreme Court (court of 3rd instance), in 771 K/Pid.Sus/2014, upheld a conviction against Tomy Delsy, S.H., the Director of PT. Kahayan Agro Lestari, and held that:

- Both he, himself, as the Director, and the company, could be held criminally liable under the Forestry Law;
- TGHK 1982 forestry zoning was valid and applicable (at the time in question, prior to 2012), and that even having applied for a forestry permit (under 60/2012), but prior to having received it, but having done forest clearing in 2008 through 2012 the defendant was criminally liable.

Also of note is that, the Supreme Court did not accept the following arguments:

- That the land was not forested, and was in fact already cleared by the local residents, even prior to TGHK 1982;
- That the location was licensed in 2005 and already in production;
- That the government never rejected royalty and tax payments;
- That there should be legal certainty for investors acting in good faith.

The 2 year sentence and a fine of Rp. 1 billion,²⁰ for clearing 1,140 hectares zoned as a forestry area, has since been implemented, in 2017.²¹

In 20/PID.SUS/2014/PT.PR a High Court (court of 2nd instance) upheld a sentence of 6 months, suspended for 10 months, and a fine on Rp. 250 million.

In 448/Pid.Sus/2013/PN.PL.R a District Court (court of 1st instance) sentenced the defendant to 10 months, suspended for 1 year, and a fine on Rp. 2 billion (replaced with a sentence of 3 month in case of failure to pay).

However, although all reported cases have resulted in convictions, it should be noted that the penalties have been at the lower end of the available range, and the companies, and their directors, that have been prosecuted have been smaller firms, with less political clout, while the larger companies have not been pursued.

if wildly artificial, it is conceivably possible to create a fact pattern (and therefore a document trail at the Ministry of Forestry), where the review part of the process, due to the government's fault, has taken several years, and therefore the 2 year period to provide replacement land has not yet started/expired.

²⁰ Around \$100,000 at the time of initial sentencing, and somewhat lower at implementation and at present due to currency depreciation.

²¹ <http://kalteng.prokal.co/read/news/39122-terbukti-garap-hutan-tanpa-izin-sah-direktur-pt-kal-dieksekusi.html>

3. What is the statute of limitations for the prosecution of a palm oil company for land clearing with fire?

The statute of limitations for a plantation company conducting land clearing with fire is 12 years, whether located in a forest estate or not.

The ICC states:

Article 78

(1) The right to prosecute shall lapse with the following lapse of time:

1st, in one year for all misdemeanors and for the crimes committed by means of the press;

2nd-ly, in six years for the crimes upon which a fine, custody or imprisonment of not more than three years is imposed;

3rd-ly, in twelve years for all crimes upon which temporary imprisonment for more than three years is imposed;

4th-ly, in eighteen years for all crimes upon which capital punishment or life imprisonment is imposed.

The potential offences available for the prosecution of deliberate fires are as follows:

Pursuant to **Article 108** of the **Environmental Law**, "every person who conducts land burning as referred to in Article 69 paragraph (1) letter h, shall be subject to imprisonment for 3 (three) years at the minimum and **10 (ten) years at the maximum** and a fine in the amount of Rp.3.000.000.000 (three billion rupiah) at the minimum and Rp. 10.000.000.000 (ten billion rupiah) at the maximum." Under Article 69 paragraph (1) of the Environmental Law, "every person is prohibited to:
h. conduct land burning;"

However, this sanction may only be imposed if the company is the one conducting the land burning. In practice, the company will prepare an explanation and justification to authorities that can prove that the company did not conduct land burning. If the fire occurred in the area that has already been planted, there will be no reason for the company to burn its own plantation area. Furthermore, the possibility of the dry season will be taken into account as the cause of the fire.

Pursuant to **Article 98** of the **Environmental Law**, every person who deliberately commit acts causing the ambient air quality standards, water quality standards, sea water quality standards, or criteria standards of environment damage to be exceeded shall be subject to imprisonment of 3 (three) years at the minimum and **10 (ten) years at the maximum** and a fine in the amount of Rp.3.000.000.000 (three billion rupiah) at the minimum and Rp.10.000.000.000 (ten billion rupiah) at the maximum.

In defense, the company will prepare explanation and justification to authorities that can prove that the company did not conduct land burning or deliberately set fire that caused a violation of the quality standards of air, water, etc.

Article 78 paragraph (3) of the Forestry Law states that any person who intentionally violates Article 50 paragraph (3) d shall be subjected to imprisonment of a **maximum of 15 (fifteen) years** and fine of a maximum of Rp.5.000.000.000 (five billion rupiah). Under Article 50 paragraph (3) of Forestry Law, "every person is prohibited from:

- d. forest burning;"

In defense, the company will prepare explanation and justification to authorities that can prove that the company did not conduct a forest burn or the company did not have the intention to conduct a forest burn. If possible, the company will promote the fact that it has a zero burning policy and the fact that it has not conducted any burning activity (or at least been prosecuted for such).

Article 48 paragraph (1) of the Plantation Law provides that every person intentionally clearing and/or preparing land by means of fire that results in the contamination and the damage of environmental function, is subject to **10 (ten) year imprisonment at the maximum** and a fine in the amount of Rp.10.000.000.000 (ten billion rupiah) at the maximum.

However, this can only be applied if the company is the one who clears and/or prepares land by means of fire. In this matter, the company will prepare explanation and justification to authorities that can prove that the company did not conduct a burn to clear its plantation and to also provide an explanation regarding the company's zero burning policy, if present. The company will allege that any fires were caused by the spread of fire from activities conducted by the community from the local village(s). Furthermore, the possibility of dry season will be taken into account as the cause of the fire.

Article 187 of the ICC provides that any person deliberately causes a fire, explosion or flood is subject to:

1. A **maximum 12 (twelve) years** of imprisonment, if due to such criminal act a public danger to property has occurred;
2. A maximum 15 (fifteen) years of imprisonment, if due to such criminal a danger of life of another has occurred;

However, this sanction can only be imposed if the company is one who caused the fires. In this matter, the company will prepare explanation and justification to authorities that can prove that the company did not cause the fires. The company will allege that any fires were caused by the spread of fire from activities conducted by the community from the local village(s).

The potential offences available for the prosecution of fires caused by negligence are as follows:

Pursuant to **Article 99 paragraph (1)** of the **Environmental Law**, every person who causes the ambient air, water, sea water quality standards, or standard criteria for environmental damage to be exceeded because of their negligence shall be subjected to imprisonment for 1 (one) year at the minimum and **3 (three) years at the maximum** and a fine in the minimum amount of Rp.1.000.000.000 (one billion rupiah) and a maximum amount of Rp.3.000.000.000 (three billion rupiah).

In defense, the company will prepare explanation and justification to authorities that can prove that the company did not conduct any negligent action that could cause the fire. Moreover, the company will explain all appropriate measures/policies that have been taken to show that the company was not negligent. The company will allege that at that moment it did not have any reasons whatsoever to start the fire and the company was always committed to its zero burning policy, if present. Furthermore, it will claim that the fire in the area of the company originated/spread from other areas that the company should not be held responsible for.

Pursuant to **Article 78 paragraph (4)** of the **Forestry Law** "any person whomsoever because of his negligence violates Article 50 paragraph (3) d shall be subject to **imprisonment for a maximum of 5 (five) years** and a penalty in the maximum amount of Rp.1.500.000.000 (one billion five hundred million rupiah)."

In defense, the company will prepare explanation and justification to authorities that can prove that the company did not conduct any negligent action that could cause the fire. The company will claim that the fire did not occur from any activity of the company and allege that it originated from a community area.

Pursuant to **Article 49 paragraph (1)** of the **Plantation Law** every person who because of their negligence clears and/or prepares land by means of fire that results in the contamination and the damage of environmental functions, is subject to a **maximum 3 (three) years of imprisonment** and fine in the amount of Rp.3.000.000.000 (three billion rupiah) at the maximum.

In defense, the company will prepare explanation and justification to authorities that can prove that the company did not conduct forest burn to clear its plantation and also to provide an explanation regarding the company's zero burning policy, if present. The company will produce various documents, specifically agreements with its contractors, to show that it adopts a zero burning policy in clearing plantation areas. And, therefore, it will argue that the possibility of negligence in clearing plantation areas by way of fire is remote.

Sanctions for the above-listed offences will be applied as follows:

Environmental Law

Regarding the person who is responsible for the environmental crime, Article 116 of the Environmental Law provides that in the event that the environmental crime is committed by and/or in the name of a business entity, the criminal charge and sanctions will be imposed to:

- a. The said business entity.

The criminal sanction imposed to the business entity is imposed to the management (director) who is authorized to represent the business entity inside or outside the court in accordance with the laws and regulations.

- b. The person ordering such criminal act or the person acting as the leader of such criminal act.

If the environmental crime was committed by a person, who based on an employment or other relationship acts in the scope of work of the business entity, the criminal sanctions shall be imposed to the person who gave the order or to the leader of such criminal act regardless of whether such crime is committed individually or collectively. In the event that the environmental criminal prosecution is pursued against the person who gave the order or the leader of such criminal acts, the imposed criminal sanctions in the form of imprisonment and fines will be increased by one-third.

In addition to criminal sanctions, Article 119 of the Environmental Law provides that the business entity may also be subject to additional sanctions or disciplinary actions in the form of:

- a) Seizure of profits earned from the criminal act;
- b) Closure of whole or part of the place of business and/or activity;
- c) Remedy of the damage caused by the criminal act;
- d) Compulsion to conduct what has been neglected; and/or
- e) Placement of the Company under conservatorship for 3 (three) years at the maximum.

Forestry Law

In the event that the criminal act violating the Forestry Law is committed by and/or in the name of a business entity or company, lawsuit and criminal sanction will be applied to their management, whether individually or collectively, and the imposed criminal sanctions in the form of imprisonment and fines will be increased by one-third.

With regards to the compensation and administrative sanction, Article 80 of the Forestry Law provides that any unlawful act stipulated in the Forestry Law, without prejudice to criminal sanction, requires the person responsible for such act to pay compensation according to the severity of damage or consequence resulting therefrom to the State, for rehabilitation and recovery of forest conditions or other necessary actions.