

# 1 PT Agrowiratama and the Melayu and Dayak peoples of Sambas, West Kalimantan

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## Introduction

PT Agrowiratama is a company of the Musim Mas group and member of the RSPO. It is also one of the first companies in Indonesia to go through the RSPO's New Planting Procedure (NPP).<sup>1</sup> In line with the NPP requirements, the company posted information about its planned expansion in Sambas in early 2011.<sup>2</sup> The company then excised around 1,000 ha of land from their concession for local communities inhabiting the area, a measure celebrated on NGOs' websites as an example of the effectiveness of the procedure and the responsiveness of the company.<sup>3</sup> The case was thus chosen as a study, as it apparently showed the positive impact of RSPO procedures from which useful lessons might be learned. However, the investigation showed that both the story and the lessons to be learned from it are far more complex, but nonetheless valuable.

## Area in question

PT Agrowiratama is located in the province of West Kalimantan, one of the four Indonesian provinces of the Indonesian part of the island of Borneo. The capital of West Kalimantan is Pontianak and the borders of the province roughly trace the mountain ranges surrounding the watershed of the Kapuas River, which drains most of the province. The area of West Kalimantan is 147,307 km<sup>2</sup> with a population of nearly four and a half million in 2010, of which nearly 30% live in or close to Pontianak city. PT Agrowiratama is located in Sambas regency, one of the twelve regencies (*kabupaten*) of the province, located in the north-west of West Kalimantan. Inhabited by around

half a million people and covering an area of roughly 6,400 km<sup>2</sup> over 19 sub-districts (*kecamatan*), Sambas is bordered by Sarawak (Malaysia) in the north, Singkawang city in the south, the Natuna Sea in the west and Bengkayang regency in the east.

In 2008, the forest sector contributed about half of the GDP of West Kalimantan with a further USD \$1.35 million from the agricultural sector, with a strong investment in estate crops, particularly oil palm. Other growing sectors are mining (gold, quartz, nickel and other minerals), manufacturing and tourism, which together contribute around 40% of the provincial government's revenues. Poverty remains a significant issue with the Human Development Index (HDI) below the national average and average income across the province at only USD \$627 per year.<sup>4</sup>

The peat swamp forest of West Kalimantan, covering an area of 1.7 million ha, is one of the largest natural ecosystems in the Indonesian rainforest. Forests extend along the coastal plain and along the rivers inland within the upstream section of the Kapuas river.<sup>5</sup> The national forest estate consists of an area of about 90,000 km<sup>2</sup> of which over half is zoned as permanent production forest. Only 5,000 km<sup>2</sup> of the production forest designated for conversion remains, attesting to the rapid expansion of estate crops in the province. Conversion of forest lands on peats to estate crops and the proliferation of fire through the dry seasons has been a significant historical factor in the high levels of green house gas emissions from the province and the degradation of biodiversity.<sup>6</sup> Most of the peat swamp forest in Sambas has been disturbed due to logging and conversion to

oil palm plantations and other agricultural lands, such as for rubber, coffee, pineapple and other fruits plants. In 2007–2008, 27% of deforestation was ascribed to oil palm, including 40% of all peat land deforestation.<sup>7</sup>

### History, peoples and land tenure

Sambas has a long though not well documented history. It is known to have been the location of a Malay<sup>8</sup> Sultanate as far back as the 15th century, the ruling family of which claimed links with Johor and Melaka and intermarried with the ruling families in Brunei, Sarawak and Pontianak, among others. The Dutch only asserted authority over Sambas from the mid-19th century, but they instituted a system of indirect rule thereby allowing the family of the Sultan to retain power and authority over his subjects. Although commerce began to be increasingly controlled by the Dutch, the Sultan's family retained its authority through the Japanese occupation, ruled through a council at the death of the last Sultan in 1946, and was only finally disbanded in 1956 under President Sukarno's populist administration. The Melayu of Mekar Jaya, one of the four communities affected by the company, recall a story that in 1921 rulers of Sambas had planned to establish a kraton in the village of Kuayan and had even started constructing it there before abandoning the project. Respect for the ancient authority of the Sultan's family remains strong.

The population of Sambas district comprises a variety of different peoples, the majority of whom today can be grouped in self-identifying categories as Malays (*Melayu*), Dayaks and Chinese. The estate examined here, PT Agrowiratama 1, overlap the lands of four administrative villages (*desa*) Mekar Jaya, Beringin, Sabung and Lubuk Dagang. The former two are mainly populated by Melayu while the latter two are mainly Dayak. Sabung actually contains a transmigration settlement made up of 150 families, half of whom are locally transmigrated Dayak and the others being Javanese from east, central

and west Java. The community of Mekar Jaya includes about 30 Chinese.

The *Melayu* interviewed for this study in Mekar Jaya and Beringin are sure that they have been in the current area at least since the 1920s and almost certainly much longer. The oldest land registration document held by anyone in the village dates from the 1930s. The people are largely self-sufficient making their living from wet rice grown in paddies, from shifting cultivation, minor livestock-raising, the collection of non-timber forest products especially vegetables and some fishing. Timber for their houses also comes from the local forests.<sup>9</sup> Quite extensive rubber gardens are the main source of cash income although pepper and fruit trees, notably *rambutan*, are also quite widely cultivated. Being near Sambas town, a number of people also travel to work on neighbouring estates and industries.

Until recently, the communities along the Sambas Kecil river did not experience land shortage. The main limit of agricultural production was labour. Accordingly, as we were told, farmers operated within well-known but not very strict rules with respect to land. By tradition,<sup>10</sup> farmers who open land are considered to become owners and retain rights in the land thereafter. Ownership thus derives from working the land and from social recognition in the community. In common with Dayak customs in West Kalimantan, a farmer also has first rights to open land inland from their current holding.

Where geography brings neighbouring farmers to have overlapping claims to open new land, their differences are usually settled amicably by discussion but where this is not possible elders from the hamlet or if necessary the village, those with the best knowledge of the areas in contention, may be brought in to advise on how to settle disputes. However, at the village level there are no customary authorities charged with adjudicating land disputes as there are among the Dayak. As among Dayaks, these Melayu farmers retain rights in fallowed

lands, part of the forest regeneration in rotational farming cycles: such lands are known as *belokar* (scrubland) but their ownership is known by all.

Buying and selling lands has become increasingly common and today a large proportion of rubber gardens are registered with the village administrative office, which for a fee of about US\$12 will provide land owners with a letter, *surat pertanyaan tanah* (SPT), defining the plot of land that they own. While not an official land title, these deeds are accepted as proof that the farmer has rights to use the land and they tend to be used as a basis for land tax.

Reflecting on the way that the land tenure system has begun to change one old farmer noted ruefully that in the past land ownership was:

... a custom based on trust. Back then no letters were necessary. Even taxes were not based on letters, they were based on trust too. Now they require documents for everything and these SPT they cost money.... In the past we elders trusted each other but today there is less trust and we need written evidence and that is a problem. With the younger generation trust has been diminished.

As for the forests used by villagers for the collection of forest products these are considered to belong to the village as communally held lands and villagers, referred to as *pengurus hutan* (forest wardens), are charged with looking after these areas, although we did not have time to clarify their exact role. Today these areas are known as *hutan bersama desa* (common village lands) but the *desa* system was only actually introduced into the area in the early 1980s: before villages were known as *kampung*. The *Melayu* of Mekar Jaya recognise that forests are charged with spiritual power but while they know neighbouring Dayak groups actually locate these forests in sacred sites, the *Melayu* have no sacred places apart from grave sites.

Although Malay aristocrats tend to have patrilineal systems, in Mekar Jaya and

Beringin lands are inherited cognatically being given equally to male and female heirs, although the few adherents to stricter forms of Islam have taken to giving half shares to female heirs in accordance with sharia law. In practice, lands tend to be allocated by elders to their heirs when they get old rather than at death, maintaining the association between land ownership and those who actually work the land.

Until very recently, the boundaries between these villages were not strictly defined at least from the *Melayu* point of view. It was only with advent of oil palm into the area that land began to be precious and in short supply. Hence along the fuzzy and porous boundaries between villages, lands have been opened up for shifting cultivation, rubber and other crops and SPT been allocated in such a way that they intermingle somewhat with gardens from neighbouring villages. This has caused problems when village boundaries were later more precisely delineated.

### **The palm oil sector in Sambas**

The district of Sambas has come late to the palm oil sector. According to figures supplied by government officials interviewed during this study, of about 400,000 ha of land in the district, since 2004, no less than 240,000 ha have been handed out to 35 oil palm companies. Most of these operations are still in the early stages of licensing, planting and production. Only 52,000 ha are actually planted and only one mill is currently available to process fresh fruit bunches into crude palm oil and kernel oil within the district. A second mill with 6,000 ha of attached estates is expected to come on line later this year. The district thus lacks capacity to process all its fruits and is thus losing both revenue and quality as fruits degrade by being driven long distances to be processed, some being sent as far as Pontianak, over 200 kilometres to the south. The government officials interviewed freely volunteered the information that there are many problems with palm oil expansion

in the area and that the district is new to handling these challenges.

As explained by these officials, the two main problems are the clearing of lands claimed by communities and smallholdings not being provided to communities as required by law. The Government emphasises that it lacks the capacity, skills, procedures and budget to deal with these land conflicts. For example, we were told, in contrast with the trillions of rupiah being invested by companies in the estates, the Monitoring and Evaluation Unit of the office overseeing investments has an annual budget of only IDR 50 million (US\$ 5,400) with which it is expected to look into the actions of all 35 oil palm companies and a myriad other enterprises. In the circumstances, the officials are rarely able to even visit estates and so tend to only investigate cases when protestors demand a government response.

Most of the companies, it is admitted, are not complying with the law and required procedures, while in comparison the RSPO member companies are relatively 'serious'. 'They want to get all the permits in proper sequence and even chase the local government to supply them.' Still, the same official informed us, even with the RSPO companies the situation is not perfect and there are land conflicts. 'The companies face the same challenges in approaching the communities', he explained.

The government admits that it does not know where people cultivate their lands. It expects the (unsupervised) companies to first carry out a land survey to establish that the land for which it seeks a license does not overlap other permits and then, once armed with a location permit issued by the regent, to carry out land surveys and then acquire lands from the community members. Whereas, the same official noted, ideally land clearance permits (IUP) should only be issued by the local government after land acquisition has been completed, in fact they are often issued before land conflicts are dealt with. Only after satisfying a number of other requirements is a final permit to

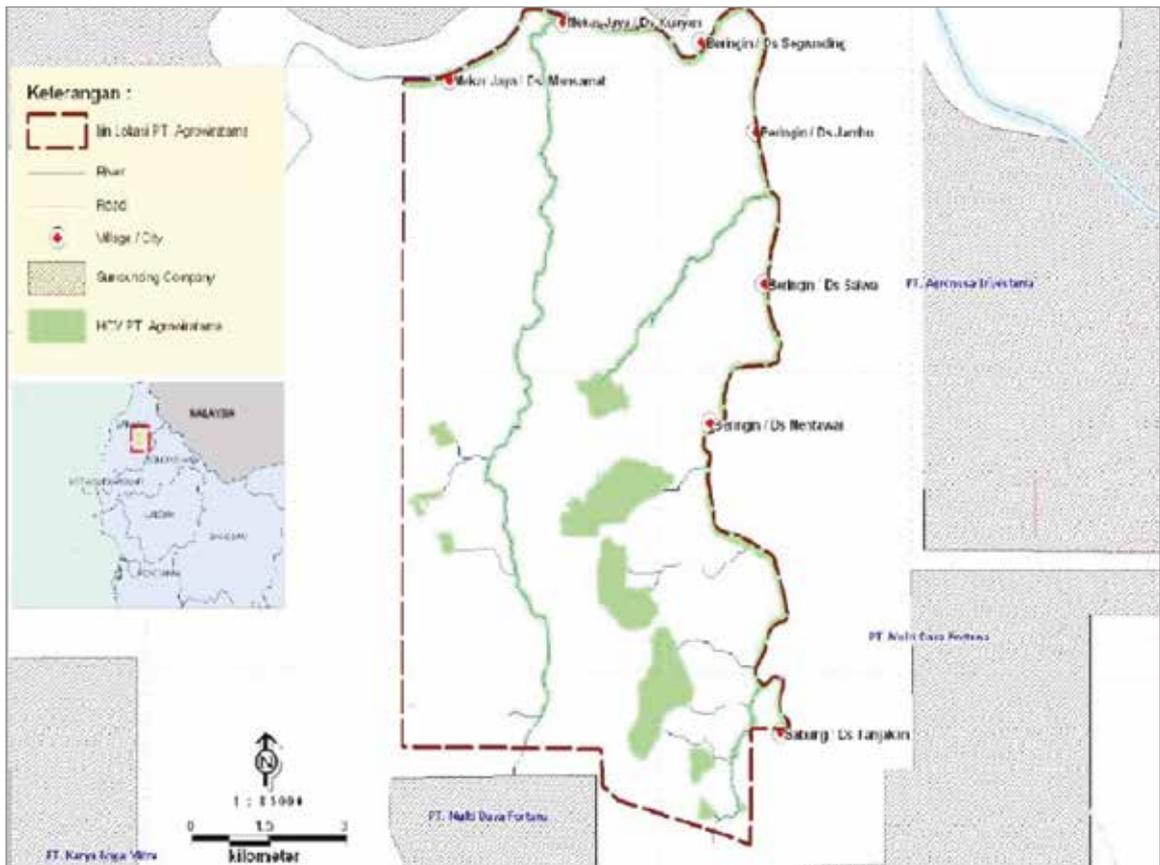
use the land (*hak guna usaha - HGU*) for oil palm actually issued by the National Land Bureau (BPN).

The NGO consortium got wholly contradictory accounts about the sequencing of planting and permits from the different government agencies. The National Land Agency insists that, according to the agency's regulations relating to land and plantations, companies cannot actually plant oil palm in their concession or build any installations until they have received a company land use permit or company building permit, although it admits that this often occurs. The companies however assume that they have the right to both clear and plant once they have secured an IUP. There is a glaring contradiction here. Indeed, in 2007, the district government issued a decree *requiring* that at least 20% of lands be planted for smallholdings *before* any HGU can be issued.<sup>11</sup> In effect, it seems to be impossible for companies to comply with both sets of laws.

### **Company in operation**

PT Agrowiratama is a company of the Musim Mas group, an Indonesian business group owned by the Karim family. The activities of Musim Mas are centered on its core business of oil palm cultivation and palm oil processing. It is a market leader in the manufacturing of palm oil, soap and margarine and owns refineries, biodiesel and oleochemical factories, ships, tankers, a grain terminal and bulk tank terminals. In Indonesia, the Musim Mas Group ranks among the biggest producers in the vegetable oil refining and soap manufacturing industries.<sup>12</sup> The market share of the Musim Mas Group on the Indonesian palm oil refining market is about 25%.

The Musim Mas Group owns oil palm plantations in North Sumatra, West Sumatra, South Sumatra, Riau and Central Kalimantan with a total area of 122,572 ha. The company operates eight Crude Palm Oil (CPO) mills with a total annual



■ Map showing location of PT Agrowiratama's proposed new planting and neighbouring concessions (Source: Control Union 2011b:3)

line with decision letter of the Ministry of Agriculture and Forestry No. 259/KPTS-II/2000.

capacity of 660,000 tonnes.<sup>13</sup> In 2007 Musim Mas opened its first biodiesel plant in Medan, which has an annual capacity of 200,000 tonnes. A second plant on Banka island, with an annual capacity of 350,000 tonnes, is under construction. Opening was planned for the first quarter of 2009.<sup>14</sup> It is not clear if this last plant is in operation yet. The Musim Mas group has four estates in Sambas district: PT Agrowiratama 1 which was issued a location permit for 9,000 ha and was then issued a clearance permit for 6,880 ha, PT Agrowiratama 2 with a location permit for about 5,000 ha, PT Mulia Indah which now has a clearance permit for 8,000 ha and PT Musim Mas with a location permit for around 10,000 ha. The total potential area for Musim Mas' planned estates in the district is thus about 30,000 ha. The new planting area of PT Agrowiratama is located in Other Usage Area (*Areal Penggunaan Lain - APL*), in

### Legal status of company operations

At the time of writing, PT Agrowiratama held the following permits and recommendations:

- Consent license/recommendation No. 582/76/BMPPT-3/9<sup>th</sup> June 2009 on the location of PT Agrowiratama for 9,000 ha, issued by the Act of the Regent of Sambas sub-district (*bupati kabupaten Sambas*).
- Location permit (*izin lokasi*) No. 425/31<sup>st</sup> December 2009 for 9,000 ha, issued by the Act of the Regent of Sambas sub-district.
- Environmental Impact Analysis (AMDAL)/decree of *Komisi Penilai AMDAL* Sambas Sub-district Official Evaluation Committee No.269/12<sup>th</sup> October 2010, approved by the Head of the Environment Office (*Badan Lingkungan Hidup*) of Sambas sub-district.

- Plantation operational license (*izin usaha perkebunan*) No. 304/20<sup>th</sup> December 2010, approved by the Head of Sambas district, for 6,880 ha and a palm oil mill of 45 mt/hr capacity.

Further documents held include: principal permit (*izin prinsip*), land information (*informasi lahan*), forest land analysis (*telaah kawasan hutan BPKH*), forest land analysis from West Kalimantan Forestry Office (*telaah kawasan hutan Dishut Kalbar*), technical consideration (*pertimbangan teknis*), macro planning of the Governor (*rencana makro dari Gubernur*), AMDAL, Plantation Enterprise Permit (*izin usaha perkebunan/IUP*), Timber Utilisation Permit (*izin pemanfaatan kayu/IPK*) from the Forestry and Plantations Office of Sambas district (*Dishutbun*), a notary act, building construction permit (*izin mendirikan bangunan/IMB*), company registration code (*tanda daftar perusahaan*), trade business permit letter (*surat izin usaha perdagangan/SIUP*) and insurance (*Jamsostek*).

### Land disputes

Two communities in the area have sustained opposition to oil palm for several years, even before the Musim Mas group began to invest in the area. The community of Tengguli is well known for its opposition but only a small number of villagers from Tengguli have farm lands within the PT Agrowiratama concession.<sup>15</sup> The lands of the village of Mekar Jaya on the other hand fall right in the middle of the location permit that was granted to PT Agrowiratama. Mekar Jaya had also opposed earlier efforts by palm oil companies to develop the area including PT Borneo Palma Prima.

PT Agrowiratama secured its location permit in late 2009 and in April 2010, they invited various village leaders from Mekar Jaya, Beringin and Sabung and other local elites (see below) to visit PT Agrowiratama's operation in Pasaman Barat, West Sumatra. This was a first stage

in the company's *sosialisasi*<sup>16</sup> programme. Almost immediately after this field visit, the community of Mekar Jaya carried out an informal plebiscite of villagers, found the majority opposed the palm oil development, and rallied outside the local regent's office on 20<sup>th</sup> May 2010 to publicly protest their inclusion in the concession without their agreement. On 23<sup>rd</sup> May 2010, they then submitted their concerns to the district legislature (DPR-D) which promised to look into the case. Consequently, in July 2010, the local government sent an investigation team to the area to look into the people's concerns.

In November 2010, the local government also sent teams to the area, accompanied by company observers, to review the unclear administrative boundaries between the villages. Although the government officials that we interviewed unanimously argued that determining such boundaries should be done by field surveys which determine the extent of village farmlands and other uses of the land, in this case the boundaries were not drawn with reference to farmlands. To the east of Mekar Jaya the boundary was merely drawn as a straight line with only one way point along its length. To the south, the boundary between Mekar Jaya and Sabung was also drawn using only three way points and not based on land use. Mekar Jaya residents claim that the rubber gardens, shifting cultivation plots and *belokar* lands of several dozen farmers were thereby unfairly allocated in Beringin as well as areas of community forests. This has led to their land claims in these areas being disputed and even those farmers with SPT have been told they are invalid as they were issued by the 'wrong' village.

The village of Mekar Jaya has faced a very different challenge in securing its land to the west of the Sekuan river. In early 2010, not long after PT Agrowiratama had secured its location permit, the Panji Anom family (often referred to as *ahli waris* or 'special heirs'), an elite *Melayu*

family with ancestral links to Sultan of Sambas informed the company that it was the owner of these lands. It based its claim on an 1897 letter from the Sultan, written in Malay Arabic, which endowed the family with land that allegedly overlaps PT Agrowiratama's concession. A further letter carrying the Sultan's signature, dated 1905, gave further details about the endowment.<sup>17</sup> Representatives of the family were thus included in PT Agrowiratama's *sosialisasi* field trip to West Sumatra, were favourably impressed and agreed to reach a settlement with the company.

In December 2010, the local government issued a land clearance permit (IUP) to PT Agrowiratama which excised about 1,478 ha of Mekar Jaya's farmlands from the concession. Notably, however, to the east and south the excised area followed the newly defined village borders with Beringin and Sabung thus leaving some 350 to 400 ha of lands claimed by Mekar Jaya within the concession. Moreover, to the west of the Sekuan river a further 1000 ha of lands claimed by Mekar Jaya were included in the IUP, being the lands also claimed by the Panji Anom family.

These new determinations of the concession boundaries were not made public. When in January 2011, PT Agrowiratama filed information on the RSPO website under the New Plantings Procedure the maps released by Control Union showed the old boundaries of the location permit not the new boundaries of the IUP. So, when, following the NPP announcement, further concerns were raised with PT Agrowiratama by NGOs and the Mekar Jaya communities, these were based on this out of date information.

Under pressure from villagers, in February 2010, the Panji Anom family issued a public statement re-asserting their claim, acknowledging they had entered into a partnership (*kemitraan*) with the company but accepting that they would respect the rights of those using their lands who had

rubber seedlings of more than four years old. The offer was and still is rejected by Mekar Jaya which also disputes the validity of the Panji Anom family's claim noting that the family has never cultivated these lands and never consulted with the community prior to PT Agrowiratama gaining a concession in the area. In November 2011, following a further negotiation between Mekar Jaya and the family a handwritten letter was agreed and co-signed by which the Panji Anom family apparently recognises the villagers' right to all their rubber plantings and *belokar* lands. Neither of these agreements between the Panji Anom family and Mekar Jaya have been formally endorsed by the company. The company however confirms that since May 2011 it has been paying compensation in stages to the Panji Anom family.

Meanwhile, sustained opposition by the Mekar Jaya villagers to PT Agrowiratama's operations led to further discussions with the government which in March 2011 released the map of the IUP. This was at first seen as a victory by the villagers and NGOs and it only became clear later that the lands that had been 'enclaved' (or rather excised) not only did not include their lands east and south of the new village boundaries thus leaving them inside the concession but also gave into the IUP all the lands west of the Sekuan claimed by the Panji Anom family.<sup>18</sup>

At the time of the NGO consortium's field visit all these land disputes remained unresolved. Furthermore the NGOs took detailed testimony from several farmers in Mekar Jaya who complained that within the last four months, PT Agrowiratama has begun clearing their lands to the west of the Sekuan river without their consent or agreement. They allege that some 200 ha had so far been cleared including small areas planted by villagers with oil palm, extensive areas of rubber in various stages of growth, and *belokar* areas. Some of the farmers have SPT for these areas, some not. Some have filed their complaints with the village administration, some with the company and some are still to do so. In some cases farmers have been offered

compensation for the lands taken but these offers have been rejected. Noted one farmer ‘I don’t want compensation for the land, I want to work the land’. ‘I want my land back and they should replace the trees. I also claim lost income from the 10 years growth, they were near being productive’ noted another. ‘It is like they stole my land’ stated a third. A number of complainants who have rejected compensation and asked for their lands back have been told by the company to take their concerns to the Panji Anom family. As one village elder told us ‘the company is using these original heirs as their shield.’

It is notable that the company, local elites and even independent assessors all refer to those opposing the oil palm companies’ plans as ‘provocateurs’, rather than accepting that the communities have a right to organise and express their choices in line with their right to Free, Prior and Informed Consent.

### **Legal analysis of the Panji Anom heirs land claim**

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In an interview with members of the Panji Anom family and their lawyer, it was explained that at the time of the Sambas Sultanate, land ownership by the Melayu people required a process in which the applicant filed a supplication to the village head (*kepala kampung* or *pembekal*), which the village head then transmitted to a high official (*petinggi*), who in turn forwarded the request to the assistant of the *demang*, or district head, to be passed on to the *demang* himself. The *demang* then submitted the supplication to the prince (*pangeran*) who managed the riches and lands of the sultanate.

According to the Panji Anom family, the land they are claiming is theirs as an endowment (*karunia*) from the Sultan of Sambas pursuant to an endowment letter and a will dated 27<sup>th</sup> *rajab* (7<sup>th</sup> month of the Islamic calendar) 1314 H (ie 1<sup>st</sup> January 1897) in the name of Prince Moeda Natakoesuma bin Sultan Aboebakar

Tajoedin bin Pangeran Panji Anom Cakra Negara. This endowment letter became the basis for supplication for the affirmation of customary owned lands to be converted pursuant to conversion provisions in articles on Conversion Provisions [sic] and article IX of Conversion Provisions of the Basic Agrarian Law (Law No. 5/1960, L.N. 1960 – 104). The supplication was filed with a Letter of Supplication for Affirmation of *Tanah Milik Adat* dated 2<sup>nd</sup> February 1987 09/CNPA/I/1987 by Yayasan Cakra Negara Panji Anom. The West Kalimantan Agrarian Directorate responded to the conversion supplication through Letter Number 593.2/2699/Agr-87 dated 15<sup>th</sup> July 1987 as follows:

- a. The Sultan of Sambas was at the time of the will, head of the government of the people of Sambas, and their *adat* sovereign, holding the right to give land to any citizen. This is the basis for the granting of land by the Sultan to the Panji Anom Prince, which is valid and pursuant to Islamic law, bequeathed to his heirs.
- b. Based on the Decree of the Minister of Home Affairs No. Sk. 26/DDA/1970 regarding the Conversion Affirmation of the Registration of Former Indonesian Rights to Land, the endowment letter of the Sultan of Sambas to Pangeran Cakra Negara Panji Anom can serve as the basis for these rights to be converted to land rights pursuant to the Basic Agrarian Law.
- c. The conversion process can be done selectively, considering: provisions on maximum ownership limit pursuant to Law No. 56 Prp of 1960; provisions regarding absentee lands (Government Regulation No. 224 of 1961) and; third party possession of such lands.

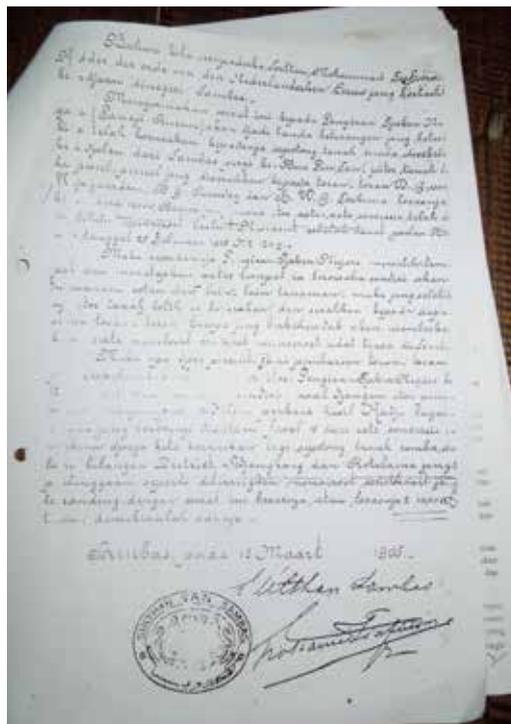
In the case of the land claimed by the heirs to Pangeran Cakra Negara Panji Anom, the government indirectly afforded recognition of the legality of their claim, but fell short of issuing an administrative state decision that recognised the full and complete legal force of the heirs’ possession of the land, noting

that a conversion process was necessary, due consideration for third parties involved, and absentee lands.

The communities who are in possession of the land overlapping the Panji Anom heirs' land hold SPT with clear delineation of the lands in question and acknowledged by the village head (*kepala desa*). However, and like the Panji Anom heirs, the communities do not have a state administrative decision in the form of a land certificate that would lead to legal effect for them. Nevertheless, the physical possession and use of the land by the communities is relevant to the Basic Agrarian Law (Art 10 Para 1) which states that:

Any person or legal entity having rights over agricultural lands are required in principle to actively work or exploit the land themselves, by preventing extortionary means. This article mandates that the final decision about the right to land shall be given only to those who are really in possession of the land.

■ *Letter dated 1905 allegedly from the Sultan of Sambas, written in Malay Arabic, and endowing the Panji Anom family with land that overlaps with PT Agrowiratama's concession.*



According to the company, the validity of the communities' claims is proven by the signature of the village head on their SPT, but this has little legal weight. However, in line with Art 10 cited above, it is the village head who can testify as to the active and ongoing physical use of the land itself by the local communities, as a form of evidence to back their claim. The Panji Anom heirs claimed to have managed the lands and planted them with rubber and rattan up until the Japanese occupation, when rubber was replaced with banana crops. The communities, on the other hand, reported never having heard of the Panji Anom heirs prior to this present claim, and no evidence was found on the land in question of agricultural activity by the Panji Anom heirs.

Further complicating the picture, PT Agrowiratama conducted land clearing activities on the lands subject to overlapping claims *before* ascertaining with full certainty *who* owns the land and who uses it. The failure to clarify this has led to further ambiguity over, for example, who has the right to compensation, particularly as the company has already paid a certain amount of compensation to the Panji Anom heirs.

### Community views on the process of respecting the right to FPIC

#### Mekar Jaya

The original village of Mekar Jaya was located at the nearby Mensamat, and prior to that in Kuayan. The community then divided and regrouped as Mekar Jaya, a village composed of three hamlets (*dusun*): Mensamat, Kuayan and Bantilan. The population of the village is around 3,000, most of whom are ethnic *Melayu*, and 29 of whom are Buddhist Chinese (with one Christian Chinese). It is recalled by some community members that among the first to open lands at Kuayan was a couple, one of whom was Chinese. Families stated with assurance that they are already the fourth

generation to have lived here, meaning that they have been there since at least 1870.

The interviews in Mekar Jaya revealed that while all (male community members at least) were aware of the existence of PT Agrowiratama, far fewer had heard of the RSPO or of the FPIC process which PT Agrowiratama has committed to implement as an RSPO member. Some community members stated that while the problems they were facing as a result of the company's presence could not be considered as serious, there were still a number of residual issues that remained unresolved, including contested and overlapping land claims and general lack of clarity among community members over the legal validity of different actors' claims to the land.

According to Pak Udin of Mensamat hamlet, only two out of 1,000 community members accepted PT Agrowiratama in 2009, when the regional government (PEMDA) issued its location permit to the company (25<sup>th</sup> Dec 2009), as evidenced by a collective petition against the company. Prior to PT Agrowiratama, Mekar Jaya had already rejecting several oil palm companies, including PT and PT BPP. On 20<sup>th</sup> May 2010, protests by community members took place in Semayong, where communities also rejected PT Agrowiratama's investment on their lands. Over 400 people took part in this protest in front of the office of the Sambas *bupati*. On 23<sup>rd</sup> May, Mekar Jaya submitted its statement of refusal to PEMDA.

The government Task Force looked into the Mekar Jaya issue in July 2010 and boundaries with Beringin were redrawn in November 2010 (without using the SPT register and only using three survey points). In December 2010, PT Agrowiratama's IUP was issued. The new boundaries led to half of Mekar Jaya's lands being excised and the east boundary of their village area (*wilayah desa*) becoming part of Beringin. One initiative taken by the company to 'socialise' their project was a 'comparative study' (*studi banding*) held in Padang, to

which the village heads of Tenguli, Beringin and Mekar Jaya were invited in 2010. It was reported that no other community members were informed or invited to participate in this meeting.

The former village head of Mekar Jaya, Pak Azim, describes the comparative study as follows:

When I went there, there were government representatives, company representatives, the police and members of the *ahli waris* (descendants of the Sultan of Sambas) too. We were told that if we were not willing to sign an agreement based on the Decree on Plasma Farming of the Ministry of Forestry, there was no point attending the meeting. So what was the point of the meeting? To make us sign a document? It was like a setup from the beginning.

On the other hand, it also appears that the content and outcomes of this study were not fully shared by the village heads with their respective communities. Pak Udin states:

We were not really told what happened in the meeting. Our village head told us about the benefits of oil palm plantations for local communities somewhere in East Sumatra, such as schools, hospitals, sports facilities, and so on. Why did the chief not socialise this project more with us? Probably because he knew we would reject it. They didn't mention any possible jobs in the plantation, but they did mention plasma. They were trying to coax us and make us want the plantation.

Thus while the village heads are chosen by the communities themselves to represent them, the information shared by these representatives with the communities was limited, as was wider community participation in the comparative study itself. The fact that the enclaved land is not only smaller but also excludes certain villages has led some community members to express doubts over the way in which their chiefs have represented their views and needs:

The land we have obtained in the enclave is smaller than we want. It does not match our

expectations. Is there a deal going on with the company here? We don't know enough (*kami kurang tahu*).

Interviews in Mekar Jaya also revealed that community members have not been given copies of relevant documents, such as a participatory map done in 2010 with the company and community representatives, even though they were involved in the mapping. The village head has a copy of the AMDAL (Environmental Impact Analysis) and people were consulted during the AMDAL in 2010. Community members reported having seen maps of the concession, the enclave and the High Conservation Value (HCV) assessment, but not the participatory map, and none were aware that they were entitled to ownership of the map by virtue of its participatory nature. It appears that a map of the enclave was given to them only in 2011. While an HCV assessment was carried out by consultancy company Aksenta, and

some community members were aware of this assessment, most had a limited understanding of what HCVs are. Pak Udin states:

I've heard the term 'HCV', but I don't really understand what HCVs are. The consultants and the Public Relations Officer of PT Agrowiratama told us they had something to do with protected species, endangered species, watersheds. We understood it was about protecting the animals living around our land and rivers.

Interviewer: What about protecting humans?

Pak Udin: Humans? Well, they just have to protect themselves.

Community members did not appear to know that HCVs also included areas fundamental to meeting basic needs of local communities (eg subsistence, health – HCV5) and areas critical to local communities' traditional cultural identity (areas of cultural, ecological, economic or religious significance identified in cooperation with such local communities – HCV6).

■ *Community meeting in Mekar Jaya / Marcus Colchester*



When asked what they considered most worth protecting, community members referred to their rubber plantations, rice paddies and riverbanks:

What needs to be protected are our rubber trees, riverbanks and fields. These are worth protecting because they are what the communities use and need. (Pak Udin)

Community members also reported that they had not been involved in the HCVA (High Conservation Value Assessment), nor was their consent sought prior to the assessment. They were unclear how had participated in the assessment, and only knew of the existence of HCVs on their land from signboards on trees and by the riverbank once the assessment was completed. When asked if they knew what kind of HCVs were on their lands, they responded that the signboards did not specify this. Finally, community members reported not having been given a copy of the HCVA. While an AMDAL was undertaken by PEMDA, community members reported not having seen or being given a copy of the document, although it was also reported that the village head has a copy. Some community members appeared to be unaware of the social dimension of the assessment, apparently not having been involved or consulted in the process.

When asked why copies of documents such as the AMDAL and HCVA were not provided to the communities by the company, representatives of PT Agrowiratama explained that communities are not interested in the documents and 'prefer to discuss and ask questions'. However, this was contested by former village head of Mekar Jaya, Pak Azim:

The company didn't offer to provide us with copies of these documents. We local communities may not understand everything about AMDAL and HCVs, but we should at least be given a copy, or at least a copy should be given to the village government, if not the community itself.

Furthermore, community members reported serious problems caused by lack of defined and participatorily mapped boundaries for both the enclaved territory and the boundaries redrawn between Mekar Jaya and Beringin in a later agreement between the village head and the *ahli waris*. The location and extent of the enclave was reportedly decided by PEMDA, without the involvement of the company.

Communities were unclear as to why the enclave is located where it is, as they were not involved in this decision-making process. Overlaps between land claimed by local communities, the *ahli waris* (descendants of the Sultan of Sambas) and the company are reported by community members as the major cause of concern. The enclaved land as demarcated by PEMDA excludes a number of villages and 200 ha overlap with land claimed by the *ahli waris*, who claim the legitimacy of their right to around 10,000 ha of land in Mekar Jaya, Sabung and Lubuk Dagang. Pak Azim, head of Mensamat hamlet (*kepala dusun*), states:

We also claim the *blokar*. We don't know if Raden Farid's letter is legally valid – this is the problem. We need help to find this out, but we do not understand the court system, and we are afraid to use it as a result. We are also afraid that their claim is legally valid, in which case ours will have little weight. We don't understand our legal rights. But we do know what the borders and extent of our village territory (*wilayah desa*) are from our ancestors, our elders, and so we know that the borders of today do not fit with those of our ancestors. But what our ancestors told us has no legal power – we know them from the oral stories passed down to us. We have lived on this land for over a hundred years at least. There are graveyards to prove this, that may be over 200 years old. Yet the claim to this land by the *ahli waris* is completely new to us.

Some community members were aware that the Basic Agrarian Law 1960 recognises claims to land based on ancestorship and history of land use:

We understand that under this law, both the communities and the *ahli waris* have reason to claim the land. But why are the claims from the *ahli waris* only being expressed now? They could have done this back in the 60s or 70s, but they happen to claim the land just when the oil palm arrives here.

Interestingly, the communities are paying taxes on the contested land, which the *ahli waris* are not:

We are both claiming the same land, but only the communities are paying taxes on it, and not the *ahli waris*. Doesn't that mean that we have legal rights to this land, and not them?

Community members of Desa Mekar Jayamet with the neighbouring villages of Beringin and Sabung, and with representatives of the *ahli waris*, to negotiate the boundaries in a meeting facilitated by PT Agrowiratama and PEMDA, but the boundaries still did not fit with those defined by their ancestors. In fact, after these negotiations, borders were redrawn between Beringin and Mekar Jaya to accommodate the land claims of the *ahli waris* which have exacerbated problems by causing parts of Desa Mekar Jaya land to become part of Desa Beringin. A reported five to seven people from Mekar Jaya who found part or all of their land within Desa Beringin have now conceded their land to PT Agrowiratama:

This enclave has caused even more problems. No consideration was given to the location of the borders. As a result, the boundaries of the villages have been shifted. Even the boundaries of sub-districts have been shifted. The enclave has cut up our village.

Some community members do not see the *ahli waris*' claim and the arrival of PT Agrowiratama as mere coincidence:

We had never heard about any claims from the *ahli waris* before PT Agrowiratama arrived. Did the company bring in the *ahli waris*? Were they brought into the picture to cause horizontal conflict among and within the communities? Maybe, but it is difficult to prove<sup>19</sup>

Despite the ongoing land conflict, PT Agrowiratama has reportedly already cleared at least 100 ha of the land under contestation, according to community members, but have agreed with the *ahli waris* and the community to leave the rubber plantations untouched and only to clear forest land.<sup>20</sup>

Communities were also concerned as to how they could be sure that the enclaved land was secured. While it was reported that a written agreement witnessed by the Public Relations Manager of PT Agrowiratama did exist, stating that the company would not touch the communities' rubber plantations, the legal validity of this document was questioned by some community members:

We know this letter exists but we haven't seen it. We have the land now, but how can we be sure that it will not be taken from us again? What guarantees that to us?<sup>21</sup>

We don't agree with the cut-off [boundaries of the enclave]. We just refuse the company. We reject the oil palm – they can just move on. In the field, everything looks safe for now. But we are little people (*orang kecil*), we are people in difficulty (*orang susah*) – how will we face the bulldozers?

At present, the rights to land of community members in Desa Mekar Jaya appear far from secure. The assessment team was shown over 3,000 SPT (*surat pernyataan tanah* – land statement letter) owned by community members signed by their village chief, which constitute a form of evidence to register one's land with the BPN. However, there remains a lot of confusion among community members as to boundaries and the extent of overlapping claims. Community members reported that a map exists of SPT and *ahli waris*' claims to land, but have not seen it. In any case, Conflicting claims between communities and *ahli waris* are of utmost concern to the communities, who report never having heard of such claims prior to the arrival of PT Agrowiratama, and only hearing of them in 2010 during the comparative study,

which Raden Farid attended, along with company representatives. Pak Azim states:

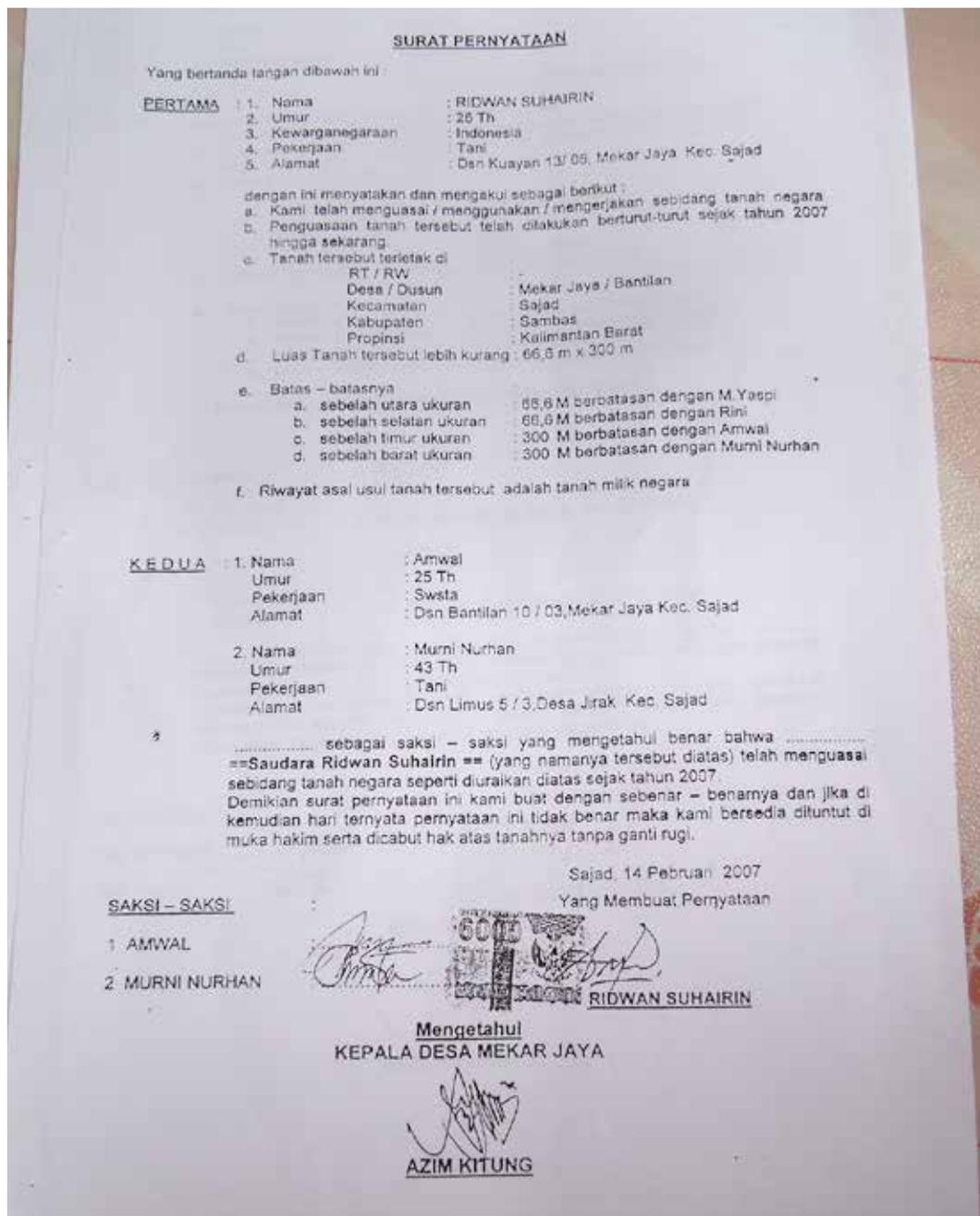
It was only when the company came that the *ahli waris* began to lay claim to this land. Before that, we never even heard about them. We are the ones who cleared this land and planted it, not the *ahli waris*. We were also told by the company that they have already paid compensation to the *ahli waris* in exchange for their land. Everytime we ask for compensation, the company tells us that they have already paid it to the *ahli waris*, but we have no proof of this. It's like a game between them. We cannot flag for an off-side.

Both the company and the *ahli waris* are responsible for this land conflict. The company keeps using the *ahli waris*' claims as a shield. Their legal claims hinge on those of the *ahli waris*, although the legal status of the *ahli waris*' claims has yet to be clarified.

According to Raden Panji Anom, the lawyer of the *ahli waris* and other *ahli waris* family members, the process of clarifying the legal status of the land under conflicting claims is ongoing, and covers an area of around 8,900 ha.

At present, over 1,000 households in the enclaved territory have unresolved land claims, and a further 1,000 households outside the enclave and within the concession, according to community members. The communities of Mekar Jaya claim another 1,000 ha of land. According to them, the extent of their customary village territory (*wilayah desa*) is far greater than the

■ Copy of an SPT held by a community member of Mekar Jaya, signed by the village head in 2007.



stated 4,000 ha in the annual village profile compiled by PEMDA. The communities of Mekar Jaya and Beringin refused to join PT Agrowiratama, even though 20% of the total area was offered by the company as part of a *kemitraan* scheme. Pak Udin states:

With PT Agrowiratama, we would only get two ha per household, instead of the 10 ha we usually have. Even those of us who do plant oil palm do so privately and independently, along with rubber, which is more lucrative for us. Why would we want to be servants on our own land?

### FPIC and women's participation – accounts from Mekar Jaya

In order to find out to what extent women in Mekar Jaya were aware of and involved in the FPIC process, informal interviews were carried out by female research team members with individual women and small groups of women.

These interviews revealed that the extent of knowledge of women in the village varies considerably. On the one hand, some had reportedly never heard of PT Agrowiratama, nor of the land conflict between their community and the *ahli waris*. None had heard about the RSPO or FPIC or been involved in any sort of community consultation with the company or the government:

I've never heard of PT Agrowiratama. I've heard of oil palm, but not about the company. (Ibu Resmiati)

Others were aware that there were problems, but did not want to be involved:

I don't want to hear about these conflicts. They make me feel sick and nauseous. I don't want my husband to tell me about them, even though I know there are conflicts. It makes me ill to think about them. (Ibu Karnia)

Customarily, the women do not participate in wider village meetings with the men (only one attended our village meeting, whose husband was working as a labourer in Malaysia). Furthermore, it appears that male family members do not share information about the issues discussed on these occasions (such as land conflicts) with them informally either.

Yet working the land is an integral part of most women's lives. Some spend over half of their day on their land:

I'm up at 1:30 am to go to the rubber fields. I come back at around 10 am, and at 1 pm, I go to the dry paddy fields (*ladang*) until around 6 pm.

A majority of the chores related to rice and rubber farming are carried out by both spouses together, such as general upkeep, fertilising, clearing and burning. Women also make use of the forest to find vegetables and certain medicinal plants. However, women interviewed in Mekar Jaya appeared not to know the area of their fields and rubber plantations. Some of them reported that their SPT and land certificates were in the name of their husband only.

One woman interviewed, Ibu Resmiati, had reportedly lost 450 ha of her land due to the redrawing of boundaries in the negotiations with the *ahli waris* and PT Agrowiratama:

That land is now part of Beringin and outside the enclave, and it is all my rubber plantation. I am afraid to ask for compensation because I know that if I do that, the company will just take my land and prevent me from accessing it. I am dealing with all these problems because my husband is working as a labourer in Malaysia. He doesn't know about all of this, because it happened after he left. I won't tell him, because I don't want him to worry. I just want everything to be sorted before he comes home. He is quite a hot-tempered man (*dia sangat panas badan*).

Ibu Resmiati approached the chief of Beringin and the company about this:

I met with the chief of Beringin and asked him to return my land to me. He informed the company of my demand, and the company offered me compensation for it instead (*ganti rugi*). They offered me 1.5 million Rp. So I offered them the land for 3.5 billion Rp. Why? Because the land is worth so much more to us little people. If we want to plant oil palm, then we will, but we won't let someone else take our land to do it. If the company or the government helped us financially to start our own plantation, then we probably would. But who wants their land to be grabbed from them?

Because of the company, my land has shrunk. Before that, I got all my vegetables from the forest, peanuts too. I never bought husked rice (beras) before this year, because I had enough land to grow it.

For Ibu Resmiati, passing on the land to her children and grand-children is part of its intrinsic value:

The land will guarantee the livelihoods of my children, not money, because money is not enough. The land itself is the most secure source of livelihood. My hope is to pass on my ancestral land (*tanah kakak*) to my children, and to all following generations.

## Beringin

Beringin is located in Kecamatan Sajad. It consists of four hamlets: Jambu, Segrunding, Salwa and Sarang Burung (Mentawai). Based on data obtained in the village office, there are 2,202 inhabitants (1,125 women and 1,077 men), and 570 families living in this village. Before the arrival of oil palm plantations, the people mostly worked as independent rubber farmers.

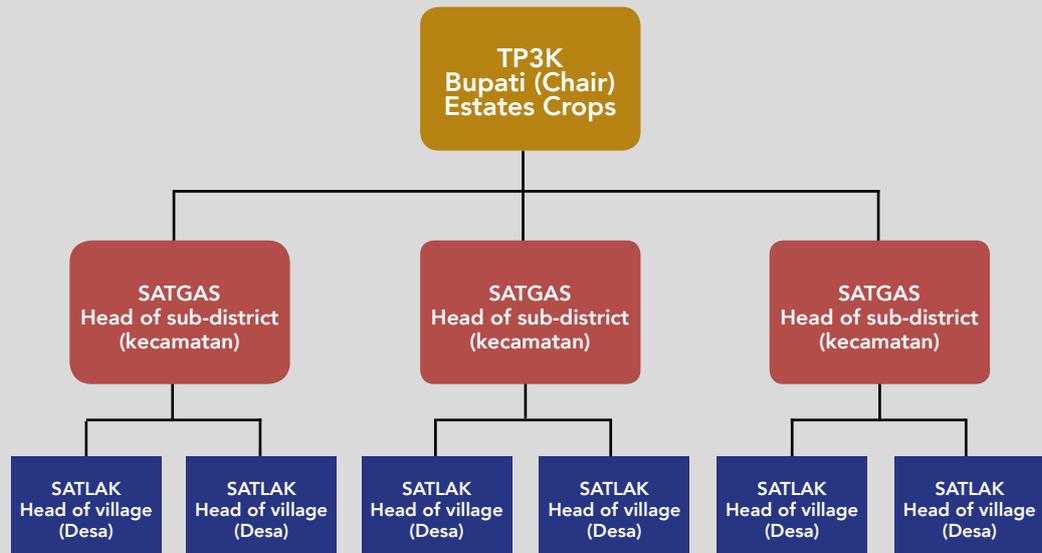
In Beringin, the investigation team interviewed the village head, Pak Asnadi, and the village secretary (*sekretaris desa*), Pak Kastani, at the village headquarters. Further interviews with community members more widely were not carried out due to time constraints. Overall, both interviewees described PT Agrowiratama's activities and process of *sosialisasi* with the community of Beringin as positive. Although they had not heard of the term FPIC or RSPO before, the process of interaction they described between the company and the community suggests that it was constructive and that the community expects to benefit from their presence. The main omission on the part of PT Agrowiratama seems to have been the sharing of key documents with the community, including AMDAL, HCVA and participatory maps.

According to Pak Asnadi, PT Agrowiratama engaged in an iterative socialisation process with the community, visiting each of the four hamlets prior to obtaining their location permit. Two meetings were held with members of Beringin in the local school, during which the benefits of cooperating with the company were explained and the company promised not to touch the rubber plantations of the community. Communications with the company were reportedly ongoing and the right of the communities relatively well recognised and respected:

They followed the rules properly, regarding the environment, the important needs of the community, their rubber plantations, and so some of us have agreed to cooperate and work with the company.

300 ha are owned by PT Agrowiratama in Beringin, of which 150 ha is collective village forest (*hutan desa kolektif*) and 150 ha plasma. 80% of the 300 ha will be allocated for nucleus and 20% for plasma. Pak Kestani reported that while the company had not provided monetary compensation for the land taken, it was supporting infrastructural development in the village, such as the building of roads through the forest and the provision of 90 bags of cement for construction works.

## Proxies of representation



The District Level Plantation Monitoring and Supervision Team (TP3K) established at the district level is supported by the Sub-District Task Force (SATGAS) at the sub-district level and Village Task Force (SATLAK) at the village level. The executing team members of the TP3K comprise village heads, vice-director of the Village Development Board (*Wakil Ketua BPD*), heads of hamlet (*kepala dusun*), heads of neighbourhood units (*ketua RT*), community leaders, customary leaders, and community relations officers of PT Agrowiratama.

The functions and tasks of SATLAK described in the decision letter of 29<sup>th</sup> March 2011 are:

- To act as a [communication and coordination] bridge between the company and the community.
- To cooperate with the company in resolving land conflict or providing compensation if land problems emerge in the future.

- To work closely with the Company Team in the field to resolve and/or give directives in land measurement for land release/compensation.
- To cooperate with the company and the government in implementing community socialisation.
- To cooperate with the Cooperative and the government in planning *kemitraan*/plasma arrangements for the community through substantiation.
- To quickly resolve each land and social conflict which affects the development of the plantation, at the level of the SATLAK *desa* to prevent further aggravation. Should the conflict not be resolved at the level of the SATLAK *desa*, to bring up the case to the level of the *kecamatan* Task Force, headed by the *camat*, and should this fail, to bring the case up to the TP3K of Sambas district.

The village head of Beringin also described the establishment on 29<sup>th</sup> March 2011 of an implementation unit (*satuan pelaksana*) known as SATLAK in Desa Beringin, whose purpose is to monitor the activities of the company and raise complaints from communities to the company. One of their responsibilities is to communicate with communities and define the borders of community-used lands, such as gardens and rubber plantations. SATLAK in Beringin is headed by the village head and its members

include a senior representative of BPD, the heads of the four hamlets of Beringin, two community representatives and a public relations and surveying team from PT Agrowiratama.

The establishment of SATLAK was seen as a positive initiative on the part of PT Agrowiratama by the village head of Beringin:

When there is a problem, such as a border problem, the community can call on the village

head, who then brings the complaint to SATLAK. Its members are chosen by the community in meetings. SATLAK then goes into the field to verify the nature of the complaint, and then bring it up to PT Agrowiratama, and any other stakeholders involved.

The village head and village secretary had never heard of the term FPIC, but a description of the right and the due process involved led them to conclude that they believed an FPIC process had been implemented by PT Agrowiratama, and that the cooperation of some community members with the company was out of free will:

Some said yes, some said no. It was an open process. We were not forced. (Pak Asnadi)

#### Setangga hamlet, Sabung village

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Sabung consists of two hamlets: Sabung Setangga and Sabung Sanggau. The population of Sabung is Dayak in the majority, with some migrants from Java and Malaysia. Interviews with community members of Sabung Setanga revealed a stark contrast in perspectives on PT Agrowiratama's interaction with the community and its activities, with some strongly supporting their relationship with the community and others denouncing a serious lack of consultation.<sup>22</sup>

Interviews revealed a significant confusion among community members as to whether Sabung Setangga is located within the concession of PT Agrowiratama or PT Mulia Indah (one of the three neighbouring Musim Mas concessions). This suggests that genuinely comprehensive and participatory mapping has not been carried out to clarify this understanding. The terms of the *kemitraan* scheme to which some community members have agreed have not been clearly explained to them, in particular, the fact that plasma land will revert to State land upon the expiry of the Business Use Rights (HGU) and that their rights to this land will be terminated. Finally, a lack of documentation of agreements and decisions taken with the company was also demonstrated.

According to Pak Budi, whom we were later informed was a newcomer from Java to Sabung (since about one year), the relationship between Sabung and PT Agrowiratama was good and the community looked forward to benefiting from economic development from its presence. According to Pak Budi, PT Agrowiratama carried out four *sosialisasi* activities in Sabung Sanggau, but not in Sabung Setanga. During these activities, the company explained to the communities the terms and duration of the HGU and the nature and purpose of HCVs, and also promised (verbally) not to touch the rubber plantations of the community. The company reportedly respect the sacred sites and graves of the community, and have not caused any obstacles for communities to access these sites. Pak Feron, the manager of the company, reportedly explained clearly and in person to the community the legality of the location permit and HGU. Furthermore, Pak Budi reported that PT Agrowiratama employed a number of women from the village and had set up a child care system for them as well.

However, the views expressed by Pak Budi were strongly contradicted by the new village head of Sabung, Pak Jeksen, whom the investigation team met later that day. The contrast between their perspectives was remarkable, prompting Pak Jeksen to call Pak Budi and demand an explanation for his comments over the phone on loudspeaker mode. Pak Budi claimed he had explained the positive and negative sides of the story to the investigation team, which was far from the case. Split allegiances between the two community members were further revealed when Pak Jeksen retorted by asking Pak Budi how much he had been paid by Pak Peron (manager of PT Agrowiratama) and asking him to stop lying about the situation of the community in Sabung.

According to Pak Jeksen, village head of Sabung since 2011, and a Dayak man, PT Agrowiratama obtained its location permit without having provided sufficient information to the community

of Sabung about its projected activities and their potential impacts, both social and environmental. Pak Jeksen claims never to have heard of the RSPO or FPIC, and repeatedly stated that PT Agrowiratama had not, or had not yet, carried out socialisation activities in Sabung Setangga, despite the fact that the office of the company is located close by (although he acknowledged that socialisation may have taken place in Sanggau and that relations between Sanggau and PT Agrowiratama were overall positive). Pak Jeksen states:

There has been no direct contact with the community of Setanga. Our permission was never requested. Pak Peron has never gone down to the field in person: we are still waiting for the company to come and socialise their project with us. As for socialisation, it consisted of the *studi banding*. That was the only socialisation. We don't really know what PT Agrowiratama is? What kind of system will they operate on? We have had no explanation of this. Agrowiratama is chaos (*Agro itu kacau*).

Pak Jeksen claims that no *kemitraan* scheme has been offered to community members of Setanggabut but perhaps to Sanggau. He was unaware of whether participatory mapping had been carried out in Sabung, and had never seen copies of the AMDAL. Pak Jeksen claims only to have met the HCVA research team after they had finished their assessment, at the Pantura Hotel, in Sambas. According to him, at least some of the HCVs identified are actually located on land that overlaps with PT MIS and are thus outside the location permit of PT Agrowiratama. As a result, he states that PT Agrowiratama has refused to pay compensation to the community for access and use of these areas because they are located outside their concession.

Pak Jeksen was adamant that the investigation team needed to visit the community itself to hear their views in person:

If you don't believe me, come to the village. Ask the people. Ask them about PT Agrowiratama,

about the system it consists of. They don't know anything. About the HGU, or anything else.

Of serious concern is the fact that community members who have accepted the plasma scheme offered by PT Agrowiratama appear to be unaware of the fact that their lands will revert to State land upon expiry of the HGU. They stated that the company had verbally agreed to this but that no contract had been made:

Our land will be returned to us and we can do whatever we want with it: plant it, make our gardens, sell it. If the land wasn't going to be returned to us once the HGU ends, of course we would not take this deal. (Pak Ali Darsono)

In addition, there is a discrepancy in the terms of the *kemitraan* scheme that members of Sabung have accepted. The socialisation report states that Sabung requests a 50/50 share in the scheme, whereas company representatives have explained the share will be of 80/20 in favour of the company.

### **Obstacles for communities in securing lands and exercising the right to FPIC**

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A number of obstacles were identified by community members to the securing of their lands and the exercise of their right to FPIC. First and foremost are the claims of the *ahli waris* to land they consider as theirs by virtue of historical occupation and use. Many community members were surprised that these claims were never voiced before the arrival of PT Agrowiratama, and remain unclear as to the legality of this claim.

Second, the boundaries of customary territories and claims from communities, the *ahli waris* and PT Agrowiratama appear to be far from clear. Former delimitations have been confused as a result of the delimitation of the enclave by PEMDA without consultation with the affected communities. In fact, community members state that establishing clear boundaries should have been done before their demonstration in May 2010:

Actually we should have clarified our boundaries before demonstrating against oil palm, because now they have cut off our lands.

Now that oil palm is here we need more clarity about who owns which land. (Pak Udin)

Third, the communities appear to lack sufficient information from the company and the government about the oil palm plantation to make informed decisions. Relevant documents have not been shared or given to them, such as the HCVA or the Environmental and Social Impact Assessment (ESIA), and socialisation activities by the company have been all but negligible. Where they have taken place, they have not sought to include wider community participation, leading to those being involved, the village chiefs, to be criticised by certain community members for the unsatisfactory outcomes of boundary and territory negotiations. The lack of transparency both between the company and the community, and to a certain degree, within the communities themselves, appears to have exacerbated uncertainties over land claims and rights.

Quite worryingly, the community is not aware that their land will revert to State land upon expiry of the HGU and most think that it will be returned to them to do as they wish with.<sup>23</sup> Furthermore, community members do not have a copy of their plasma scheme contract with the company, which the village head acknowledged was creating fear that PT Agrowiratama would end up taking over their lands.

While *sosialisasi* has taken place on a number of occasions, it appears these constitute negotiations over the terms of the relationship between PT Agrowiratama and the communities, rather than the genuine pursuit of consent. *Sosialisasi* is being equated with FPIC, but even then, is weak and perfunctory in practice. It is also evident that proxies are being used within villages to influence the decisions of other community members who may disagree with PT Agrowiratama's activities (Pak Budi being an example of this). The pursuit of individual consent and

not community consent is problematic, as the impacts of PT Agrowiratama's activities will not be experienced on an individual but a collective basis. The focus of the company's socialisation activities appear to be at the *desa* level and on certain influencible individuals.

Community representation also appears to be problematic: for example, some community members expressed doubts as to whether the members of SATLAK truly reflected the views of the community, or whether they have been influenced by the company in such a way that their function is not to seek the consent of communities, but to negotiate the terms of their relationship with PT Agrowiratama.

An insight that can be drawn from this is that homogeneity in views within the community should not be assumed: the relationship and personal allegiances of the individuals interviewed with the company has a strong bearing on their perspectives, and the difficulty in accessing the *dusun* itself suggests that certain actors from the community may have been seeking to avoid the investigation team from meeting with the broader community.

### **Overview of company's implementation of the right to FPIC**

The NGO consortium interviewed representatives of PT Agrowiratama on 13<sup>th</sup> June 2012.<sup>24</sup> The representatives first explained the permit acquisition process of their operations. In 2009, land information (*informasi lahan*) was collected, followed by a participatory survey once the location permit had been obtained, and a field survey by consultant team Aksenta, who visited the villages within the area covered by the location permit. Technical recommendations were made by district authorities and the plantation business permit (*izin usaha perkebunan*) was issued to PT Agrowiratama. Once the plantation business permit had been obtained, the company carried out consultations in the affected villages and established SATLAK

at the village level to engage customary leaders and other village representatives. Notifications on the new planting were made in the villages for 30 days and consultations took place in the villages of Sabung, Beringin and Lubuk Dagang in Subah, Sajad and Sambas.

With regards to the local communities inhabiting the concession, the company representatives stated that while customary structures did exist in Sambas district, they were not as strong with regards to customary land (*tanah ulayat*) as in other parts of Indonesia, such as Padang in West Sumatra. They admitted that problems between the company and communities of varying scale persisted, but that through mediation and negotiation with customary leaders, these were being resolved.

According to company representatives, a social survey was conducted to identify local communities that lived in or near the area of proposed planting. Former gardens planted with fruit trees and crops (*tembawang*) were also identified in a land survey. The process of land acquisition was documented in the minutes of land measurement meetings (*berita acara pengukuran lahan*) (attended by SaATLAK) as well as customary tenure systems and customary land boundaries. Participatory mapping was included as part of the participatory survey in 2009. Company representatives noted that community members rarely held formal evidence of legal ownership of the land, apart from their SPT.

The company representatives stated that the membership of SATLAK was determined by a decision letter based on a village decree. SATLAK was understood by the company as evidence that they had accepted the self-chosen representatives of the communities. Company representatives assured the NGO consortium that compensation (cash) had been paid to the villages who had lost land to oil palm, and that these payment processes were fully documented. There is no MoU regarding rights-holders who

are entitled to compensation or benefits, but there are records of compensation payment recipients. The smallholder scheme (KKPA) is based on a plasma system held by a cooperative under the HGU. Plasma plots are not distributed to individuals. The company also reports holding records of land owners, but that customary land boundaries and locations are continually contested, as in the case of the *Ahli Waris*.

With regards to participatory SEIAs, the company reported having invited representatives from the affected villages to give their inputs to the assessments through focus group discussions and consultation meetings. According to the representatives, these meetings were participatory in nature, but did not necessarily delve into great detail into the issues raised. The HCVA of June 2010 involved visits by Aksenta to the communities, and the Aksenta team was reportedly accompanied by several community members. Only one public consultation was held on this occasion.

At the time, the company reportedly received 'investment support letters' (*surat dukungan investasi*) from three villages, which are very general statements rather than specific endorsements of the ESIA or HCVA. The company does not provide evidence to the communities of their participation in the mapping, SEIA or HCVA, and the communities do not ask for them, supposedly because 'they do not understand these things in writing'. However, should the communities request these documents, the company will provide them.

When asked whether there was evidence that neighbouring communities (ie those not directly involved) had endorsed the boundaries of land claims of affected groups, the company reported that mapping the boundaries between and with other villages were not their responsibility, and that the communities themselves should determine these. If any problems arose in this regard, they would need to be dealt

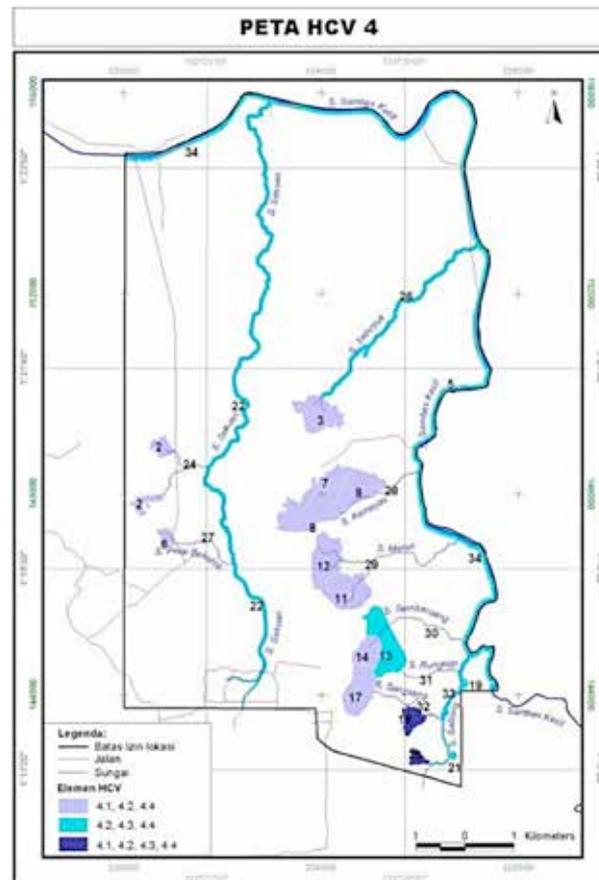
with through the external complaint SOP (Standard Operational Procedure) of the company.

With regards to negotiation procedures, the company has a SOP which guides the process of consultation and requires the documentation of this process. In addition to the SOPs, the company reports accepting as recognised evidence that which has been endorsed by the *desa* authority. Negotiation processes are organised and facilitated by TP3K as a proxy, and village representatives are actively involved. Community welfare is supported through the company's corporate social responsibility programme on 1) society, religion and culture 2) education 3) health 4) infrastructure and 5) economy, based on the needs and proposals from the communities. A conflict resolution mechanism has also been developed by the company.

### HCV Assessment

A detailed assessment of the High Conservation Values in the PT Agrowiratama concession was carried out in the field by the Indonesian consultancy, Aksenta, in June 2010, submitted to the company in August 2010 and then revised and finalised in November 2010.<sup>25</sup> The report was released to the NGO consortium team by PT Agrowiratama at the team's request, in compliance with the RSPO Principle 1 on Transparency.

No primary forest was found within the legal boundary of PT Agrowiratama in the HCV Assessment. Peat soil represented 3% of the soil within the concession. The HCV assessment identified areas that should be managed to conserve HCVs 1, 4 and 6, being, in sum, remnant forests harbouring rare, threatened and endangered species (1), river banks for protecting limnology and hydrology (4) and sites and graves sacred or culturally important to the residents (6). The total area of these HCVs is of 982.4 ha, or 10.9% of the total concession area. The Aksenta team developed a detailed map of the land use system within the concession.



■ Map of HCV 4 in PT Agrowiratama concession (Source: Aksenta 2010:5.28)

The study concluded that the planting of palm oil would have a 'significant social impact on the basic requirement to the social sustainability of the local community'.<sup>26</sup> However, a surprising aspect of the assessment is that, notwithstanding this finding and the detailed livelihood mapping, it did not identify any areas as HCV 5, defined by the RSPO as 'areas fundamental to meeting the basic needs of local communities'. The assessors explain that they could not determine which areas are basic to the communities' livelihood as they could not determine in advance which lands the community might choose to relinquish to the company in the expectation of improved incomes and which they might choose to retain to sustain their current economies.<sup>27</sup> This suggests that the current methodology being used by these HCV assessors provides almost no protection of basic needs or food security.<sup>28</sup>



written documents made available to the community by PT Agrowiratama. It was also recommended that the monitoring and preservation of identified HCV sites in Beringin be the responsibility of the company, as the community lacks the capacity to do so itself.

Three recommendations were made by head of hamlet Sabung Setangga Pak Jeksen as key to securing the land rights and FPIC of the community of Sabung. First, socialisation activities are absolutely critical for *dusun* Setanga and the company must initiate these as soon as possible, to prevent conflict at a later stage. At present, a significant lack of knowledge and information has been communicated to its community. Second, it was recommended that PT Agrowiratama clarify the legal validity of the *ahli waris*' claim to land, and not to give it precedence over the claims of the communities who have been working it for generations. Finally, Pak Jeksen urged PT Agrowiratama to stop the clearing of the land until these land conflicts are fully and efficiently resolved in a way that is satisfactory to all parties involved:

I don't know if PT Agrowiratama has an HGU, but I do know that they are already working the land. Yet we reject PT Agrowiratama. They are operating illegally, and without socialising with the community here. The situation bears great potential for conflict.

### Recommendations from the government

- Provision of greater funds to the district government of Sambas in order to carry out adequate and comprehensive monitoring and evaluation of oil palm company operations, including processes of negotiation and consultation with local communities and resolution of land disputes and other grievances.
- PT Agrowiratama to submit its 3-monthly report as part of its HGU application requirements.
- PT Agrowiratama to ensure that the enclaved land is clean and clear, meaning that conflicting claims are resolved in ways that are satisfactory to all parties involved.
- PT Agrowiratama to clarify *who* exactly are the members of the Panji Anom family who are laying claim to the land on the basis of inheritance.
- PT Agrowiratama, local communities and the Panji Anom family to work towards a possible compromise in the form of a limit on the size of land ownership to 20 ha per Panji Anom family member involved. To this end, communities should come to a collective agreement on such a 'land ceiling' and develop a regulation at the village level. This new regulation could then be put forward to relevant authorities at the sub-district and district levels, to be endorsed and supported by the district government and registered with the National Land Agency.
- Greater weight given to the active and sustained *use* of land as the legitimate basis of land claims, and revision of the boundaries of the enclave should the current boundaries not reflect fully local communities' use of the land.
- Recognition of and protection of HCV 5s through the development of mechanisms for joint monitoring and management by the company and the communities, and possibly endorsed by a local regulation.
- Incorporation of HCV 5s in the spatial planning laws of Sambas and in local regulations relating to community land and food protection (*perlindungan lahan pangan masyarakat*).
- Information on HCVs to be shared with local communities, including the results of HCV surveys and the location and boundaries of HCVs.
- PT Agrowiratama to provide awareness-raising activities and training to local communities on the nature and value of HCVs so as to better protect and maintain the biodiversity of these areas whilst allowing communities to continue their customary agricultural practises within them.
- PT Agrowiratama to provide copies

of their HCV Assessment to relevant government bodies (National Land Agency, Board of Investment and Forestry and Plantations Office)

### Recommendations from the company

- Local government to act as a bridge when disputes arise between companies and local communities.
- NGOs to work together with companies to deliver information to shape communities' understanding of the company's operations and its impacts (both negative and positive).
- Government to work on improving transparency and information-sharing to companies and local communities in relation to development programmes and policies.

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### Endnotes

1. The New Plantings Procedure was adopted in 2010 and requires RSPO members to post information on the RSPO website about their plans to open up new plantations, along with a summary of how they have done their High Conservation Value Assessment (HCVA), impact studies and the process they are using to secure lands. Under the procedure companies must allow 30 days to

receive comments on their plans and they must delay planting if complainants have evidence that they are in violation of RSPO requirements under Principle 7 on ‘new plantings’. The purpose of the procedure is to ensure that companies start off on the right track and do not clear primary forests or areas with High Conservation Value (HCV), or take over lands without consent, thus disqualifying the operation from certification later. Under the RSPO certification system if a company is in violation of these key provisions or has serious conflicts in its operations then not only may it not be certified but all other operations of the same conglomerate are also disqualified.

2. RSPO 2011.
3. FPP, Sawit Watch, Gemawan & Kontak Rakyat Borneo 2011.
4. Summit Reports (nd).
5. Hadisuparto 1996.
6. Siregar & Sambas 1999:153.
7. Carlson et al. 2012.
8. The term *Malayo* is first recorded in a Chinese text as applying to a Hindu kingdom in Jambi in the 7<sup>th</sup> century CE. Melayu is still the name of a river there. The term was gradually applied to other eastern Sumatran kingdoms over the following centuries being extended to include Melaka when the political centre of gravity shifted across the Malacca Straits. The term also began to be applied to the language of commerce of the archipelago and from the 19<sup>th</sup> century, as notions of race took hold, both colonials and locals began to apply the term to refer to almost all the Islamic subjects of the coastal trading entrepot states (Milner 2008). In Sambas today, many of the Malay-speaking Islamic lowland and riverine communities which, however vaguely, trace allegiance back to the Malay Sultanates, describe themselves as *Melayu* even if many of them are relatively recent converts to Islam and their ways of life retain many elements of their Dayak past.
9. The HCV Assessment notes the prevalence of ‘illegal logging’ in the area (Aksenta 2010), although the area is classified as APL and not forest land.
10. One interviewee noted: ‘we don’t apply *adat* to land, that is for the Dayak. We only have *adat* for ceremonies like marriage and funerals.
11. Regulation 26/Permentan/OT.140/2/2007.
12. Musim Mas Group 2006.
13. Tan 2007.
14. Sambodo 2009.
15. Aksenta 2010.
16. The term *sosialisasi* which has the normal meaning of ‘being friendly’ is used as a technical term by Indonesian developers to mean ‘awareness raising’ or ‘public dissemination of information’. It implies a one way transfer of information from the developer to those to be developed. See ‘*sosialisasi*’ in Glossary.
17. Although we met with the Legal Attorney for the Panji Anom family, we were not shown the original versions of these letters only photocopies and so we make no comment here on their authenticity or otherwise. It is however important to note that the Panji Anom family is known to have been socially excluded by other descendants of the Sultan and an alternative version of the 1897 letter is also in circulation which endows the same lands to other heirs, so the issue of authenticity needs determination.
18. Forest Peoples Programme et al. 2011.
19. Similar cases of land claims based on letters from the Sultan of Sambas have also been reported in the case of neighbouring oil palm plantation PT ANI in its dispute with *desa* Sajingan Kecil and in PT ANI’s extension in relation to Sabung. We also heard from our discussions that the community of Tengguli had been able to repudiate their claims and fend off palm oil from their lands.
20. This is despite the fact that the company acknowledges that concession and enclave borders are still in the process of being clarified and that conflicting land claims still exist. Discontent within the community about the clearing has already resulted in one community member (Aswandi) destroying oil palm seedlings of PT Agrowiratama. After being reported to the police, his case was retracted.
21. Company representatives stated that their priority was to clear empty lands first and not rubber plantations owned by communities, but did acknowledge that as many of them practise shifting cultivation, it is difficult to determine what ‘empty land’ consists of without first identifying and consulting the land owners.
22. It should be noted that the investigation team was unable to enter the hamlet itself during visits on two consecutive days, as community members interviewed either asked to meet outside the hamlet in coffee stalls by the road, or met the team on their way to the hamlet.
23. Company representatives, on the contrary, stated that the communities knew they would lose their land and that they were happy with that (‘they only think about today, not about tomorrow’).
24. PT Agrowiratama staff interviewed: Sahat Mikal Indra Siregar, Erwin Hutagaol, Riko Pratama Putra, Hasto Trijatmiko (Sustainability Department), Santo Limbong (Field Manager), Susanto (Public Relations) and Kanda (Certification)
25. Aksenta 2010.
26. Control Union 2011a: 9.
27. Aksenta 2010a: section 6.2.
28. That this is systemic can be seen by comparing the PT Agrowiratama HCV Assessment with that carried out by Aksenta for PT Mulia Indah, another Musim Mas company, in 2011 (see Control Union 2011b). Again Aksenta identified no HCV 5.