

# Palm Oil Risk Assessment Indonesia - West Papua

Version 1.2 | November 2017



COUNTRY RISK  
ASSESSMENTS



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## A. Introduction

The world demand for palm oil is rapidly growing and is driving deforestation and other negative Corporate Social Responsibility (CSR) related impacts e.g., biodiversity loss, greenhouse gas emissions, corrupt and illegal behaviour, and violation of civil rights including workers' rights, traditional and indigenous peoples' rights.

Each of the CSR categories are considered minimum legal, environmental and social responsible criteria that should met for palm oil plantation establishment and management. The criteria are in line with key CSR International Guidelines Content Areas as identified, analysed and published by the Danish Business Authority: A comparison of 4 international guidelines for CSR OECD Guidelines for Multinational Enterprises, ISO 26000 Guidance on Social Responsibility, UN Global Compact and UN Guiding Principles on Business and Human Rights, January 2015. This risk assessment used the methodology detailed in the Corporate Social Responsibility (CSR) Palm Oil Risk Assessment Framework Guidelines (November 2015).



Figure 1. Countries for which NEPCo have developed a risk assessment for palm oil

## B. Overview of sourcing risks for palm oil from Indonesia – West Papua

**Palm oil Risk Score:** 5 / 100 in 2017

This report contains an evaluation of the CSR risks in West Papua, Indonesia for five categories and 21 sub-categories of law. We found:

- **Specified risk in 19 sub-categories.**
- **Low risk for 1 sub-category.**
- **Not-applicable for 1 sub-category.**

### Palm oil source types and risks

There are two palm oil source types found in West Papua, Indonesia. Knowing the “source type” that palm oil originates from is useful because different source types can be subject to different applicable legislation and have attributes that affect the risks. We have analysed the risks for both source types and found the risks do not differ substantially between smallholders and large scale plantations.

<b>Small holder palm oil plantations</b>	<p>Palm oil from small holder plantations, with one of the following ownership structures:</p> <ul style="list-style-type: none"> <li>• Small-scale or larger-scale independent farmers</li> <li>• Farmer groups or farmer managed cooperatives</li> <li>• Smallholder farmer managed plots</li> <li>• Company managed plantations that have been leased from smallholder owned community land.</li> </ul>
<b>Large scale palm oil plantations</b>	<p>Palm oil from larger scale palm oil plantations are either company managed /company owned plantations or managed by state-owned enterprises.</p>

The CSR risks identified in this report concern business issues, social issues and environmental issues.

Regarding **business issues**, there is a risk of:

- the local government of Papua using the legal framework to prioritize large-scale palm oil development over indigenous claims to customary rights (sub-category 1.1). Furthermore, the risk with land tenure relates to the fact that half the land area in Indonesia is not officially registered.
- illegality and corruption in the issuance of relevant plantation licenses (1.2). Local governments are actively inviting companies to come to Papua and providing them with permits for plantation development. These permits are reportedly often on customary land, in several cases local villagers have been forcibly removed by the authorities.
- tax evasion due to the existence of illegally operating plantations, which operates without the HGU license and thus operations avoid having to pay land and building tax (1.3-1.5). Furthermore, half the land area in Indonesia is not officially registered and production on non- registered land is not currently being

taxed. most companies in Indonesia do not report their income to the Director General of Tax to evade payment of tax. Tax evasion is also done by stating a false amount of income, resulting in payment of a lower amount of tax (refer references for examples).

Regarding **social issues**, there is a risk that:

- some companies do not register all employees, preventing these workers from getting a social security card and the required medical coverage and insurance (2.1 and 2.2). Forced labour, child labour and debt bondage has proved to be a pervasive issue in the Indonesian palm oil sector, ultimately affecting the legal employment of many palm oil workers and company compliance with the ILO Fundamental Conventions.
- Indonesia's health and safety requirements are breached by palm oil producers (2.3). The use of safety equipment is not common in Indonesia, and thus in many cases employees do not use safety equipment despite companies providing it. Supervisors and managers are also commonly known not to wear safety equipment; with a reported lack of enforcement or incentives to use it. Additionally, there is a lack of systematic reporting on occupational accidents and diseases by palm oil plantations.
- indigenous and traditional peoples' rights are not upheld (2.4). The lack of security for indigenous peoples is a pervasive concern throughout Indonesia and especially in Kalimantan. Under the Law No. 39/2014 on Plantations, companies are effectively prohibited from retaining forest within their plantations and local authorities are prohibited from issuing permits where 'adat' communities have customary rights. Despite this change, continued cases of abuse, corruption, and strife persist against traditional and indigenous communities by both palm oil companies and the government.

Regarding **environmental issues**, there is a risk that:

- palm oil plantations are not complying with the relevant environment regulations and are not obtaining the legally required environmental licenses (3.1 and 3.3). There are numerous cases of companies not conducting an Environmental Impact Assessment (AMDAL), which per the law, companies would not then be able to obtain an Environmental License nor a concession license. But in practice these companies are managing palm oil concessions and have obtained a concession license without following the due process. These cases usually involve bribery and/or weak enforcement by the authorized person from the local government.
- natural ecosystems along the boundaries of protected areas and high conservation value areas are being cleared to establish palm oil plantations due to palm oil companies disregarding the relevant laws operating without land tenure, proper operating and agricultural licenses (3.2). There is also a lack of officially publicly available maps and data on palm oil concessions.

Regarding **conversion**, there is a risk that:

- natural forests or ecosystems are cleared for the establishment of palm oil plantations (4.1). Despite, the extent of palm oil plantation impacts on natural forest and ecosystem conversion is currently limited in Papua there are plans for rapid expansion. It is not illegal to convert forest to oil palm in Indonesia; however, the Presidential Instruction No. 8/2015 suspends the granting of new palm oil licenses in primary natural forest and peat lands. The instruction directs several ministries and government agencies to take the necessary steps per their

respective authority to implement the instruction; however, it is not legally binding.

- fire is being used to clear natural ecosystems/forests for the establishment of palm oil plantations (4.2). Peatlands are often the main target of clearing land by burning.

This matrix summarises the findings of the CSR risk assessment set out in this report.

Legal Category	Sub-category	Risk Conclusion	
<b>Business Issues</b>	1.1. Land tenure	Specified	
	1.2. Plantation registration & management rights	Specified	
	1.3. Payment of royalties & required fees	Specified	
	1.4. Value Added taxes & other sales taxes	Specified	
	1.5. Income and profit taxes	Specified	
	1.6. Disclosure of Information	N/A	
<b>Social issues</b>	2.1. Legal employment	Specified	
	2.2. ILO Fundamental Conventions are upheld.	Specified	
	2.3. Health and safety	Specified	
	2.4. IP and TP rights are upheld.	Specified	
<b>Environmental issues</b>	3.1. Environment	Specified	
	3.2. Protected sites and species	Specified	
	3.3. HCV	3.3.1. Species diversity.	Specified
		3.3.2. Landscape-level ecosystems & mosaics.	Specified
		3.3.3. Ecosystems and habitats	Specified
		3.3.4. Critical ecosystem services.	Specified
		3.3.5. Community needs	Specified
3.3.6. Cultural values.	Specified		
<b>Conversion</b>	4.1. New plantations since November 2005 have not replaced natural forest or ecosystems.	Specified	
	4.2. Fire avoidance is being practiced	Specified	
<b>GMOs</b>	5.1. No GMO's	Low	

## C. Overview of the palm oil sector in Indonesia – West Papua

Indonesia is the world's largest producer of palm oil. Indonesia is the world's largest producer of palm oil. In 2016, Indonesia produced 34.5 million tons of palm oil (The Indonesian Palm Oil Producers Association (GAPKI), 2016). The total planted area of oil palm is estimated to be around twelve million hectares and projected to reach 13 million hectares by 2020 (Indonesia Investments, 2016; IndexMundi, 2016). In 2016, 25.1 million tons were exported (The Jakarta Post 28 March 2017). Consequently, palm oil remains a vital part of Indonesian economy, especially in relation to rural development. However, increased public awareness about the environmental- and social consequences of Indonesian palm oil development have created a need for the Indonesian government to strike a difficult balance between economic development and environmental- and social awareness. As a result, the Indonesian government aims to reduce greenhouse gas emissions with 26% by 2020, while also doubling the production of palm oil (Stolle, Austin, & Payne, 2015; Indonesia Investments, 2016). The vast majority of oil palm development takes place on the islands of Sumatra, Kalimantan and Papua, with only a small number of plantations found in Java and Sulawesi (Gunarso, Hartoyo, Agus, & Killeen, 2013).

Indonesia has the world's third-largest area of rainforest with approximately 131.3 million hectares (The REDD desk, 2013). Palm oil development takes place solely within this tropical climate. Sumatra was the first oil palm frontier and the island is currently hosting 70% of Indonesia's palm oil plantations (Indonesia Investments, 2016). Between 2001 and 2005, the main source of conversion in Sumatra was agroforest and rubber plantations complemented by disturbed and undisturbed swamp forest, as well as open swamp habitat (Gunarso, Hartoyo, Agus, & Killeen, 2013, p. 39).

Kalimantan, the Indonesian part of Borneo, is the current area of oil palm expansion and accounts for roughly 30% of Indonesian plantations (Stolle, Austin, & Payne, 2015). Kalimantan is comprised by five districts: West, Central, East, North and South, with the majority of palm oil production taking place in the three former districts. The bulk of conversion in Kalimantan has been on mineral soil, with a smaller amount taking place on peat land. In addition, the amount of undisturbed forest in the biodiverse Indonesian Borneo have suffered a notable decline in the period 2006-2010 with a corresponding increase in disturbed forest area (Gunarso, Hartoyo, Agus, & Killeen, 2013, p. 41). Plantation development in Papua is relatively low and Papua still have 80% of its natural forests (Zimmermann, 2016). However, Papua is projected to become the next area of oil palm expansion, as 27.6 of Papua's 34.6 million hectares of natural forest have been slated for logging and palm oil development (Zimmermann, 2016). Palm oil is not a new phenomenon in Indonesia and having almost exhausted Sumatra for suitable land for plantation development, expansion is now happening at a rapid pace in Kalimantan and scheduled to commence in the undeveloped Papua.

The Indonesian palm oil industry is dominated by large-scale private enterprises and smallholders, with government-schemes only playing a modest role. Private enterprises constitute roughly half of palm oil production while smallholders account for 40% (Indonesia Investments, 2016; UNDP, 2015). While there exists growing public pressure for sustainably produced palm oil production and increased recognition among political leaders of the need for this, Daemeter Consulting (2015) reports that Indonesia's legal framework on palm oil are comprehensive, but oftentimes contradictory and weakens progressive industry efforts (p. iii). An example of this is the new Plantation Law, which acknowledges the respect of indigenous peoples and environmental protection, but also fails to prevent the conversion of High Conservation Values (HCVs) as well as protecting

land outside of the plantation (Daemeter Consulting, 2015, p. iv). Hence, palm oil in Indonesia remains a complex and contentious topic, as it involves several actors, an ambiguous legal framework, corporate and indigenous interests as well as both national- and international concerns.

### *Indonesian Sustainable Palm Oil (Permentan No.19/2011)*

In March 2011, Ministry of Agriculture (MoA) enacted Permentan No.19/2011 to improve palm oil industry practices through certification against the government defined Indonesian Sustainable Palm Oil (ISPO) standard (<http://www.ispo-org.or.id/index.php?lang=ina>). The regulation requires all Indonesian large holder palm oil producers, i.e., company-managed, company-owned plantations and state-owned enterprises, to comply with ISPO criteria by 31 December 2014. The ISPO standard comprises seven principles, 45 criteria and 174 indicators, grounded in the national legal framework (with a few additions) and encompassing:

- social aspects including land tenure, worker well-being, social responsibility, and local economic development;
- environmental aspects including greenhouse gas emissions, biodiversity protection, and pollution control;
- productivity aspects linked to good agronomic practices and mill operation techniques; and
- principles of continuous improvement.

Implementation of the ISPO regulation is closely linked to the Plantation Performance Evaluation system of Permentan 07/2009. In February 2009, the MoA issued Regulation No.7 on Guidelines to Evaluate Plantation Businesses, directing local officials to evaluate the performance of plantation companies operating under their jurisdiction (Permentan 07/2009). The evaluations are to be performed annually for plantations under development and once every three years for operational plantations. The purpose of the evaluation program, as stated in Permentan 07/2009 is to:

1. Evaluate the performance of a plantation business;
2. Evaluate compliance with applicable rules and regulations;
3. Encourage plantation businesses to conform to technical standards of plantation and mill management and business operations to maximize performance (e.g. yield);
4. Encourage plantation businesses to meet obligations under applicable rules and regulations (e.g., retention of riparian buffers);
5. Implement a plantation business mentoring program.

The systems are designed to be implemented in coordination so that companies achieving specified levels of performance under Permentan 07/2009 advance to ISPO certification audit by an approved ISPO certification body (CB). Accreditation of CBs is overseen by the ISPO Commission, with priority given to CBs already accredited by the National Accreditation Commission for audit against other standards. The ISPO audit must be performed by accredited ISPO auditors following a pre-defined evaluation and scoring system, with oversight by CBs. While details of the ISPO standard differ from that of RSPO, the certification systems are broadly similar, and structure of the standard share much in common. Among key differences between them, however, is that RSPO is voluntary, whereas ISPO is mandatory for all large holder plantation companies operating in Indonesia. In this sense, ISPO carries broader potential reach than RSPO to drive improvements in performance throughout the industry, especially among those

showing chronic non-compliance; however, by the end of 2014 only 63 companies had ISPO certification.

As implementation of the ISPO standard improves over time, it should help to improve legal compliance and transparency, but its forest protection implications seem likely to be limited, because it does not address HCV and HCS areas, does not support company-initiated forest conservation efforts, and provides no protection for secondary forests (beyond the AMDAL) that could harbour significant ecological and carbon values. The exemption from ISPO for smallholders and especially CPO producers selling into biofuel supply chains is a troubling development, as it would seem to promote development of a two-tiered market for palm oil, one that is legally compliant (ISPO certified) and one that is not. Implementing regulations for ISPO have been revised in a 2015 Minister of Agriculture regulation that replaces the 2011 version. Noteworthy provisions include:

- (i) Small holder farmers are exempted from ISPO certification, yet in some oil palm growing regions they are important agents of deforestation;
- (ii) producers selling into biodiesel supply chains are exempted from ISPO;
- (iii) the 2011 ISPO requirement to retain HCV forests has been dropped from the 2015 version, and a new criterion making it difficult for companies to protect them voluntarily has been added; (iv) a new principle in support of the Moratorium on new licenses in primary forest or peat has been added; and (v) a new criterion requires that companies identify and map protection areas in their plantations, which seems designed to protect steep slopes, hydrologically sensitive areas, and peat (but not HCVs).

### *One Map Initiative for Oil Palm licensing*

The One Map initiative aims to digitize data and information related to primary and secondary forests, including peatlands, on a single public portal, synchronized with data on licenses attached to the land area, with the urgent aim of eliminating duplicate licenses issued for the same land area.

The One Map Initiative should facilitate the process of identifying ecologically suitable, appropriately classified, and uncontested (or weakly contested) land for oil palm licensing and make monitoring of legal compliance easier and more transparent.

According to the World Bank's Doing Business 2015 report, Indonesia ranks 155th out of 189 nations in ease of setting up a business. One of Jokowi's commitments to the private sector during his campaign was to develop a one-roof investment facility, aimed at reducing the time required for processing license applications. In January 2015, within his first 100 days in office, Jokowi inaugurated the One-Stop Integrated Service (or PTSP, in Bahasa Indonesia) at Indonesia's Investment Coordinating Board (BKPM). To facilitate investors using the PTSP for setting up businesses and processing licenses for all sectors, BKPM was assigned authority for issuing 134 licenses previously under 22 different ministries and related institutions (see section 3.2.10.3 below for implications for MoEF).

As follow up to establishment of PTSP, BKPM is in the process simplifying permit procedures, aiming to cut processing time by two-thirds by April 2015. A senior BKPM official has been quoted as saying the average time to process land permit applications will be cut from the current 260 days down to 90 days.

The One Stop Integrated Service (PTSP) to be operated by the Investment Coordinating Board (BKPM) is expected to sharply reduce the time required to obtain forest-lease licenses and environmental permits. The Ministry of Environment and Forestry (MoEF)

has transferred to BKPM the rights to award 35 types of licenses, including those for forest product utilisation in natural forests and industrial forests, ecosystem restoration licenses, forest land use permits, and the “borrow and use” permits on forest estate land, among others.

### *Corruption Eradication Commission (KPK)*

An attempt to improve legal compliance for industrial licensing was undertaken by the Corruption Eradication Commission (KPK). The KPK’s efforts to improve legal compliance in industrial land licensing to ensure compliance with environmental requirements and detect overlaps with protected areas and other industrial land use licenses is an important tool to achieve transparency of existing licenses. Future KPK action directed at the palm oil sector could have potential significant positive impacts in reducing corruption and improving governance, which could reduce palm oil driven deforestation

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## D. CSR Risk Assessment

### BUSINESS ISSUES

#### 1.1. Land Tenure

*Legislation covering land tenure rights that includes the use of legal methods to obtain tenure rights. Risk may be encountered where land rights have not been issued according to prevailing regulations and where corruption has been involved in the process of issuing land tenure rights. The intent of this indicator is to ensure that any land tenure rights have been issued according to the legislation.*

##### 1.1.1. Applicable laws and regulations

- Indonesian National Constitution (UU Dasar 1945)
  - The Basic Agrarian Law of 1960 (UU No.5/1960): [link](#); [link](#)
  - Law No. 18/2004 on Estate Crops, dated 11 August 2004 (Undang-undang No. 18/2004 tentang Perkebunan)
  - Law No. 6/2014 - Villages - [link](#)
- Constitutional Court decision
  - (MK35/2012): Ruling No. 35/PUU-X/2012 separates customary forests from their previous classification as State forests. Indonesia's 1999 Forestry Law previously stated that "customary forests are state forests located in the areas of custom-based communities". The Constitutional Court's ruling deletes the word "state" from that sentence, and revises the Law so that state forests no longer include customary forests. [link](#)
  - MK No. 45/2011 - The establishment of Forest Zone (Eng. Version) - [link](#)
- Presidential Instruction No. 8/2015 - Moratorium on new licenses in primary forests and peatlands [link](#)
- Government Regulation
  - No. 72/2005 - Villages - [link](#)
  - No. 43/2014 - Clarification of Village Law - [link](#)
  - Government Regulation No.24/1997 - Land Registration - [link](#)
  - Government Regulation No.15/2010 - Implementation of Spatial Planning - [link](#)
  - Government Regulation No.68/2010 - Procedures Public Role in Spatial Planning - [link](#)
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  - No. 62/2013 - Gazettal of the Forest Zone - [link](#)
  - Minister of Forestry Regulation No.44/2011 - 2nd Changes to The Minister of Forestry Number P.33 / Menhut-II / 2010 on Procedures for Release of The Forest Production Which Can Be Converted - [link](#)
  - No. 44/2012 - Gazettal of the Forest Zone (revised in 2013) - [link](#)
- Minister of Agrarian Regulation
  - No.19/2011 - Indonesian Sustainable Palm Oil - [link](#)

- Joint Ministerial Decree
  - No. 79/2014 - Procedures for the resolution and control of land within the Forest Zone - [link](#)
  - No. 9/2015 - Procedures to determine communal rights of customary land - [link](#)
- Local Regulation of Papua No.23/2008 - Hak Ulayat Masyarakat Hukum Adat dan Hak Perorangan Warga Masyarakat Hukum Adat Atas Tanah

#### 1.1.2. Legal authority

- New Ministry of Environment and Forestry (MoEF)
  - The merging of two ministries (Ministry of Forestry and Ministry of Environment) into a single “mega ministry” governing forest management and implementation of environmental laws and regulations. The ministry’s priorities include promoting community based forest management, recognition of customary forests, resolving land conflicts and eliminating fires.
- New Ministry of Agrarian and Spatial Planning
  - New ministry charged with implementing President Jokowi’s vision for land reform, which includes recognition of more than 12 million ha of community forests and making available more than 2 million ha of land for agriculture.
- National Land Agency (BPN)
  - Government body that manages issues of land tenure by handling grants, renewal of titles as well as registration
- Indonesia Investment Coordinating Board (BKPM)
  - Reporting directly to the President of the Republic of Indonesia, BKPM acts an interface between business and government and is charged with attracting domestic and foreign investment.

#### 1.1.3. Legally required documents or records

- Location Permit (Ijin Lokasi)
  - A location permit serves a license for the transfer of rights and utilizes the land for investment. It is obtained from the jurisdiction authority and must be followed up the relinquishment of the land from the previous owner after a 12 to 36-month period based on the area size ([http://www.prac.org/newsletters/Ali\\_2005.pdf](http://www.prac.org/newsletters/Ali_2005.pdf))
- Plantation Business Permit (IUP)
  - In order to obtain an IUP, a written application to the regent/mayor/governor should be filed along with 15 specific documents (see <https://www.hcvnetwork.org/resources/folder.2006-09-29.6584228415/Annex%20%20Legal%20Review%20by%20Andiko.pdf> page 12)
- Business Use Permit (Hak Guna Usaha)
  - Acquired from the local land office after having obtained a location permit and determines the land use, business use and building use.

#### 1.1.4. Sources of information

*Non-Government sources*

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### 1.1.5. Risk determination

#### *Overview of Legal Requirements*

Land tenure in Indonesia is complex and characterized by conflicts and overlapping claims. These issues are partly derived from the Indonesian legislation, which recognizes a dual system of land tenure. Broadly speaking, there are two types of ownership in Indonesia: customary (adat) and formal/certified title.

Referent to the Constitution of Indonesia, land is a State matter and the individual States are thus the highest level of authority in matters pertaining to land tenure and natural resources. This authority is augmented by the Basic Agrarian Law Act of 1960 (UU 5/1960), which outlines the recognition of state lands, lands with rights as well as customary lands (Gnych & Wells, 2014). The Basic Agrarian Law reinforced supremacy of the State in land matters and, among other important provisions, converted most adat (traditional) rights recognized under Dutch colonial law into a series of new (and weaker) statutory titles that made indigenous land ownership subordinate to the 'national interest'.

Subsequent laws also gave government authorities discretion to recognize adat land ownership and thereby determine circumstances where communities are legally entitled to defend their customary land use rights (hak ulayat) against the State or a company licensed by the State.

Since UUPA No.5/1960, a host of other laws relevant to land ownership have been enacted that reinforce supremacy of the State in land matters, such as the Forestry Law of 1999. The current legal framework shaped by the Law on Estate Crops (UU No.18/2004) for oil palm is still firmly rooted in concepts of State control, with emphasis on rights conferred to companies via licenses issued by the State. Yet, significant improvements have been made in recent years, including requirements for:

- (i) plantations to provide meaningful development benefits to local communities; and
- (ii) companies to 'purchase' use rights from local communities prior to any development, with communities free, in principle, to accept or reject offers negotiated directly with a company.

In a recent Constitutional Court decision (MK35/2013) of notable significance, the court decided that where Customary Forest (Hutan Adat) claims can be demonstrated by local communities, rights over such forests shall be conferred to local communities, and will no longer be considered state land. It's not clear how this decision will affect power

relations between companies and communities moving forward, but it's a landmark decision of significant importance.

The Law on Estate Crops ((UU No.18/2004 amongst other things addresses:

- (i) definition of legal grounds for acknowledging customary (adat) land ownership by indigenous communities;
- (ii) delegation of responsibility to companies (rather than government) to obtain consent from local communities to release land for planting to initiate development; and
- (iii) defining legal instruments that companies can use to assert and protect rights over land once required permits have been issued.

The law reinforces the authority of district officials to issue licenses, monitor compliance and oversee company-community relations, including conflict resolution.

Systematic land registration is ongoing in Indonesia, but most private rights to urban and rural land remain unregistered. Land tenure rights can be entered into the Land Registry only if the company provides all legally required documents described in the field 'Legally required documents or records'.

To summarise, the following legal requirements apply to the different source types:

- Small-scale plantations less than 25 hectares
  - Simplified business license (STDB license): It is a receipt of the sale of land issued by the village head or sub-district head and plantation registration with the district government
- Large-scale plantations greater than 25 hectares:
  - Location Permit (Ijin Lokasi license) – grants an applicant the 'option' to develop a plantation within a given area, subject to time constraints and other conditions
  - Plantation Business Permit (Ijin Usaha Perkebunan (IUP) license) - This grants the holder the right to establish an oil palm plantation within a defined area
  - Business Rights Use Permit (Hak Guna Usaha (HGU) license) - Acquired from the local land office after a location permit is obtained. It determines land, business and building use. Location Permit (Ijin Lokasi license) – grants an applicant the 'option' to develop a plantation within a given area, subject to time constraints and other conditions

#### *Description of risk*

It is evident that the Indonesian Constitution, the Basic Agrarian Law Act and subsequent legislation have provided the State authority with an incontestable power over land matters. In Papua, the power to access land and tenure is controlled by the local government, which in turn have made large concessions to private companies while adopting a discourse framing these projects as 'package deals' ultimately benefitting the public (DTE, 2011). However, evidence suggests that large-scale development of palm oil plantations in Papua have largely disenfranchised indigenous populations by removal of natural forests containing sago palms for food, animals for hunting and non-timber forest products for subsistence and sale (Pye, 2016).

Land conflicts is widely reported in Papua along with several instances of violence, intimidation and harassment by Indonesian security forces (Welford, 2016). According a 2016 report published by the Catholic Justice and Peace Commission of the Archdiocese of Brisbane, the main causes of land conflicts are weak systems of governance, powerful elites, corruption, inequality and power imbalances, which in turn

leads to eviction of indigenous communities, ignoring of customary rights as well as inadequate indigenous compensation for lost land (CJPC Brisbane, 2016). However, a positive development is traceable as under the Law On Plantations (UU No. 18/2004)<sup>1</sup>, which is the main piece of Indonesian legislation governing palm oil development, there are now legal requirements for:

- plantations to provide meaningful development benefits to local communities; and companies to 'purchase' use rights from local communities prior to any development, with communities free, in principle, to accept or reject offers negotiated directly with a company (Paoli, et al., 2013, p. 51)

Also, adat is a communal approach to land and land use rights, where individuals can obtain the right to use a piece of land, but where the land is owned by the greater community (Gold & Zuckerman, 2014). Boundaries are defined by natural features, such as rivers, ridges, valleys and trees (Hendriatiningsih et. al., 2009). Customary land tenure can thus appear complex and unmanageable for outsiders, but constitutes a set of palpable boundaries and a set of clear rules for indigenes.

In addition, Constitutional Court decision MK35/2013 set a precedence stating that if indigenous claims to Customary Forests can be demonstrated by local communities, rights shall be transferred to these communities and no longer be considered state land (Paoli, et al., 2013). From an indigenous perspective, this is an important ruling, as it brings about a change in UU. 41/1999, which is the law of forestry. However, its effects are yet to be seen and so far, not a single customary forest has been declared by the government (Dewi, 2016).

A summary of land tenure risks includes:

- Many different claims to the same land can be legal depending on what law, regulation or decree is used for justification. This means the same development on the same location can be both legal and illegal depending on one's legal point of reference.
- The wide discretionary powers assigned to local government and private companies under the law causes extreme variability across Indonesia in norms of social and environmental management of oil palm. Outcomes on the ground thus reflect a combination of local government attitudes toward oil palm and especially their role as regulators, corporate philosophy of firms operating in the region, and community preparedness for negotiations.
- Indonesia is plagued with asymmetry in access to justice among citizens belonging to different socio-economic classes. In some regions, communities and NGOs cannot challenge State agencies or private companies to assert their land rights, due e.g. to a lack of formal title, inability to afford legal representation, or politico-business collusion affecting the judiciary. This happens despite existence of numerous laws aimed at protecting the environment and communities.
- Insecurity of land tenure for communities and for companies is widespread throughout Sumatra, creating inequality of power and ambiguity in land rights that exacerbates the risk of land based illegalities. Land tenure tensions are widespread but most intense in areas where land conversion has been most severe, or the legacy of bad practice (even from deeper history) and its lingering impacts.
- As implementation of the ISPO standard improves over time, it should help to improve legal compliance and transparency. The exemption from ISPO for

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<sup>1</sup> Other important legislation in relation to land tenure are those related to Spatial Planning: UU No.26/2007, UU No.41/1999, PP No.26/2008, PP No.10/2010, PP No.15/2010 (Paoli, et al., 2013, p. 53)

smallholders and especially CPO producers selling into biofuel supply chains is a troubling development, as it would seem to promote development of a two-tiered market for palm oil, one that is legally compliant (ISPO certified) and one that is not.

- The One Map Initiative (see overview) in the future, should facilitate the process of identifying ecologically suitable, appropriately classified, and uncontested (or weakly contested) land for oil palm licensing and make monitoring of legal compliance easier and more transparent.
- As half the land area in Indonesia is not officially registered compliance with this criterion is considered elevated.

#### *Risk conclusion*

The local government of Papua has systematically used the legal framework to prioritize large-scale palm oil development over indigenous claims to customary rights, something which remains a major concern in Papua and the rest of Indonesia. This policy has been enforced through the violent removal, intimidation and harassment of indigenous peoples from their lands.

#### **1.1.6. Risk designation and specification**

Elevated risk

#### **1.1.7. Control measures and verifiers**

##### *Verifiers:*

Ensure the palm oil plantation supplier(s) has the following valid land tenure documents in place:

- Small-scale plantations less than 25 hectares
  - Simplified business license (STDB license): It is a receipt of the sale of land issued by the village head or sub-district head and plantation registration with the district government
- Large-scale plantations greater than 25 hectares:
  - Location Permit (Ijin Lokasi license) – grants an applicant the ‘option’ to develop a plantation within a given area, subject to time constraints and other conditions
  - Plantation Business Permit (Ijin Usaha Perkebunan (IUP) license) - This grants the holder the right to establish an oil palm plantation within a defined area
  - Business Rights Use Permit (Hak Guna Usaha (HGU) license) - Acquired from the local land office after a location permit is obtained. It determines land, business and building use. **Or;**
  - A palm oil plantation obtains One-Stop Integrated Service (PTSP) license issued by the Indonesia’s Investment Coordinating Board (BKPM). **And;**
  - Company-managed or company-owned plantations and state-owned enterprises obtain an Indonesian Sustainable Palm Oil (Permentan No.19/2011) ISPO certificate.
- Records Free Prior Informed Consent and/or a participatory social impact assessment and/or was conducted and copies of negotiated agreements are available
- Evidence that a dispute resolution policy is in place

Consult stakeholders on the following:

- Verify if a company obtains a PTSP license with the [Indonesia's Investment Coordinating Board \(BKPM\)](#)
- Verify if a large-scale plantation obtains an Indonesian Sustainable Palm Oil (ISPO) certificate through the [ISPO website](#)
- Check the validity of the HGU license with the provincial Province National Land Agency (BPN Province) Office
- Review information on land tenure disputes and developments on indigenous and traditional peoples' land claims:
  - NGO investigations and reports ([Forest Peoples Programme](#), [Sawit Watch](#), [Rainforest Action Network](#), [Global Platform of Indigenous and Community lands](#), [Greenpeace](#), [Friends of the Earth](#))
  - Media reports (Mongabay.com, greenomics.org, red-monitor.org, thejakartapost.com, eyesontheforest.org)
- Check with indigenous communities, local communities and others to confirm that customary and / or indigenous peoples' rights are upheld and there is an absence of significant disputes
- Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations. For land tenure issues check palm oil producers' 'Landbank' scores: <http://www.sustainablepalmoil.org/companies/>

This data can support SPOTT users in conducting further research to verify whether or not company commitments are being implemented on the ground.

Under Map of Concessions found here: <http://www.sustainablepalmoil.org/about/> use the map search bar to find specific company concessions or locations. Click the concession sites marked by pins to zoom in for more information, then go to the company pages of featured concessions to view their assessments and for legality particularly pay attention to the layer called 'government allocated areas' to ensure the palm oil producer is operating in a legal area. For more on how to use the SPOTT map see the ZSL FAQs page.

To ensure the palm oil producer is not operating within an area off limits according to the Indonesian Presidential moratorium review the maps and reports produced by Global Forest Watch Commodities platform which shows the locations of almost 800 palm oil mills and the radius of its palm oil suppliers (which is on average approximately 50 kilometres):

To see where the moratoria areas are you must select the layer under Forest Use then click: Indonesia Moratoria Areas:  
<http://commodities.globalforestwatch.org/#v=map&x=-68.91&y=-0.08&l=4&lyrs=tcc%2CgfwMill>

Conduct on-site verification to confirm the following:

- Palm oil plantations takes place within the authorized boundaries in accordance with the relevant licenses
- Evidence active consultation and/or evidence of a participatory social impact assessment and/or conducting a Free Prior Informed Consent was conducted and there is a dispute-resolution mechanism in place

## 1.2. Plantation registration and management rights

*Legislation covering land management rights including customary rights and any legal requirements for management planning. It also covers legal business registration and tax registration, including relevant legal required licenses. Risk may be encountered where land rights have not been issued according to prevailing regulations and where corruption has been involved in the process of issuing land tenure and management rights. The intent of this indicator is to ensure that any land management rights have been issued according to the legislation. Low quality of the management plan resulting in illegal activities may be a risk factor for this indicator as well.*

### 1.2.1. Applicable laws and regulations

- Indonesian National Constitution (UU Dasar 1945)
  - No. 18/2004 - Plantations (updated in 2014) - <http://indonesiabch.or.id/docs/uu18-2004.pdf>
  - No.32/2009 - Law No. 32/2009 on Environmental Protection and Management. [link](#)
  - No. 39/2014 – Plantations – (This law replaces the 2004 Law on Plantations, reaffirming principles of sustainability, the key role of local authorities in governing the sector and requirement for companies to negotiate partnership agreements with communities. Under the law, companies are effectively prohibited from retaining forest within their plantations and local authorities are prohibited from issuing permits where adat communities have customary rights.) [link](#)
- Constitutional Court decision
  - MK No. 45/2011 - The establishment of Forest Zone (Eng. Version) - [link](#)
- Presidential Instruction No. 8/2015 - Moratorium on new licenses in primary forests and peatlands - [link](#)
- Minister of Forestry and Environmental Regulation
  - No. 33/2010 - Procedures for The Release of the Forest Production Which Can Be Converted - [link](#)
  - No.17/2011 - Changes to The Minister of Forestry Number P.33 / Menhut-Ii / 2010 on Procedures for Release of the Forest Production Which Can Be Converted - [link](#)
  - Minister of Forestry Regulation No.44/2011 - 2nd Changes to The Minister of Forestry Number P.33 / Menhut-Ii / 2010 on Procedures for Release of the Forest Production Which Can Be Converted - [link](#)
  - No. 44/2012 - Gazzettal of the Forest Zone (revised in 2013) - [link](#)
  - No. 97/2014 - Delegation of forestry licensing authority to the Investment Coordination Board - [link](#)
- Minister of Agrarian Regulation
  - No. 26/Permentan/OT.140/2/2007 on Guidelines for Estate Crop Enterprise Permits, dated 28 February 2007 (Peraturan Menteri Pertanian No.26/Permentan/OT.140/2/2007 tentang Pedoman Perizinan Usaha Perkebunan)
  - No.19/2011 - Pedoman Perkebunan Kelapa Sawit Berkelanjutan Indonesia (Indonesian Sustainable Palm Oil/Ispo) - [link](#)
  - No.98/2013 – Guidelines for Estate Crop Enterprise Permits - [link](#)

- Joint Ministerial Decree
  - No. 79/2014 - Procedures for the resolution and control of land within the Forest Zone - [link](#)
- Government Regulation
  - No.40/1996 on Hak Guna Usaha (Business Use Permit), Hak Guna Bangunan Dan Hak Pakai Atas Tanah (Peraturan Pemerintah No. 40 Tahun 1996): PP 40-1996 Tentang Hak Guna Usaha, Hak Guna Bangunan Dan Hak Pakai Atas Tanah.pdf
  - Government Regulation No.24/1997 – Land Registration - [link](#)
  - No.2/1999 on Location Permits (Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional No.2/1999): [link](#)
  - No.27/1999 - Environmental Impact Assessment - [link](#)
  - Government Regulation No.68/2010 – Procedures Public Role in Spatial Planning - [link](#)
  - 24/2015 - Collection of plantation funds - [link](#)

### *Oil Palm Licensing*

- PP No.24/1997 - Government Regulation No. 24/2010 on Use of Forest Areas (Peraturan Pemerintah No. 24/2010 tentang Penggunaan Kawasan Hutan).
- Presidential Instruction No. 8/2015 - Moratorium on new licenses in primary forests and peatlands - [link](#)
  - Minister of Forestry Regulation No. 44/2012 - Gazettal of the Forest Zone (revised in 2013) - [link](#)

### **1.2.2. Legal authority**

- New Ministry of Environment and Forestry (MoEF)
  - The merging of two ministries (Ministry of Forestry and Ministry of Environment) into a single “mega ministry” governing forest management and implementation of environmental laws and regulations. The ministry’s priorities include promoting community based forest management, recognition of customary forests, resolving land conflicts and eliminating fires.
- New Ministry of Agrarian and Spatial Planning
  - New ministry charged with implementing President Jokowi’s vision for land reform, which includes recognition of more than 12 million ha of community forests and making available more than 2 million ha of land for agriculture.
- The Ministry of Agriculture
  - Formulation and implementation of policies relating to infrastructure and agricultural inputs. Charged with overseeing and increasing the production of rice, corn, soy, palm oil, sugarcane, meat as well as other agricultural products while also being in charge of increasing competitiveness, quality as well as marketing.
- National Land Agency (BPN)
  - Government body that manages issues of land tenure by handling grants, renewal of titles as well as registration
- Indonesia Investment Coordinating Board (BKPM)

- Reporting directly to the President of the Republic of Indonesia, BKPM acts an interface between business and government and is charged with attracting domestic and foreign investment.

### 1.2.3. Legally required documents or records

- Location Permit (Ijin Lokasi)
  - A location permit serves a license for the transfer of rights and utilizes the land for investment. It is obtained from the jurisdiction authority and must be followed up the relinquishment of the land from the previous owner after a 12 to 36-month period based on the area size ([http://www.prac.org/newsletters/Ali\\_2005.pdf](http://www.prac.org/newsletters/Ali_2005.pdf))
- Plantation Business Permit (IUP)
  - In order to obtain an IUP, a written application to the regent/mayor/governor should be filed along with 15 specific documents (see <https://www.hcvnetwork.org/resources/folder.2006-09-29.6584228415/Annex%20%20Legal%20Review%20by%20Andiko.pdf> page 12)
- Business Use Permit (Hak Guna Usaha)
  - Acquired from the local land office after having obtained a location permit and determines the land use, business use and building use.

### 1.2.4. Sources of information

#### *Non-Government sources*

- CJPC Brisbane. (2016). We Will Lose Everything: A Report on a Human Rights Fact Finding Mission to West Papua . Brisbane: Catholic Justice and Peace Commission of the Archdiocese of Brisbane.
- DTE. (2011). The Land of Papua: a continuing struggle for land and livelihoods . Down to Earth .
- Gold, M. E., & Zuckerman, R. B. (2014). Indonesian Land Rights and Development. Columbia Journal of Asian Law.
- Indonesia-Investments. (2016, July 16). Palm Oil Industry Indonesia: Five-Year Moratorium on New Concessions. Retrieved from [www.indonesia-investments.com: http://www.indonesia-investments.com/news/todays-headlines/palm-oil-industry-indonesia-five-year-moratorium-on-new-concessions/item7006#poll0](http://www.indonesia-investments.com/news/todays-headlines/palm-oil-industry-indonesia-five-year-moratorium-on-new-concessions/item7006#poll0)
- Jacobson, P. (2016, July 18). Indonesia's palm oil permit moratorium to last five years. Retrieved from [news.mongabay.com: https://news.mongabay.com/2016/07/indonesias-palm-oil-permit-moratorium-to-last-five-years/](https://news.mongabay.com/2016/07/indonesias-palm-oil-permit-moratorium-to-last-five-years/)
- Pye, D. (2016, June 3). Indonesia's Salim Group linked to 'secret' palm oil concessions in West Papua. Retrieved from [news.mongabay.com: https://news.mongabay.com/2016/06/indonesias-salim-group-linked-to-secret-palm-oil-concessions-in-papua/](https://news.mongabay.com/2016/06/indonesias-salim-group-linked-to-secret-palm-oil-concessions-in-papua/)
- Welford, R. (2016, March 16). Indonesia: Land disputes: Lessons from West Papua. Retrieved from [landportal.info: https://landportal.info/news/2016/03/indonesia-land-disputes-lessons-west-papua](https://landportal.info/news/2016/03/indonesia-land-disputes-lessons-west-papua)

### 1.2.5. Risk determination

#### *Overview of Legal Requirements*

A large body of laws and regulations related to permitting for oil palm defines:

- i. the licenses required for development;
- ii. process and requirements for obtaining them;
- iii. division of local vs central government authority for issuing them; and
- iv. requirements for securing long-term business use rights (HGU) once plantations are developed.

A critical legal instrument codifying this framework is the Ministry of Agriculture Regulation No.26/2007 concerning Guidelines for Plantation Licensing (Permentan No.26/2007). The legal authority of Permentan No.26/2007 is derived from the landmark 2004 Law on Plantations, which assigns authority to the Ministry of Agriculture (MoA) to formalize licensing requirements and procedures to be administered at local and national levels.

### **Plantation Business License**

In brief:

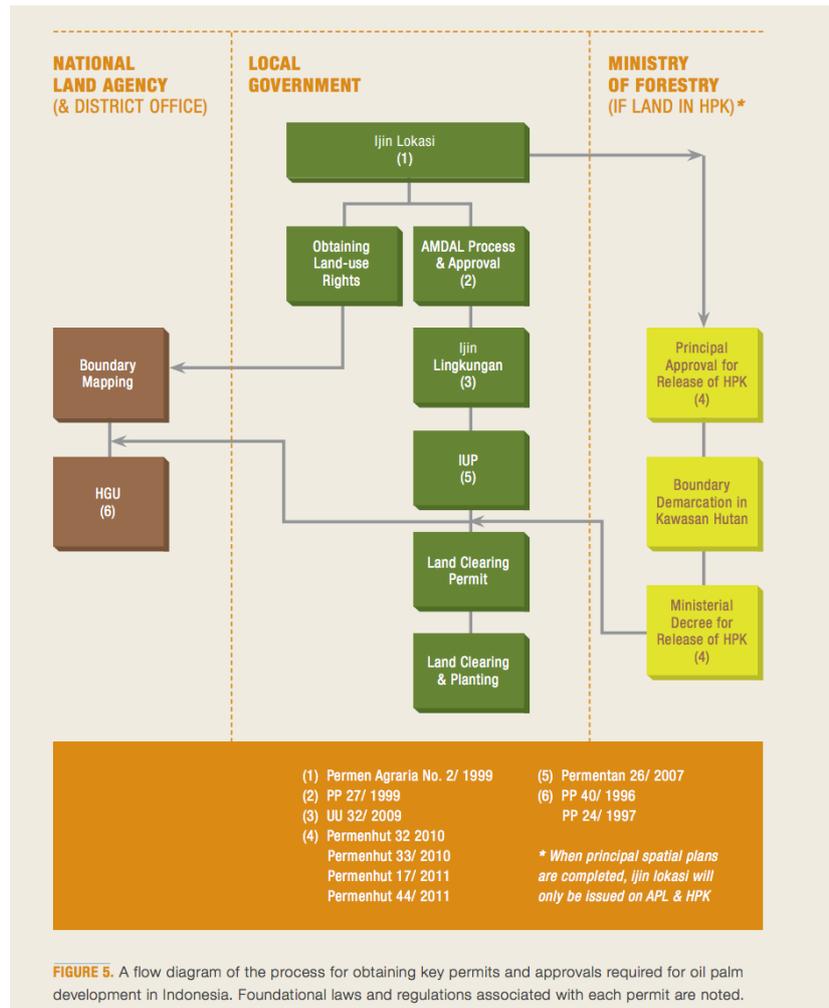
1. Companies are required to obtain a **Location Permit (Ijin Lokasi)**, which confers the right to:
  - a. Begin negotiations with local communities for land release to plant oil palm; and
  - b. To initiate the mandatory Environmental Impact Assessment (AMDAL), as well as other ground survey activities.
2. Once the AMDAL is completed and approved, companies are issued an **Environmental Permit (Ijin Lingkungan)** by local offices of the Ministry of Environment.
3. Together with the *plantation development plan*, a *sworn declaration to develop smallholder plots*, and other documents, a permit is used to obtain a **Plantation Business License (Ijin Usaha Perkebunan, IUP)**.
4. Once the IUP is issued, companies must obtain a **Land Clearing Permit (Ijin Pembukaan Lahan, IPL)** from local authorities to begin development.

At this point, companies are legally permitted to initiate development, provided:

- i. community approval for land release has been received; and
- ii. the license area falls outside the Forest Zone and thus allocated for agriculture (APL or KBNK) where local officials have authority to license development.

If the license falls within Forest Zone, and such areas have been classified as forest for conversion (Hutan Produksi Konversi, HPK), then a request for HPK release must be filed with local MoF offices. This is a two stage process (see Figure 5), the first a request to obtain approval in principle (Persetujuan Prinsip Pelepasan Kawasan HPK) after obtaining the Ijin Lokasi, and the second a request filed once boundaries of the plantation have been agreed to obtain the formal MoF Decree for release of HPK (Keputusan Menteri tentang Pelepasan Kawasan HPK).

The Location Permit (Ijin Lokasi) is valid for three years with possible extension for one year. It is a challenge for companies to complete required licensing procedures within the time allotted, given that, in addition to developing several thousand hectares of plantations, they must conduct consultations with communities for negotiating land release, put in place environmental safeguards to mitigate negative impacts of plantation development identified during the AMDAL (and HCV assessments for RSPO members) and organize and control contractors to comply with these safeguards and many do not complete the process before developing their palm oil plantations.



### Business Use Right (Hak Guna Usaha, HGU)

Another important licensing process runs in parallel with the above the Plantation Business License process and is connected to the Location Permit (Ijin Lokasi) limited time validity, and is required to obtain the long-term Business Use Right (Hak Guna Usaha, HGU) for control over the plantation (see Figure 5). This permit provides control over the land for a period of 35 years, with option for extension of a further 25 years. This process can be initiated at any point after the Ijin Lokasi has been obtained, but cannot be completed until steps 1-4 in Figure 5 are complete and plantation boundaries have been demarcated in the field by local offices of the National Land Agency (BPN).

#### Description of risk

There is a risk relevant licenses are issued illegally due to corruption, this includes issuance of license in areas not zoned for agriculture, allowing palm oil companies to commence development without proper licensing, and failure to enforce remediation for illegality.

- In June 2016, it was revealed that one of Indonesia's largest conglomerates, Salim Group, had acquired 117,000 hectares of palm oil concessions through using a complex network of shared directorships as well as offshore companies (Pye, 2016). This offshore acquisition was due to the need of Salim Group to circumvent its own sustainability guidelines, which clearly states a no-tolerance policy on conversion of High Conservation Value areas (HCVs) (Pye, 2016). In addition, CJPC Brisbane reports that local governments are actively inviting companies to come to Papua, while also providing them with permits for plantation development. These permits

are on customary land, consequently confusing and frustrating local villagers, who in several cases have been forcibly removed by the authorities (CJPC Brisbane, 2016; Welford, 2016). PT Henrison Inti Persada (HIP) is the most established oil palm plantation company, getting the final permit for its plantation in Klamono in 2006 (although it had already started planting oil palm illegally a few years before) (Pusaka, 2015). A Chinese company, the Tianjin Julong Group, is also reportedly aiming to start a plantation in Saifi and Seremuk districts, through its subsidiary Julong Agro Plantation, according to information from NGOs active in the area. There is no information whether this company has successfully obtained any permits to operate in Papua (Pusaka, 2015). PT Inti Kebun Makmur also has a 20,000 hectares location permit for oil palm, but has not yet applied for the forest release permit (Pusaka, 2015).

- From an environmental and social point of view, a positive development in the palm oil industry is present, as Indonesian president, Joko "Jokowi" Widodo, in July 2016 forewarned about an upcoming five-year moratorium on new palm oil licenses (Jacobson, 2016). In addition, Widodo's administration has discursively put environmental concerns as a top priority (Indonesia-Investments, 2016). However, the reports mentioned above paled with Indonesia's low score on Transparency International's Corruption Perception Index - the CPI in Indonesia for 2015 was 36 (on a scale from 0 to 100 where 100 is lowest level of corruption) and ranked 88 out of 167 countries - warrants caution.

#### *Risk conclusion*

This indicator has been evaluated as Elevated risk.

#### **1.2.6. Risk designation and specification**

Elevated risk

#### **1.2.7. Control measures and verifiers**

##### *Verifiers:*

Ensure the palm oil plantation supplier(s) has the following valid land tenure documents in place:

- Small-scale plantations less than 25 hectares
  - Simplified business license (STDB license): It is a receipt of the sale of land issued by the village head or sub-district head and plantation registration with the district government
- Large-scale plantations greater than 25 hectares:
  - Location Permit (Ijin Lokasi license) – grants an applicant the 'option' to develop a plantation within a given area, subject to time constraints and other conditions
  - Plantation Business Permit (Ijin Usaha Perkebunan (IUP) license) - This grants the holder the right to establish an oil palm plantation within a defined area
  - Business Rights Use Permit (Hak Guna Usaha (HGU) license) - Acquired from the local land office after a location permit is obtained. It determines land, business and building use. **Or;**
  - A palm oil plantation obtains One-Stop Integrated Service (PTSP) license issued by the Indonesia's Investment Coordinating Board (BKPM). **And;**

- Company-managed or company-owned plantations and state-owned enterprises obtain an Indonesian Sustainable Palm Oil (Permentan No.19/2011) ISPO certificate.
- Records Free Prior Informed Consent and/or a participatory social impact assessment and/or was conducted and copies of negotiated agreements are available
- Evidence that a dispute resolution policy is in place

Consult stakeholders on the following:

- Verify if a company obtains a PTSP license with the [Indonesia's Investment Coordinating Board \(BKPM\)](#)
- Verify if a large-scale plantation obtains an Indonesian Sustainable Palm Oil (ISPO) certificate through the [ISPO website](#)
- Check the validity of the HGU license with the provincial Province National Land Agency (BPN Province) Office
- Review information on land tenure disputes and developments on indigenous and traditional peoples' land claims:
  - NGO investigations and reports ([Forest Peoples Programme](#), [Sawit Watch](#), [Rainforest Action Network](#), [Global Platform of Indigenous and Community lands](#), [Greenpeace](#), [Friends of the Earth](#))
  - Media reports (Mongabay.com, greenomics.org, red-monitor.org, thejakartapost.com, eyesontheforest.org)
- Check with indigenous communities, local communities and others to confirm that customary and / or indigenous peoples' rights are upheld and there is an absence of significant disputes

Conduct on-site verification to confirm the following:

- Palm oil plantations takes place within the authorized boundaries in accordance with the relevant licenses
  - Evidence active consultation and/or evidence of a participatory social impact assessment and/or conducting a Free Prior Informed Consent was conducted and there is a dispute-resolution mechanism in place

### 1.3. Payment of royalties and required fees

*Legislation covering payment of all legally required commodity fees such as royalties and other volume based fees. It also includes payments of the fees based on correct classification of quantities, qualities and species. Incorrect classification of products is a well-known issue often combined with bribery of officials in charge of controlling the classification.*

#### 1.3.1. Applicable laws and regulations

- Government Regulation
  - No. 59 Year 1998 on Tariff of Non Taxable State's Revenue Under of Forestry and Estate Corps.
  - No.12/2001 - Indonesian Sustainable Palm Oil/ISPO - [link](#)
- Minister of Agrarian Regulation No.17/2010 - Guidelines for Determination of Price of Palm Oil Product (POB) - [link](#)
- Ministry of Finance Decree

- No. 575/KMK.04/2000 - Calculation Guidelines crediting Input Tax for Employers [link](#)
- No. 78/PMK.03/2010 – Calculation Guidelines crediting Input Tax for Employers [link](#)
- Law of Value Added Tax (UU PPN) Article 16b paragraph 3 - Input tax paid for the acquisition of taxable products and of taxable services which, on supply exempt from value added tax can not be credited [link](#)
- Act No 12 Year 1985 on Land and Building Taxes (PBB) jo Act No 12 Year 1994 about changes of Act No 12 Year 1985.
- Land and Buildings Tax Regulation UU 12/1985, 12/1994, PP 48/1997, PP 25/2002 (PBB) - [link](#) and [link](#)
- Land and Building Tax/Duty on Acquisition of Land or Buildings (Purchase Tax)) Regulation UU 21/1997, UU 20/2000
- Tax on Transfer of Land and Buildings Regulation GR 48/1994, GR 27/1995, GR 79/1999, GR 71/2008. Payment is considered fulfillment of PPh Article 25 obligations
  - Income Tax Regulation Law No. 7 of 1983, Law No. 7 of 1991, Law No. 10 of 1994, Law No. 17 of 2000, Law No. 36 of 2008 on Income Tax

### 1.3.2. Legal authority

- Ministry of Finance - charged with formulating, stipulating and implement policies connected to budgeting, taxes, customs, excise, treasury, state assets management, fiscal balance as well as budget financing and risk management
- Subsidiary government institutions responsible for the formulation of tax policy and procedures of relevance to oil palm companies:
  - State Treasury
  - Indonesian Tax Offices
  - Customs Office
    - This office is related to the exit permit, including foreign workers' entry permit
  - Director General of Taxation
    - Responsible for issuing tax policy
- The District Tax Service Office and the Local Tax on Land and Building Office (PBB) - responsible for the management of all tax related payments imposed on oil palm plantations

### 1.3.3. Legally required documents or records

- The Notarial Deed
- Annual balance sheet,
- Calculation of annual income,
- Accounts daily transaction journal

### 1.3.4. Sources of information

#### *Government sources*

- <http://www.pajak.go.id>

- <http://www.dephut.go.id>

#### *Non-government sources*

- Butt, S. (2011, June). Taxing questions. Retrieved from [www.insideindonesia.org](http://www.insideindonesia.org): <http://www.insideindonesia.org/taxing-questions>
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- Transparency International . (2016). Indonesia . Retrieved from [www.transparency.org](http://www.transparency.org): <https://www.transparency.org/country/#IDN>
- <http://climatepolicyinitiative.org/wp-content/uploads/2015/12/Full-Report-English-Early-Insights-on-Taxation-in-the-Palm-Oil-Supply-Chain.pdf>
- Environmental Investigation Agency (EIA) study, dated Dec 2014: PERMITTING CRIME: How palm oil expansion drives illegal logging in Indonesia <http://eia-international.org/wp-content/uploads/Permitting-Crime.pdf>

### **1.3.5. Risk determination**

#### *Overview of Legal Requirements*

Being the world's largest producer and exporter, palm oil as a commodity is of critical importance to the Indonesian economy. Consequently, legislation seeks to both promote the growth of the sector while also providing a direct source of income for both States and the Federal government. Falconer, Mafira & Sutiyono (2015) estimates that in 2012/13, the Indonesian palm oil industry contributed 0.8-1 billion USD in tax revenues (p. 6). A majority of this revenue (64%) was derived from export tax – export tax applies to Fresh Fruit Bunches (FFB), Crude Palm Oil (CPO) and refined palm oil products. In Indonesia, export tax is progressive, meaning that tax rates increase and decrease along with the standard export prices. The tax rates increase more steeply for less processed products, which in turn are taxed at higher rates (Falconer, Mafira, & Sutiyono, 2015, p. 8). Another tax relevant to the palm oil industry is the Land and Buildings Tax, where the standard rate is 0.1% of the total value of owned land and buildings. However, the rate for the palm oil industry is double the standard rate at 0.2% (Falconer, Mafira, & Sutiyono, 2015, p. 10).

#### *Description of risk*

Tax evasion is a widely known issue in Indonesia and within the palm oil sector especially. Tax evasion in the palm oil industry is oftentimes due to the existence of illegally operating plantations, which operates without the HGU and thus avoids paying land and building tax as well as transfer pricing, which is the shifting of profits to subsidiaries located in lower taxed regions, thus reducing tax liability (Butt, 2011). Another risk in relation to tax is deliberately wrongful filling of tax forms by large corporations, which have proved a pervasive problem in the Indonesian palm oil

industry as well as widespread corruption among the Indonesian elite (Transparency International , 2013; Suroyo & Danubrata, 2015).

In addition, general enforcement in tax related issues in Indonesia remains weak: "The tax office often fails to detect tax evasion, so lost tax revenue is very rarely identified, let alone recovered" (Butt, 2011).

#### *Risk conclusion*

This indicator has been evaluated as Elevated risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.3.6. Risk designation and specification**

Elevated risk

#### **1.3.7. Control measures and verifiers**

##### *Country Specific*

Ensure the plantation company has the following valid tax documents:

- Monthly Withholding Tax Reports - obtain copies from the company to verify taxes are correct and paid
- Receipts for payment of sales taxes, related royalties and other required fees

##### *Generic Control Measures:*

- Volumes, and qualities given in sales and transport documents shall match the paid fees.
- Classification of volumes and qualities shall match the royalties and fees paid.

### **1.4. Value added taxes and other sales taxes.**

*Legislation covering different types of sales taxes which apply to the material being sold. Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.*

#### **1.4.1. Applicable laws and regulations**

- Law
  - Law – 8 1983 – [link](#)
  - Law – 42 OF 2009 – [link](#)
- Presidential Decree No.61/2015 The collection and use of funds of Palm Oil (on the collection and use of palm oil funds), issued on 18 May 2015
- Government Regulation
  - No 12 Year 2001 on Import and or Taxable Delivery of Strategies Certain Goods is Released from Value Added Tax in Conjunction with Government Regulation No 12 Year 2014 – [link](#)
  - Law – 42 OF 2009 – [link](#)
  - No 31 Year 2007 On Fourth Changes of Government Regulation No 12 Year 2001
  - No.25/2015 The collection and use of funds of Palm Oil (Palm Oil Deposits), issued on 25 May 2015

- Ministry of Finance Regulation
  - No 92/PMK.02/2005 on Determination of Certain Types of Export Goods and Rates of Export Levy – [link](#)
  - No.113/2015 Organization and Management of Funds Oil Palm Plantations (on the organisation and work procedures of the management body for the palm oil fund) issued on 10 June 2015.
- Ministry of Forestry Regulation No P.68/Menhut-II/2014 – [link](#)
- Corruption Perceptions Index 2015 – [link](#)
- Export Tax Regulation UU 10/1995, 128/PMK.011/2013 – Indonesian Abbreviation Bea Keluar (Export Duty) – [link](#)

#### 1.4.2. Legal authority

- Ministry of Finance - charged with formulating, stipulating and implement policies connected to budgeting, taxes, customs, excise, treasury, state assets management, fiscal balance as well as budget financing and risk management
- Subsidiary government institutions responsible for the formulation of tax policy and procedures of relevance to oil palm companies:
  - State Treasury
  - Indonesian Tax Offices
  - Customs Office
    - This office is related to the exit permit, including foreign workers' entry permit
  - Director General of Taxation
    - Responsible for issuing tax policy
- District Tax Service Office and the Local Tax on Land and Building Office (PBB) - responsible for the management of all tax related payments imposed on oil palm plantations.

#### 1.4.3. Legally required documents or records

- Monthly VAT-reports

#### 1.4.4. Sources of information

##### *Non-Government sources*

- Falconer, A., Mafira, T., & Sutiyono, G. (2015). Improving Land Productivity through Fiscal Policy: Early Insights on Taxation in the palm oil supply chain. Climate Policy Initiative.
- Suroyo, G., & Danubrata, E. (2015, February 24). Indonesia to crack down on corporate tax avoidance. Retrieved from [www.reuters.com: http://www.reuters.com/article/us-indonesia-tax-taxavoidance-idUSKBN0LS05320150224](http://www.reuters.com/article/us-indonesia-tax-taxavoidance-idUSKBN0LS05320150224)
- Transparency International . (2013, January 4). Indonesian court fines palm oil giant for tax evasion. Retrieved from [www.ti.or.id: http://www.ti.or.id/en/index.php/news/2013/01/04/indonesian-court-fines-palm-oil-giant-for-tax-evasion](http://www.ti.or.id/en/index.php/news/2013/01/04/indonesian-court-fines-palm-oil-giant-for-tax-evasion)
- Transparency International . (2016). Indonesia . Retrieved from [www.transparency.org: https://www.transparency.org/country/#IDN](https://www.transparency.org/country/#IDN)

- [http://daemeter.org/new/uploads/20150902122555.RFN\\_E\\_Book\\_p09.pdf](http://daemeter.org/new/uploads/20150902122555.RFN_E_Book_p09.pdf)
- <http://climatepolicyinitiative.org/wp-content/uploads/2015/12/Full-Report-English-Early-Insights-on-Taxation-in-the-Palm-Oil-Supply-Chain.pdf>
- <http://bisniskeuangan.kompas.com/read/2013/10/22/0725287/sitemap.html>
- Environmental Investigation Agency (EIA) study, dated Dec 2014: PERMITTING CRIME: How palm oil expansion drives illegal logging in Indonesia <http://eia-international>

#### **1.4.5. Risk determination**

##### *Overview of Legal Requirements*

Indonesia's Value Added Tax (VAT) (Pajak Pertambahan Nilai or PPN) rate is 10%, payable by companies exceeding sales of IDR 4.8 billion (369,000 USD) per year. VAT exemption is available for the import of capital goods for plantation companies and CPO mills and oil palm plantation owners and biofuel producers in particular benefit from VAT exemptions (Falconer, Mafira, & Sutiyono, 2015, p. 14). The biofuel component of fuel sales is also exempt from VAT.

##### *Description of risk*

Tax evasion is a widely known issue in Indonesia and within the palm oil sector especially. Tax evasion in the palm oil industry is oftentimes due to the existence of illegally operating plantations, which operates without the HGU and thus avoids paying land and building tax as well as transfer pricing, which is the shifting of profits to subsidiaries located in lower taxed regions, thus reducing tax liability (Butt, 2011). Another risk in relation to tax is deliberately wrongful filling of tax forms by large corporations, which have proved a pervasive problem in the Indonesian palm oil industry as well as widespread corruption among the Indonesian elite (Transparency International, 2013; Suroyo & Danubrata, 2015).

In addition, general enforcement in tax related issues in Indonesia remains weak: "The tax office often fails to detect tax evasion, so lost tax revenue is very rarely identified, let alone recovered" (Butt, 2011).

##### *Risk conclusion*

This indicator has been evaluated as Elevated risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.4.6. Risk designation and specification**

Elevated risk

#### **1.4.7. Control measures and verifiers**

##### *Country Specific*

- Ensure the plantation company has the following valid tax documents:
  - Value Added Tax and Monthly Withholding Tax Reports – obtain copies from the company to verify taxes are correct and paid
  - Sales documents/invoices – confirm that information product type, quantities etc. are correctly stated, and that sales prices are in line with market prices and quantities match the taxes paid
  - Receipts for payment of VAT taxes

- Confirm with the Directorate General of Tax (PBB) the operation is up-to-date in the payment of the applicable VAT taxes

#### *Generic*

- Sales documents shall include applicable sales taxes.
- Receipts for payment sales taxes shall exist.
- Volumes, species and qualities given in sales and transport documents shall match the fees paid.
- Sales prices shall be in line with market prices.
- Volume and qualities shall match the sales documents.
- Authorities shall confirm that operation is up to date in payment of applicable sales taxes.
- Consultation with financial authority to verify that all required income and profit taxes have been paid

### **1.5. Income and profit taxes**

*Legislation covering different types of sales taxes which apply to the material being sold. Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.*

#### **1.5.1. Applicable laws and regulations**

- Income Tax Regulation Law No. 7 of 1983, Law No. 7 of 1991, Law No. 10 of 1994, Law No. 17 of 2000, Law No. 36 of 2008 on Income Tax [link](#)
- Act No 7 year 1983 - [link](#)
- [link](#) (Reference with Column E: in conjunction with Act No 7 Year 1983)

#### **1.5.2. Legal authority**

- Ministry of Finance - charged with formulating, stipulating and implement policies connected to budgeting, taxes, customs, excise, treasury, state assets management, fiscal balance as well as budget financing and risk management
- Subsidiary government institutions responsible for the formulation of tax policy and procedures of relevance to oil palm companies:
  - State Treasury
  - Indonesian Tax Offices
  - Customs Office
    - This office is related to the exit permit, including foreign workers' entry permit
  - Director General of Taxation
    - Responsible for issuing tax policy
- District Tax Service Office and the Local Tax on Land and Building Office (PBB) - responsible for the management of all tax related payments imposed on oil palm plantations.

#### **1.5.3. Legally required documents or records**

- Monthly Withholding Tax Reports

#### 1.5.4. Sources of information

##### *Non-Government sources*

- Butt, S. (2011, June). Taxing questions. Retrieved from [www.insideindonesia.org](http://www.insideindonesia.org): <http://www.insideindonesia.org/taxing-questions>
- Deloitte . (2016). Indonesia Highlights 2016. Deloitte.
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- Transparency International . (2013, January 4). Indonesian court fines palm oil giant for tax evasion. Retrieved from [www.ti.or.id](http://www.ti.or.id): <http://www.ti.or.id/en/index.php/news/2013/01/04/indonesian-court-fines-palm-oil-giant-for-tax-evasion>
- Transparency International . (2016). Indonesia . Retrieved from [www.transparency.org](http://www.transparency.org): <https://www.transparency.org/country/#IDN>
- <http://climatepolicyinitiative.org/wp-content/uploads/2015/12/Full-Report-English-Early-Insights-on-Taxation-in-the-Palm-Oil-Supply-Chain.pdf>
- Corruption Perceptions Index for Indonesia: <https://www.transparency.org/cpi2014/results>

#### 1.5.5. Risk determination

##### *Overview of Legal Requirements*

In Indonesia, income tax is based on self-assessment and the burden of proof lies with the taxpayer to ensure it is compiling with the law and paying the right amount of taxes not with the tax authorities (PwC, 2015, p. 522). Self-assessment means that taxpayers themselves calculate, pay and report the amount of tax. The penalties for tax evasion and avoidance are strict; including for underpaid tax, additional underpaid tax, overpaid tax and nil tax assessments that may be received by the debtor in the form of letters, warrants and administrative sanctions (PwC, 2015). The standard corporate tax in Indonesia is 25% and apply to both domestic- as well as international-sourced income (Deloitte, 2016). Small enterprises (corporate taxpayers with an annual turnover of not more than Rp 50 billion; about US\$ 5.8 million) are entitled to a tax discount of 50% of the standard rate, which is imposed proportionally on taxable income of gross turnover up to Rp 4.8 billion or equivalent to US\$ 565,000 (Deloitte, 2016; PwC, 2015).

##### *Description of risk*

Tax evasion is a widely known issue in Indonesia and within the palm oil sector especially. Tax evasion in the palm oil industry is oftentimes due to the existence of illegally operating plantations, which operates without the HGU and thus avoids paying land and building tax as well as transfer pricing, which is the shifting of profits to

subsidiaries located in lower taxed regions, thus reducing tax liability (Butt, 2011). Another risk in relation to tax is deliberately wrongful filling of tax forms by large corporations, which have proved a pervasive problem in the Indonesian palm oil industry as well as widespread corruption among the Indonesian elite (Transparency International, 2013; Suroyo & Danubrata, 2015).

In addition, general enforcement in tax related issues in Indonesia remains weak: "The tax office often fails to detect tax evasion, so lost tax revenue is very rarely identified, let alone recovered" (Butt, 2011).

Also, Indonesia is ranked 90 out of 176 countries overall for the Corruption Perception Index, scoring a 37 / 100 in 2016.

#### *Risk conclusion*

This indicator has been evaluated as Elevated risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.5.6. Risk designation and specification**

Elevated risk

#### **1.5.7. Control measures and verifiers**

- Ensure the plantation company has the following valid tax documents:
  - Value Added Tax and Monthly Withholding Tax Reports - obtain copies from the company to verify taxes are correct and paid
  - Sales documents/invoices - confirm that information product type, quantities etc. are correctly stated, and that sales prices are in line with market prices and quantities match the taxes paid
  - Receipts for payment of sales taxes, related royalties and other required fees
- Confirm with the Directorate General of Tax (PBB) the validity of Monthly Withholding Tax Reports report and the operation is up-to-date in the payment of the applicable taxes

### **1.6. Disclosure of information**

*Legislation covering requirements for regular business reporting to ensure information disclosure and transparency. Risk relates to lack of business transparency and/or incorrect disclosure of legally required business information.*

#### **1.6.1. Applicable laws and regulations**

No laws applicable

There are no legal requirements related to disclosure for business connected to the palm oil sector in Indonesia, except related with public documents such as AMDAL, Concession status.

#### **1.6.2. Legal authority**

N/A

#### **1.6.3. Legally required documents or records**

N/A

#### **1.6.4. Sources of information**

### *Government sources*

- UU No. 14 Tahun 2008 on Keterbukaan Informasi Publik (Public Information Disclosure)

#### **1.6.5. Risk determination**

There are no legal requirements related to disclosure for business connected to the palm oil sector in Indonesia. In the contrary there are restrictions on publishing certain kinds of information in the public domain, e.g., palm oil license boundaries.

Some large-scale holders do publish annual reports including sustainability reporting; however, the information published across the sector is not consistent and limited.

#### **1.6.6. Risk designation and specification**

Not applicable.

There is not legal requirement for business information disclosure applicable to the palm sector in Indonesia. One still may require key business information from their supplier.

#### **1.6.7. Control measures and verifiers**

N/A

## SOCIAL ISSUES

### 2.1. Civil rights - legal employment

*Legal requirements for employment of personnel involved in plantation activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withhold by employer. Risk relates to situations/areas where systematic or large scale noncompliance with labour and/or employment laws. The objective is to identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.*

#### 2.1.1. Applicable laws and regulations

- Act No 21 year 2000 on Labour Union. - [link](#)
- Act No 13 Year 2003 on Manpower - [link](#)
- Act No 3 Year 1992 on Worker Social Security. - [link](#)
- Act No 24 Year 2011 on Social Security Organizing Body.(BPJS) - [link](#)
- Act No. 40 Year 2004 On National Social Security System (SJSN) - [link](#)
- Act No. 21 Year 2007 on the suppression of Criminal Act human trafficking - [link](#)
- Article 13 paragraph (1) Ministerial Decree 150/1999 on paragraph (2) Ministerial Decree 196/1999 on the Implementation of the Social Security For freelance, Wholesale and Specific Time Employment Agreement
- Legal Basis for Labour Inspection International Labour Organization Law No. 3 of 1951 concerning Bringing the Labour Inspection
- Law No. 21 of 2003 concerning the Ratification of ILO Convention No. 81 on Labour Inspection in Industry and Trade.
- Presidential Decree No. 21 of 2010 concerning Labour Inspection.
- Manpower and Transmigration Ministerial Decree No. 9/V/2005 concerning Procedure for Labour Inspection Reporting
- Law No. 23 of 1948 of the Republic Indonesia into operation for the whole territory of Indonesia.
- Law No. 7 of 1981 concerning Compulsory Reporting for Companies.
- Law No. 13 of 2003 concerning Manpower.
- UU No. 13 Tahun 2003 about Employment
- Pasal 153 ayat 1 huruf e UU No.13/2003 yang berbunyi : Pengusaha dilarang melakukan pemutusan hubungan kerja dengan alasan pekerja/buruh perempuan hamil, melahirkan, gugur kandungan, atau menyusui bayinya. Pemutusan hubungan kerja yang dilakukan karena pekerja hamil adalah batal demi hukum dan pengusaha wajib mempekerjakan kembali pekerja yang bersangkutan
- No. 39 Tahun 1999 about Human Right - [link](#)
- No. 36 Tahun 2009 about Healthy - [link](#)
- Regulation of Ministry of Home Affairs No. 50 year 2010 on Immigrant labour, [link](#)

#### *Local Regulations*

- Local Regulation No. 7 year 2014. Manpower in South Kalimantan [link](#)

- Local Regulation No. 4 year 2014 [link](#)

#### *Government Regulations*

- Government Regulation No 86 Year 2013 on Procedures for The Imposition of Administrative Penalties in Addition to The Organization of Employer and Any Person, Other Than Employer, Workers, and Contribution in The Implementation of The Beneficiaries of Social Security - [link](#)
- Article 36, Government Regulation No. 35, Year 2015

#### *Local Regulations*

- Local Regulation No. 188.4/420/2015, on minimum wage in Papua
- Local regulation No. 187 year 2009 on Minimum Wage in Papua barat - [link](#)
- Local Regulation of Papua Barat Nr. 561/198/10/2015 on Minimum Wage of Papua Barat year 2016

#### **2.1.2. Legal authority**

- Ministry of Manpower and Transmigration.
  - Company should register the work agreement with employee to Central Ministry of Manpower and Transmigration or the provincially based Ministry of Manpower and Transmigration. In Indonesia the work agreements can be accepted by Government if the employment is not permanent but rather temporary or project-based. To register the employment contract, the company should provide the reason why the employment is contract-based or temporary (<http://naker.go.id/>).
- Ministry of Health
  - Companies should register workers and employees, related to health and safety rights (<http://www.depkes.go.id/>).
- Ministry of Home Affairs
  - Companies must register foreign employees associated with tenure, period of stay and salary to ministry of home affairs (<http://www.kemendagri.go.id/>).
- Badan Penyelenggara Jaminan Sosial – BPJS Ketenagakerjaan (BJPS Manpower)
  - Office of Indonesia's two mandatory Social Security Programs (SJSN Law)

#### **2.1.3. Legally required documents or records**

- Employment Agreement
- Social Security Card for Employees
  - All employees must be covered by the mandatory employment security
- A valid foreign workers recruitment permit (IMTA). Migrant Workers further need to show valid passports, work visa ((limited stay permit (VITAS) and the limited stay permit card (KITAS)) as well as pass a medical exam prior to employment.

#### **2.1.4. Sources of information**

##### *Government sources*

- BPJS Ketenagakerjaan, (Februari, 2016). Semua Perusahaan Wajib Daftar Pekerjaanya ke BPJS Ketenagakerjaan.

<http://www.bpjsketenagakerjaan.go.id/berita/6313/Semua-Perusahaan-Wajib-Daftar-Pekerjanya-ke-BPJS-Ketenagakerjaan.html>

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#### *Non-Government sources*

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- Hukum Online. 2015. Labour Inspector after the new law of local government. <http://www.hukumonline.com/berita/baca/lt550fc5bd931d7/pengawas-ketenagakerjaan-setelah-uu-pemda-baru>
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- Shalahudin,, O. (2012, March 21). Child Workers in Oil Palm in Sambas and Sanggau - Digest. Retrieved from [odishalahuddin.wordpress.com](http://odishalahuddin.wordpress.com): <https://odishalahuddin.wordpress.com/2012/03/21/buruh-anak-di-perkebunan-kelapa-sawit-di-sambas-dan-sanggau-intisari/>
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#### 2.1.5. Risk determination

##### *Overview of Legal Requirements*

In Indonesia, public health- and employment security is covered by the "SJSN Law", which is administered and enforced by BPJS. Of greatest relevance to the oil palm industry is the coverage provided by BPJS' Manpower Division, which provides mandatory employment security (Alizia & Limbong, 2015). As of July 1 2015, all companies must register their workers with the BPJS. BPJS provides death- and accident insurance as well as old age savings and pensions for all citizens. Social security coverage is compulsory for all Indonesians including expatriates working in Indonesia for more than six months (Alizia & Limbong, 2015). Furthermore, pursuant to article 13, paragraph 1 in conjunction with article 2 of Ministry decrees 150/1999 and 196/1999, contract workers in oil palm plantations are required to be included in the social security program. Government regulation 86/2013 states that sanctions may be imposed on employers or individuals, if they fail to register themselves or their employees with the BPJS (Alizia & Limbong, 2015). Social security coverage is demonstrated by a social security card.

Legal employment in Indonesia is demonstrated by a range of documents, most importantly the employment contract, which, pursuant to article 54 of law no. 13/2003, should include the following in writing:

- The name, address, and type of business
- name, sex, age, and address of the worker / labourer
- position or type of work
- place of work
- the amount of wages and payment
- requirement work requirements which contains rights and obligations of employers and workers
- start and validity period of labour agreement
- place and date of employment agreement was established; Signature of the parties to the employment agreement (Indonesia Labour Law 2014).

However, an oral contract may be made between employer and employee, in which case the employer is obliged to issue a letter of appointment to the worker. The letter should include the following:

- Name and address of employee
- Start-date
- Type of job as well as intended tasks
- Wage (Indonesia Labour Law, 2014)

An employer must ensure its foreign workers have a work permit (IMTA). Based on the work permit (IMTA), the Indonesian Immigration will issue a limited stay permit (VITAS) and the limited stay permit card (KITAS) for the worker and the work permit is granted for a 6-month period (which can be renewed).

The government's new Manpower Act has set 2020 as the year in which it will seek to have eradicated child labour between the ages of 7 and 15. This will be achieved through programs that will provide opportunities for learning and advancement. However, because Indonesia's labour laws remain based on the Dutch Colonial Government Ordinance of 1925, child labour from the age of 12 is not illegal. Act No. 1 of 1951 attempted to raise the minimum age to 14, but it was never implemented, according to the U.S. Department of Labour Bureau of International Labour Affairs. However, Indonesia has ratified ILO conventions 138 on minimum working age thus setting the minimum age at 15. In addition, the Manpower Act will set the minimum working age at 15, and for work that is hazardous (Schuster Institute, 2015). Issues of female working conditions have proved an issue in the oil palm industry. Government responses have been act no. 13/2003 on employment and act no. 39/1999 on human rights, which dictates wage equality, the prohibition of dismissal when pregnant women and childbirth, menstruation leave and childbirth.

In relation to inspection, workplaces in Indonesia are inspected by representatives from the government, more specifically from the Directorate General of Labour Inspection Empowerment (the Ministry of Manpower and Transmigration), who are responsible for compliance with labour standards as well as enforcement and penalization (ILO, n.d.).

#### *Description of Risk*

There is a risk that companies do not comply with all the legal employment conditions.

- Although required by law, there is a risk that some companies do not register all their employees, preventing these workers from getting a social security card and the required medical coverage and insurance.
- Forced labour, child labour and debt bondage has unfortunately proved to be a pervasive issue in the Indonesian palm oil sector, ultimately affecting the legal employment of many palm oil workers (Skinner, 2013; United States Department of Labour, 2015; Schuster Institute, n.d.) (also see section 2.2).
- A company that has not registered its employees to the BPJS will get a total of two warning letters within ten work days. If the company still does not register the employees after the second warning letter, the company will be penalized in the form of a fine (Alizia & Limbong, 2015).
- Studies show that there are still many children engaged in labour, oftentimes caused by the need to contribute to the family's income as the children often constitute an important part of a family's resources (Shalahudin, 2011).
- In relation to palm oil, most children are invited or forced to work in plantations by their parents or siblings, as only 15% claim to be employed directly by a foreman or employer (Shalahudin, 2011). These problems are exacerbated by the weak oversight and enforcement from the Indonesian government, as ILO reports that until the end of 2009, the Directorate General of Labour Inspection Empowerment was only supported by 204 personnel consisting of:
  - 72 structural officials
  - 68 labour inspectors
  - 64 administrative staff (ILO, n.d.)
- Consequently, ILO reports a significant gap between the number of Indonesian companies and labour inspectors (ILO, n.d.) In 2014, in accordance with Law No. 23 Year 2014, Kemenaker noted the end of 2014 the number of labour inspectors was 1,776 to oversee 265,209 companies. Ideally, it takes 4,452 labour inspectors to do a comprehensive systematic inspection thus it could be said there is a shortage of 2,676 inspectors. Of the 514 districts / cities in Indonesia, 155 districts / cities have not had labour inspectors established in the area (Hukum, 2015).

- According to a recent report Dupper, Fenwick and Hardy (June 2016), one of the most significant problems facing the Indonesian labour inspectorate is a severe lack of financial and human resources. The budget is extremely constrained and there is a dearth of inspectors,101 particularly in some areas. It was reported in 2013 that labour inspection services could only reach between 200,000 and 250,000 firms per year out of a total of 22.7 million micro and small enterprises, and 3.8 million medium and large enterprises in Indonesia. This, the ILO notes, “leaves a large gap in provision of services, with it [being] estimated that less than 1 per cent of enterprises are serviced by labour inspectors each year”.
- In addition to inadequate resourcing, Dupper, Fenwick and Hardy mentioned that there is defective coordination on labour inspection between the central and regional governments and within and between regions. It has also been found that district-level inspectors have poor levels of motivation and high turnover, limited accountability and problems with corruption,106 and inadequate training and technical capacity. Finally, in this regard, labour inspectors have been found to turn a “blind eye” to businesses that openly violate labour laws and to side with employers rather than workers when interpreting or applying the relevant labour laws. For example, in a recent study, Amengual and Chirot (2016) point out that in respect of payment of minimum wages in Indonesia, inspectors either turned a blind eye to violations, or went as far as approving illegal worker-management agreements to postpone payment of the minimum wage.
- Currently, the central office of the Ministry has no authority over the district inspectors because they fall under the authority of the local government. As a result, the Ministry is often powerless to ensure uniform interpretation of the law, or to address instances of corruption or adverse influence.

### *Risk Conclusion*

In conclusion, employees in Indonesia is protected by a fairly comprehensive legal framework in relation to registration and coverage of employees. However, evidence suggests that the palm oil industry is still struggling with enforcement of legal employment, as several instances of debt bondage, forced labour, child labour and slave-like conditions have been uncovered by several reports (see section 2.2).In addition, see also evidence presented under 2.2 that overlaps with non-compliance with 2.1 requirements.

#### **2.1.6. Risk designation and specification**

Elevated risk

#### **2.1.7. Control measures and verifiers**

##### *Control Measures*

- Verify the palm oil plantation supplier(s) have the following relevant legal employment documents in place:
  - List of employees (e.g., request the employer’s payroll list)
  - Employment contract agreements for all employees (ask for a sample). The contract must include the following information:
    - The name, address, and type of business
    - Name, sex, age, and address of the worker / labourer
    - Position or type of work
    - Place of work
    - The amount of wages and payment

- Requirement work requirements which contains rights and obligations of employers and workers / labourers
- Start and validity period of labour agreement
- Place and date of employment agreement was made. Signature of the parties to the employment agreement
- Evidence of insurance (Social Security Agency for Health and Employment)
- Salary payment receipts (ask for a sample)
- A valid passport, work visas (limited stay permit (VITAS) and card (KITAS))
- Evidence of passed medical exam for migrant employees
- Consult stakeholders on the following:
  - Consult the Local Manpower and Transmigration office that all employees are registered
  - Consult the [Social Security Agency for Health and Employment](#) that all valid insurances are in place.

Conduct on-site verification:

- Confirm all workers are employed according to the regulations and required contracts and:
  - Hold certificates of competence required for the function that they perform
  - Are covered by mandatory insurance policies
  - Are paid a salary which is officially stated by the employer according to legal requirements
  - Are above the minimum age for both palm oil activities and hazardous work
  - Are paid at least the legally established minimum wage
- Interview employees and ask what activity they performed, what are their working hours and how much they are paid.
- Confirm the company does not employ unregistered workers, either on probation, or who receive government benefits for the unemployed

## 2.2. Health and Safety

*National and sub national laws and regulations incorporation of the ILO Fundamental Conventions. This is to ensure minimum employment requirements cover an observance of minimum working age, legislation against forced and compulsory labour, and discrimination and freedom of association etc. Risk relates to if there are gaps in the national and/or sub national laws and regulations with the ILO Fundamental Conventions. The objective is to identify the gaps and/or where there may be serious violations of the legal rights of workers take place against the eight core ILO Fundamental Conventions.*

### 2.2.1. Applicable laws and regulations

- Law
  - Act No. 1 Tahun 1970 about work safety / Safety Act No.1, 1970 - [link](#)
  - Act No 13 Year 2003 on Manpower - [link](#)
  - Act No No. 23 tahun 1992 about health / Health Act No.23, 1992 - [link](#)
  - Law No. 4 of 1992 concerning Social Security for Workers.

- Government Regulation
  - Government Regulation No 7 Tahun 1973 about Oversight of Distribution, Storage and Distribution of Pesticides.
- Ministry of Manpower and Transmigration Regulation
  - No.51 tahun 2012 about Optimization of Labour Inspection in provincial and district/ city / Regulation of the minister of manpower and transmigration No. 51/2012 about optimizing the manpower supervision in province area and region/city area.
  - No 1 Tahun 1978 about Occupational Health and Safety in Transportation and Logging.
  - No 5 Tahun 1996 about Management System Occupational Health and Safety.
- Ministry of Agrarian Regulation
  - No 1 No.19/2011 - Pedoman Perkebunan Kelapa Sawit Berkelanjutan Indonesia (Indonesian Sustainable Palm Oil/ISPO)
- Ministry of Manpower and Transmigration Decree
  - No.51 tahun 2012 No 186 Tahun 1999 about Workplace Fire Fighting Unit.
  - No 235 Tahun 2003 about Types of Jobs that Jeopardize the Health, Safety or Morals of Children.
- Ministry of Manpower and Transmigration Instruction
  - Government No 11 Tahun 1997 about Special Surveillance K3 Fire. - [link](#)

### 2.2.2. Legal authority

- Ministry of Manpower and Transmigration
  - <http://naker.go.id/>
  - Company should register the work agreement with employee to the Central Ministry of Manpower and Transmigration or the provincially based Ministry of Manpower and Transmigration. In Indonesia the work agreements can be accepted by Government if the employment is not permanent but rather temporary or project-based. To register the employment contract, the company should provide the reason why the employment is contract-based or temporary.
- The Directorate General of Labour Inspection Empowerment
  - A directorate under the Ministry of Manpower and Transmigration and a technical unit with the responsibility of providing labour protection for both workers and employers
  - "It's main role is to enforce the country's labour laws through labour inspection actions. It also formulates policies, standards, norms, guidelines, and mechanisms, and provides technical guidance and evaluation services in all these areas." ([http://www.ilo.org/labadmin/info/WCMS\\_153136/lang--en/index.htm](http://www.ilo.org/labadmin/info/WCMS_153136/lang--en/index.htm))
  - [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/genericdocument/wcms\\_166317.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_166317.pdf)
- Ministry of Health
  - <http://www.depkes.go.id/>

- Companies should register workers and employees, related to health and safety rights.
- Social Security Agency for Health and Employment
  - [http:// http://www.bpjsketenagakerjaan.go.id/](http://www.bpjsketenagakerjaan.go.id/)

### 2.2.3. Legally required documents or records

- There should be a certificate from the responsible institute documenting that staff has passed the work health and safety training.
- SGS, BSI, Nebosh Group are among Safety Training organization that provide certificate training for safety. Ministry of Manpower and Transmigration also provides training for safety.

### 2.2.4. Sources of information

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### 2.2.5. Risk determination

#### *Overview of Legal Requirements*

Companies are required to have employees trained in work safety by an independent institute with international recognition. All persons involved in operational activities have a legal obligation to wear personal protection equipment along with safe operation of machinery. Furthermore, there exists a wide array of requirements to the safe handling of chemicals referent to Act No 1/1970.

#### *Description of Risk*

There is a risk that the legal health and safety requirements are not being met.

- As reviewed above, the Indonesian legal framework has incorporated many safety requirements beneficial to workers in palm oil plantations. This protection is indeed necessary, as workers in oil palm plantations face several hazards daily. Some major risks are (ILO, 2004):
  - Falling fruit bunches (weighing 15-25 kilograms)
  - Injuries from cutting tools
  - Eye damage from falling fronds
  - Bites from insects and snakes as well as oil palm pest (fire caterpillars)
  - High level of sun exposure causing heating, dehydration and increased risk of skin cancer
  - Poisoning from toxic herbicides (such as paraquat)
  - Abrasion from the thorns of the palm oil fruit
  - Injuries from heavy lifting and carrying as well as repetitive movements
- Furthermore, the use of safety equipment is not common in Indonesia, with safety equipment being seen by some workers as a complication to their work flow. Sometimes, therefore, employees do not use safety equipment even though the company has provided it.
- Supervisors and managers commonly do not wear safety equipment; with a reported lack of enforcement or incentives to use it. In relation to this, it is worth noting that the FAO has reported major difficulties in obtaining information on occupational accidents and diseases (Strehlke, n.d).
- It is also noted that in most cases only fatalities or permanent incapacity is reported, thus leaving many workers with serious injuries vulnerable. Workplaces in Indonesia are inspected by representatives from the government, more specifically from the Directorate General of Labour Inspection Empowerment (the Ministry of Manpower and Transmigration), who are responsible for compliance with labour standards as well as enforcement and penalization (ILO, n.d).

#### *Risk Conclusion*

In conclusion, health and safety requirements have been and continue to be poorly implemented in Indonesia. The risk is assessed as Elevated.

### 2.2.6. Risk designation and specification

Elevated risk

### 2.2.7. Control measures and verifiers

- Seek evidence the palm oil plantation supplier(s) have the following valid H&S documents in place:
  - Health and Safety policies and procedures
  - Health and Safety training certificate
  - Workplace deaths records
  - Annual sustainability reports - check if the palm oil plantation regularly reports on its Occupational Safety and Health (OSH) management system
- Consult stakeholders on the following:
  - Confirm employees are registered with the [Ministry of Health](#)
  - Consult the [Social Security Agency for Health and Employment](#) that all valid insurances are in place and being paid
  - Confirm with the training organization that provide certificate training for safety (main independent institutions that provide this certificate include: SGS, BSI, Nebosh Group) or the Ministry of Manpower and Transmigration) or the Ministry of Manpower and Transmigration that the palm oil plantations obtains a valid H&S training certificate
- Confirm with on-site verification:
  - All safety and health regulations are followed and all required safety equipment is used
  - Interview employees to verify they have been trained about work safety and equipment use

## 2.3. ILO Fundamental Conventions are upheld

*Legally required personnel protection equipment for persons involved in plantation activities and safety requirements to machinery used. Legally required safety requirements in relation to chemical usage. The health and safety requirements that shall be considered relate to operations on the plantation. Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of plantation workers at significant risk throughout plantation establishment and management operations.*

### 2.3.1. Applicable laws and regulations

*Laws and Regulations Related to Child Labour (US DOL 2014)<sup>2</sup>*

Standard, age and related legislation:

- Minimum Age for Work - 15 - Article 69 of Law No. 13/2003, Manpower Act; Law No. 20/1999 on the Ratification of ILO C. 138 (39, 40)
- Minimum Age for Hazardous Work - 18 - Article 71 of Law No. 13/2003, Manpower Act (40)

<sup>2</sup> (United States Department of Labor, 2015) - <http://www.dol.gov/ilab/reports/child-labor/findings/2014TDA/indonesia.pdf>

- Prohibition of Hazardous Occupations or Activities for Children - Annex F of the Ministry of Manpower and Transmigration Decree No. 235; Chapter 1 of the Appendix to Presidential Decree No. 59/2002 (41, 42)
- Prohibition of Forced Labour - Article 32 of Law No. 13/2003, Manpower Act; Articles 1–2 of Law No. 21/2007 on the Eradication of the Criminal Act of Trafficking in Persons (40, 43)
- Prohibition of Child Trafficking - Article 83 of Law No. 23/2002, Child Protection Act; Article 6 of Law No. 21/2007 on the Eradication of the Criminal Act of Trafficking in Persons (40, 43)
- Prohibition of Commercial Sexual Exploitation of Children - Article 74 of Law No. 13/2003, Manpower Act; Articles 81 and 82 of Law No. 23/2002, Child Protection Act; Law No. 23/2002; Article 297 of the Penal Code; Law No. 10/2012 on the Ratification of the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (7, 40, 44)
- Prohibition of Using Children in Illicit Activities - 18 - Article 74 of the Manpower Act, Law No. 13/2003; Articles 67, 78 and 89 of Law No. 23/2002, Child Protection Act (40, 45)
- Minimum Age for Compulsory Military Recruitment - 18 - Law No. 34/2004 on the Indonesian National Armed Forces (46, 47)
- Minimum Age for Voluntary Military Service - Law No. 34/2004 on the Indonesian National Armed Forces (46, 47)
- Compulsory Education Age - 15 - Article 48 of Law No. 23/2002, Child Protection Act; Articles 6 and 34 of Law No. 20/2003, National Education Law, (45, 48)
- Free Public Education - Article 34 of Law No. 20/2003, National Education Law (48)

*ILO Conventions ratified by Indonesia Government and accompanying legislation*

ILO Convention and ratification in Indonesia:

- Convention No. 19 Equality of Treatment for National And Foreign Workers as Regards to Workmen’s Compensation for Accident - Indonesia staatsblad 1929 No. 53
- Convention No. 29 Forced or Compulsory Labour - Indonesia staatsblad 1933 No. 261
- Convention No. 45 The Employment of Women on Underground Work in Mines of All Kind - Indonesia Staatsblad 1937 No. 219
- Convention No. 81 Labour Inspection - Undang-Undang Republik Indonesia Nomor 21 Tahun 2003, Tentang Pengesahan ILO Convention No. 81 Concerning Labour Inspection in Industry and Commerce (Convention ILO No. 81 Mengenai Pengawasan Ketenagakerjaan dalam Industri dan Perdagangan), Tanggal 25 Juli 2003
- Convention No. 87 Freedom of Association and Protection of Right to Organize - Undang-Undang Republik Indonesia Nomor 21 Tahun 2000, Tentang Serikat Pekerja / Serikat Buruh, Tanggal 4 Agustus 2000
- Convention No. 88 Institute for Employment Service - Keputusan Presiden Republik Indonesia Nomor 36 Tahun 2002 Tentang Pengesahan Ilo Convention No. 88 Concerning The Organization Of The Employment Service (Convention Ilo No. 88 Mengenai Lembaga Pelayanan Penempatan Tenaga Kerja), Tanggal 29 Mei 2002
- Convention No. 98 The Application of The Principles of The Right to Organize and to Bargain Collectively - Undang-undang Nomor 18 Tahun 1956 Tentang Persetujuan

Convention Organisasi Perburuhan Internasional No. 98 mengenai Berlakunya Dasar-dasar dari pada Hak untuk Berorganisasi dan untuk Berunding Bersama, Tanggal 29 Agustus 1956

- Convention No. 100 Equal Remuneration for Men and Women Workers for Work of Equal Value - Undang-undang Nomor 80 Tahun 1957 Tentang Persetujuan Convention Organisasi Perburuhan Internasional No. 100 mengenai Pengupahan bagi Pekerja Laki-laki dan Wanita untuk Pekerjaan yang Sama Nilainya, Tanggal 19 Desember 1957
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#### *Child Labour Laws*

- Act No. 25 Year 1997, article 1 on child labour - [link](#)
- Act No 13 Year 2003, article 68 – 75 on Child labour - [link](#)
- Act No. 20 Year 1999 on ILO Ratification on ILO Convention No. 138 Year 1973 on Minimum age worker
- Act No. 1 Year 2000 ILO Ratification on ILO Convention No. 182 Year 1999 On Prohibition and Immediate Action for the Elimination of the Worst Forms of Child

- Decree of Ministry of Labour and Transmigration No: KEP. 235 /MEN/2003 on Types of Work that are Hazardous to Health, Safety or Morals of Children.
- Decree of Ministry of Labour and Transmigration No. Kep. 115/Men/VII/2004 On Protection for Children who do Works to Develop Talents and Interests.

#### *Women Employee rights*

- <http://www.gajimu.com/main/pekerjaan-yanglayak/hak-maternal/pertanyaan-mengenai-hak-pekerja-perempuan-1>
- Convention on the Elimination of All Forms of Discrimination Against Women yang telah diratifikasi dengan UU No. 7 Tahun 1984 (CEDAW)
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- ILO Convention No. 183 Year 2000 on Maternity Protection (Konvensi ILO mengenai Perlindungan Maternitas)
- [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/legaldocument/wcms\\_149910.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/legaldocument/wcms_149910.pdf).

#### **2.3.2. Legal authority**

See 2.2.2

#### **2.3.3. Legally required documents or records**

See 2.2.3

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### 2.3.5. Risk determination

#### *Overview of legal requirements*

Indonesia has ratified 8 out of the 8 ILO Fundamental Core Conventions.

Regarding child labour, Indonesia has a National Action Plan for the Elimination of the Worst Forms of Child Labour and has adopted the Roadmap for the Acceleration of Making Indonesia Free of Child Labour by 2022. 3.7 percent of children ages 10-14 years (816,363) are working and of these, 61.2 percent work in agriculture. Table 1 below outlines relevant Indonesian laws regarding child labour.

#### *Description of risk*

There is a risk that the standards of the ILO Fundamental conventions are not being met in palm plantations.

- Many organizations and media outlets have found multiple widespread cases of child labour, forced labour, and trafficking in persons related to the oil palm industry throughout Indonesia.
- The Schuster Institute for Investigative Journalism states, "According to the U.S. State Department's 2013 Trafficking in Person's Report (TIP), there are increasing reports about children exploited in prostitution in the Riau Province of Sumatra, a region dominated by the palm oil industry, and children from North Sulawesi exploited in prostitution in West Papua, now under development for new oil palm plantations."
- The ILO has published numerous accounts and reports and cites many instances of child labour abuses. Furthermore, ILO is implementing a number of action programs in North Sumatra to combat such abuses.
- KLK is Malaysia's third largest plantation company and has a repeated history of social conflicts, including a Bloomberg Businessweek article which highlighted a Schuster Institute for Investigative Journalism at Brandeis University investigation revealing widespread forced and child labour practices throughout Sumatra including in KLK's plantations (RAN 2014).
- A recent UNDP blog on Indonesia highlighted the disadvantages in the work of women on palm oil plantations which included a lack of pay allocated for jobs completed on the plantation. In addition, discrepancies between women and men regarding land ownerships, female workers on palm oil plantations were found to not be paid fairly for their contributions. Women are often unpaid for fruit collection from the ground as the contributions are often used to help their husbands meet the production quotas rather than for personal profit. If the total average monthly wages in Indonesia are indexed to 100, then agricultural wages average 54 and female agricultural wages average 44.
- In a recent study, Amengual and Chirot (2016) point out that in respect of payment of minimum wages in Indonesia, inspectors either turned a blind eye to violations, or went as far as approving illegal worker-management agreements to postpone payment of the minimum wage.

- Also, Indonesia is ranked 90 out of 176 countries overall for the Corruption Perception Index, scoring a 37 / 100 in 2016.

### *Risk Conclusion*

There is a general elevated risk for all of Sumatra with variation at the sub province and sub district level, and at finer scales related to corporate policies. Many anecdotal examples of child labour, labour issues throughout Sumatra. ILO Fundamental Conventions related laws are not upheld consistently by all entities and/or are systematically ignored, and/or are not enforced by relevant authorities.

#### **2.3.6. Risk designation and specification**

Elevated risk

#### **2.3.7. Control measures and verifiers**

##### *Control Measures:*

- Implement with category 1.1 control measures
- Confirm the palm oil plantation supplier(s) have:
  - Policies and procedures confirming ILO Fundamental Conventions are upheld and compliance system is in place

##### *Generic control measures:*

- At least the legally established minimum salaries shall be paid for personnel involved in farm management activities.
- Salaries shall be paid officially and declared by the employer according to requirements for personnel involved in farm management activities.
- Minimum age shall be observed for all personnel involved in farm management activities.
- Minimum age shall be observed for all personnel involved in hazardous work.
- Stakeholders shall confirm that forced or compulsory labour is not involved in farm management activities.
- There evidence and/or employees confirm the employer allows them the right to organize and collective bargain.

## **2.4. The rights of indigenous and traditional peoples are upheld**

*Legislation requirements addressing: i) customary rights relevant to plantation activities including requirements covering sharing of benefits and indigenous rights ii) "free prior and informed consent" in connection with transfer of plantation management rights and customary rights to the organisation in charge of the plantation operation iii) Legislation that regulates the rights of indigenous/traditional people as far as it's related to plantation activities. Possible aspects to consider are land tenure, right to use certain plantation related resources or practice traditional activities, which may involve plantation lands.) When there is no or inadequate legislation addressing the rights of traditional and indigenous peoples, their rights are still upheld by the relevant plantation operation(s). Risk relates to the violation of indigenous and traditional peoples' rights including land tenure rights, resource access and use rights, a due process has been follow in cases of transference of rights, a recognised dispute conflict resolution process exists etc.*

### **2.4.1. Applicable laws and regulations**

- The Indonesian Constitution

- Article 18b-2

- Act No. 5/1960 on Basic Agrarian Regulation
- Act No. 39/1999 on Human Rights, MPR Decree No X/2001 on Agrarian Reform
- Act No. 27/2007 on Management of Coastal and Small Islands
- Act No. 32/2010 on Environment clearly use the term Masyarakat Adat and use the working definition of AMAN
- Court decision MK35/2012
  - Important ruling as it led to change in UU. 4/1999 (Forestry Law), stipulating that customary forests no longer shall be considered as state forests, but instead become forests subject to rights (hutan hak)
- Law No. 4/2011 on geospatial information
  - Introduction of the One-Map Policy

#### 2.4.2. Legal authority

- The Ministry of Social Affairs
- Ministry of Environment and Forestry
- Ministry of Agrarian and Spatial Planning

#### 2.4.3. Legally required documents or records

- Indonesian Identity Card
  - The Indonesian government does not recognize any groups as distinctively indigenous and argue that all Indonesians are indigenous and thus subject to the same rights. The only distinction is thus between Indonesians and non-Indonesians

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#### 2.4.5. Risk determination

##### *Overview of Legal Requirements*

The existence of indigenous peoples, indigenous territories and traditional wisdom has been recognized in the Constitution (UUD45) Article 18B paragraph (2) states the recognition and respect the country's customary law communities along with their traditional rights.

Commensurate with this provision, Article 28 paragraph (3) assert respect for cultural identity and rights of indigenous people in tune with the times and civilization. The forestry, Law No.41 / 1999 on Forestry jo. Constitutional Court Decision No. 35 / PUU-IX / 2012 which states that indigenous forest under customary community, reaffirming the existence of indigenous people and their rights, including customary rights of indigenous forest in customary territory. Law 32/2009 on the Protection and Management of the Environment, recognition of indigenous peoples, local wisdom and indigenous peoples' rights related to the protection and management of the environment provided for in Article 63 paragraph (1) letter t, paragraph (2) letter n, and paragraph (3) letter k is the duty and authority of the central government, provincial government and district/city.

Some districts in Kalimantan has issued the regulations that recognizes the existence of indigenous peoples, such as the regulation Malinau District, No.10 / 2012, East Kalimantan Provincial Regulation No.1 / 2015 on Guidelines for the recognition and protection of indigenous peoples.

Law No. 39/2014 on Plantations - This law replaces the 2004 Law on Plantations, reaffirming principles of sustainability, the key role of local authorities in governing the sector and requirement for companies to negotiate partnership agreements with communities. Under the law, companies are effectively prohibited from retaining forest

within their plantations and local authorities are prohibited from issuing permits where adat communities have customary rights.

### *Risk Description*

Papua is the easternmost and largest province of Indonesia located on the island of New Guinea. Papua is home of the largest tract of rainforest outside of the Amazon and hosts nearly 50% of Indonesia's combined biodiversity (Bellantonio, Stoltz, Lapidus, Maitar, & Hurowitz, 2016). In Papua, there reside around 3.6 million people, including 312 different tribes and several uncontacted indigenous communities. Indigenous groups are scattered across Papua, with highland peoples living in the central mountainous region living of the cultivation of sweet potato along with pig husbandry (Survival International, n.d.). Living in coastal regions, the lowland people fare in swampy areas marred by malaria as hunter/gatherers (Survival International, n.d.). While the tribes share many similarities and an equal amount of differences, a common and central feature is the heavy reliance on nature and ecosystem services. Historically, Papuans have suffered under the Indonesian occupation and West Papua's struggle for free choice of government continues today (Al Jazeera, 2013). Violence, harassment and intimidation remains a part of everyday life for many Papuans wanting independence. In addition, Indonesia have made much profit of off Papua's abundance of natural resources through mining, logging and now palm oil. Often, this development happens at the expense of indigenous groups, who have reported several instances of forceful removal, intimidation and harassment by Indonesian security forces (Welford, 2016). Indeed, Survival International states that military presence "is almost always associated with human rights violations such as killings, arbitrary arrests, rape and torture" (Survival International, n.d.). The ready availability of natural resources and revenue have attracted many Indonesians to Papua and Papuans, who are ethnically, culturally and linguistically distinct from the rest of Indonesia, remain a minority in their own country.

The lack of security for indigenous peoples is a pervasive concern throughout Indonesia and especially in Papua. In practice, legal systems often deny or limit indigenous peoples' rights and State policies consistently discriminate against them. Norman Jiwan of Sawit Watch, an Indonesian NGO working to achieve social change for farmers, workers, and indigenous peoples, states: "World Bank studies show that less than 40% of all land holdings in Indonesia are formally titled, with the rest being held under informal or customary tenures. Since independence the Indonesian State has progressively dismantled customary institutions and pursued policies designed to integrate 'isolated and alien peoples' or 'isolated communities' into the national mainstream through resettlement, re-education and through the banning of traditional religions. Although the worst excesses of these policies have attenuated since 1998, underlying laws and policies continue to severely limit indigenous peoples' rights and customs" (Jiwan 2011). This discrimination and deliberate disregard of customary rights are exacerbated by the lack of formal mechanisms to institute Free and Prior Informed Consent (FPIC), which is generally lacking in Indonesia. In addition, it seems that state-recognized village-level institutions do not independently represent the interest of the local communities, but rather work in favour of state-control (Jiwan, 2011). As of 2011, Sawit Watch identified 660 land disputes between palm oil companies and local communities in Indonesia and the Badan Pertanahan Nasional (the National Land Bureau of Indonesia) listed some 3,500 land disputes as of 2009 (Jiwan 2011). This issue is exacerbated in Papua, due to Papua's remote location and ethnic difference from the rest of Indonesia. Often being perceived as sub-humans and cut-off from media access, the indigenes of Papua have suffered from several human rights abuses at the hands of private corporations and the Indonesian military without adequate compensation or media attention (Bellantonio, Stoltz, Lapidus, Maitar, & Hurowitz, 2016; Survival International, n.d.).

As a result of a long and tumultuous history of social strife regarding land use, a recent Constitutional Court decision concerning the legal recognition of local community ownership and control over customary forest, MK35/2012, broadens the scope for communities to assert adat ownership of land far beyond that defined in the 2004 Plantations Law (firstpeoples.org). This ruling is of great significance to the indigenous peoples of Indonesia, who in many cases have been forcibly removed from their ancestral land, consequently causing a high level of land conflicts in Indonesia. This claim is backed by a recent report from Indonesia's Human Rights Commission, which covers 40 case studies over more than 1,000 pages based on eight hearings held throughout the country (mongabay.com, 2016). These 40 cases are only a fraction of the thousands of disputes between communities, companies, and states. As a result of the report and investigation, the Commission is requesting for the Indonesian government to recognize indigenous peoples' rights and set up a task force on indigenous rights. While MK35/2012 was an important ruling, its effects are not yet clear as not a single customary forest has been declared by the government (Dewi, 2016). In addition, the 'Old' Plantation law was in 2014 replaced by the 'New' Plantation Law (MK39/2014), which is aimed more towards the protection of indigenous rights and customary claims. However, this law has also received criticism from civil society, which claims that it does not adequately provide justice to neither the indigenous peoples nor the environment, but still serves to benefit large-scale private investment. As a result, it is still believed that small farmers and indigenous peoples will be increasingly marginalized as stated by Marsuetus Darto, chairman of Farmers Union Oil Palm: Expert consultation conducted by NEPCon, 2014.

Indigenous peoples as subjects of law must first be recognized through Regional Regulations and for Papua through local regulation Papua Province No. 23 of 2008 (Gaung Aman.2015). Indigenous peoples' communal land is subject to the regulation Number 32 Year 2015 under the Minister of Environment and Forests which divides the forests into two ownership categories, i.e., the state forest and private forest. Indigenous people land tenure recognition must be advance through local regulations. After a process of recognition, their traditional territory will be mapped and indicate whether it overlaps with the state forest areas. If so, then the indigenous forest areas that have been officially recognized it will be returned to the indigenous peoples and excised from what is considered the state forest areas (CNN Indonesia, 2015).

There are two big issues related to indigenous peoples that generally arise during the oil palm plantation operation: First, land conflicts between company and indigenous people; and second, partnership programs or community development program that usually promised by company but never been realized. (Hidayat 2015)

Furthermore, evidence shows that the Korean-Indonesian palm oil company Korindo's plantations and subsidiaries have caused forceful removal of indigenous peoples, while also effectively removing the habitat of the tree kangaroo and other animals (Bellantonio, Stoltz, Lapidus, Maitar, & Hurowitz, 2016). The media attention to this caused a majority of Korindo's buyers, among others Wilmar, Musim Mas and IOI, to boycott palm oil sourced from Korindo's plantations (Nelsen, 2016).

Despite the change stemmed by Law No. 39/2014 on Plantations continued cases of abuse, corruption, and strife persist as evidenced above and thus this indicator is specified as Elevated Risk.

#### **2.4.6. Risk designation and specification**

Elevated Risk

#### **2.4.7. Control measures and verifiers**

- Compliance with 1.1 and 1.2 is demonstrated (see 1.1 and 1.2 control measures)

- Consult stakeholders on the following:
  - Review information on land tenure disputes and developments on indigenous and traditional peoples' land claims:
    - NGO investigations and reports ([Forest Peoples Programme](#), [Sawit Watch](#), [Rainforest Action Network](#), [Global Platform of Indigenous and Community lands](#), [Greenpeace](#), [Friends of the Earth](#))
    - Media reports (Mongabay.com, greenomics.org, red-monitor.org, thejakartapost.com, eyesontheforest.org)
  - Consult with indigenous communities, local communities, landowners and other stakeholders to find out if A) land tenure rights are clear and – where applicable – lease of the land has been agreed by all the landowners; and B) if there are any court orders or other legal decisions that mean that the company is not allowed to operate due to conflicts of land tenure
  - Assess palm oil plantations [corporate CSR risk](#), particularly check palm oil producers' 'Landbank' scores its linked to publicly available information on disclosure of their operations

## THE ENVIRONMENT

### 3.1. Environment

*National and sub national laws and regulations related to the identification and/or protection of environmental values including but not limited to those relating to water use, air and greenhouse gas emissions, chemical, fertilizer and pesticide use. Risk relates to systematic and/or large scale non-compliance with legally required environmental protection measures that are evident to an extent that threatens natural resources or other environmental values.*

#### 3.1.1. Applicable laws and regulations

- Law
  - Act No 32 Year 2009 on Protection and Environmental Management - [link](#)
- Government Regulation
  - No 27/2012 on Environment License.
- Ministerial Decree of Environmental
  - No.40/2000 - Working Guidelines Appraisal Commission Environmental Impact Assessment.

#### 3.1.2. Legal authority

- New Ministry of Environment and Forestry (MoEF)
  - The merging of two ministries (Ministry of Forestry and Ministry of Environment) into a single "mega ministry" governing forest management and implementation of environmental laws and regulations. The ministry's priorities include promoting community based forest management, recognition of customary forests, resolving land conflicts and eliminating fires.
- The Ministry of Agriculture
  - Formulation and implementation of policies relating to infrastructure and agricultural inputs. Charged with overseeing and increasing the production of rice, corn, soy, palm oil, sugarcane, meat as well as other agricultural products while also overseeing increasing competitiveness, quality as well as marketing.
- New Ministry of Agrarian and Spatial Planning
  - New ministry charged with implementing President Jokowi's vision for land reform, which includes recognition of more than 12 million ha of community forests and making available more than 2 million ha of land for agriculture.
- National Land Agency (BPN)
  - Government body that manages issues of land tenure by handling grants, renewal of titles as well as registration.
- A Bupati
  - Mayor has the authority to approve the environmental license
- The Government employs expert
  - Mayor WASGANISPHPL (15 types) with the authority to supervise GANISPHPL personnel at the concessions.

GANISPHPL-BINHUT is the technician who has the qualification (trained by government authorities) to manage protected forests, manage protected and endangered flora & fauna and implement environmental impact analysis.

### 3.1.3. Legally required documents or records

- Environmental Impact Assessment Document (AMDAL)
- Government Regulation No.27 Year 1999 about Environmental Impact Assessment
- Ministry of Environmental and Forestry Regulation No.24 year 2009 about Guidelines for Assessment of EIA Document
- Ministry of Environmental and Forestry Regulation No.5 Year 2012 about Type of Business Plan And / Or Activities Required To Have An Analysis Of Environmental Impact
- Ministry of Environmental and Forestry Regulation No.16 Year 2012 about Guidelines for Making of Environmental Document

### 3.1.4. Sources of Information

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### 3.1.5. Risk determination

#### *Overview of Legal Requirements*

PP No.27/1999, Permen LH No.28/2006, UU No.32/2009, Keppres No.32/1990 and Permentan No.14/2009 – Address Management of Environmental Impacts

Components of Indonesia's national regulatory framework for oil palm have been designed to avoid or mitigate environmental impacts of plantations and mills. The framework includes national laws and regulations, supplemented by numerous Ministerial regulations and sub-Ministerial decisions that set:

- i. pollution control standards covering fertilizers, pesticides, herbicides, air pollutants (including those resulting from fires), and waste water;
- ii. procedures and standards for Environmental Impact Assessments (AMDAL); and
- iii. locally established protected areas (kawasan lindung setempat) that may not be developed.

The AMDAL analyses likely environmental impacts of a proposed development activity and identifies recommended actions to minimize and/or avoid environmental impacts of a project. In theory, the document provides a basis for discussion among project proponents, government officials, and impacted communities on whether the proposed activity should move forward given the magnitude of impacts and potential to mitigate them. AMDAL is a strict requirement for all oil palm plantations greater than 50 ha and is integrated into licensing procedures.

The company should have an environmental license permit and should obey all applicable laws (see 'Applicable laws and regulations') if they want to do business in Indonesia. Conducting an Environmental Impact Assessment is a condition of issuing an Environmental License. Act No. 32 Year 2009 Clause 109 says that every person who conducts business and without an Environmental License will get a jail sentence of between one year and three years, and a fine between 1 billion rupiahs and 3 billion rupiahs.

First launched in June 1995, the Indonesian term for PROPER stands for "Program Penilaian Peringkat Kinerja Perusahaan dalam Pengelolaan Lingkungan." PROPER is an information disclosure system which grades factories against the regulatory standards, based on five colours – gold, green, blue, red and black (in descending order). Companies which are selected for participation are normally public listed companies, companies with operations that have significant impact on the environment, or export-oriented companies.

PROPER covers environmental aspects such as air pollution control, water pollution control, hazardous waste management, Environmental Impact Assessments (EIA) and marine pollution control – all of which are mandatory by law. Hailed as an innovative policy instrument when it was first developed, the PROPER rating system works in tandem with existing government regulations as well as enforcement, and aims to improve the environmental performance of businesses in Indonesia. From a regulator's perspective, it is more cost effective as the rating system mobilises external agencies for support. These external agencies or stakeholders can be local communities, NGOs, bankers, or the press, who have a keen interest on the environmental performance of the companies. This can be a good tool for helping to assess environmental risk linked to the palm oil sector.

#### *Description of risk*

There is a risk that the environmental requirements enshrined in law are not complied with in the field.

- In practice, not all the legal requirements are enforced or can be subject to bribes. Penalties are not very high for violating environmental law. Exceptions are now starting to strengthen environmental law. Common awareness is increasing.
- There are numerous cases of companies not conducting an Environmental Impact Assessment (AMDAL) – meaning the companies would not be able to obtain an Environmental License. Or cases where AMDAL has been already carried conducted, local government authority has yet officially approved the AMDAL, however companies have started ground activities. But in practice these companies are managing palm oil concessions. These cases usually involve the authorized person from the local government. For example in 2011 PT Nabire Baru and sister company PT Sariwana Unggal Mandiri, which holds a timber use permit, started logging the forests and planted two million oil palm seeds around the villages of Sima and Wami, Yaur District, West Papua (Pusaka, 2015). PT Nabire Baru is a subsidiary of the Goodhope Company, which is owned by a Sri Lankan multinational company, Carson Cumberbatch. This company with diverse interests is a medium-sized player in the oil palm industry, claiming 63,971 hectares of planted oil palm, mostly in Indonesia, in 201372. In fact, there are three companies linked to the same group active in the area. PT Sariwana Unggal Mandiri is the timber business which markets logs taken from the PT Nabire Baru concession around Wami, while in Sima village, another subsidiary called PT Sariwana Adi Perkasa has an 8,000 hectare permit to plant oil palm. The latter company was formally bought by Bukit Darah PLC (a company linked to Carson Cumberbatch), in 201373. In December 2014, the Regency Head finally approved PT Sariwana Adi Perkasa's Environmental Impact Assessment, even though the company was already operational, had cleared thousands of hectares of forest and planted oil palm (Pusaka, 2015).

- In reality sometimes company without an environmental impact assessment approval/license can continue operation. In oil plantation, this cases is now difficult because of the enforcement by RSPO for its producer members. Any new planting, company doing the planting should have AMDAL approval in place before any ground activities started.

#### *Risk conclusion*

In conclusion, law enforcement is weak when it comes to environmental license permits and violations. The risk is assessed as Elevated.

#### **3.1.6. Risk designation and specification**

Elevated risk

#### **3.1.7. Control measures and verifiers**

##### *Verifiers:*

- Confirm the palm oil plantation has the following required valid environmental documentation:
  - Environmental Impact Assessment (AMDAL)
  - Environmental Monitoring Document (Rencana Pemantauan Lingkungan (RPL)
  - Environmental Management Document (Rencana Pengelolaan Lingkungan (RKL)
  - Indicative Maps for Postponement of new permit (PIPIB)
  - Land Cover Map by the Ministry of Environment and Forestry (Kementerian Lingkungan Hidup dan Kehutanan (KLHK))
- Consult stakeholders and/or relevant data/websites:
  - Verify all legally required environmental documents (AMDAL, RKL, RPL,) are if validated by local authority and/or through accredited relevant audit reports
  - Review the Corruption Eradication Commission (KPK) annual reports. The KPK are engaged in highly visible efforts to improve legal compliance in industrial land licensing to ensure compliance with environmental requirements and detect overlaps with protected areas and other industrial land use licenses <http://www.kpk.go.id/id>
  - Review the colour grading of the PROPER rating: PROPER – <http://proper.menlh.go.id/portal/> Programme for Environmental Performance Rating, the PROPER rating award is an initiative by Indonesia's Ministry of Environment.

Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations. Check palm oil producers' 'environmental management' and 'fragile, marginal and peat soils' scores:

<http://www.sustainablepalmoil.org/companies/>.

- Conduct on-site verification:
  - Check that the Environmental Impact Assessment (AMADAL) was carried out and fulfils all the legal requirements and environmental controls are implemented in the field

## 3.2. Protected sites and species

*International, national, and sub national treaties, laws, and regulations related to protected areas allowable forest uses and activities, and/or, rare, threatened, or endangered species, including their habitats and potential habitats. Risk relates to illegal plantation establishment and/or management within protected sites. Note that protected areas may include protected cultural sites, including sites with historical monuments.*

### 3.2.1. Applicable laws and regulations

- Laws
  - No.5/1990 - Conservation of Biological Resources and Ecosystems – [link](#)
  - No.32/2009 - Indonesia. Undang-Undang Tentang Perlindungan dan Pengelolaan Lingkungan Hidup. UU No. 32, LN No. 140 Tahun 2009, TLN. No. 5059. [link](#)
- Presidential Decree No. 32, 1990 on the Management of Protected Forests (Undang-Undang No. 32/2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup )
- Government Regulation
  - No. 71/2014 on Protection and Management of Peatland Ecosystems [link](#)
  - No.27/1999 - Government Regulation on Environmental Impact Assessment (Peraturan Pemerintah Nomor 27 Tahun 1999 tentang Analisis Mengenai Dampak Lingkungan Hidup): [link](#)
- Minister of Agrarian
  - No.14/2009 - GUIDELINES FOR LAND USE PEAT FOR RAISING PALM OIL, Ministry of Agriculture: [link](#)
  - No.19/2011 - Pedoman Perkebunan Kelapa Sawit Berkelanjutan Indonesia (Indonesian Sustainable Palm Oil/ISPO)
- Minister of Environment and Forestry No.28/2006: Regulation outlining AMDAL requirements (Environmental Impact Assessment) for all OP plantations greater than 50ha (Permen LH No.28/2006) and is performed on behalf of the company by individuals or a consulting company accredited by the Ministry of Environment (MoE) to conduct AMDAL.

### 3.2.2. Legal authority

- New Ministry of Environment and Forestry (MoEF)
  - The merging of two ministries (Ministry of Forestry and Ministry of Environment) into a single “mega ministry” governing forest management and implementation of environmental laws and regulations. The ministry’s priorities include promoting community based forest management, recognition of customary forests, resolving land conflicts and eliminating fires.
- The Ministry of Agriculture
  - Formulation and implementation of policies relating to infrastructure and agricultural inputs. Charged with overseeing and increasing the production of rice, corn, soy, palm oil, sugarcane, meat as well as other agricultural products while also overseeing increasing competitiveness, quality as well as marketing

### 3.2.3. Legally required documents or records

- Maps of locally protected areas produced by companies linked to “Peatland Hydrological Unit” map
- Environmental Impact Assessment (AMDAL)
- Regulars report ie . Environmental Monitoring Document (Rencana Pemantauan Lingkungan (RPL) and Environmental Management Document (Rencana Pengelolaan Lingkungan (RKL)
- Indicative Maps for Postponement of new permit (PIPIB)
- Land Cover Map by KLHK

### 3.2.4. Sources of Information

#### *Non-Government sources*

- [http://daemeter.org/new/uploads/20130905124826.OilPalm\\_in\\_Indonesia\\_summary\\_final.pdf](http://daemeter.org/new/uploads/20130905124826.OilPalm_in_Indonesia_summary_final.pdf)
- [http://daemeter.org/new/uploads/20150902122555.RFN\\_E\\_Book\\_p09.pdf](http://daemeter.org/new/uploads/20150902122555.RFN_E_Book_p09.pdf)
- A recent Eyes on the Forest report that just came out offers more insight into the presence of illegal FFB in the supply chain in central Sumatra.  
<http://eyesontheforest.or.id/attach/EoF%20%2806Apr16%29%20No%20One%20is%20Safe%20English%20FINAL.pdf>

### 3.2.5. Risk determination

#### *Overview of Legal Requirements*

Criteria for delineating locally protected areas (Kawasan Lindung Setempat) were first stated in Presidential Decree No.32/1990 and have since been reinforced in more recent regulations such as Permentan LH No.28/2006: Regulation outlining AMDAL requirements (Environmental Impact Assessment (see 3.1 for more details on AMDAL requirements) and Government Regulation No. 71/2014 on Protection and Management of Peatland Ecosystems. Maps of locally protected areas are not produced by government agencies, but rather must be identified and avoided on the basis of biophysical characteristics that are measured in the field by companies during plantation development. Areas that may not be developed include:

- Peatlands greater than 3 meters in depth.
- Coastal tidal buffers of at least 100m from the high water mark.
- Riparian buffer zones of 5 m for a river with a dyke, and 100 m for a river (sungai) or 50 m for a tributary of a river (anak sungai).
- Buffers around lakes and dams of at least 50-100 meters from the high water mark.
- Buffers around surface water springs of at least 200 meters.
- Slopes greater than 40 percent.

Government Regulation No. 71/2014 on Protection and Management of Peatland Ecosystems requires ground surveys to refine and improve upon a recently completed “indicative map” of peatlands through ground surveys. Surveys are intended to deepen understanding of physical, biological, social and cultural attributes of the area to produce a revised “Peatland Hydrological Unit” map. Such maps are envisaged to be produced at national, provincial and district levels, with increasing levels of spatial resolution based on higher quality data.

This base map is then used for delineating areas for production vs protection, where protection must represent at least 30% of the total area, centered first on protection of the dome, and then building outward based on the following considerations:

- i. peat depth (more than 3m must be protected),
- ii. presence of endemic or protected species, and
- iii. other areas already designated for protection (e.g. hutan lindung). Based on these (or other) factors, governors or district heads can request to expand areas designated for protection by re-designating production areas for protection, but the reverse, i.e. the reassignment of protection areas for production, is not allowed.

#### *Description of risk*

There is a risk that natural ecosystems along the boundaries of protected areas are being cleared and/or threatened to establish palm oil plantations.

- Sources indicate that palm oil companies disregard the relevant laws including those connected to locally protected areas (Kawasan Lindung Setempat) and/or palm oil companies operating without land tenure, proper operating licenses etc.
- One of the most egregious forms of land-based illegality linked to palm oil in Indonesia is conversion of protected areas for commodity production. It is difficult to present data of overlap of palm oil concessions and incidents of possibility illegalities linked to the palm oil sector and protected areas in Papua via maps because there is no official publicly data released by KLHK (Ministry of Forestry and Environment). Nevertheless, based on observation, despite the current limited number of oil palm plantations in Papua, there are known palm oil plantations adjacent to the border of protected areas and wildlife reserves such as Wildlife Reserve of Mamberamo, Natural Reserve of Tamaru Selatan and Natural Reserve of Pegunungan Arfak. Due to the elevated risks linked with land tenure rights and agricultural licensing etc. as detailed under 1.1 and 1.2 combined with the long history several cases of palm oil farms in Papua converting protected areas for commodity production combined with the precautionary approach due to the lack of officially publicly available maps and data on palm oil concessions this category is been determined to be of elevated risk.

#### *Risk conclusion*

This indicator has been evaluated as Elevated risk.

#### **3.2.6. Risk designation and specification**

Elevated risk

#### **3.2.7. Control measures and verifiers**

##### *Verifiers:*

- Compliance with 3.1 is demonstrated (see 3.1 control measures)
- Confirm the palm oil supply area is not overlapping any [official protected areas](#) in Indonesia and cross check locally protected areas maps linked to to "Peatland Hydrological Unit" map
- Conduct on-site verification to confirm the palm oil plantation (s):
  - are not within official protected areas
  - management plans for protected sites and species are implemented and monitored

##### *Generic*

- All legally protected areas (including species habitats) shall be included in the management plan or related documentation if required by the legislation.

- Legal established procedures for surveying, managing and protecting endangered or threatened species within the management unit shall be followed and evidence as provided by a copy of the management plan
- Nature protection regulations such as protected areas, set-aside areas, protected species and hunting.

### 3.3. High Conservation Values (HCV)

*International, national, and sub national treaties, laws, and regulations related to protected areas allowable forest uses and activities, and/or, rare, threatened, or endangered species, including their habitats and potential habitats. Risk relates to illegal plantation establishment and/or management within protected sites. Note that protected areas may include protected cultural sites, including sites with historical monuments.*

#### Overall Context

Indonesia is in the process of updating Indonesia Biodiversity Strategic and Action Plan (IBSAP) 2015- 2020. IBSAP Implementation (2003-2013) has been running for more than 10 years. Result of implementation reviews of IBSAP carried out by National Development and Planning Agency (BAPPENAS) in 2012 showed that there are at least eight challenges that affect the implementation of biodiversity management including: (i) inadequate local/provincial insight on the function of biodiversity; (ii) biodiversity issue has not yet become the main issue; (iii) insufficient political support; (iv) inadequate human capacity with biodiversity issue recognition; (v) lack of synergy of biodiversity programs; (vi) less-publicized biodiversity policy; (vii) the absence of monitoring and evaluation institution at local level; and (viii) lack of stakeholders participation.

For the current assessment, HCV are identified as follows:

HCV 1 – all protected species including:

- bird species listed in IBA and EBA;
- species listed in CITES, IUCN under status of EN, CR, and Vu;
- species protected and strictly protected on national level (PP no.7 year 1999);

HCV 2 – core areas of intact forest <20,000 ha: UNESCO world heritage sites, ASEAN-Heritage Park, Ramsar sites, forests in strict nature reserves, biosphere reserves, reserves of national or regional parks.

HCV 3 – Key and rare ecosystem (Peat forest > 3 m depth, Karst, mangrove, Peat swamp).

HCV 4 – ecosystem protection forests and protection forests.

HCV 5 – any areas that is used by local community for live supporting system (i.e. Large river supplying clean water for local community).

HCV 6 –forests of the important cultural and historical sites.

The general threats to HCV areas in the four regions (Sumatra, Sulawesi, Kalimantan and Papua) mainly from the harvesting of timber from steep slopes (HCV 4.2), buffer zones adjacent to conservation areas or protection forest (HCV 1.1), areas with a high presence of critically endangered (CR) species (HCV 1.2), rare ecosystem (HCV 3) and within watershed areas (HCV 4.1 improper forest practices, waste from the forest operation causes damage to water sources (Remark Asia 2016).

#### *HCV Mapping Methodology*

Mapping used for the HCV the risk assessment is based on the HCV toolkit from 2008 and the HCV Common Guidance (2013). To identify HCV there are several stages,

applied methods and data sources used for the analyses. For HCV 1 we employed some data associated with distribution of species linked to the latest forest cover, conservation areas and riparian areas. The HCV 1 data and approach was also used for HCV 2 and 3 with the additional of IFL (Intact Forest Landscape), ecoregions and land systems data layers. For HCV 4 hydrological information, land systems and the latest forest cover data was used. As for analysing HCV 5 and 6 data used was based on information on hydrology, land cover and distribution of indigenous territories.

All data used in this study is public data available in the public domain and was cross checked with some reports to verify the validity of the data. Secondary data was also used and is detailed in the table below. The data used in this study has a medium scale that is above 1: 250,000 so it has its limitations associated with the detail of each HCV.

The non-forest and other forest map legend categories corresponds with legal terms. It is important to note non-forest areas are outside what is considered forest areas in legal terms, nevertheless, they may still be a potential palm oil supply area.

Maps, Scale and Source:

- Peta Rupa Bumi Indonesia - 1: 250.000 - Bakosurtanal /BIG
- Landcover 2016 - 1 : 250.000 - BAPLAN, Ministry of Forest
- Digital Elevation model SRTM 90 Meter - SRTM for the globe Version 4. Downloaded from: CGIAR-CSI SRTM 90m Database <http://srtm.csi.cgiar.org> CGIAR-CSI.
- Land system Map - 1: 250.000 - RePPPProt, A. 1990. National Overview from the Regional Physical Planning Programme for Transmigration. UK Overseas Development Administration and Directorate BINA Programme, Ministry of Transmigration, Jakarta.
- Ecoregion/Bioregion map - 1: 250.000 - Wikramanayake, E., E. Dinerstein, C. J. Loucks, D. Olson, J. Morrison, J. Lamoreux, M. McKnight, and P. Hedao 2002. Terrestrial Ecoregions of the Indo-Pacific: A Conservation Assessment. Island Press.
- Important Bird Areas (IBA) - 1: 1.000.000 - Birdlife International. 2013. Data zone: Important Bird Areas (IBA) and Endemic Bird Areas (EBA). Downloaded from: <http://www.birdlife.org/datazone/home>. Birdlife International.
- Endemic Bird Areas (EBA) - 1: 1.000.000 - Birdlife International. 2013. Data zone: Important Bird Areas (IBA) and Endemic Bird Areas (EBA). Downloaded from: <http://www.birdlife.org/datazone/home>. Birdlife International.
- Soil Map - 1: 250.000 - RePPPProt, A. 1990. National Overview from the Regional Physical Planning Programme for Transmigration. UK Overseas Development Administration and Directorate BINA Programme, Ministry of Transmigration, Jakarta.
- Geology Map - 1: 250.000 - Pusat Penelitian dan Geologi Bandung
- Tiger Distribution Map - 1: 500.000 - Wildlife Conservation Society 2011. Panthera tigris. In: IUCN 2013. IUCN Red List of Threatened Species. Version 2013.1
- Orang Utan Distribution Map - 1: 250.000 - Greenpeace : KEPO Hutan <http://www.greenpeace.org/seasia/id/Global/seasia/Indonesia/Code/Forest-Map/data.html>
- Peatland Distribution - 1: 250.000 - Wetlands International - Indonesia Programme & Wildlife Habitat Canada (WHC).
- Moratorium Map - 1: 250.000 - Kementerian Kehutanan. 2015. Peta Indikatif Penundaan Izin adalah Peta Lampiran SURAT KEPUTUSAN MENTERI KEHUTANAN REPUBLIK INDONESIA Nomor: SK.2312/Menhut-VIII/IPSDH/2015. Skala 1:250.000.

- Distribution Communal Land - 1: 500.000 - BRWA

### 3.3.1. Species Diversity – HCV 1

Concentrations of biological diversity including endemic species, and rare, threatened or endangered species that are significant at global, regional or national levels. HCV 1 sub-categories also consider:

- a) Areas that contain species that are listed as rare, threatened or endangered by IUCN and or Official National and/or regional lists;
- b) Centres of endemism where concentrations of endemic species occur;
- c) Areas that contain species that are listed as depleted or poorly reserved at national or regional scale;
- d) Areas with mapped significant seasonal concentrations of species (e.g. migratory staging areas);
- e) Areas of high species/communities diversity
- f) Areas that are identified in the literature as refugia.

#### 3.3.1.1. HCV Occurrence

Almost all HCV 1 areas which identified, located near protected areas. It's for support the maintenance of biodiversity for conservation and protected areas nearby. Management activities in the concession must ensure biodiversity support function is maintained or even improved. Impacts directly or indirectly, related to infrastructure development and improvement of access, should be considered. (LIPI 2014).

Papua is home to thousands of unique flora and fauna species, including birds of paradise, rainbow fishes, and tree kangaroos. These small marsupials are at risk of total extinction as they lose their forest habitat (Transportenvironment.2016). Based on HCV reports in Papua, it was discovered species diversity of flora and fauna. In Papua, flora found examples *Anisoptera costata*, *Aquilaria malaccensis*, *Instia bijuga*, *Pericopsis mooniana*, *Pterocarpus inidicus*. The types are categorized as VU (Vulnerable) and AN (Endangered) according to IUCN (2016). It also discovered numbers of fauna which endemic or threatened as categorized under IUCN Red List as Critically Endangered (CR). For example, *Zaglossus bruijnii* and *Eretmochelys imbricata* (IUCN 2016).

Using precautionary approach and forest coverage delineation following HCVF Toolkits' guidance, the total size for HCV 1 are as follows (based on forest types): 1) primary forest = 26,146,012 ha, 2) secondary forest = 7,903,984 ha, 3) plantation forest = - ha, and 4) non-forest = 1,574.671ha).

See Map 1 of HCV 1 areas in Annex.

#### 3.3.1.2. Sources of information

- Remark Asia. 2016. Laporan Identifikasi Nilai Konservasi Tinggi di PT Multi Wahana Wijaya, Provinsi Papua Barat. Indonesia : Remark Asia Consultant.
- Marcus Colchester, Patrick Anderson, Norman Jiwan, Andiko and Su Mei Toh, 2009, HCV and the RSPO: report of an independent investigation into the effectiveness of the application of High Conservation Value zoning in palm oil development in Indonesia. Forest Peoples Programme, HuMA, SawitWatch and Wils Asia, Moreton-in-Marsh. - See more at: <http://sawitwatch.or.id/2011/09/what%E2%80%99s-happen-in-the-indonesian-palm-oil-industry-2/#sthash.ae1FRpi3.dpuf>
- Jiwan. "What's happen (sic) in the Indonesian palm oil industry?" Sawit Watch. 2011. <<http://sawitwatch.or.id/2011/09/what%E2%80%99s-happen-in-the-indonesian-palm-oil-industry-2/>>.

- the Effects Of Palm Oil. <https://orangutan.org/rainforest/the-effects-of-palm-oil/>
- The Fifth National Report of Indonesia to The Convention on Biological Diversity. 2014. Ministry of Environment and Forestry of Indonesia. <https://www.cbd.int/doc/world/id/id-nr-05-en.pdf>
- Lembaga Ilmu Pengetahuan Indonesia (LIPI). 2014. Status Kekinian Keanekaragaman hayati Indonesia. Indonesian Institute of Sciences.
- Ekspedisi di Papua Barat, Menyimpan Keanekaragaman Hayati, 2014. [http://ekspedisi.biologi.lipi.go.id/bio\\_ekspedisi/?p=76](http://ekspedisi.biologi.lipi.go.id/bio_ekspedisi/?p=76)
- IDEAS. 2015. Identifikasi Nilai Konservasi Tinggi PT. Bintuni Utama Murni Wood Industries, April 2015. Bogor : Ideas Consultancy Services
- Re-mark Asia. 2014. Laporan Identifikasi dan Penilaian Hutan Bernilai Konservasi Tinggi High Conservation Value Forest IUPHHK-HA PT Mitra Pembangunan Global (PT MPG) Distrik Kais, Aifat Timur dan Aifat Selatan dan Maybrat, Propinsi Papua Barat, Indonesia. Bogor : Re-Mark Asia.
- Re-mark Asia. 2014. Laporan Identifikasi Nilai Konservasi Tinggi PT Permata Putera Mandiri Kabupaten Sorong Selatan, Propinsi Papua Barat, Indonesia. Bogor : Re-Mark Asia.
- [http://www.dephut.go.id/informasi/PHPA/ca\\_rekap.html](http://www.dephut.go.id/informasi/PHPA/ca_rekap.html)
- commons.wikimedia.org/wiki/File:Lesser\_Bird\_of\_Paradise
- Pattiselano, F and Arobaya, AYS. 2014. The future of Papua's biodiversity is alarming. The Jakarta Post. Manokwari, West Papua. Ed: Mon, December 1 2014 (<http://www.thejakartapost.com/news/2014/12/01/the-future-papua-s-biodiversity-alarming.html>)
- <http://www.wwf.or.id/?42763/Deklarasi-Papua-Barat-sebagai-Provinsi-Konservasi>
- Investigation reveals deforestation throughout palm oil supply chain. September 1, 2016 . <https://www.transportenvironment.org/press/investigation-reveals-deforestation-throughout-palm-oil-supply-chain>
- Burning Paradise: Palm Oil in the land of the Tree Kangaro. 2016. <http://www.mightyearth.org/BurningParadise/>
- [https://www.academia.edu/7015499/Biodiversitas\\_Hewan\\_Endemik\\_Papua](https://www.academia.edu/7015499/Biodiversitas_Hewan_Endemik_Papua)
- <http://www.iucnredlist.org/details/6429/0>
- <http://www.iucnredlist.org/details/136696/0>
- <http://www.iucnredlist.org/details/6434/0>
- <https://alamendah.org/2009/08/03/kanguru-indonesia-di-papua/>

### 3.3.1.3. Risk determination

The main threats to HCV 1 areas are include: fragmentation by illegal logging activities, forest and land fires, coaching (over hunting), and conversion of forest land by the government and other actors. (LIPI, 2014).

The implementation of IBSAP in 2012 indicates that the government facing a number of challenges such as (i) lack of understanding of the function of biodiversity in the area; (ii) Biodiversity issues have not become major issues; (iii) lack of political support; (iv) lack of adequate human resources with knowledge of issues on Biological Diversity; (v) lack of synergy of the Biodiversity programs; (vi) lack of dissemination of the Biodiversity management policy; (vii) the absence of monitoring institutions and

evaluation in the area; (viii) lack of stakeholders involvement in the area (5th CBD report.2014 ).

Furthermore, evidence shows that the Korean-Indonesian palm oil company Korindo's plantations and subsidiaries have caused forceful removal of indigenous peoples, while also effectively removing the habitat of the endemic and endangered tree kangaroo and other animals (Bellantonio, Stoltz, Lapidus, Maitar, & Hurowitz, 2016) (IUCN Redlist.2016). The media attention to this caused a majority of Korindo's buyers, among others Wilmar, Musim Mas and IOI, to boycott palm oil sourced from Korindo's plantations (Nelsen, 2016).

#### 3.3.1.4. Risk designation and specification

Elevated risk

#### 3.3.1.5. Control measures and verifiers

*Verifiers:*

- Confirm the palm oil plantation supplier has the following relevant has the following in place:
  - Biodiversity surveys and/or High Conservation Value (HCV) [assessments](#) to identify occurrence of HCV 1 values in or adjacent to the palm oil plantation
  - Conversation/High Conservation Value (HCV) management plans
  - Historical remote sensing imagery evidence to confirm no conversion of primary forest, peatlands and HCVs post 2005.
- Consult the relevant data/stakeholders:
  - Assess the risk of [deforestation](#) and [fires](#) use for land conversion by examining remote sensing time series images within palm oil plantation's operational boundaries
- Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations. Check palm oil producers' 'environmental management' and 'fragile, marginal and peat soils' scores: <http://www.sustainablepalmoil.org/companies/>
- Conduct on-site verification to confirm:
  - Confirm management plans for protected sites, species and High Conservations Values are implemented and monitored.
  - Maps/remote sensing images (for protected areas, deforestation etc.) assessed reflect reality

### 3.3.2. Landscape-level ecosystems and mosaics – HCV 2

*Large landscape-level ecosystems and ecosystem mosaics that are significant at global, regional or national levels, and that contain viable populations of the great majority of the naturally occurring species in natural patterns of distribution and abundance. Sub-categories:*

*a) Intact Forest Landscapes (IFL map<sup>3</sup> uses the most recent coverage)*

<sup>3</sup> <http://www.intactforests.org/world.map.html>

- b) *Landscape-scale natural forests that have experienced lesser levels of past human disturbance (e.g., minimal timber harvesting) or other management (e.g. fire suppression), or areas within such forests.*
- c) *Forests recognised as being regionally significant at the bioregion or larger scale by conservation organisations (in formally recognised reports or peer reviewed journals) due to the unusual landscape-scale biodiversity values provided by size and condition of the forest relative to regional forest land cover and land use trends.*
- d) *Forests that provide regionally significant habitat connectivity between larger forest areas or between refugia and mosaics.*
- e) *Significant Roadless areas.*
- f) *Significant Forests that haven't been affected by forest management activities.*

### 3.3.2.1. HCV Occurrence

To determine presence of HCV 2, follow HCVCG. All Intact Forest Landscapes (IFL) shall be considered as HCV 2.

Using precautionary approach and forest coverage delineation following HCVF Toolkits' guidance, the total size for HCV 2 are as follows (based on forest types): 1) primary forest = 31,120,543 ha, and 2) secondary forest = 9,183,536 ha.

See Map 2 of HCV 2 areas in Annex.

### 3.3.2.2. Sources of information

- Annex 2 - <http://www.globalforestwatch.org>
- Anggraeni, D. and Watopa, Y. (2004). Kajian singkat Konservasi dan Ekonomi (RACE). Suatu usaha untuk memadukan kepentingan konservasi dan pembangunan ekonomi di Tanah Papua. Conservation International, Indonesia.
- Remark Asia 2014. Rencana Pengelolaan dan Pemantauan NKT PT Wapoga Mutiara Timber Unit II, Papua. Indonesia : Remark Asia Consultant.
- <http://www.nabire.net/kelestarian-hutan-di-papua-terancam-akibat-pertambangan-ilegal/>
- <https://nurcahyanto88.wordpress.com/2011/10/07/peta-potensi-tambang-di-papua/>
- <http://distamben.papuabaratprov.go.id/index.php/mineral-batubara>
- <https://papua.go.id/view-detail-peta-3/explanation-geologi.html>

### 3.3.2.3. Risk determination

Annex 2 shows a Global Forest Watch (GFW) map of West Papua and IFL loss from 2000-2013 and concession boundaries of palm oil plantations (current and planned) on the island indicating a loss of IFLs linked to the establishment of palm oil plantations.

The main threats to HCV 2 areas include habitat fragmentation, logging activity, hunting, land clearance for mines, lack of knowledge of protected wildlife, illegal logging, the existence of settlements and the expansion of the palm oil plantation sector (Remark Asia 2014). The latest spatial analysis shows that the road network has approached more than 2700 km and about 25% of protected areas in Papua are located in less than 20 km from the constructed road (Anggraeni and Watopa, 2004). The number of mining concessions become major threats to forest opening might contribute to reduce the extent of HCV2 (ESDM Papua.2016)

Although the extent of palm oil plantation impacts on HCV 2 are currently limited in Papua there are plans for rapid expansion in the coming future (Papua is targeted for much of this expansion due to limited land availability in other key palm oil plantation areas on the islands of Kalimantan and Sumatra (Obidzinski et al. 2014)) and thus adopting a precautionary approach to threats to HCV 2 by palm oil plantations this indicator is considered Elevated risk.

### 3.3.2.4. Risk designation and specification

Elevated risk

### 3.3.2.5. Control measures and verifiers

*Verifiers:*

- Confirm the palm oil plantation supplier has the following relevant has the following in place:
  - High Conservation Value (HCV) [assessments](#) to identify occurrence of HCV 3 values in or adjacent to the palm oil plantation
  - Conversation/High Conservation Value (HCV) management plans
  - Historical remote sensing imagery evidence to confirm no conversion of primary forest, peatlands and HCVs post 2005.
- Consult the relevant data/stakeholders:
  - Assess the risk of [deforestation](#) and [fires](#) use for land conversion by examining remote sensing time series images within palm oil plantation's operational boundaries
- Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations. Check palm oil producers' 'environmental management' and 'fragile, marginal and peat soils' scores: <http://www.sustainablepalmoil.org/companies/>
- Conduct on-site verification to confirm:
  - Confirm management plans for protected sites, species and High Conservations Values are implemented and monitored.
  - Maps/remote sensing images (for protected areas, deforestation etc.) assessed reflect reality

### 3.3.3. Ecosystems and habitats – HCV 3

*Rare, threatened, or endangered ecosystems, habitats or refugia. Sub categories:*

- a) Existing forests in forest landscapes where these ecotypes are rare;
- b) Areas of important genes or genetically distinct populations;
- c) Ecosystems that are depleted or poorly reserved at the regional or national scale;
- d) Old growth forests, outside of forest biomes where the concept is redundant;
- e) Remnant natural forest vegetation in heavily cleared landscapes.

#### 3.3.3.1. HCV Occurrence

A number of ecosystems including Lowland forest and seral scrub on River valleys, Lakes and water bodies on Terraces, Lowland forest and seral scrub on Coastal flats, Lowland swamp forest and shrubland on Volcanic ridges, etc (Remark Asia 2014).

Using precautionary approach and forest coverage delineation following HCVF Toolkits' guidance, the total size for HCV 3 are as follows (based on forest types): 1) primary forest = 4.993.525 ha, and 2) secondary forest = 1.164.206 ha, 3) plantation forest = 460 ha, and 4) non-forest = 1.764.397 ha

See Map 3 of HCV 3 areas in Annex.

#### 3.3.3.2. Sources of information

- Remark Asia 2014. Rencana Pengelolaan dan Pemantauan NKT PT Wapoga Mutiara Timber Unit II, Papua.
- Obidzinski, K. A. Dermawan, and A. Hadianto. 2014. Oil palm plantation investments in Indonesia's forest frontiers: Limited economic multipliers and uncertain benefits for local communities. *Environmental, Development and Sustainability* 16 (6): 1177 – 1196.
- Annex 1 <http://www.globalforestwatch.org/>

### 3.3.3.3. Risk determination

Threat for HCV 3 areas are following: the existence of settlements, logging activity, the main road across districts, illegal logging, habitat fragmentation, and overlap with mine clearance (Remark Asia 2014). Massive land conversion to extract natural resources such as mining, oil palm, estate for cacao and coffee, forest concession has also been increasing as a result of Rapid Regional Development Program in Papua ().

Annex 1 shows a GFW map of total tree cover loss from 2005-2014 overlaid with proxy HCV 1 and 3 mapped areas (Protected Areas, BirdLife Endemic Bird Areas and Conservation International Biodiversity Hotspots). When this map is also compared with the Global Forest Watch map of Intact Forest Landscapes (Annex 2) overlaid with palm oil concessions in Papua (note: GFW claims the palm oil data set is known to be incomplete, but it is currently the best available) provides evidence of palm oil plantations linked to the potential loss of HCV 1 and 3 valuable habitats and threatening their values.

Although the extent of palm oil plantation impacts on HCV 1 and HCV 3 are currently limited in Papua there are plans for rapid expansion in the coming future (Papua is targeted for much of this expansion due to limited land availability in other key palm oil plantation areas on the islands of Kalimantan and Sumatra (Obidzinski et al. 2014)) and thus adopting a precautionary approach to threats to HCV 1 and HCV 3 by palm oil plantations this indicator is considered Elevated risk.

### 3.3.3.4. Risk designation and specification

Elevated risk

### 3.3.3.5. Control measures and verifiers

*Verifiers:*

- Confirm the palm oil plantation supplier has the following relevant has the following in place:
  - Biodiversity surveys and/or High Conservation Value (HCV) [assessments](#) to identify occurrence of HCV 3 values in or adjacent to the palm oil plantation
  - Conversation/High Conservation Value (HCV) management plans
  - Historical remote sensing imagery evidence to confirm no conversion of primary forest, peatlands and HCVs post 2005.
- Consult the relevant data/stakeholders:
  - Assess the risk of [deforestation](#) and [fires](#) use for land conversion by examining remote sensing time series images within palm oil plantation's operational boundaries
- Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations. Check palm oil producers'

'environmental management' and 'fragile, marginal and peat soils' scores:  
<http://www.sustainablepalmoil.org/companies/>

- Conduct on-site verification to confirm:
  - Confirm management plans for protected sites, species and High Conservations Values are implemented and monitored.
  - Maps/remote sensing images (for protected areas, deforestation etc.) assessed reflect reality

### 3.3.4. Critical ecosystem services – HCV 4

*Basic ecosystem services in critical situations, including protection of water catchments and control of erosion of vulnerable soils and slopes. Sub-categories:*

- a) *protection from flooding;*
- b) *protection from erosion;*
- c) *barriers from destructive fire;*
- d) *clean water catchments*

#### 3.3.4.1. HCV Occurrence

HCV 4 areas in Papua Island can be classified into seven subtypes as follows:

1. River headwaters (sub watershed), springs, areas with high and very high erosion danger risks
2. Lakes, swamps and/or swamp forests
3. Rivers (river courses and riparian areas)
4. Peat domes and peat hydrological units
5. Mangrove forests
6. Coastlines
7. Areas with slopes > 40%

Using precautionary approach and forest coverage delineation following HCVF Toolkits' guidance, the total size for HCV 3 are as follows (based on forest types): 1) primary forests = 31,280,984 ha; 2) secondary forests = 2,648,389 ha; 3) plantation forests = 627 ha; and 4) non-forest areas = 3,951,826 ha

See Map 4 of HCV 4 areas in Annex.

#### 3.3.4.2. Sources of information

- Remark Asia. 2014. Laporan Identifikasi dan Penilaian Hutan Bernilai Konservasi Tinggi (HCVF) IUPHHK-HA PT Mitra Pembangunan Global, Provinsi Papua Barat.

#### 3.3.4.3. Risk determination

Threats to HCV 4 in Papua are following: clearing of the riverside, the lack of commitment of the company in maintaining the riverside, water pollution due to the use of chemicals, less tablespoons of quality, harvesting techniques are not RIL (Reduce impact logging), illegal logging, and land clearing by the communities (Remark Asia 2014).

#### 3.3.4.4. Risk designation and specification

Elevated risk

### 3.3.4.5. Control measures and verifiers

#### *Verifiers:*

- Implement Category 3.1 control measures
- Confirm the palm oil plantation supplier has the following relevant has the following in place:
  - High Conservation Value (HCV) [assessments](#) to identify occurrence of HCV 4 values in or adjacent to the palm oil plantation
  - Conversation/High Conservation Value (HCV) management plans
  - Historical remote sensing imagery evidence to confirm no conversion of primary forest, peatlands and HCVs post 2005.
- Consult the relevant data/stakeholders:
  - Assess the risk of [deforestation](#) and [fires](#) use for land conversion by examining remote sensing time series images within palm oil plantation's operational boundaries
- Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations. Check palm oil producers' 'environmental management' and 'fragile, marginal and peat soils' scores: <http://www.sustainablepalmoil.org/companies/>
- Conduct on-site verification to confirm:
  - Confirm management plans for protected sites, species and High Conservations Values are implemented and monitored.
  - Maps/remote sensing images (for protected areas, deforestation etc.) assessed reflect reality

### 3.3.5. Community needs – HCV 5

*Sites and resources fundamental for satisfying the basic necessities of local communities or indigenous peoples (e. g.: for livelihoods, health, nutrition, water, etc.), identified through engagement with these communities or indigenous peoples. Sub-categories:*

- a) *Unique/main sources of water for drinking and other daily uses;*
- b) *Unique/main sources of water for the irrigation of food crops;*
- c) *Food, medicines or fuel etc. for local consumption.*

#### 3.3.5.1. HCV Occurrence

Papua and West Papua Provinces received special autonomy status based on Law No. 21/2001, Government Regulation in Lieu of Law No. 1/2008 and Law No. 35/2008. The Papua Customary Council uses a system to divide customary territories according to the seven customary territories in Papua, especially since these indigenous groups have upheld their unwritten customary law for generations. The Papua customary law is stipulated in the Special Local Government Regulation No. 23/2008. With Indonesia's largest primary forest, and the recognition of indigenous peoples' rights and their customary territories through Special Autonomy Law and Special Local Government Regulation, there is a strong presence of HCV 5 areas in most of Papua.

The Papuan indigenous communities still depend largely on natural resources for their livelihoods. Hunting and gathering are still commonly practised by a large portion of Papuan communities. For them, forests are the largest supermarkets that provide for

their basic fundamental sustenance. Sago is their staple food which they harvest from coastal sago forests. They also collect tubers, fruits, vegetables, and protein from hunting and fishing. Papuan communities also obtain construction materials, livestock feed and cash income from the forest. Similarly, water for drinking, cooking, and every day needs are obtained from rivers and other water sources near their homes (Matanubun, 2005)

Using precautionary approach and forest coverage delineation following HCVF Toolkits' guidance, the total size for HCV 5 are as follows (based on forest types): 1) primary forest = 2,393,369 ha; 2) secondary forest = 669,472 ha; 3) plantation forest = 211 ha; and 4) non-forest areas = 1,387,826 ha (Remark Asia 2016).

See Map 5 of HCV 5 areas in Annex.

### 3.3.5.2. Sources of information

- Arumingtyas, L. (2016, July 11). Priority Rule Government Completes Oil Moratorium. Retrieved from [www.mongabay.co.id](http://www.mongabay.co.id): <http://www.mongabay.co.id/2016/07/11/pemerintah-prioritas-rampungkan-aturan-moratorium-sawit/>
- Arumingtyas, L., & Sapariah. (2016, June 2). Oil Moratorium Policy and Mines Target Out in June, How is the Evaluation and Licensing? Retrieved from [www.mongabay.co.id](http://www.mongabay.co.id): <http://www.mongabay.co.id/2016/06/02/kebijakan-moratorium-sawit-dan-tambang-target-keluar-juni-bagaimana-proses-evaluasi-perizinan/>
- Bellantonio, Stoltz, Lapidus, Maitar, & Hurowitz, 2016. Burning paradise : Palm Oil in the Land of the Tree Kangaroo. <http://www.mightyearth.org/BurningParadise/>
- Matanubun, H., and L. Maturbongs. "Sago Palm Potential, Biodiversity and Sociocultural Considerations for Industrial Sago Development in Papua, Indonesia." Di dalam (2005): 41-54.
- Nelsen, A. (2016, September 1). Korean palm oil firm accused of illegal forest burning in Indonesia. Retrieved from [www.theguardian.com](http://www.theguardian.com): <https://www.theguardian.com/environment/2016/sep/01/korean-palm-oil-firm-accused-of-illegal-forest-burning-in-indonesia>
- Remark Asia. 2016. Centralized National Risk Assessment for Indonesia FSC-CNRA-Indonesia V1-0 EN. Indonesia: Remark Asia Consultant.

### 3.3.5.3. Risk determination

The lack of security for indigenous peoples is a pervasive concern throughout Indonesia and especially in Papua. In practice, legal systems often deny or limit indigenous peoples' rights and State policies consistently discriminate against them. Norman Jiwan of Sawit Watch, an Indonesian NGO working to achieve social change for farmers, workers, and indigenous peoples, states: "World Bank studies show that less than 40% of all land holdings in Indonesia are formally titled, with the rest being held under informal or customary tenures. Since independence the Indonesian State has progressively dismantled customary institutions and pursued policies designed to integrate 'isolated and alien peoples' or 'isolated communities' into the national mainstream through resettlement, re-education and through the banning of traditional religions. Although the worst excesses of these policies have attenuated since 1998, underlying laws and policies continue to severely limit indigenous peoples' rights and customs" (Jiwan 2011). This discrimination and deliberate disregard of customary rights are exacerbated by the lack of formal mechanisms to institute Free and Prior Informed Consent (FPIC), which is generally lacking in Indonesia. In addition, it seems that state-recognized village-level institutions do not independently represent the interest of the local communities, but rather work in favour of state-control (Jiwan,

2011). As of 2011, Sawit Watch identified 660 land disputes between palm oil companies and local communities in Indonesia and the Badan Pertanahan Nasional (the National Land Bureau of Indonesia) listed some 3,500 land disputes as of 2009 (Jiwan 2011). This issue is exacerbated in Papua, due to Papua's remote location and ethnic difference from the rest of Indonesia. Often being perceived as sub-humans and cut-off from media access, the indigenous peoples of Papua have suffered from several human rights abuses at the hands of private corporations and the Indonesian military without adequate compensation or media attention (Bellantonio, Stoltz, Lapidus, Maitar, & Hurowitz, 2016; Survival International, n.d.).

As a result of a long and tumultuous history of social strife regarding land use, a recent Constitutional Court decision concerning the legal recognition of local community ownership and control over customary forest, MK35/2012, broadens the scope for communities to assert adat ownership of land far beyond that defined in the 2004 Plantations Law (firstpeoples.org). This ruling is of great significance to the indigenous peoples of Indonesia, who in many cases have been forcibly removed from their ancestral land, consequently causing a high level of land conflicts in Indonesia. This claim is backed by a recent report from Indonesia's Human Rights Commission, which covers 40 case studies over more than 1,000 pages based on eight hearings held throughout the country (Arumingtyas, 2016). These 40 cases are only a fraction of the thousands of disputes between communities, companies, and states. As a result of the report and investigation, the Commission is requesting for the Indonesian government to recognize indigenous peoples' rights and set up a task force on indigenous rights. While MK35/2012 was an important ruling, its effects are not yet clear as not a single customary forest has been declared by the government (Dewi, 2016). In addition, the 'Old' Plantation law was in 2014 replaced by the 'New' Plantation Law (MK39/2014), which is aimed more towards the protection of indigenous rights and customary claims. However, this law has also received criticism from civil society, which claims that it does not adequately provide justice to neither the indigenous peoples nor the environment, but still serves to benefit large-scale private investment.

Furthermore, evidence shows that the Korean-Indonesian palm oil company Korindo's plantations and subsidiaries have caused forceful removal of indigenous peoples, while also effectively removing the habitat of the tree kangaroo and other animals (Bellantonio, Stoltz, Lapidus, Maitar, & Hurowitz, 2016). The media attention to this caused a majority of Korindo's buyers, among others Wilmar, Musim Mas and IOI, to boycott palm oil sourced from Korindo's plantations (Nelsen, 2016).

Also see 2.4 for more information.

#### **3.3.5.4. Risk designation and specification**

Elevated risk

#### **3.3.5.5. Control measures and verifiers**

*Verifiers:*

- Implement control measures from indicators 1.1, 1.2 and 2.4
- Confirm the palm oil plantation supplier has the following relevant in place:
  - High Conservation Value (HCV) [assessments](#) to identify occurrence of HCV 5 in or adjacent to the palm oil plantation
  - Conversation/High Conservation Value (HCV) management plans
- Consult the relevant data/stakeholders:

- Assess the risk of [deforestation](#) and [fires](#) use for land conversion by examining remote sensing time series images within palm oil plantation's operational boundaries
- Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations. Check palm oil producers' 'environmental management' and 'fragile, marginal and peat soils' scores: <http://www.sustainablepalmoil.org/companies/>
- Conduct on-site verification to confirm:
  - Confirm management plans for High Conservations Values are implemented and monitored
- Where HCV set-asides with existing rights of local communities have been identified, there is evidence of a negotiated agreement that optimally safeguards both the HCVs and these rights in accordance with internationally recognized FPIC standards, are not constrained by local legal frameworks (see Category 2.4 also for more details)

### 3.3.5. Cultural values – HCV 6

*Sites, resources, habitats and landscapes of global or national cultural, archaeological or historical significance, and/or of critical cultural, ecological, economic or religious/sacred importance for the traditional cultures of local communities or indigenous peoples, identified through engagement with these local communities or indigenous peoples. Sub-categories:*

- a) Aesthetic values;
- b) Historic values;
- c) Scientific values;
- d) Social (including economic) values;
- e) Spiritual values.

#### 3.3.6.1. HCV Occurrence

Papua and West Papua Provinces received special autonomy status based on Law No. 21/2001, Government Regulation in Lieu of Law No. 1/2008 and Law No. 35/2008. The Papua Customary Council uses a system to divide customary territories according to the seven customary territories in Papua, especially since these indigenous groups have upheld their unwritten customary law for generations. The Papua customary law is stipulated in the Special Local Government Regulation No. 23/2008. With Indonesia's largest primary forest, and the recognition of indigenous peoples' rights and their customary territories through Special Autonomy Law and Special Local Government Regulation, there is a strong presence of HCV 6 areas in most of Papua. WWF Indonesia has identified significant sites throughout all national parks in Papua.

The area of HCV 6 based on forest types are, Primary Forest 26.146.000, Secondary Forest 7.903.980, Plantation Forest 1.883 and Non Forest 7.373.800 (Remark Asia 2016).

See Map 6 of HCV 6 areas in Annex.

#### 3.3.6.2. Sources of information

- <http://rainforests.mongabay.com/20png.htm>
- <http://regional.kompas.com/read/2015/12/10/03442901/Pembangunan.Perkebunan.Sawit.di.Papua.Dinilai.Menggusur.Warga.dari.Tanah.Leluhur>

- Impian PT. ANJ Ditentang Masyarakat Adat Maybrat.2016.  
<https://awasmiffee.potager.org/?p=1435&lang=id#more-1435>
- Rakyat Papua Koban Investasi Sawit dan Hutan Desak Jokowi Moratorium Investasi di Papua. 2015 <http://www.kpa.or.id/news/blog/rakyat-papua-koban-investasi-sawit-dan-hutan-desak-jokowi-moratorium-investasi-di-papua/>
- Sawit Datang, Hutan Suku Yei Perlahan Hilang. November 15, 2016  
<http://www.mongabay.co.id/2016/11/15/sawit-datang-hutan-suku-yei-perlahan-hilang/>

### 3.3.6.3. Risk determination

Land tenure conflicts regarding land-based investment such as oil palm plantations, forestry industries (logging concessions and industrial timber plantations) and more recently, food estates, has led to political and security tension. These issues are constantly tied to political power overlaps between Jakarta and Papua. Merauke Integrated Food and Energy Estate (MIFEE) and industrial timber plantation development in Merauke poses a real threat to the lives of the Malind Anim indigenous peoples (Miffee.2016)

The clash between national and Papuan autonomous policies and laws often create problems regarding the rights of indigenous peoples, customary territories and natural resources.

As Papua New Guinea's forests are lost and degraded, it also loses its diversity of plants, animals and indigenous people. Some 700 languages—more than 10 percent of Earth's tongues—are spoken in New Guinea, and there are at least as many indigenous societies. When developers including the forestry sector enter a community, tribesmen are often forced to choose between their native way of life or selling their lands. At times tribal elders do not understand that the agreement they sign will take away their livelihood and may spell an end for their culture. They often believe that loggers merely wish to "use" their lands, not convert the forest into scrub or savanna (rainforest.mongabay.com).

Given the number of outstanding land tenure issues linked to indigenous peoples' rights and territories it is deemed that forest management activities including illegal logging activities are threatening HCV 6 values in Papua and thus the risk specification is Specified risk.

### 3.3.6.4. Risk designation and specification

Elevated risk

### 3.3.6.5. Control measures and verifiers

*Verifiers:*

- Implement control measures from indicators 1.1, 1.2 and 2.4
- Confirm the palm oil plantation supplier has the following relevant has the following in place:
  - High Conservation Value (HCV) [assessments](#) to identify occurrence of HCV 6 values in or adjacent to the palm oil plantation
  - Conversation/High Conservation Value (HCV) management plans
- Consult the relevant data/stakeholders:
  - Assess the risk of [deforestation](#) and [fires](#) use for land conversion by examining remote sensing time series images within palm oil plantation's operational boundaries

- Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations. Check palm oil producers' 'environmental management' and 'fragile, marginal and peat soils' scores: <http://www.sustainablepalmoil.org/companies/>
- Conduct on-site verification to confirm:
  - Confirm management plans for High Conservations Values are implemented and monitored
- Where HCV set-asides with existing rights of local communities have been identified, there is evidence of a negotiated agreement that optimally safeguards both the HCVs and these rights in accordance with internationally recognized FPIC standards, are not constrained by local legal frameworks (see Category 2.4 also for more details)

## CONVERSION

### 4.1. New plantations have not replaced natural forest or natural ecosystems since November 2005

*November 2005 has been set as the baseline of natural forest and/or ecosystem conversion. Risk relates to plantation establishment on converted natural forest and/or ecosystem areas post November 2005. Note: The baseline of natural forests and ecosystem conversion has been set at November 2005 to be in aligned with other international benchmarks set through the Roundtable on Sustainable Palm Oil's deforestation 2005 baseline and to complement initiatives such as Amazon Soy Moratorium establishment in 2006.*

#### 4.1.1. Applicable laws and regulations

- Presidential Instruction No. 8/2015 -Moratorium on new licenses in primary forests and peatlands [link](#)
- Government Regulation No. 71/2014 Management and protection of peatlands [link](#)
- Minister of Agriculture Regulation
  - No.14/2009 - Guidelines For Land Use Peat For Raising Palm Oil, Ministry of Agriculture: [link](#)
  - No. 11/2015 - Indonesian Sustainable Palm Oil (revised standard) - [http://perundangan.pertanian.go.id/admin/p\\_mentan/Permentan%2011-2015%20ISPO.pdf](http://perundangan.pertanian.go.id/admin/p_mentan/Permentan%2011-2015%20ISPO.pdf) [link](#)
- Indonesian National Constitution (UU Dasar 1945)
  - No. 18/2004 - Plantations (updated in 2014) - [link](#)
  - No. 39/2014 – Plantations – (This law replaces the 2004 Law on Plantations, reaffirming principles of sustainability, the key role of local authorities in governing the sector and requirement for companies to negotiate partnership agreements with communities.) [link](#)
- Constitutional Court decision
  - MK No. 45/2011 - The establishment of Forest Zone (Eng. Version) - [link](#)
- Minister of Forestry and Environmental Regulation
  - No. 33/2010 - Procedures for The Release of the Forest Production Which Can Be Converted - [link](#)
  - No.17/2011 - Changes to The Minister of Forestry Number P.33 / Menhut-Ii / 2010 on Procedures for Release of the Forest Production Which Can Be Converted - [link](#)
  - Minister of Forestry Regulation No.44/2011 - 2nd Changes to The Minister of Forestry Number P.33 / Menhut-Ii / 2010 on Procedures for Release of the Forest Production Which Can Be Converted - [link](#)
  - No. 44/2012 - Gazettal of the Forest Zone (revised in 2013) - [link](#)
  - No. 97/2014 - Delegation of forestry licensing authority to the Investment Coordination Board - [link](#)
- Joint Ministerial Decree
  - No. 79/2014 - Procedures for the resolution and control of land within the Forest Zone - [link](#)

- Government Regulation
  - No.40/1996 on Hak Guna Usaha (Business Use Permit), Hak Guna Bangunan Dan Hak Pakai Atas Tanah (Peraturan Pemerintah No. 40 Tahun 1996): PP 40-1996 Tentang Hak Guna Usaha, Hak Guna Bangunan Dan Hak Pakai Atas Tanah.pdf
  - Government Regulation No.24/1997 – Land Registration - [link](#)
  - No.2/1999 on Location Permits (Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional No.2/1999): [link](#)
  - No.27/1999 - Environmental Impact Assessment - [link](#)
  - Government Regulation No.68/2010 – Procedures Public Role in Spatial Planning - [link](#)
  - 24/2015 - Collection of plantation funds - [link](#)

*Environmental relevant Laws:*

- Law
  - No 32 Year 2009 on Protection and Environmental Management - [link](#)
- Government Regulation
  - No 27/2012 on Environment License
- Ministerial Decree of Environmental
  - No.40/2000 - Pedoman Tata Kerja Komisis Penilai Analisis Mengenai Dampak Lingkungan Hidup

**4.1.2. Legal authority**

- New Ministry of Environment and Forestry (MoEF)
  - The merging of two ministries (Ministry of Forestry and Ministry of Environment) into a single “mega ministry” governing forest management and implementation of environmental laws and regulations. The ministry’s priorities include promoting community based forest management, recognition of customary forests, resolving land conflicts and eliminating fires.
- New Ministry of Agrarian and Spatial Planning
  - New ministry charged with implementing President Jokowi’s vision for land reform, which includes recognition of more than 12 million ha of community forests and making available more than 2 million ha of land for agriculture.
- National Land Agency (BPN)
  - Government body that manages issues of land tenure by handling grants, renewal of titles as well as registration

**4.1.3. Legally required documents or records**

- Location Permit (Ijin Lokasi)
  - A location permit serves a license for the transfer of rights and utilizes the land for investment. It is obtained from the jurisdiction authority and must be followed up by the relinquishment of the land from the previous owner after a 12 to 36-month period based on the area size ([http://www.prac.org/newsletters/Ali\\_2005.pdf](http://www.prac.org/newsletters/Ali_2005.pdf))
- Plantation Business Permit (IUP)

- In order to obtain an IUP, a written application to the regent/mayor/governor should be filed along with 15 specific documents (see <https://www.hcvnetwork.org/resources/folder.2006-09-29.6584228415/Annex%20%20Legal%20Review%20by%20Andiko.pdf> page 12)
- Business Use Permit (Hak Guna Usaha)
  - Acquired from the local land office after having obtained a location permit and determines the land use, business use and building use.
- AMDAL requirements (Environmental Impact Assessment)

#### 4.1.4. Sources of information

##### *Sources:*

- Annex 2 - <http://www.globalforestwatch.org>
- Obidzinski, K. A. Dermawan, and A. Hadianto. 2014. Oil palm plantation investments in Indonesia's forest frontiers: Limited economic multipliers and uncertain benefits for local communities. *Environmental, Development and Sustainability* 16 (6): 1177 – 1196.
- Hoare A and Wellesley, L. 2014. Illegal Logging and Related Trade: The Response in Indonesia. Research Paper. Energy, Environment and Resources. October 2014. A Chatham House Assessment.
- MIFEE. (2015, April 30). West Papua Oil Palm Atlas – The companies behind the plantation explosion. Retrieved from awasmiffee.potager.org: <https://awasmiffee.potager.org/?p=1205>
- Mongabay . (2006, February 4). Papa New Guinea . Retrieved from rainforests.mongabay.com: <http://rainforests.mongabay.com/20png.htm>
- <http://www.rimbawan.com/images/stories/aturan-pdf/2016/PP%20NO%2057%20gambut.pdf>

##### *Laws:*

- Presidential Instruction No. 8/2015 -Moratorium on new licenses in primary forests and peatlands  
<http://jdih.esdm.go.id/peraturan/Inpres%20No.%208%20Thn%202015.pdf>
- Government Regulation No. 71/2014 Management and protection of peatlands  
<http://www.rimbawan.com/images/stories/aturan-pdf/2014/PP%20No.%2071%20Th.%202014%20-%20Perlindungan%20&%20Pengelolaan%20Ekosistem%20Gambut.pdf>
- Minister of Agriculture Regulation No. 11/2015 - Indonesian Sustainable Palm Oil (revised standard) -  
[http://perundangan.pertanian.go.id/admin/p\\_mentan/Permentan%2011-2015%20ISPO.pdf](http://perundangan.pertanian.go.id/admin/p_mentan/Permentan%2011-2015%20ISPO.pdf)

#### 4.1.5. Risk determination

##### *Overview of Legal Requirements*

In May 2011, the Government of Indonesia issued the Presidential Instruction No. 10/2011, subsequently revised by the Presidential Instruction No. 8/2015, on delays in issuing new permits and improving governance of primary natural forests and peat land. This presidential instruction is part of the cooperation between Indonesia and the Government of the Kingdom of Norway (cifor.org) to combat the high rates of deforestation driven by land use changes for such sectors as the palm oil industry.

Based on the president's instructions, the Map of moratorium Peat (PIPIB) should be reviewed and revised every 6 months, to ensure better monitoring to anticipate and prevent further conversion damage.

One of the most widely anticipated recent developments in palm oil governance is revision of Law no. 18/2004 on plantations. The new law, enacted in October 2014. No. 39/2014 – Plantations (replacing the 2004 Law on Plantations), reaffirm principles of sustainability, the key role of local authorities in governing the sector and requirement for companies to negotiate partnership agreements with communities.

<http://www.indolaw.org/UU/Law%20No.%2039%20of%202014%20on%20Plantations.pdf>

In March 2011, MoA enacted Ministry of Agriculture Regulation No.19/2011 to improve palm oil industry practices through certification against the government defined Indonesian Sustainable Palm Oil (ISPO) standard ([www.ispo-org.or.id](http://www.ispo-org.or.id)). The regulation requires all Indonesian palm oil producers to comply with ISPO criteria by 31 December 2014. The recent government regulation No. 11/2015 on ISPO standard defines the revised ISPO standard. It no longer references HCV, prohibits forest conservation within plantations where such land is suitable for oil palm, and defines land to be allocated for conservation as those required for protection by law. CPO producers selling into biofuel supply chains are exempted from ISPO certification, but no guidelines are provided for how producers qualifies for the exemption.

Peatland:

Ministry of Agriculture (MoA) Permentan No.14/2009. This regulation prohibits development (a) on peat where >70% of the area is >3 meters deep, or (b) where peat <3m deep that has specific characteristic considered too high risk for development.

Permentan No.14/2009 concerning use of peat lands for oil-palm does not prohibit development of peat lands, but restricts development only to areas that meet specified pre-conditions:

1. Peat must be less 3metres;
2. The mineral soil substratum may not be not quartz sand or acid sulphate soils;
3. Peat soils must be well developed (sapric or hemic in maturity); immature febric peat is not permitted;
4. The peat must have eutrophic fertility levels (defined as sufficient fertility to sustain OP growth).

Ministry of Agriculture Regulation No.14/2009 also stipulates that annual monitoring of plantation development must be undertaken by central government or local government authorities to ensure plantation development follows the approved plan. If non-compliance is found (e.g. planting occurs outside prescribed areas) a series of three, quarterly corrective action warnings are issued. If the warnings are not heeded, the district government can request MoA to revoke the company's operating license.

Government Regulation No. 71/2014 on Management and Protection of Peatlands – This updated regulation outlines a process for mapping, land use zonation and management of peatland hydrological units throughout Indonesia. A minimum of 30% of each unit must be protected, with potentially larger areas based on presence of defined criteria. Provisions of the regulation create opportunities for regional, progressive leadership to propose larger areas for conservation, balancing production and protection goals for peatland based on local aspirations ([www.rimbawan.com](http://www.rimbawan.com)).

Presidential Decree No. 10 of 2011 updated by the Presidential Instruction No. 8 year 2015, applies to the primary natural forests and peat lands. Introduced a new term "Primary Forest" is not 'natural forest'. The use of the term 'primary forest' also affect

the scope of the moratorium because it does not include secondary natural forest or logged-over forests (CIFOR, 2011). The Maps of Moratorium regarding the peat (PIPIB) will be revised regularly every six months to help improve monitoring and prevention of unauthorized land conversion.

It is not illegal to convert forest to oil palm in Indonesia; however, the Presidential Instruction No. 8/2015 suspends the granting of new palm oil licenses in primary natural forest and peat lands. The instruction directs several ministries and government agencies to take the necessary steps per their respective authority to implement the instruction; however, it not legally binding.

#### *Description of risk*

There is a risk of natural forests or ecosystems are cleared for the establishment of palm oil plantations.

- The total area of oil palm estates in Indonesia increased from approximately 2.5 million hectares (ha) in 2000 to greater than 8 million ha in 2013, and during the period of 2011- 2013 the area of new oil palm plantations established was average of 630,000 ha/annual (Hoare and Wellesley, 2014). The total area of oil palm is projected to reach 13 million hectares by 2020 (Indonesia Investments , 2016; IndexMundi, 2016).
- Global Forest Watch map of Intact Forest Landscapes (Annex 2) overlaid with mapped palm oil concessions in Papua (note: GFW claims the palm oil data set is known to be incomplete, but it is currently the best available) provides evidence of deforestation driven by palm oil plantations. And although the extent of palm oil plantation impacts on natural forest and ecosystem conversion is currently limited in Papua there are plans for rapid expansion in the coming future (Papua is targeted for much of this expansion due to limited land availability in other key palm oil plantation areas on the islands of Kalimantan and Sumatra (Obidzinski et al. 2014)).

#### *Risk conclusion*

In conclusion, land conversion in Indonesia increasing as demand of agricultural land. The risk is assessed as Elevated.

#### **4.1.6. Risk designation and specification**

Elevated risk

#### **4.1.7. Control measures and verifiers**

##### *Verifiers:*

- Implement control measures for Category 1.1, 1.2 and 3.1
- Consult relevant data and stakeholders:
  - Check palm oil producers' 'environmental management' and 'fragile, marginal and peat soils' scores: <http://www.sustainablepalmoil.org/companies/> and/or the company's latest annual report.
  - Assess the risk of [deforestation](#) (including peatland) for land conversion by examining remote sensing time series images within palm oil plantation's operational boundaries
  - Confirm with relevant local authorities and/or local stakeholders that no land clearance nor preparation was conducted
- Conduct on-site verification:

- maps/remote sensing images detecting fire risk assessed reflect reality and ground truthing confirm fire has not been used for land conversion of natural ecosystems for the establishment or management of palm oil plantations.

## 4.2. Fire avoidance is being practiced

*Assess the risk of fire use in plantation establishment and/or management activities. Risk relates to assessing the role of fire use driving natural ecosystem conversion.*

### 4.2.1. Applicable laws and regulations

- Government Regulation Number 4, 2001: Damage Control and Environmental Pollution or Related to Forest Fire and or Land:  
(<http://www.bpn.go.id/Publikasi/Peraturan-Perundangan/Peraturan-Pemerintah/peraturan-pemerintah-nomor-4-tahun-2001-1107>)

### 4.2.2. Legal authority

- New Ministry of Environment and Forestry (MoEF)
  - The merging of two ministries (Ministry of Forestry and Ministry of Environment) into a single “mega ministry” governing forest management and implementation of environmental laws and regulations. The ministry’s priorities include promoting community based forest management, recognition of customary forests, resolving land conflicts and eliminating fires.
- New Ministry of Agrarian and Spatial Planning
- Indonesian National Board for Disaster Management (Badan Penanggulangan Bencana Nasional – BNPB)
- Government Regulation No. P.32 / Menlhk / Sekretariat / Kum.1 / 3/2016 states that the Forest Fire Control Organization (Dalkarhutla) established pursuant to Government Level and Management Level. Dalkarhutla Government Levels consist of federal government; provincial government level; and the level of regency government.

### 4.2.3. Legally required documents or records

- Location Permit (Ijin Lokasi)
  - A location permit serves a license for the transfer of rights and utilizes the land for investment. It is obtained from the jurisdiction authority and must be followed up by the relinquishment of the land from the previous owner after a 12 to 36-month period based on the area size  
([http://www.prac.org/newsletters/Ali\\_2005.pdf](http://www.prac.org/newsletters/Ali_2005.pdf))
- Plantation Business Permit (IUP)
  - In order to obtain an IUP, a written application to the regent/mayor/governor should be filed along with 15 specific documents (see <https://www.hcvnetwork.org/resources/folder.2006-09-29.6584228415/Annex%20%20Legal%20Review%20by%20Andiko.pdf> page 12)
- Business Use Permit (Hak Guna Usaha)
  - Acquired from the local land office after having obtained a location permit and determines the land use, business use and building use.
- AMDAL requirements (Environmental Impact Assessment)

#### 4.2.4. Sources of information

- Annex 3 and 4: <http://www.globalforestwatch.org>
- Dateline Pacific . (2015, December 15). Forest fires devastating for Papua, says Greenpeace. Retrieved from [www.radionz.co.nz](http://www.radionz.co.nz):  
<http://www.radionz.co.nz/international/programmes/datelinepacific/audio/201782917/forest-fires-devastating-for-papua,-says-greenpeace>
- Lawson, S. (2015, November 19). Oil palm plantation development & forest fires in southern Papua, September-October 2015. Retrieved from [westpapuamedia.info](http://westpapuamedia.info):  
<https://westpapuamedia.info/2015/11/25/oil-palm-plantation-development-forest-fires-in-southern-papua-september-october-2015/>
- Schonhardt S. 2016. Illegal Forest Fires Threaten Another Indonesian Province, Report Finds. <http://www.wsj.com/articles/illegal-forest-fires-threaten-another-indonesian-province-report-finds-1472725709>

#### 4.2.5. Risk determination

##### *Overview of Legal Requirements*

Forest Protection and forest areas in Indonesia stated by Law 41 of 1999, which is the effort to prevent the damage to the forest and forest products are caused by human actions, livestock, fire, forces of nature, pest and disease (article 47 paragraph 1).

Government Regulation No. 4, 2001, On Damage Control or Environmental Pollution.

The policy includes prevention, mitigation and recovery and monitoring of the environment of fire-related money or land (Article 2).

Government Regulation No. 45 Year 2004 on Protection of Forests

To prevent the damage caused by the forest fires by control activities which include: the prevention of fire suppression and post-fire security (Article 20, Paragraph 1)

##### *Description of risk*

There is a risk that fire is being used to clear natural ecosystems/forests for the establishment of palm oil plantations.

- It is illegal in Indonesia for companies to clear land using fire, and oil palm concession holders are also legally required to have in place appropriate fire prevention and fire-fighting measures ([westpapuamedia.info](http://westpapuamedia.info)).
- Some environmental groups who perform investigations related to forest fires and land clearing for palm oil and timber have identified the spread of fire to establish palm oil plantations in most provinces in previously untouched areas in Papua (Schonhardt 2016). Peatlands are often the main target of clearing land by burning which result in increased emissions of greenhouse gases and this is also the case for Papua ([radionz.co.nz](http://radionz.co.nz)).
- Papua is slated to become the new frontier of palm oil development in Indonesia, but despite the relatively low presence of oil palm plantations currently, one case has already drawn considerable public attention. In September 2016, it was revealed that Korean-Indonesian palm oil company Korindo used illegal burning methods in the clearing of their plantations, consequently contributing to the palm oil haze that roamed throughout Southeast Asia in 2015 and 2016 (Bellantonio, Stoltz, Lapidus, Maitar, & Hurowitz, 2016; Nelsen, 2016). Furthermore, evidence shows that Korindo plantations and subsidiaries have caused forceful removal of indigenous peoples, while also effectively removing the habitat of the tree kangaroo and other animals (Bellantonio, Stoltz, Lapidus, Maitar, & Hurowitz, 2016). The media attention to this caused a majority of Korindo's buyers, among others

Wilmar, Musim Mas and IOI, to boycott palm oil sourced from Korindo's plantations (Nelsen, 2016).

- Annex 3 shows the frequency of fires in Indonesia from January 2013 to October 2016 with a number of fires likely connect for land use and/or conversion purposes. The Global Forest Watch Fires platform indicates (as of October 31st 2013) two fires activated within palm oil concession areas during the week of 10 – 23 October 2016. Overall during this time there were 110 fire alerts on islands: Java, Kalimantan, Lesser Sunda, Maluku, Papua, Sulawesi, Sumatra with the highest concentration of fires on Papua (see Annex 4).

#### *Risk conclusion*

In conclusion, given forest fire is one of the main means for clearing land for the on-going establishment of palm oil plantations the risk is designated as Elevated.

#### **4.2.6. Risk designation and specification**

Elevated risk

#### **4.2.7. Control measures and verifiers**

##### *Verifiers:*

- Implement control measures for Category 1.1, 1.2 and 3.1
- Consult relevant data and stakeholders:
  - Assess the risk of [deforestation](#) (including peat land) and [fires](#) use for land conversion by examining remote sensing time series images within palm oil plantation's operational boundaries
  - Confirm with relevant local authorities and/or local stakeholders that no land clearance nor preparation was conducted by fire
- Conduct on-site verification:
  - maps/remote sensing images detecting fire risk assessed reflect reality and ground truthing confirm fire has not been used for land conversion of natural ecosystems for the establishment or management of palm oil plantations

## GENETICALLY MODIFIED ORGANISMS (GMOs)

### 5.1. There is no commercial use of genetically modified palm.

*Plantations have not been planted with genetically modified commodities and/or GMO fertiliser is not being used. Risk relates to the use of GMO plants and/or fertiliser as a potential factor influencing upstream buyers purchasing decisions based on consumer preferences.*

#### 5.1.1. Applicable laws and regulations

- Law
  - No.21 Year 2004 about Ratification of Cartagena Protocol on Biosafety - [link](#)
  - No. 32 Year 2009 about Protection and Management of Environmental - [link](#)
  - No. 18 Year 2012 about Food - [link](#)
- Government Regulation
  - No.44 Year 1995 about Seeds System - [link](#)
  - No.27/1999 - No.21 Year 2005 about Biosafety of Genetically Engineered Products - [link](#)
- Minister of Agriculture Decree
  - No.38 Year 2011 about Registration of Horticulture Crops - [link](#)
  - No.61 Year 2011 about Testing, Evaluation, Released and Withdrawing of Variety - [link](#)

#### 5.1.2. Legal authority

Minister of Agriculture

#### 5.1.3. Legally required documents or records

n/a

#### 5.1.4. Sources of information

- <http://www.rsपो.org/files/pdf/Factsheet-RSPO-Overview.pdf>
- Puspita Deswina and Bambang Prasetya, Development of GMO in Indonesia (a review). Biotechnology Research Center, LIPI. [www.academia.edu/592635/Development\\_of\\_GMO\\_in\\_Indonesia\\_A\\_review\\_](http://www.academia.edu/592635/Development_of_GMO_in_Indonesia_A_review_)
- Titi Rahayu for the USDA Foreign Agricultural Service, 2015. Indonesia - Agricultural Biotechnology Annual – 2015. [https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Agricultural%20Biotechnology%20Annual\\_Jakarta\\_Indonesia\\_7-14-2015.pdf](https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Agricultural%20Biotechnology%20Annual_Jakarta_Indonesia_7-14-2015.pdf)
- Thom Wright and Titi Rahayu for the USDA Foreign Agricultural Service, 2016. Indonesia - Agricultural Biotechnology Annual – 2016. [https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Agricultural%20Biotechnology%20Annual\\_Jakarta\\_Indonesia\\_11-18-2016.pdf](https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Agricultural%20Biotechnology%20Annual_Jakarta_Indonesia_11-18-2016.pdf)
- Indonesia Biosafety Clearing House: <http://indonesiabch.or.id/regulasi/>

#### 5.1.5. Risk determination

There is no current use of GMO palm oil in Indonesia.

Government Regulation (PP No. 21 Year 2005) regulates biotechnology products of genetic engineering in Indonesia. This Government Regulation is made on the basis of the precautionary approach in accordance with the Cartagena Protocol on Biosafety. This Protocol has been ratified by Indonesia earlier by Act No. 21 of 2004. In this regulation, it has been determined that every person who conducts research and development on biotechnology products must prevent and / or overcome the negative impact of its activities on human health and the environment.

The Cartagena Protocol has been ratified by Indonesia through Law No. 21 of 2004

The National Biosafety Commission on Genetically Engineered Product (BCGEP) is responsible for providing biosafety recommendations, suggestions, and considerations of GE products to the authorized ministries. The BCGEP, which was established in 2010 based on Presidential Regulation No. 39/2010, had been inactive since June 15, 2013. The GOI's policy on biotechnology is "accept with a precautionary approach" with respect to environmental safety, food safety, and/or feed safety based on scientific approaches as well as taking into considerations of religion, ethical, socio-cultural, and esthetical norms. A few regulations and guidelines have been issued to protect the public from the possibility of negative consequences of biotechnology utilization.

According to USAID (2016), Indonesia continues to develop GE crops, such as: rice (nitrogen use efficiency), sugarcane (modification of high glucose content), cassava (modification of amylase), tomato (resistant to virus), and delayed ripening papaya, albeit at a relatively modest pace. Indonesia has not commercially cultivated any GE crops, including GE seed production. However, Post sources report that as soon as the three GE sugarcane varieties receive feed safety approval from the Ministry of Agriculture, PT Perkebunan Nusantara XI (a state-owned company) will cultivate and market them to sugar mills for food consumption.

To date Indonesia has not cultivated any GE crops commercially, including GE seed production. Post sources report, however, that state-owned company PT Perkebunan Nusantara XI is prepared to cultivate and market GE sugarcane as soon the GOI issues feed safety approval for local GE sugarcane cultivars (USAID 2016).

There is no evidence of unauthorized use of GM and no commercial use of GM in the country.

There are no trials of GM in the country. Licenses are required for commercial use of GM but none have been issued.

#### **5.1.6. Risk designation and specification**

Low risk

#### **5.1.7. Control measures and verifiers**

n/a

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## Annex I: Palm oil source types

The table **Palm Oil Source Types in Indonesia – West Papua** identifies the different types of plantations in **Indonesia – West Papua** which supply palm oil to the market.

'Palm oil plantation type' is a term used to describe the different types of palm oil plantations in a country, to allow a more detailed specification of risk. The Palm oil plantation Type is used to clarify:

- which plantation types palm oil can be sourced from legally;
- what the legal requirements are for each plantation type, and
- if there are risks related to certain plantation types and not others.

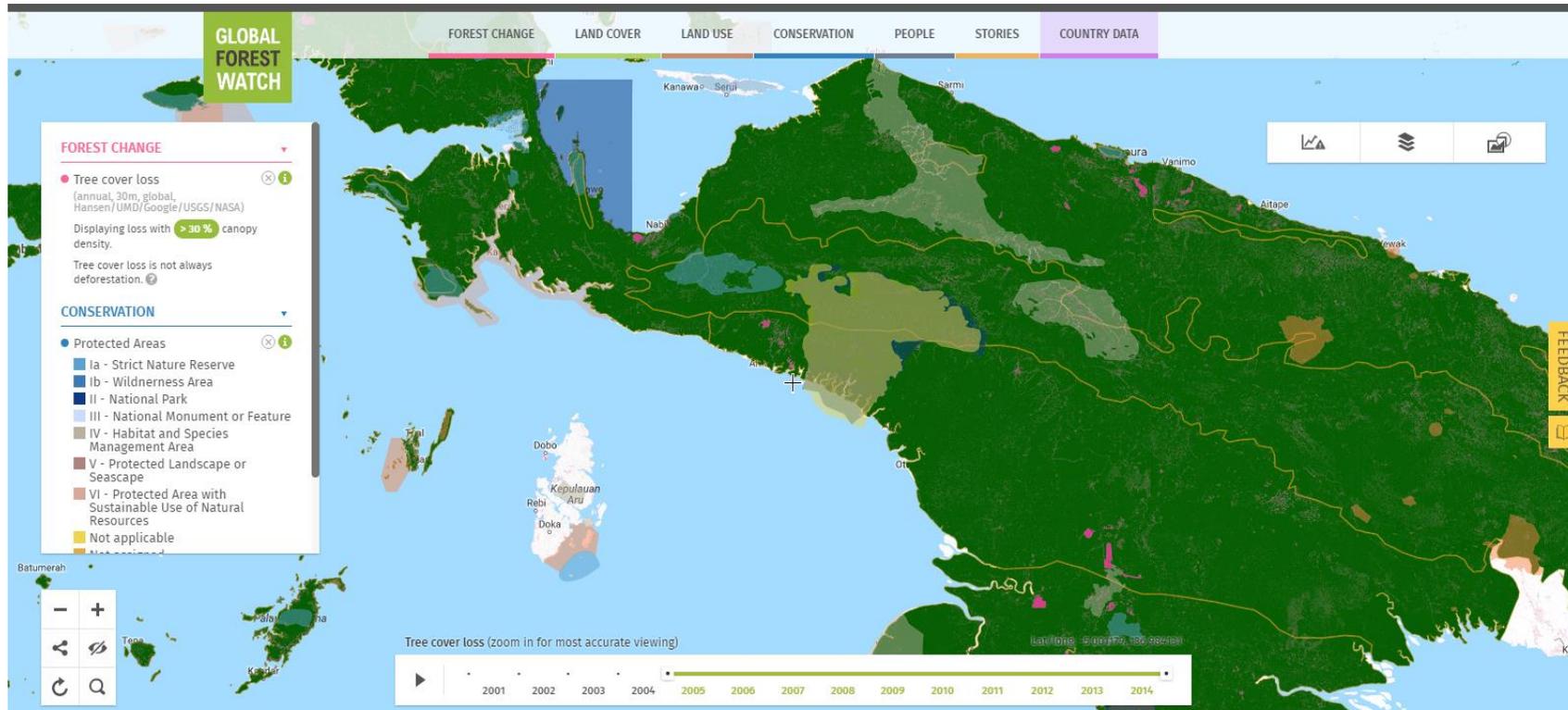
## PALM OIL SOURCE TYPES IN SUMATRA, INDONESIA

Source Type	Plantation Classification	Ownership and management <sup>4</sup>	Description of source type
Small holder palm oil plantations	Small-scale independent farmers	Smallholder	Plantations are owned and managed by small scale independent farmers, and linked to supply chain via local agents.
	Larger-scale independent farmers		Plantations are owned by larger scale independent farmers and linked to supply chain via local traders or mills.
	Farmer groups or farmer-managed cooperatives		Plantations are owned and managed by farmer groups or farmer-managed cooperatives and trade directly with mills.
	Smallholder farmer managed plots		Plantations are owned by smallholders as managed plots, and linked with company plasma schemes.
	Company-managed, smallholder-owned plantations	Smallholder owned community land, leased to companies for management.	Plantations are company managed smallholder owned on leased community-lands.
Large scale palm oil plantations	Company owned and managed plantations	Company-managed, company-owned plantations	Large scale palm plantations on privately owned land, managed by companies.
	State-owned enterprises	Public land managed by state owned enterprises.	Large scale palm plantations on publicly owned land, managed by state owned enterprises.

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<sup>4</sup> For more details on Indonesian oil palm smallholder farmers by province see Annex 8 and [http://daemeter.org/new/uploads/20160105233051.Smallholders\\_Book\\_050116\\_web.pdf](http://daemeter.org/new/uploads/20160105233051.Smallholders_Book_050116_web.pdf).

## Annex II: Global Forest Watch Map of Total Tree Cover Loss 2005-2014 in West Papua with overlaid proxy HCV 1 and 3 areas (Protected Areas, BirdLife Endemic Bird Areas and Conservation International Biodiversity Hotspots)



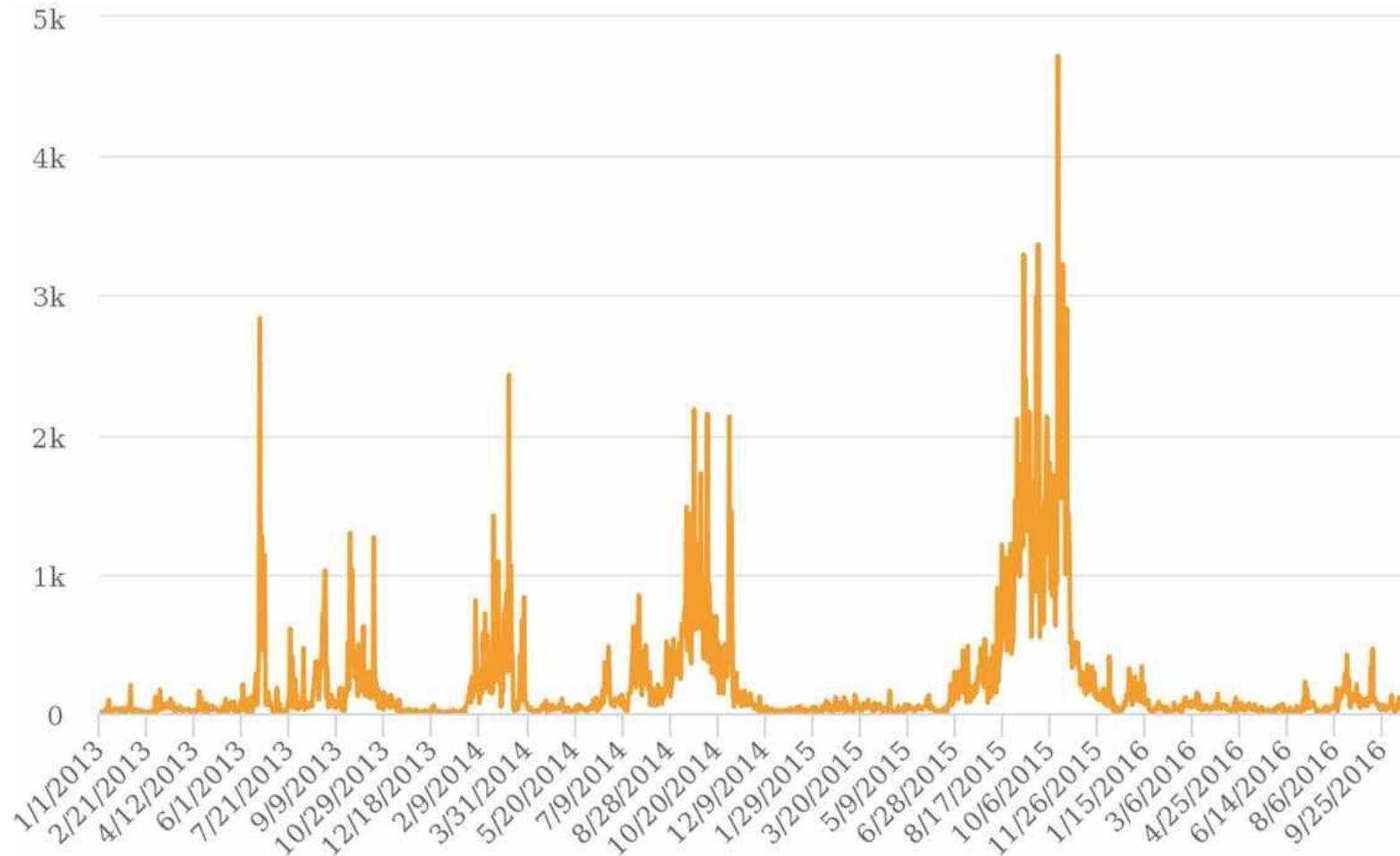
As last seen on 31st October 2016: [http://www.globalforestwatch.org/map/7/-5.00/136.98/ALL/grayscale/loss/556,612,592,618?tab=analysis-tab&begin=2001-01-01&end=2015-01-01&threshold=30&dont\\_analyze=true](http://www.globalforestwatch.org/map/7/-5.00/136.98/ALL/grayscale/loss/556,612,592,618?tab=analysis-tab&begin=2001-01-01&end=2015-01-01&threshold=30&dont_analyze=true)

**Annex III: Global Forest Watch Map of Intact Forest Landscapes (IFLs) Loss 2000-2013 in West Papua overlaid with palm oil concessions (note: GFW claims the palm oil data set is known to be incomplete, but it is currently the best available)**



As last seen on 31st October 2016: [http://www.globalforestwatch.org/map/7/-5.00/136.98/ALL/grayscale/none/607,556?tab=analysis-tab&dont\\_analyze=true](http://www.globalforestwatch.org/map/7/-5.00/136.98/ALL/grayscale/none/607,556?tab=analysis-tab&dont_analyze=true)

Annex IV: Global Forest Watch Map Figure: FIRE ALERT COUNT for Indonesia from JAN 1, 2013 – 31st October 2016



As last seen on 31st October 2016: <http://fires.globalforestwatch.org/home/>

Annex V: Global Forest Watch Map Figures 1 – 3a: Fire Analyses for Indonesia from 10 – 23 October 2016 (As last seen on 31st October 2016: <http://fires.globalforestwatch.org/home/>)

GFW Fires ANALYSES

From: 2016-10-23

To: 2016-10-30

ON ISLANDS: Java, Kalimantan, Lesser Sunda, Maluku, Papua, Sulawesi, Sumatra

During this time period, there were 110 fire alerts

Figure 1: DISTRIBUTION OF FIRE ALERTS

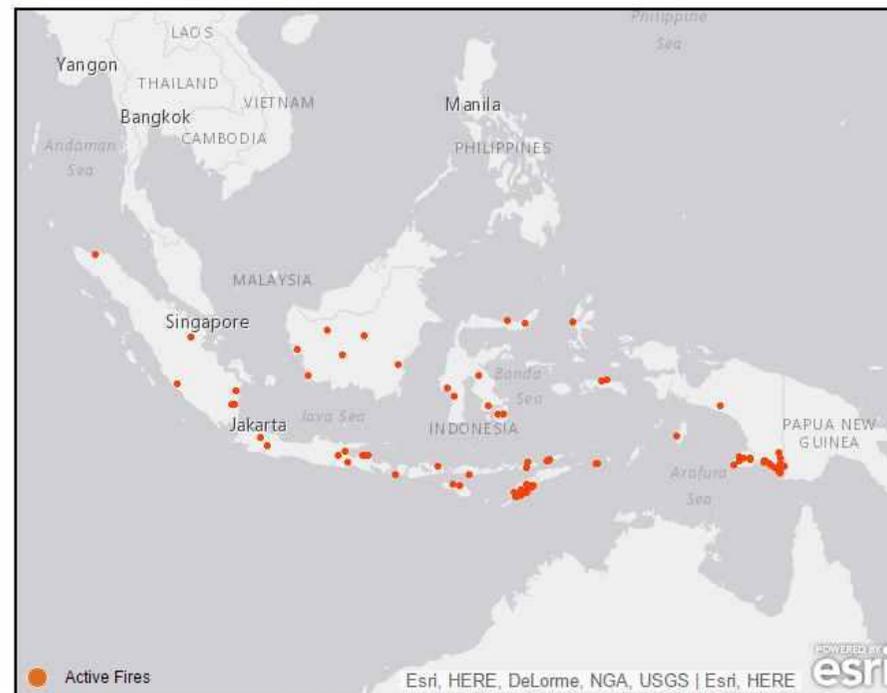


Figure 2a: DISTRICTS WITH THE GREATEST NUMBER OF FIRE ALERTS

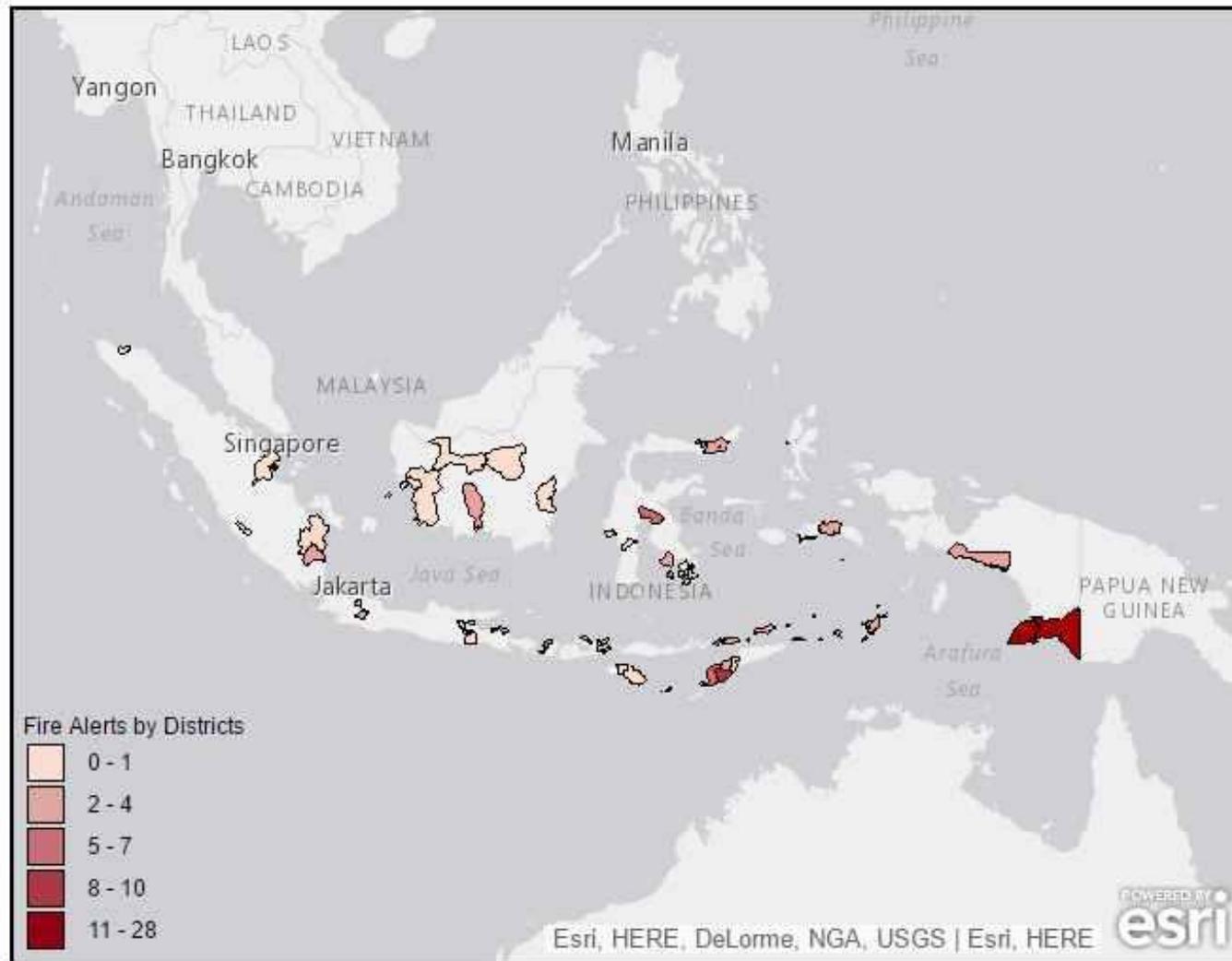
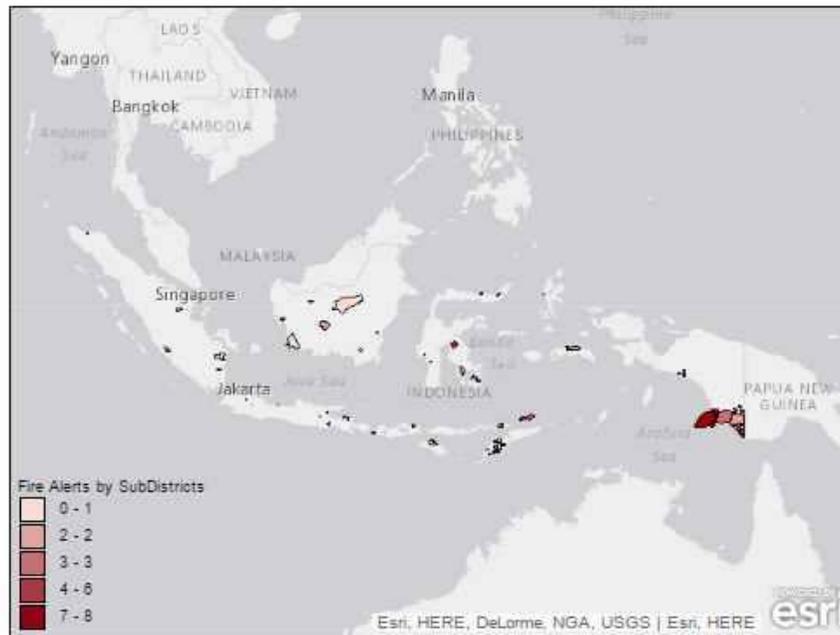


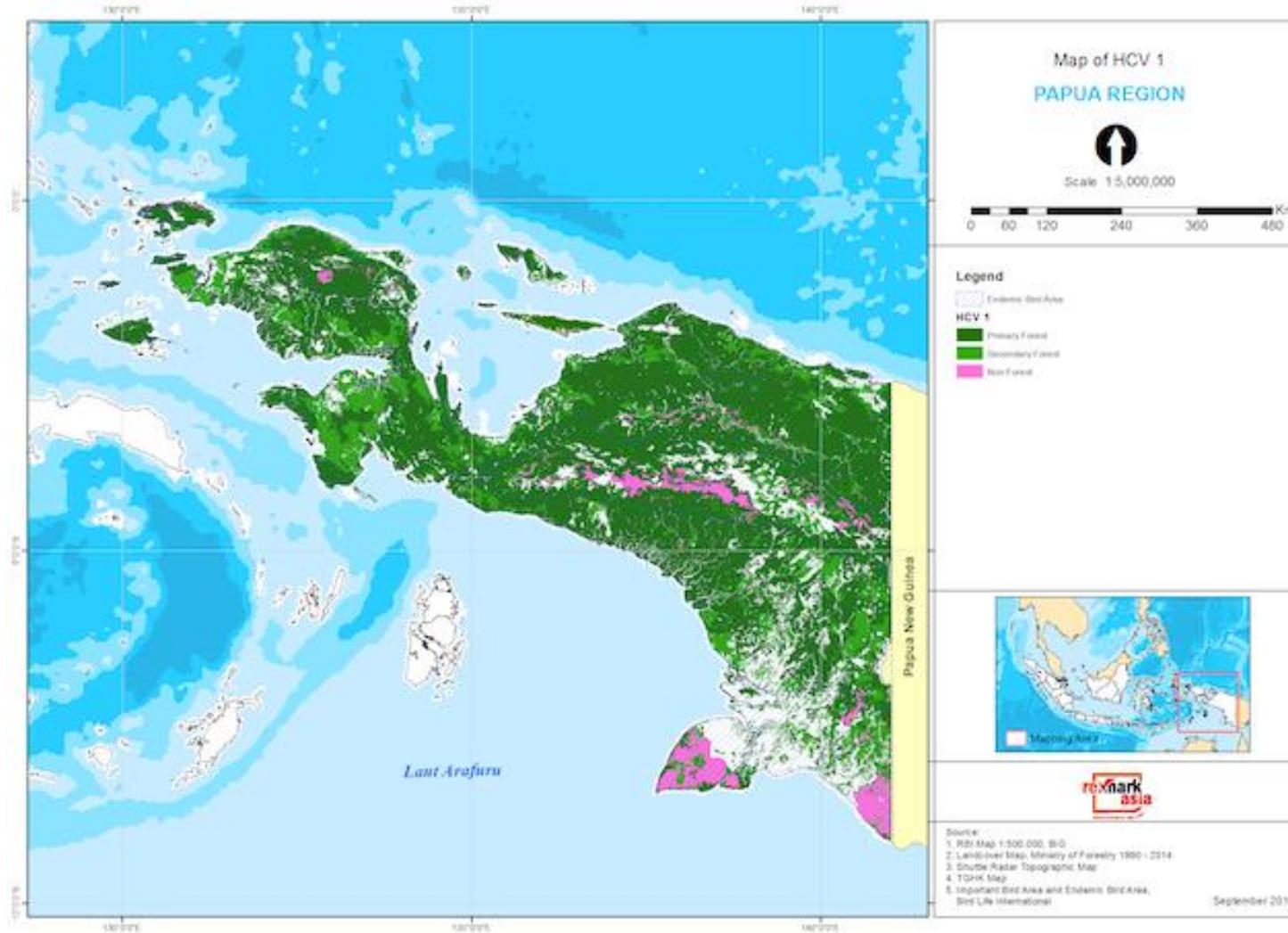
Figure 2b: DISTRICTS WITH THE GREATEST NUMBER OF FIRE ALERTS

DISTRICT	ISLAND	NUMBER OF FIRE ALERTS
MERAUKE	Papua	28
TIMOR TENGAH SELATAN	Lesser Sunda	10
KUPANG	Lesser Sunda	7
LUWU TIMUR	Sulawesi	6
SITUBONDO	Java	4
BOLAANG MENGONDOW	Sulawesi	3
BANDUNG	Java	3
TULANG BAWANG	Sumatra	3
MALUKU TENGGARA BARAT	Maluku	3

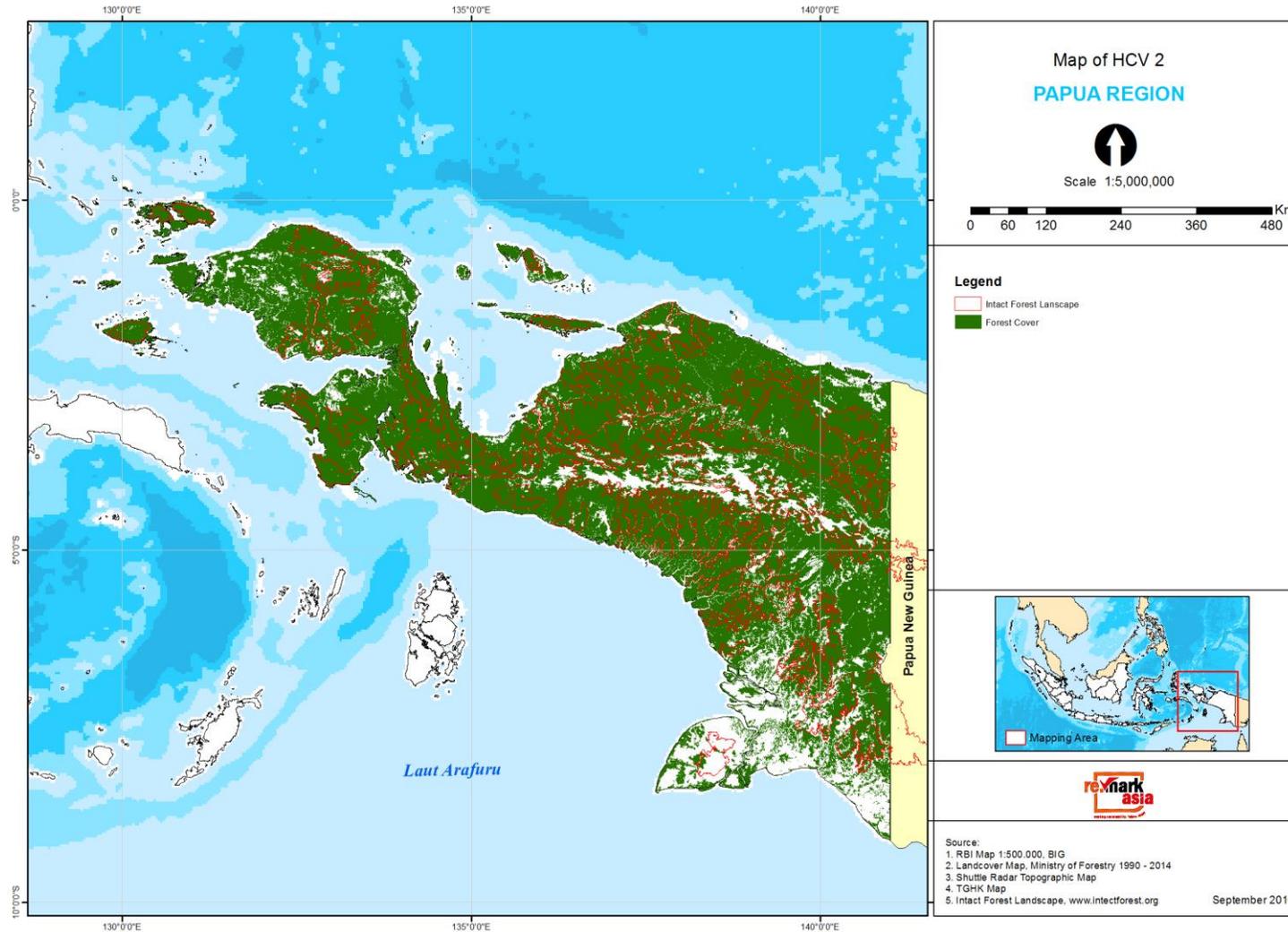
Figure 3a: SUBDISTRICTS WITH THE GREATEST NUMBER OF FIRE ALERTS



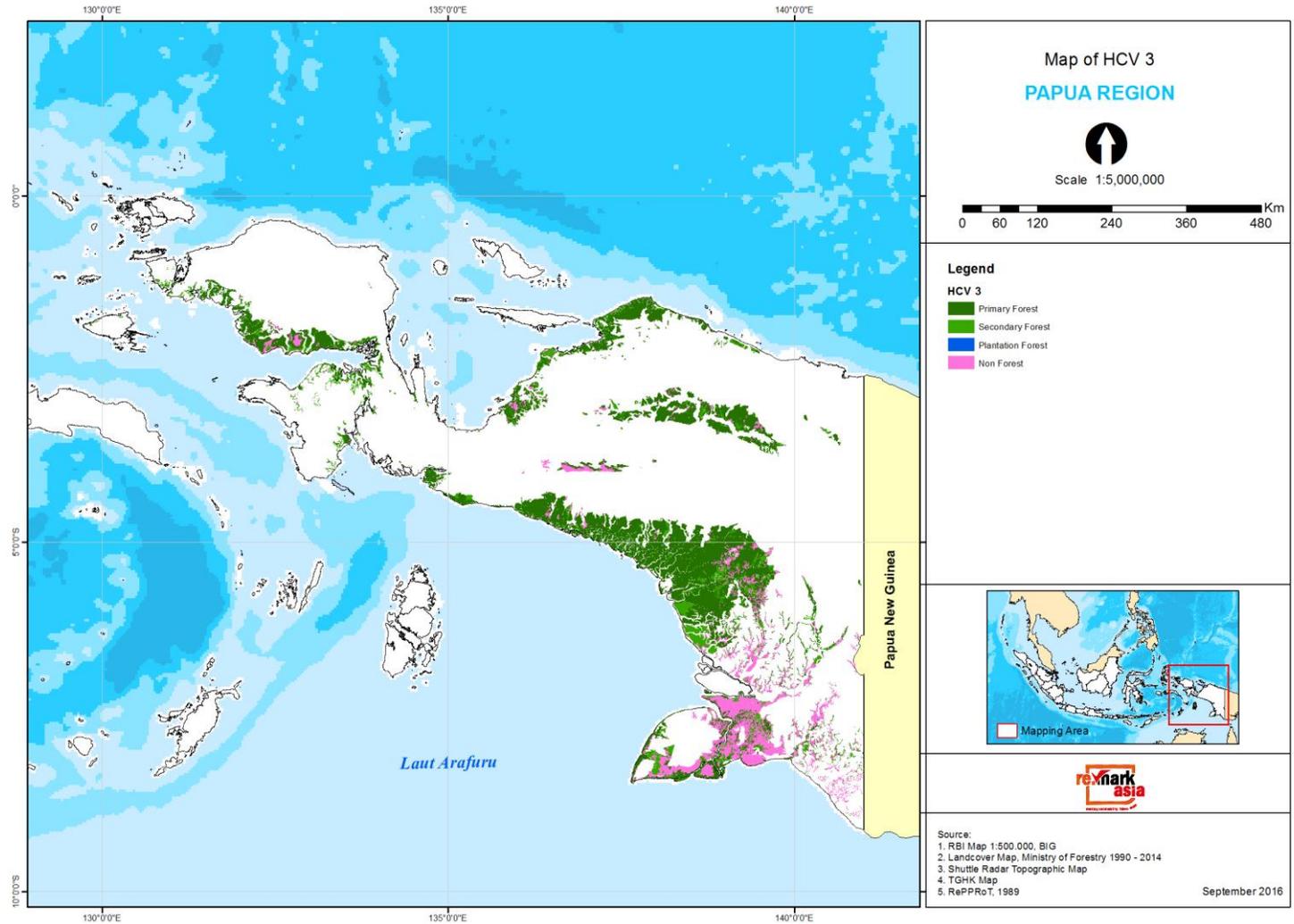
## Annex VI: Map 1. HCV 1 areas in West Papua



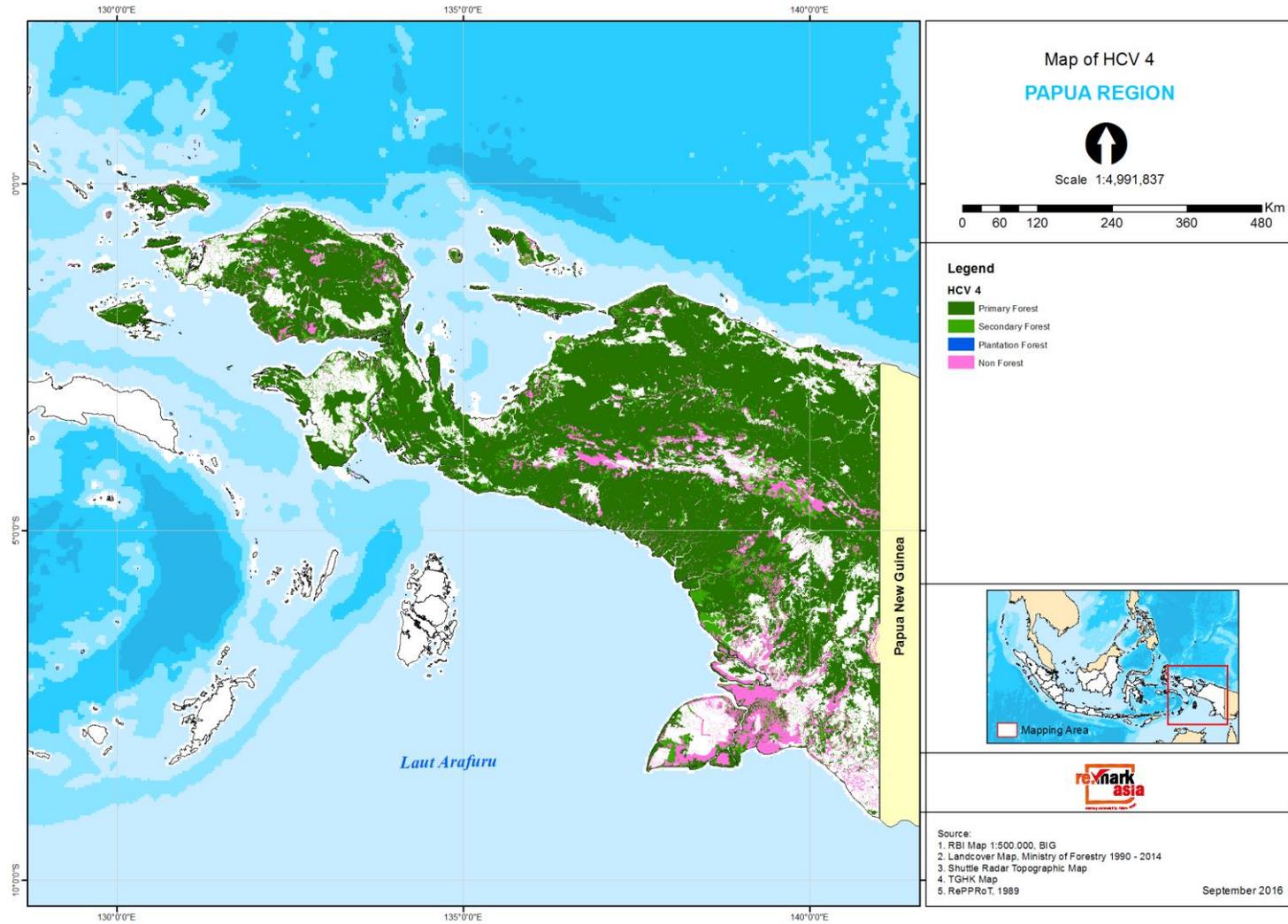
## Annex VII: Map 2. HCV 2 areas in West Papua



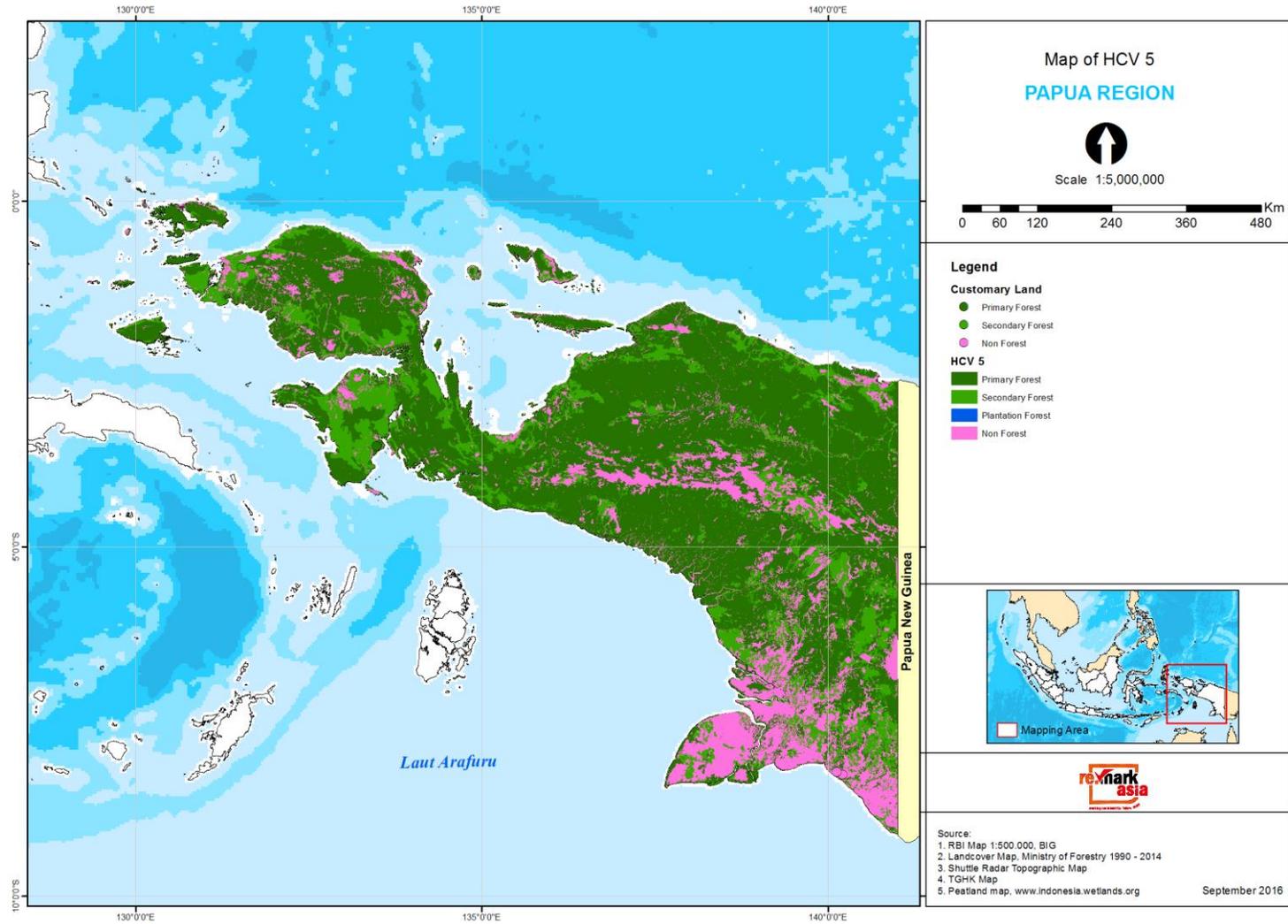
## Annex VIII: Map 3. HCV 3 areas in West Papua



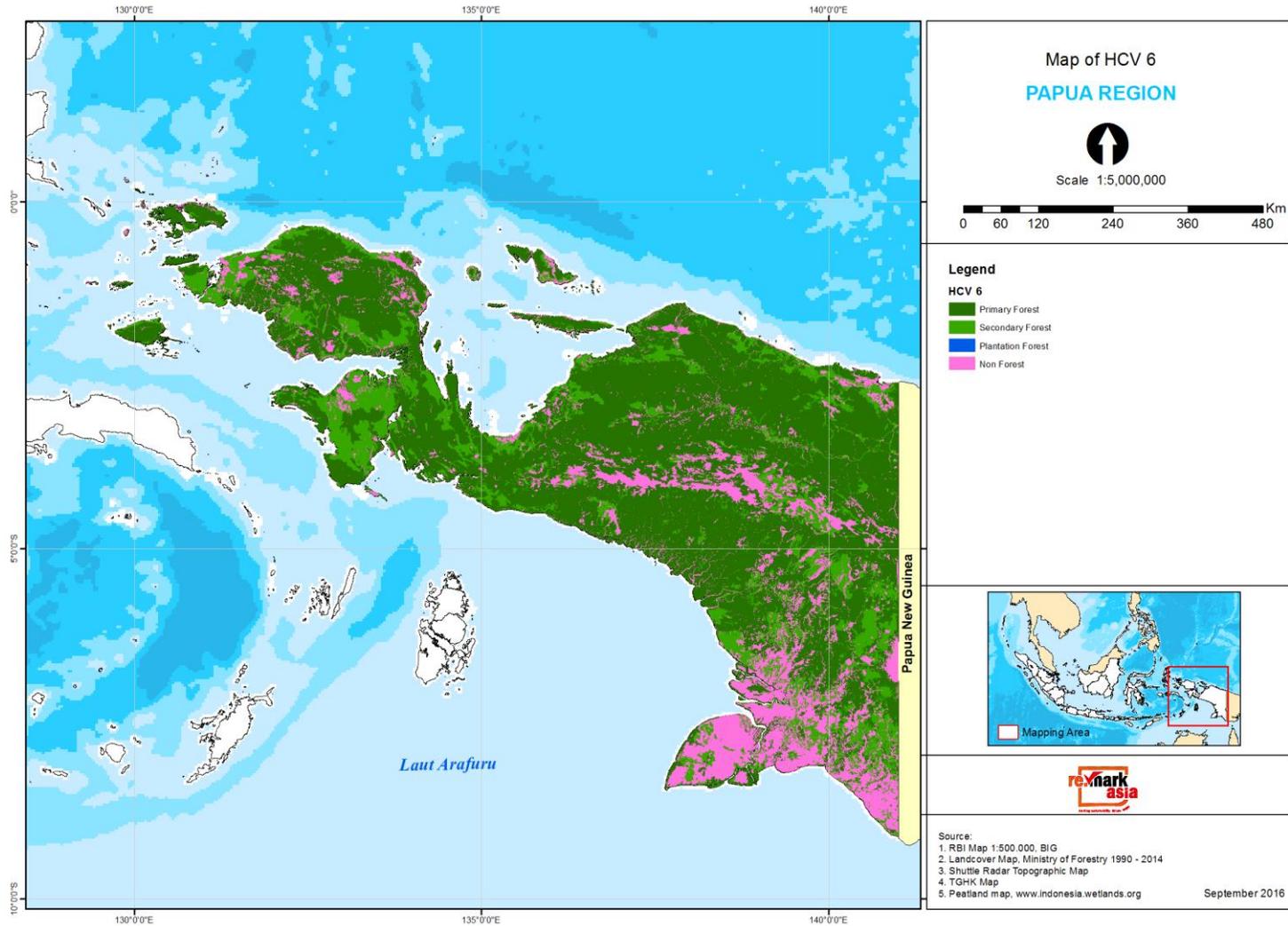
## Annex IX: Map 4. HCV 4 areas in West Papua



## Annex X: Map 5. HCV 5 areas in West Papua



## Annex XI: Map 6. HCV 6 areas in West Papua



## About

# Responsible Sourcing of Soy, Cattle and Palm Oil

Responsible Sourcing of Soy, Cattle and Palm Oil is a project aimed at creating awareness and capacity among Danish companies to minimise risks of social and environmental problems connected to sourcing palm oil, soy and cattle from developing countries. The project is run by NEPCon and SEGES and funded by DANIDA, Ministry of Foreign Affairs of Denmark.



NEPCon (Nature Economy and People Connected) is an international, non-profit organisation that builds commitment and capacity for mainstreaming sustainability. Together with our partners, we foster solutions for safeguarding our natural resources and protecting our climate.

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