

# PERMITTING CRIME:

How palm oil expansion drives  
illegal logging in Indonesia



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### FRONT COVER:

Forest cleared for oil palm in Lamandau, Kalteng, September 2013.

### BACK COVER:

Forest in Gunung Mas, Kalteng, October 2014

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### GLOSSARY OF TERMS:

AMDAL: Environmental Impact Assessment

IPK: Timber Utilization Permit

IUP: Plantation Business Permit

JPIK: Independent Forestry Monitoring Network

Regency: Kabupaten, an administrative unit beneath the Province

Regent: Bupati, the head of a regency or kabupaten

SK-PKH: Decree of Forest Estate Release

SVLK: Timber Legality Verification System

# INTRODUCTION

In June 2013, the Government of Central Kalimantan, Indonesia, announced the latest in a long line of attempts to rein in hundreds of oil palm plantation companies operating in violation of the law.

Teras Narang, the provincial Governor, released a list of the companies whose operations were illegitimate and declared solemnly that they must all cease operating.

The same month, in one of the richest tracts of rainforest left in the province, the chainsaws fired up. An opaque oil palm company linked to a coterie of prominent figures in Central Kalimantan's plantation sector and a Jakarta-based investment bank began clear-cutting. The returns were lucrative but the looting of millions of dollars of timber was just one of many criminal offences committed by the firm.

This is the face of illegal logging in Indonesia today.

The Environmental Investigation Agency (EIA) has been documenting and exposing the illicit trade in stolen timber in Indonesia for more than 15 years. In that time there has been a remarkable transformation in the forestry sector. Rates of illegal logging have been slashed in half and the Indonesian government has committed to an ambitious reform agenda. It has thrown open its doors to civil society and displayed genuine intent to halt the ransacking of the rainforests.

But the importance of the traditional, selective logging forestry model is declining. In its place, the conversion of rich forests to plantations for palm oil and other products is

generating a vast and poorly regulated stream of timber. Although the rule of law has increasingly been brought to bear on the old selective logging system, Indonesia's plantation sector remains in abject chaos.

The unprecedented growth of plantations has been characterised by illegality. Successive attempts to bring some semblance of order to land acquisition practices and deforestation have been undermined by a combination of corruption and incompetence, resulting in the exploitation of forest dwellers and driving rates of deforestation to the highest in the world.

Over the past two years, EIA has conducted investigations into the palm oil sector and its increasing role in the supply of timber from natural forests. This report exposes the criminality driving forest conversion and makes clear the urgent need for both enforcement and reform.

In November 2014, the newly inaugurated President Joko Widodo acknowledged the threat unregulated plantation expansion poses to Indonesia's natural heritage, stating: "It must be stopped. We mustn't allow our tropical rainforest to disappear because of monoculture plantations like oil palm."

The time to act is now.

## LOCATOR MAP:





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# TIMBER SUPPLY IN INDONESIA

**ABOVE:**  
Truck taking timber from selective logging concession in Kalteng

Since the turn of the millennium there has been a fundamental change in Indonesia’s forestry sector. From the 1970s until the early 2000s, the dominant source of revenue from the country’s extensive forests was selective logging based on a concession system. But as timber yields declined due to over-exploitation, the government promoted and subsidised a move to a plantation model.

Plantations, for both oil palm and wood fiber, not only compensated for the loss of GDP; as they surged into former logging concessions and frontier forests, a new era of clear-cutting also generated a vast supply of timber to feed a rampant domestic processing industry and export markets.

Between 1990 and 2010, the area of palm oil plantations grew from 1.1m hectares (ha) to 7.8m ha.<sup>1</sup> Analyses of the level of deforestation caused by this expansion vary but all confirm the leading role palm oil has played in the destruction of forests.

A study published this year estimated that between 2000-10, Indonesia lost at least 1.6m ha of forest to oil palm concessions. Most of this was in Kalimantan, which accounted for about 1.1m ha.<sup>2</sup> Another analysis found that between 1990-2005, more than 50 per cent of oil palm expansion in Indonesia came at the expense of natural forests.<sup>3</sup>

A 2013 analysis found that in the two years to 2011, palm oil was the single leading driver of deforestation in the country.<sup>4</sup> During this period, Indonesia overtook Brazil as the country with the highest annual rate of deforestation<sup>5</sup> and, as a direct result, became the third highest contributor to human-driven climate change.<sup>6</sup>

Using Ministry of Forestry (MoF) data, EIA has calculated a conservative average volume of 32.5 cubic metres (m<sup>3</sup>) of commercial timber per hectare in forests targeted by oil palm plantations.<sup>7</sup> Applying this to equally conservative estimates of forest loss<sup>8</sup> suggests that clearance for palm oil would have generated at least 52 million m<sup>3</sup> of timber between 2000-10.

However, over the same period the MoF’s annual reports record only 39 million m<sup>3</sup> coming from *Izin Pemanfaatan Kayu* (Timber Utilisation Permits, or IPK), the permit that timber harvested during forest conversion.<sup>9</sup> The gaping hole is certainly far larger than the 13 million m<sup>3</sup> this implies because the MoF’s IPK figures over this period also include natural forest areas cleared to establish industrial timber concessions and mines.

The shortfall in the figures could be for a number of reasons. The MoF does not collect data on timber from the point of production but rather from sawmills which report the source of the timber used. Further, until 2010 the MoF only collected data from large sawmills licensed to process in excess of 6,000m<sup>3</sup> each year. EIA’s research has shown that large volumes are being processed by medium and small sawmills licensed locally and not captured in the MoF’s IPK figures.

As this report will show, it is also clear that large volumes of timber are coming from illegal, unlicensed land clearance where companies have not obtained IPK permits.

“Large volumes of timber are coming from illegal, unlicensed land clearance for palm oil.”

## CENTRAL KALIMANTAN

The situation in the province of Central Kalimantan (*Kalimantan Tengah*, or *Kalteng*) is illustrative of the relationship between palm oil expansion and timber production, as well as the shortcomings of MoF statistics. In the 2000s, it experienced rapid expansion of plantations and had a higher rate of deforestation than any other province in Indonesia.<sup>10</sup> Unlike areas in Sumatra targeted for palm oil expansion, Kalteng does not have a significant timber plantation industry to obscure the picture.

From 2001-06, the MoF's annual reports recorded timber production from different sources by province. According to these figures, large sawmills in Kalteng consumed no timber from IPK until 2005, when there was a sudden production of more than 1.5 million m<sup>3</sup> from forest conversion.<sup>11</sup> The same year consumption of timber from logging concessions reportedly leaped 150 per cent, from about one million m<sup>3</sup> in 2004 to more than 2.5 million m<sup>3</sup> in 2005.

The area of forests under logging concessions had barely increased and the sudden surge in timber supposedly from logging concessions also exceeded the annual allowable cut by 150 per cent.<sup>12</sup> This coincided with a surge in the issuance of permits for oil palm concessions, suggesting that much of the increase in timber reportedly from logging concessions was in fact unlicensed and mis-declared timber from plantation expansion. This period also coincided with the first direct elections of local regents (district heads) under the country's regional autonomy system.

In the past six years, the reported volumes of IPK timber processed by large sawmills in Kalteng has been more steady, ranging from 42,000m<sup>3</sup> to 85,000m<sup>3</sup>.<sup>13</sup> The average over this period – 75,000m<sup>3</sup> – represents an annual

plantation expansion of only 2,300ha if a proxy of 32.5m<sup>3</sup> per hectare is used. In a period in which Kalteng's palm oil plantations expanded to cover more than one million ha,<sup>14</sup> the provincial statistics again likely represent a fraction of the true timber yields from forest conversion.

As the available MoF figures record the location of the sawmill which used timber and not its source, a portion of the conversion timber harvested in Kalteng is likely registered in other areas. Provincial data obtained by EIA and field observations also show that a potentially larger volume is processed in medium and small sawmills than by the large mills licensed by the MoF, from which the MoF's data on log production is derived.

### MIDDLE:

Forest clearing for oil palm in Katingan, Kalteng, October 2014

### BOTTOM:

Forest cover in Lamadau, Kalteng, September 2013



“Conversion timber has to date been almost entirely ignored by the SVLK. By early 2014, only five IPK holders had applied for SVLK certification.”

## IPK COMPLIANCE

Large gaps in the data may not result from poor data gathering alone but also because of companies illegally harvesting timber without IPK. The scale of this illegality is hard to gauge because companies are known not to report commercial timber stands. In 2004-05, for example, the Supreme Audit Agency (BPK) investigated five companies in Kalteng to assess their compliance with IPK regulations. All five had failed to report commercial timber stands extracted during clearance and authorities had failed to check or monitor their activities.<sup>15</sup>

In 2011, Hanif Budi Nugroho, the head of the Forest Agency in Kotawaringin Timur, a regency in the centre of Kalteng, said that of 52 oil palm firms in the area not one had obtained an IPK permit, resulting in illegal logging.<sup>16</sup> This was evidenced by substantial timber volumes available in one of the concessions that later did apply for IPK, one of only two that did so.<sup>17</sup>

EIA’s research shows that the practice of harvesting commercial timber in oil palm concessions without IPK is common. This is, however, just one of the ways in which conversion for oil palm can produce illegal timber.

Due to illegality in the means by which companies acquire rights over land and

forests, much of the timber harvested under apparently legitimate IPKs is also illegal. Corrupt and irregular practices in the permit process are rife, to the extent that the existence of an IPK permit alone is no guarantee of legality.

## CERTIFYING INDONESIA'S TIMBER AND FORESTRY SECTORS

In 2005, responding to pressure over rampant illegal logging, the Indonesian government began developing a system to verify the legality of timber production and trade. The *Sistem Verifikasi Legalitas Kayu* (Timber Legality Verification System, or SVLK) was passed into law in 2009<sup>18</sup> and came into effect in September 2010.

Under the scheme, all timber producers and processors must undergo auditing by certification bodies against an agreed SVLK Standard detailing principles, criteria, indicators and verifiers of legality.

However, due to gaps in early versions of the law, which has been revised four times,<sup>19</sup> and poor understanding of the scheme within the plantation sector, conversion timber has to date been almost entirely ignored by the SVLK. By early 2014, only five IPK holders had applied for SVLK certification, while selective logging for traditional forestry has been the focus of most audits.

The SVLK has been developed over a period in which rates of traditional forms of illegal logging have declined significantly. In 2001, it was estimated that 83 per cent of timber was harvested illegally;<sup>20</sup> by 2010, that had fallen to 40 per cent.<sup>21</sup> The reform agenda of which the SVLK is a part is credited as being a core reason for this.

Until this year, however, little attention was paid to rates of illegality in land conversion and related timber production. By 2010, land conversion accounted for 75 per cent of timber production from natural forests, according to MoF figures<sup>22</sup> and is associated with an illegality rate of 80 per cent [see page 8].

As conversion increasingly replaces the traditional forestry model as a source of timber, it is driving up illegal logging to previous highs and threatens to undermine progressive reforms.

Clearly, SVLK implementation in the plantation sector is now of paramount importance. It is equally important to understand the nature of illegality in the sector to ensure that monitoring is credible and future reforms adequately address the problem.

**BELOW:**  
Crude timber processing  
in Indonesia



# PLANTATION PERMITTING PROCEDURES

A range of different permits and processes are required under Indonesian law to convert natural forest to oil palm plantations. The various stages of the process are governed by different ministries, their line agencies at regency and provincial levels, and regents.

## IZIN LOKASI:

### Location Permit

The first significant step in the process is to apply for a Location Permit. The application is made to the regent or provincial governor (if the proposed concession straddles two regencies), outlining how it complies with relevant spatial plans. If it is successful the regent or governor issues the permit, providing the company with the right to negotiate to acquire land within a given area, commonly with both rural rights-holders and the MoF. The company must acquire at least 51 per cent of the land within the concession within three years or the permit expires.

## ANALISIS MENGENAI DAMPAK LINGKUNGAN (AMDAL):

### Environmental Impact Assessment

The AMDAL is a process by which the social and environmental impacts of a plantation are identified and mitigated. Four documents are produced, including the ANDAL, which outlines in detail the findings of field assessments. The documents are assessed by an AMDAL commission, formed by the regency or provincial Environment Agency. The commission should include NGOs, academics, community representatives and government officials. Once the AMDAL documents are approved by the commission the regent or governor can issue an *Izin Lingkungan*, or Environmental Permit. Operating without a required Environmental Permit is a criminal offence under Law 32/2009 on Environmental Protection and Management (the Environmental Law).

## IZIN USAHA PERKEBUNAN (IUP):

### Plantation Business Permit

The Plantation Business Permit, or IUP, grants the company the right to operate on land within the Location Permit that has been legally acquired. In order to obtain the IUP, companies must make an application to the regent or governor, submitting a range of documents,

including the AMDAL. Since 2007, at least 20 per cent of the IUP area must be developed in ways that financially benefit the local community, commonly through smallholdings.

## SK PELEPASAN KAWASAN HUTAN (SK-PKH):

### Decree of Forest Estate Release

If the planned concession falls within the *kawasan hutan*, or Forest Estate, it must be released by the MoF prior to land clearing. Operating within the Forest Estate, prior to completing this process, is a criminal offence under the Forestry Law. Companies must make an application to the Minister of Forestry, who may relinquish the Ministry's claim to the land by issuing a Decree of Forest Estate Release (SK-PKH).

## IZIN PEMANFAATAN KAYU (IPK):

### Timber Utilisation Permit

Prior to land clearing a timber survey is carried out within a sample area of the concession. Companies must pay taxes on timber stands if there is at least 50m<sup>3</sup> of timber composed of trees with a diameter of more than 30cm across the whole concession. If an IUP and SK-PKH have been issued, the regency Forestry Agency can issue an IPK permit providing rights to harvest a given volume of timber over a part of the concession. The IPK permit is valid for one year and can be extended once.

## HAK GUNA USAHA (HGU):

### Land Use Rights

The HGU is issued when all available land within the Location Permit has been acquired in compliance with the Location Permit regulation. It effectively rounds off the permit process, providing the company with tenure within a given boundary for 35 years.

#### BELOW:

Map from AMDAL document showing forest cover





## RATES OF ILLEGALITY

**ABOVE:**  
Timber from forest conversion  
used illegally in Katingan,  
Kalteng, May 2011

If the proper legal process is followed it provides opportunities for consultation with communities, mitigation of environmental damage, and checks and balances to counter corruption. In practice it is widely abused in ways that illegitimately increase the area of land available for plantation expansion, often at the expense of forests and the rights of rural communities.

A 2014 report produced the most comprehensive estimate yet of the extent of such violations. Examining two national studies of illegality and more specific assessments, it arrived at an estimated rate of illegality in all palm oil concessions in Indonesia of 80 per cent.<sup>23</sup> The report also made use of a detailed analysis of legal compliance in one regency in Kalteng, which found indications of illegality in 89 per cent of oil palm concessions.<sup>24</sup> This approximately matches the rate of illegality in timber production at its peak in the early 2000s.

The most common violation identified was clearing outside concession boundaries, which occurred in 61 per cent of cases. Companies had also routinely begun clearance before obtaining all necessary permits and illegally encroached on peatlands.

The regency study is symptomatic of a deeper malaise in Kalteng. As the province's forests have been replaced

by palm oil at an unprecedented rate, it has been plagued by an epidemic of 'unprocedural' permit allocation.

In 2011, the MoF and the Judicial Mafia Eradication Taskforce, a multi-agency anti-corruption body, revealed that only 67 of 352 plantations in the province had obtained SK-PKH.<sup>25</sup> The majority of the companies carrying out forest clearance had also failed to obtain IPK. This was in large part due to a failure by the MoF and the regencies to agree on a spatial plan for the province, which led to the regencies directing plantation expansion to areas the MoF was not inclined to release.

Due to decentralisation of political power in the 2000s, regents exercise considerable power over the allocation of land and forest resources within their jurisdictions. The SK-PKH issued by the MoF is one of the few parts of the process which cannot be controlled by them. The failure to reconcile the spatial plans until 2012 removed one of the few checks on this power and cast the plantation sector deeper into the shadows.

Regents have taken advantage of this absence of scrutiny to issue permits in ways that run counter to the regulatory framework, commonly by expediting the permit process. If followed properly, it is a multi-year process resulting in an incremental reduction in the size of a concession. As it progresses, emerging

**"A third of all regents are currently under investigation for corruption."**

criteria should lead to sections being removed from the area permitted for conversion, particularly social and environmental factors. For example, the land of villagers who do not want to sell their land might be excised, or the AMDAL will prohibit clearing peatlands.

But the plantation database for Kalteng shows this has not been happening, with dozens of concessions in which the Location Permit and IUP are the same size. In many cases, the dates of the two permits are only weeks or even days apart. This is technically impossible as it provides no time for an AMDAL to be carried out, let alone considered by an AMDAL commission.

This was confirmed to EIA by the head of a Plantation Agency in one regency. When EIA pointed out that it had happened within his own jurisdiction, the official smiled and said such instances would be 'political decisions' by the regent.

The casualty of these expedited 'political' decisions is the AMDAL process. Satellite analysis and field visits by EIA confirm that companies routinely begin operating soon after the IUP has been issued, irrespective of whether an AMDAL has been approved. Although operating without an Environmental Permit is a criminal offence, it is the regent's control of the IUP that they respect.

The scale of this crime is borne out by government records. EIA's analysis of a sample of 51 companies that should have obtained approval from the provincial AMDAL commission reveals half are operating without it. The records show that many of the companies that have completed their AMDALs began operating months or even years before they were approved by the government.

Even when AMDAL assessments are carried out, there is evidence that they are cursory. It is reportedly an open secret among Environment Agency officials that companies pay commission members for favourable decisions.<sup>26</sup> The Ministry of Environment itself found that half of the regency AMDAL commissions did not properly conduct reviews.<sup>27</sup>

The incentive for companies in expediting the permit process is clear; it enables them to maximise the area available for development. The incentive for regents in openly violating the law is less clear. However, regents and governors have been subject to corruption investigations and convictions for precisely these offences. In 2012, the MoF revealed that 13 regents from four provinces, including Kalteng, were under investigation for improper allocation of

forest resources to palm oil and mining firms.<sup>28</sup> Across the country, a third of all regents are currently under investigation for corruption.<sup>29</sup> The governors of two of the provinces hit hardest by deforestation, Riau and East Kalimantan, have also been jailed for illegal permit issuance.<sup>30</sup>

EIA's research into a range of cases shows in detail how illegality in the oil palm sector is perpetrated and how this generates large volumes of illegal timber.

**MIDDLE:**

Forest illegally cleared by fire in Katingan, Kalteng, 2014

**BOTTOM:**

Satellite analysis shows illegal forest clearing outside concession boundaries in Gunung Mas, Kalteng



© Wancino/JPIK



## CASE STUDIES:



Logs prepared for transport  
in NSP, July 2013

During 2013 and 2014 EIA carried out in-depth research in Kalteng to identify timber harvested illegally from palm oil concessions. Fieldwork was conducted jointly with the Kalteng branch of *Jaringan Pemantau Independen Kehutanan* (JPIK) - the Independent Forest Monitoring Network. JPIK is a national network of NGOs which monitors the implementation of the SVLK.

### PT NUSANTARA SAWIT PERSADA

#### INDICATIONS OF ILLEGALITY:

- IUP issued prior to approval of Environmental Permit
- Operating without Environmental Permit
- Clearing forest prior to IPK
- Clearing outside concession boundaries
- Operating in Forest Estate
- Operating in deep peat

In 2010, the Regent of Kotawaringin Timur issued a spate of permits to palm oil companies. Among the beneficiaries were two linked plantation firms: PT Nusantara Sawit Persada (NSP) and PT Borneo Sawit Perdana (BSP).

In just two days in January, the firms obtained both Location Permits and IUP covering a cumulative area of more than 35,000ha.<sup>31</sup> The issuance of the permits so close together gave no time for AMDAL documents to be prepared, indicating there was no legal basis for the IUPs.

On August 5, 2011 a member of the provincial legislature told a parliamentary committee that NSP was operating illegally and had done so since 2008. A company spokesman denied its operations were illegal but admitted he could not produce the IUP because it was “still in process”.<sup>32</sup>

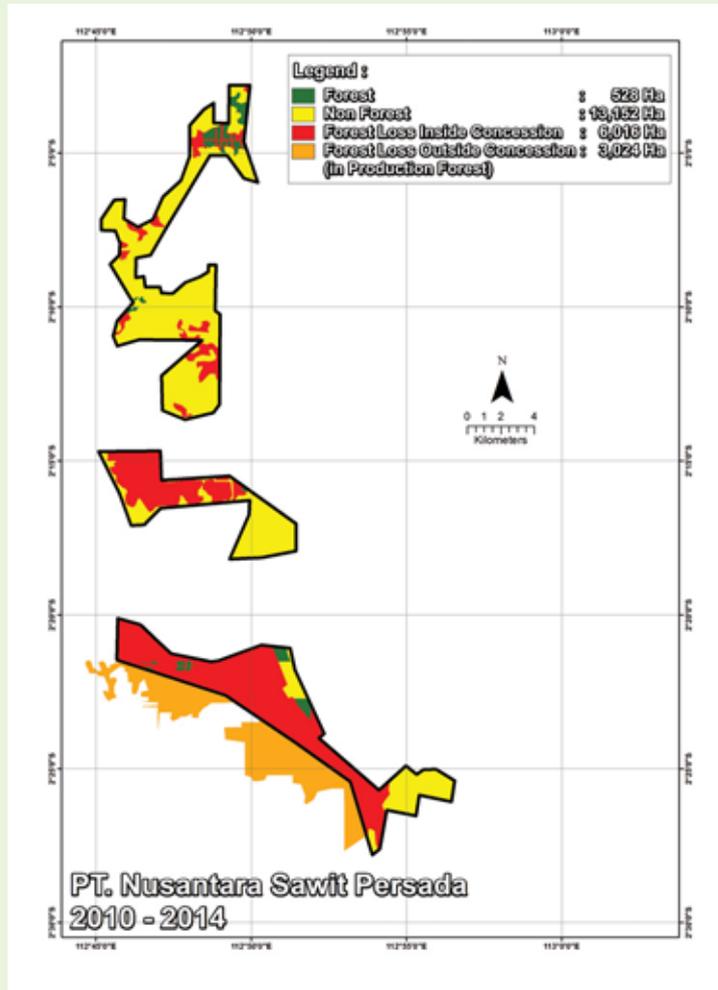
In spite of this, provincial records show that just five days later, on August 9, 2011, the Minister of Forestry issued a SK-PKH to NSP. This decree allowed 13,008ha of NSP’s concession to be converted into ‘non-forest’, freeing it for agricultural development. The following May, the provincial Forestry Agency granted NSP an IPK for 9,223m<sup>3</sup> of timber to be harvested from just under a third of the concession.

At this stage the AMDAL process had still not been carried out, let alone approved. NSP’s AMDAL documents, later obtained by EIA, show they were signed by the company director in December 2012. The provincial Environment Agency’s records show they were not approved until May 2013, when the Environmental Permit was finally issued.

By this time, NSP had cleared thousands of hectares of forest. This included areas identified in maps used by the government as peat at a depth of up to 8m – far beyond the 3m threshold allowed by law. Under the 2009 Environmental Law these were criminal actions, punishable by a prison sentence.

After obtaining an Environmental Permit in May 2013 land clearing accelerated, and in July 2013 the company was awarded a successive IPK for 7,613m<sup>3</sup> of timber. EIA visited the concession shortly after the permit was issued. Company staff said the timber was being shipped directly out of the province to Surabaya, a major processing hub on the island of Java.

EIA also found that land clearing occurred far beyond the boundaries of the concession, as far as 2km into areas designated as Production Forest. This is a violation of the Forestry Law punishable by a prison sentence of up to 10 years.



## The case goes to court

By 2014, the state attorney for Kotawaringin Timur had brought criminal charges against four individuals connected to NSP. The case was brought on the relatively narrow charge of cultivating palm oil on 181ha of land in 2012 prior to obtaining an IUP, in violation of the Forestry Law and Plantation Law.

The charges were dismissed before the case got to trial on the grounds that the contents of the indictment were “vague” and should be heard in a civil court. The state attorney has stated his intention to appeal to a higher court<sup>33</sup> and in October 2014, a judicial official confirmed to EIA that the case remains in the system.

The indictment conflicts with documents obtained by EIA showing that NSP did have an IUP at the time the alleged offenses were committed. The case appears not to have been brought on the basis of the violation of the Environmental Law, which is clearly evidenced.

The issuance of permits contrary to procedure - prior to the approval of the AMDAL and issuance of an Environmental Permit - merits further investigation.

The case demonstrates how concessions must be subject to deeper scrutiny even where there is a seemingly legitimate IPK. The scale of the criminal acts that took place prior to the IPK being issued, and the illegitimacy in the process of establishing tenure over the concession, means the timber from it should be considered illegal.

## COMPANY OWNERSHIP

The public face of NSP and BSP is Teguh Patriawan, chairman of the Indonesian Plantation Association in Kalteng and the vice chairman for plantations at Indonesia’s Chamber of Commerce and Industry (KADIN).

Patriawan signed the AMDAL documents as the Managing Director and makes statements to the media on palm oil issues in that capacity.

The company is also linked to a Jakarta-based investment bank, the Samuel Group. The indictment named Thomas Tampi as one of the co-defendants. Tampi is also a Managing Director of Samuel Group subsidiary PT Samuel Sekuritas Indonesia<sup>34</sup> and describes himself as both the CFO and Director of NSP.<sup>35</sup>

Tampi also names himself as the CFO of Cipta Plantations. A domain name for the company has been registered by an employee of the Samuel Group.<sup>36</sup>

NSP has in the past shared a registered address with another of the case studies in this report, PT Prasetya Mitra Muda (PMM). The director of PMM is a Kurniadi Patriawan. [See page 13]

## CASE STUDIES:

### PT FLORA NUSA PERDANA

#### INDICATIONS OF ILLEGALITY:

- Operating without Environmental Permit
- IUP issued prior to approval of Environmental Permit
- Clearing forest prior to IPK
- Operating in Forest Estate

In July 2013, EIA and JPIK visited a concession operated by the company PT Flora Nusa Perdana (FNP) in Gunung Mas, a relatively remote and under-developed regency in Kalteng's indigenous Dayak heartlands.

FNP obtained a Location Permit in 2006 and an IUP in mid-2007, covering an area of just under 10,000ha. EIA's analysis of satellite data indicates that about 85 per cent of the concession was still under forest cover at that time.

The provincial government has no record of FNP ever obtaining an Environment Permit or IPK, and the MoF confirmed that in 2013 the forest release process (SK-PKH) remained at the "application stage". Nevertheless, since 2007 it has cleared 4,500ha of forest.

EIA's field visit confirmed that most of this area is now planted with palm oil while extraction of commercial timber stands is ongoing. At the time of the first field visit, there were two sawmills in operation on the road entering the concession, stacked with large logs. EIA ascertained that one of them, and likely the second, was licensed to process less than 2,000m<sup>3</sup> per year and as such fell under the jurisdiction of the regency government.

Based on the MoF's estimates of timber stands in secondary forests and the area cleared, the volume of timber extracted from the concession since 2007 would likely reach in excess of 150,000m<sup>3</sup>. All timber extraction from the concession has been carried out illegally, violating both the Forestry Law and Environmental Law.

#### The case goes to court

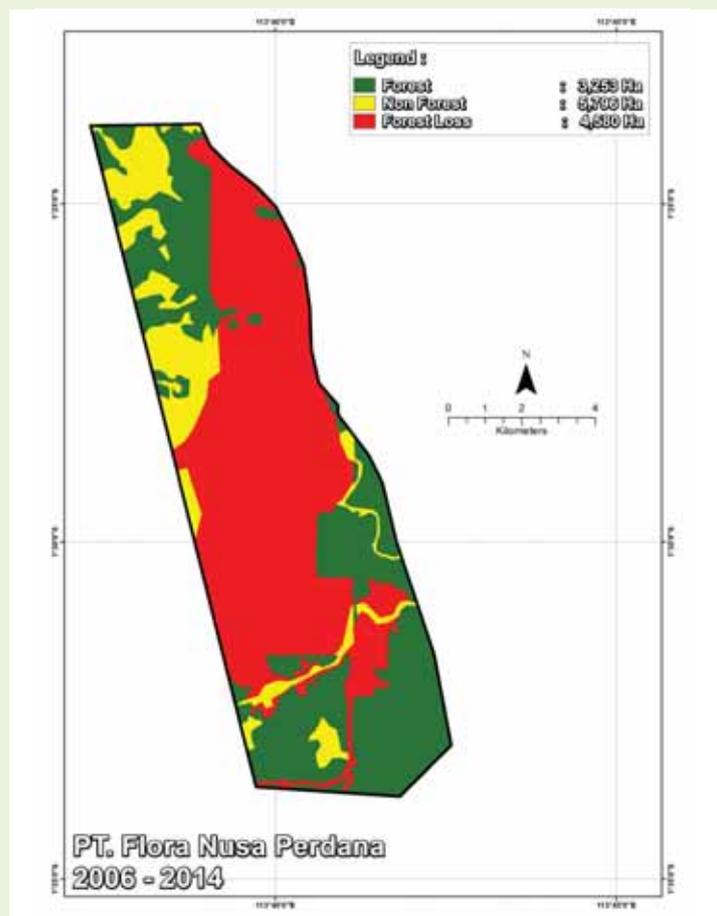
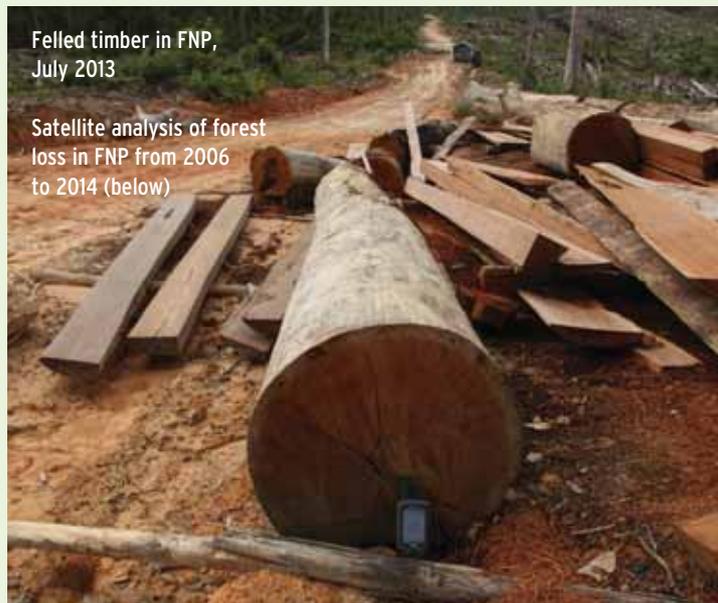
In October 2008, a local customary leader reported FNP to the provincial police through a Palangkaraya-based lawyer. The report accused the company of carrying out illegal logging in primary forest, without an SK-PKH or IPK.

Subsequently, the Director of Criminal Investigations in the provincial police launched an investigation and officers carried out two field visits, in November and December 2008. The findings of the investigation reportedly confirmed that FNP had encroached on the Forest Estate in violation of the Forestry Law.<sup>37</sup>

Three years later, the head of the provincial police issued a public statement that the company was one of nine under investigation for violations of the Forestry Law, Plantation Law and other regulations.<sup>38</sup>

Felled timber in FNP,  
July 2013

Satellite analysis of forest  
loss in FNP from 2006  
to 2014 (below)



A policeman in the provincial criminal investigation unit confirmed to EIA and JPIK that the findings of the investigation were submitted to the state attorney in Gunung Mas in January 2009. EIA has been unable to ascertain what action was taken, and to date land clearing - and timber harvesting - continues.

## PT PRASETYA MITRA MUDA

### INDICATIONS OF ILLEGALITY:

- Operating without Environmental Permit
- IUP issued prior to approval of Environmental Permit
- Clearing forest prior to IPK
- Operating in Forest Estate

While in the vicinity of FNP in July 2013, EIA and JPIK came across a large cleared area in the forest. According to provincial government maps there was no concession of any kind in the location. Workers in the area said it was a palm oil concession belonging to a company named PT Prasetya Mitra Muda (PMM).

The name appeared nowhere in any records, other than in a list of concessions that had been granted principle permission for forest release by the MoF. That indicated the company had obtained a Location Permit and the MoF had decided there was grounds for the area to be released from the Forest Estate, but no more.

In July, JPIK submitted a written request to the regency Plantation Agency for basic permit information on PMM, and other concessions, but this was rejected.

Over the following year, JPIK continued to monitor the concession on the ground and EIA carried out satellite analysis. PMM had begun clearing in April 2013, processing logs in the two sawmills adjacent to FNP. In the second half of the year the rate of forest clearing grew rapidly and the number of sawmills proliferated. By mid-2014 at least 400ha of dense forest had been felled and at least 12 sawmills had sprung up to process thousands of cubic meters of valuable illegal timber.

JPIK once again attempted to obtain data on both the sawmills and concession from regency agencies in April 2014, but was again refused. When JPIK asked an official in the Forestry Agency if the sawmills had applied for SVLK audits, the official claimed to have no knowledge of the SVLK.

### Rungan-Kahayan

While information on PMM was thin on the ground, a better picture emerged of the forests that it was targeting.

The land clearing was taking place east of the Rungan River, a tributary to the Kahayan River, the longest in the province. At the confluence of the two rivers lies a tract of relatively undisturbed forest holding some of the richest biodiversity left in Borneo.

The Rungan-Kahayan block has been largely spared the exploitation that has destroyed vast tracts of Kalteng over the past few decades. A study of viable habitats published in 2004 found it could be home to more than 1,000 orangutans.<sup>39</sup>

A more detailed field study carried out close to the location of PMM in 2010 found "pristine and diverse" forests that held "one of the richest areas seen in south-east Asia in terms of wildlife". The presence of a raft of species categorised as endangered or critically endangered was documented, including orangutans, Bornean southern gibbons, Sunda pangolins and Wallace's hawk eagle.<sup>40</sup>

The forest had been preserved due to the careful guardianship of the nearby village of Mungku Baru. Dayaks from the village developed a deeply held cultural belief in the sanctity of the *ulin* tree, also known as Borneo Ironwood or *Eusideroxylon zwageri*, which yields extremely dense and beautiful timber that has been subject to over-exploitation. The belief has led the Dayaks to protect their forests fiercely and with success, but they are now under threat from illegal plantations.

Cleared land in PMM in July 2013



Felled timber in PMM in July 2013



## CASE STUDIES:

### Vow of the Young Partners

In October 2014, EIA and JPIK finally obtained a copy of PMM's ANDAL, albeit not from government sources. The document shed new light on the company, its owners and the location of the concession.

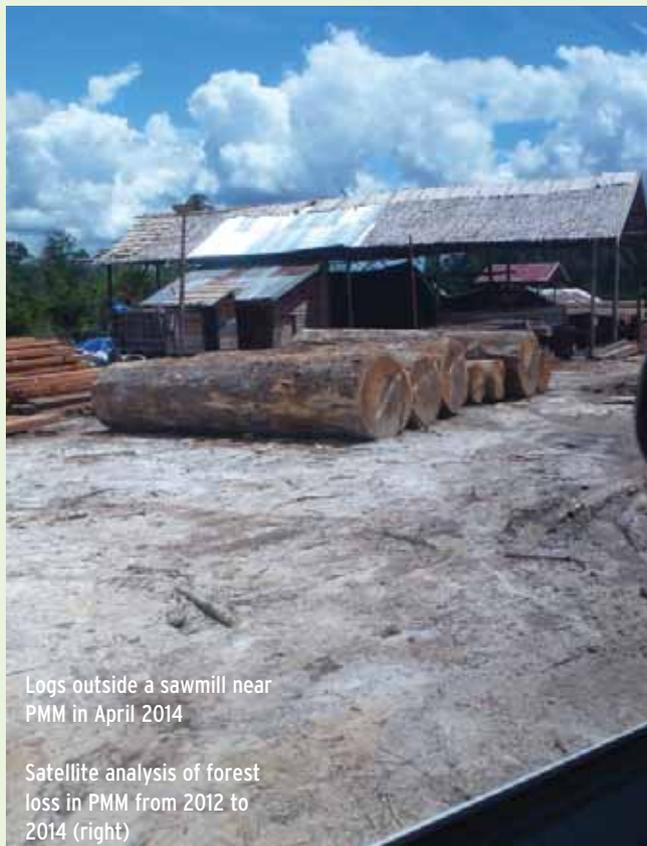
The company was incorporated in August 2010 by Yantoni Kerisna, William Kerisna and Aries Liman. Yantoni Kerisna, then aged 50, was the founder of a contractor which carries out land clearing for dozens of palm oil firms in Kalteng. William Kerisna was at the time aged only 27.

In April 2012, the company obtained a Location Permit from the Regent covering 13,883ha. Eight months later a shareholder statement named William Kerisna as Managing Director and 25-year-old Kurniadi Patriawan as director.

PMM's ANDAL and incorporation documents list the company address as a condominium in Jakarta, which is also the home address of the younger Kerisna. But the shareholder statement gave an alternative address which matches that of PT Nusantara Sawit Persada. [See page 11]

Yantoni Kerisna's firm, PT Fortuna Farmindo, has been awarded multi-year contracts to carry out land clearing and preparation for both companies.<sup>41</sup>

There are consistencies in the disregard NSP and PMM have displayed for permit processes. PMM's ANDAL is dated January 2014, after the company began logging the forest. A village head in the area told EIA and JPIK that he attended a



Logs outside a sawmill near PMM in April 2014

Satellite analysis of forest loss in PMM from 2012 to 2014 (right)

consultative meeting on the AMDAL in the capital of Gunung Mas in May 2014. By that time the Environmental Permit could not have been issued, although PMM had cleared hundreds of hectares of forest and harvested thousands of cubic-meters of timber.

Maps in the AMDAL documents show that the concession is mostly forested and stretches into the forests of Mungku Baru.

The maps also highlight the likelihood that the concession will stoke conflict with and between local communities. This is particularly pertinent for the villages of Bereng Malaka and Parempoi, which are sandwiched between the concession blocks, effectively isolating them within a narrow strip of land along the Rungan River. JPIK has documented evidence that disputes have already emerged, which will be exacerbated as the land available to communities shrinks.

In November, the provincial Forestry Agency confirmed that an IPK had been issued to PMM in June 2014. This suggests that the AMDAL documents have been approved and an Environmental Permit has been issued. The permits serve as a post hoc legitimisation of the forest and environmental crimes perpetrated by the company.





Timber harvested in KAP, September 2013



Villager and tree in KAP concession, 2013

© LPIKP Kalteng

## PT KAHAYAN AGRO PLANTATIONS

### INDICATIONS OF ILLEGALITY:

- Non-compliance with Gunung Mas Regent Instruction 4 of 2012
- Non-compliance with Kalteng Governor Decision No. 188.44/30/2013
- Underestimated timber yields
- IUP issued prior to approval of Environmental Permit

In March 2012, Dayaks from nine villages in Gunung Mas descended on the Regency capital. Their purpose was to hold a peaceful protest outside the local legislature, objecting to a palm oil concession proposed by the firm PT Kahayan Agro Plantations (KAP).<sup>42</sup> The concession threatened to annex thousands of hectares of forest and the community rubber smallholdings woven into it.<sup>43</sup>

This was not the first time the villages had rejected the concession. In a letter to the regency police before the protest took place, signed by representatives of all nine villages, they noted they had rejected the proposal in a formal letter to the sub-district government and verbally in AMDAL consultation meetings. They had held meetings with the regency and provincial governments, reasserting their position.<sup>44</sup>

The company had obtained a Location Permit for 17,500ha in February 2010. Nine days later, Anglo-Eastern Plantations PLC, a palm oil grower listed on the London Stock Exchange, acquired a 95 per cent for US\$4.6 million.<sup>45</sup> Within two weeks, the Regent of Gunung Mas had issued an IUP covering the full 17,500ha without an approved AMDAL. While this violated the regulation governing IUP, the company did not begin land clearing and so did not violate the Environment Law.

It was during the AMDAL process that the communities raised concerns and their position on the concession was clear. "On principle", they later wrote to the Regent, "we nine

villages are fixed in our disagreement with oil palm company PT KAP in our area".

In response to the protest, the Regent issued a formal Instruction in March 2012 to the director of KAP (Instruction 4 of 2012). It stated that if the community held rights within the IUP area, their land would have to be excised from it. The Regent also banned the company from buying land from the communities, either inside or outside the IUP, without the permission of the regency government.<sup>46</sup> It further dictated that if the company violated the terms of the Instruction, its permits would be reviewed by the Regent.

Tongkuy, the customary leader of Tumbang Marikoi, one of the villages, told EIA that during this period he was offered bribes to sign letters in support of the concession. While such letters are not legally required, they can be submitted to the MoF in support of applications for SK-PKH. According to Tongkuy, the offer came from an employee of KAP and two senior village officials who supported the plantation.

"They came to my house in the field near Apak River," he told EIA in October 2014. "They carried a bag with them and inside it were papers. He asked me to sign it. They said 'you must sign this, because the head of the village and the head of the sub-district have signed it and you are the only one who has not. If you sign this, I will renovate your house'."

Tongkuy refused and in September 2012 the MoF issued a SK-PKH for 11,385ha, relieving its claim over the Forest Estate. In January 2013, the Governor of Kalteng issued a Decision on the environmental feasibility of the plantation (Decision No. 188.44/30/2013), a formal legal instrument that approved the Environmental Permit. He stipulated that KAP must comply with the Regent's Instruction, conducting an inventory of all land claims within the concession. The Instruction made reference to customary lands, for which consultation and mapping would include customary institutions.<sup>47</sup>

Two months later, an IPK was issued to a third party, PT Kahayan Hutan Lestari, to extract 57,680m<sup>3</sup> of timber from 5,384ha within the concession.<sup>48</sup>

## CASE STUDIES:

### Expropriating customary lands

The clause in both the Regent's Instruction and the Governor's Decision that required an inventory of customary lands in the area were grounded in Provincial law. In 2009, the Governor issued a Regulation which, for the first time, formally recognised customary rights over land and established a system for those rights to be formally registered within the state's land system.

The regulation gave a deadline of six years within which the inventory had to be completed, but by the time KAP's Environmental Permit was issued it had not taken place in the affected villages.

After Tongkuy was offered bribes to support the concession, he visited Jakarta with a sympathetic provincial member of Parliament to appeal to the MoF and Ministry of Agriculture to revoke the concession. He was advised by the MoF to contact the Kalteng branch of *Aliansi Masyarakat Adat Nusantara* (AMAN), the indigenous peoples' alliance that has led the fight for recognition of customary rights. In September 2013, AMAN Kalteng initiated a participatory mapping process in order to map customary lands in Tumbang Marikoi.

But by this point, KAP had already begun its own process of land acquisition. Villagers told EIA and JPIK that KAP employees

marked out the location of existing smallholdings within the concession and paid a flat fee of Rp.2.5 million (US\$200) per hectare.

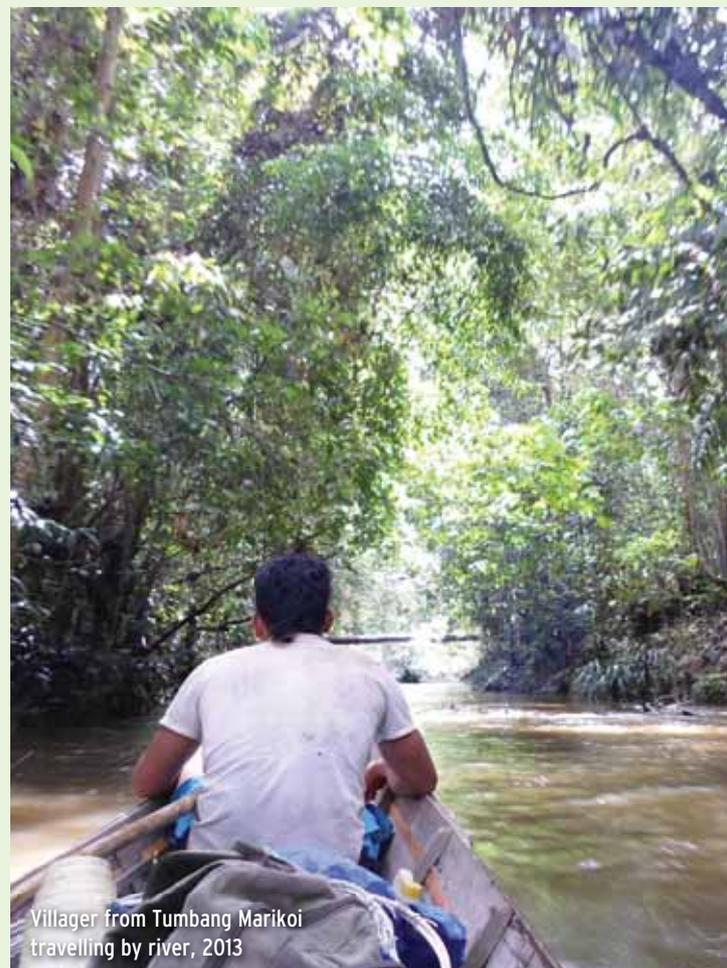
According to the community's customary laws, individual land tenure is exercised by clearing and using forest. Areas that are not yet opened - 'potential forest' - were for communal use and exploited sustainably by the community. It was as a result that large areas of forest remained within the communities' land. In order to acquire these areas, the company encouraged individuals to mark out a boundary, ostensibly bringing the land into private use, and paid the same fee.

This clearly fell short of the process required to properly evaluate land rights claims, particularly because it failed to take communal ownership into account. The process initiated by AMAN Kalteng has yet to be completed but it is too late - by the end of 2013, inhabitants of two of the villages told EIA that most had already sold their land.

It is clear that KAP did not comply with the instruction from both the Regent and the Governor to properly map tenure claims within the concession. Doing so would have required a far more in-depth process, employing established principles for participatory mapping. In turn, customary lands were not excised from the IUP area.



Solitary tree in KAP concession in September 2013



Villager from Tumbang Marikoi travelling by river, 2013



Timber harvested in KAP,  
September 2013

The Regent also instructed that no community land could be sold without the permission of the government. The inference was that the government would safeguard the community's land rights, acting as a check on land acquisitions. In practice, what occurred was a quick sale of land at cheap rates. Community members expressed the view that the lack of documentation for their land claims contributed to uncertainty over tenure and encouraged individuals to sell.

Far from protecting the communities, the Regency government facilitated a wholesale transfer of their resources – both land and timber – to a private company. The revenues from almost 60,000m<sup>3</sup> of timber in 2013 alone likely exceeded the fees the communities were paid for their land.

Both the community and a local NGO<sup>49</sup> have raised doubts over the volumes of timber that have been declared within the concession. The IPK identifies approximately 10m<sup>3</sup> of timber per hectare, less than a third of the conservative average yield based on MoF figures.

Community members estimated that the true potential of the forest was between 50-100m<sup>3</sup> per hectare. Using the lower estimate would produce a yield of 270,000m<sup>3</sup> from the forests within the concession. At a conservative estimate, the value of this timber would be in excess of US\$50 million – more than 20 times the company will pay the community for all of the land. Based on a higher estimate of the timber yields and prices for the species on the global market, the value could be in excess of US\$100m.

The case that the timber was underestimated is supported by the supply contracts declared by the five sawmills buying from the concession. According to provincial government data, PT Kahayan Hutan Lestari was contracted to supply them with 68,000m<sup>3</sup><sup>50</sup> in 2013, far in excess of the timber it is licensed to harvest in 2013 under its IPK.

In the meantime, the community is barred from extracting timber from its forests, a restriction enforced brutally. In September this year a villager from Tumbang Marikoi was felling a tree when he heard a gunshot. A security guard working for KAP told him to leave the company's land.

"He said 'no more cutting trees here, all of the area here has been bought by the timber company'," the villager told EIA. "We never sold an inch of land or forest to that company. Never."



Hardwood tree in KAP  
concession in 2013

© IPIK Kalteng



Logs harvested from KAP  
concession, October 2014



# CORRUPTION ON THE FOREST FRONTIER

**ABOVE:**  
Forest clearing in BMB,  
September 2013

While investigating illegal and improper permit processes in Kalteng, EIA and JPIK were repeatedly drawn to the Regency of Gunung Mas. While the Regency retains rich, relatively untouched forests that have to date been spared the levels of exploitation seen in more accessible areas, these frontier forests are being increasingly targeted for palm oil expansion, generating huge volumes of timber.

Levels of legal compliance in this expansion programme are low even for Kalteng. There is also credible evidence linking four large concessions in the regency to a major corruption scandal.

In 2012, EIA and JPIK ascertained that at least 77,000ha was allocated to companies in just five concessions in Gunung Mas. This was up to three times the area issued in any other year during the term of the Regent, Hambit Bintih.

One of these permits was obtained by PT Prasetya Mitra Muda [see page 13]. The other four were all issued to companies owned by three local businessmen – Cornelis Antun, Elan Gahu and Edwin Permana.

## THE GANG OF THREE

In 2011, Cornelis Antun set up two companies, PT Berkala Maju Bersama (BMB) and PT Jaya Jadi Utama (JJU), registered to his house in the provincial capital, Palangkaraya. The two companies both obtained Arahan Lokasi, or Plantation Reference Letters, which directed them to areas in Gunung Mas in which they could carry out feasibility studies and community consultations. This provides the basis on which an

application for a Location Permit can be made.

Using these letters as their sole asset, in February 2012 Cornelis and his two co-owners agreed a deal to sell a majority stake to a Malaysian plantation firm, CB Industrial Product Holding Berhad (CBIP). The deal gave CBIP 94 per cent equity in both JJU and BMB, for a fee of Rp.14 billion upfront and a further Rp.32 billion when the companies obtained both Location Permits and IUPs. It stipulated that the permits be obtained within six months, through “proper and valid legal proceeding ... and in compliance with the applicable prevailing laws and regulations”.<sup>51</sup> What followed was far from compliant with the law.

The day after the CBIP agreement was announced Hambit issued Location Permits for both concessions.<sup>52</sup> Within weeks he issued IUPs to both concessions, despite the fact that Environmental Permits had not been issued. In April, CBIP announced to the Malaysian stock exchange that it had completed the purchase for a total of just over Rp.41bn (US\$4.5 million).

The permits had not been issued in compliance with the law. The ANDAL for BMB, obtained by EIA, is dated November 2012 – eight months after the IUP was issued. Provincial government records show that it was not approved until May the following year. The ANDAL for JJU was not approved until May 2013.<sup>53</sup>

Between March and October 2012, Cornelis and his colleagues formed two new companies, PT Kurun Sumber Rezeki (KSR) and PT Gumus Alam Subur (GAS). KSR and GAS obtained

“Cornelis was the nephew of Hambit, the Regent who issued the permits which made him rich. He was, in addition, the treasurer for Hambit’s re-election campaign in 2013.”

Plantation Reference Letters covering a further 30,000ha. By the end of the year they had sold them on to CBIP in deals worth a further Rp.41bn.<sup>54</sup> Once again, Hambit issued Location Permits after the deals were signed.<sup>55</sup>

Within the year the three investors had potentially earned US\$9 million solely from permits issued by Hambit.

Aside from being a successful businessman, Cornelis was also the nephew of Hambit, the Regent who had issued the permits which made him rich. He was, in addition, the treasurer for Hambit's forthcoming re-election campaign, in 2013.<sup>56</sup>

## MONEY POLITICS

The Gunung Mas election commission held that Hambit had won the 2013 election but the decision was subject to a legal challenge by his opponent. The dispute was scheduled to be heard at the Constitutional Court in Jakarta by chief justice Akil Mochtar.

Before the case could begin, however, Indonesia's anti-corruption taskforce caught Cornelis at Mochtar's house. He was arrested in the act of handing over about US\$250,000 to the judge to ensure Hambit was declared the winner of the election. Hambit was later arrested at a hotel.<sup>57</sup>

Cornelis' co-investor in the CBIP deal, Elan Gahu, would later admit to a court that he provided Cornelis with a loan amounting to a third of the cash for the judge. The court heard that another Rp.1 billion came from the third member of the CBIP deal, Edwin Permana.<sup>58</sup>

In March 2014, Hambit and Cornelis were both convicted of offences under the Corruption Eradication Law. Hambit was sentenced to four years and Cornelis to three years, both with a Rp.150m fine.<sup>59</sup> Elan and Edwin have not been arrested.

No legal action has been taken against either Hambit or Cornelis and his partners in relation to the irregular plantations.

The AMDAL documents for all four concessions, obtained by EIA, indicate that they will produce large volumes of commercial timber when active. Most of the area they cover is described as "Secondary Dry Forest", a classification within which the MoF estimates average timber yields of up to 120m<sup>3</sup> per hectare.

Of the four, only BMB has begun operating. EIA and JPIK documented substantial forest clearing in the concession by September 2013 but the provincial Forestry Agency has no

record of an IPK. Even if it exists, the IUP it is predicated on is fundamentally legally compromised.

JJU, one of the two concessions that have obtained IUP, lies on the other side of the Kahayan river from PT Kahayan Agro Plantation. As such, it hems in the communities whose land has already been expropriated to the south of the river by KAP. In November this year, the provincial Forestry Agency confirmed that an IPK had been issued to JJU at the end of October. The situation for the communities, as the company logs out what remains of their forest, will soon grow far worse.

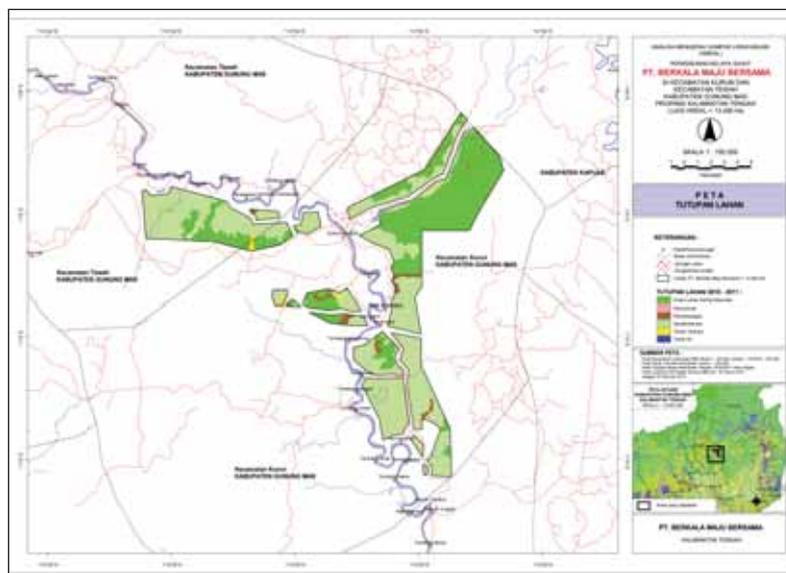
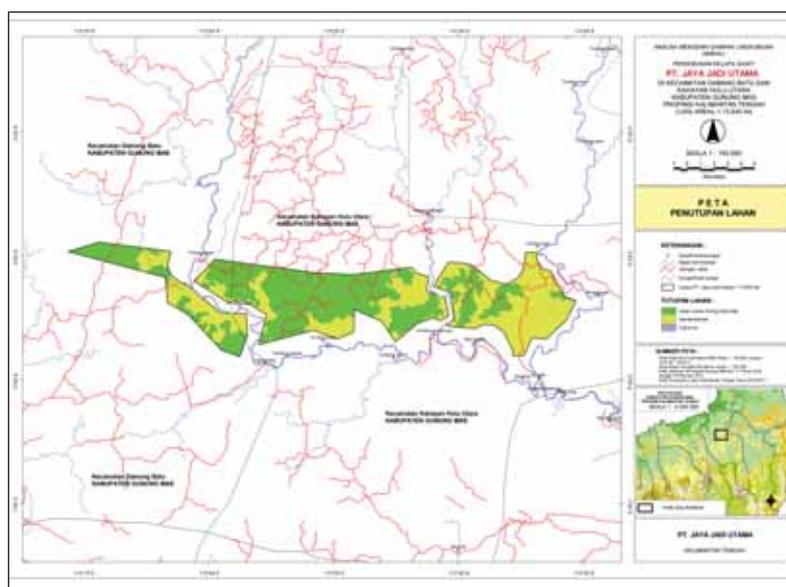
The remaining three concessions lie within the Rungan-Kahayan block. Consequently, this illegal expansion, connected to a corrupt politician and his crony, will lead to rampant deforestation in one of the richest tracts of forest left in Kalimantan. It will in turn lead to the harvesting of hundreds of thousands of cubic meters of illegal timber.

### BELOW:

Hambit Bintih arrives for his corruption trial in Jakarta, December 2013

### MIDDLE & BOTTOM:

AMDAL documents show forest cover (dark green) in CBIP concessions JJU and BMB



# LAW ENFORCEMENT

The criminal justice response to this epidemic of forest crime has been extremely limited. This is not because the government has not recognised or acknowledged the problem. Far from it: over the years, a succession of studies by various agencies and ministries have produced empirical evidence of the breadth and depth of illegality.

The outcome of the studies is predictable and repetitive: pledges of enforcement, commonly against a small set of the most obvious test cases. Yet there is no evidence this has led to tangible action. "The track record of Indonesia in terms of law enforcement is not good," Heru Prasetyo, the head of the REDD+ Agency, told journalists in August this year while announcing another audit of dubious plantation licences.<sup>60</sup>

Corruption is a key obstacle to enforcement, as a 2009 document by the MoF itself acknowledged: "The prevention, detection and suppression of forest crimes continue to be hampered by corruption in the justice system at each step from criminal detection and investigation, through case preparation and prosecution, to adjudication and appeal."<sup>61</sup>

The government and NGOs have acknowledged that a key issue underpinning this crime wave is the corruption and collusion between companies and regency officials, resulting in the issuance of "unprocedural" permits. Prasetyo, while commenting on this problem,

observed that a third of all regents were under investigation for corruption.

NGOs and progressive government figures have emphasised the need to look beyond sectoral legislation and to corruption laws in order to address this. In May 2012, the NGOs Save Our Borneo and Indonesia Corruption Watch warned that if enforcement agencies only focused on sectoral laws such as the Forestry Law or Plantation Law, "then it is almost certain forestry crimes, specifically the illegal granting of concessions, will be difficult to uncover."<sup>62</sup>

Indonesia's REDD+ National Strategy, a government blueprint for reducing deforestation, emphasises the need to use administrative, civil and criminal laws to address "improper issuance of permits"

The Anti-Corruption and Anti-Money Laundering Laws provide scope to look at the corruption, collusion and money politics underpinning the plantation sector. Indonesia boasts an effective anti-corruption agency, in the Corruption Eradication Commission (KPK), that is capable of carrying out such investigations.

Indeed, one of the few successful, high-profile convictions relating to the plantation sector concerned corruption in the issuance of IPK permits by the Governor of East Kalimantan to a logging firm. But the KPK's interest in forestry is perceived to be limited, despite the fact that the sector accounts for most of the US\$100m it has recovered in assets.<sup>63</sup>

## GHOSTS IN THE MACHINE

A primary focus for corruption investigations must be the role of middlemen who obtain and sell plantation permits on for substantial profit. Examples of this include Cornelis and his colleagues, who sold permits on to CBIP.

Sawit Lamandau Raya [see opposite page] was established by two local businessmen and sold on within a month.

An investigation by Save Our Borneo revealed that one regent in Kalteng had issued permits to 15 "sham companies" owned by members of his family, his cronies and even his personal driver.<sup>64</sup>

It would be productive for corruption investigations to focus on individuals to whom regents are transferring millions of dollars of state assets without complying with legally required safeguards.

## CASE STUDIES

### PT Suryamas Cipta Perkasa

One of the challenges to forging legal compliance in the plantation sector has been the fact that until 2009, the legislation governing AMDALs did not have sanctions for non-compliance. This was rectified on paper by the 2009 Environmental Law, which included criminal sanctions against companies operating without a required Environmental Permit.

In 2011, EIA identified a company that had fallen foul of this legislation and a broad range of other regulations. EIA packaged up the evidence that PT Suryamas Cipta Perkasa (SCP) had broken the law and in March 2012 sent the dossier to the head of the regency police, copied to a range of relevant officials, ministries and agencies.

Subsequently, EIA produced a report, *Testing the Law*, analysing the response. It warned that Law 32/2009 was “at risk of joining a long list of unenforced, ignored laws on Indonesia’s statute book” and identified procedural and structural failings in the investigation of the case. Two years on, the picture is worse.

The investigation by the police took just over two years from the receipt of the dossier. But in that time all they achieved was to identify reasons some of the violations could not be prosecuted, while ignoring others.

Most damning was the failure to investigate and prosecute the violations under the Environmental Law. The evidence was clear and compelling: by October 2014, government documents confirmed that the company was still operating without an Environmental Permit. However, the police have failed to act on this.

The investigation also failed to examine the company’s encroachment on carbon-rich peatlands, which has ominous implications for Indonesia’s attempts to reduce its greenhouse gas emissions.

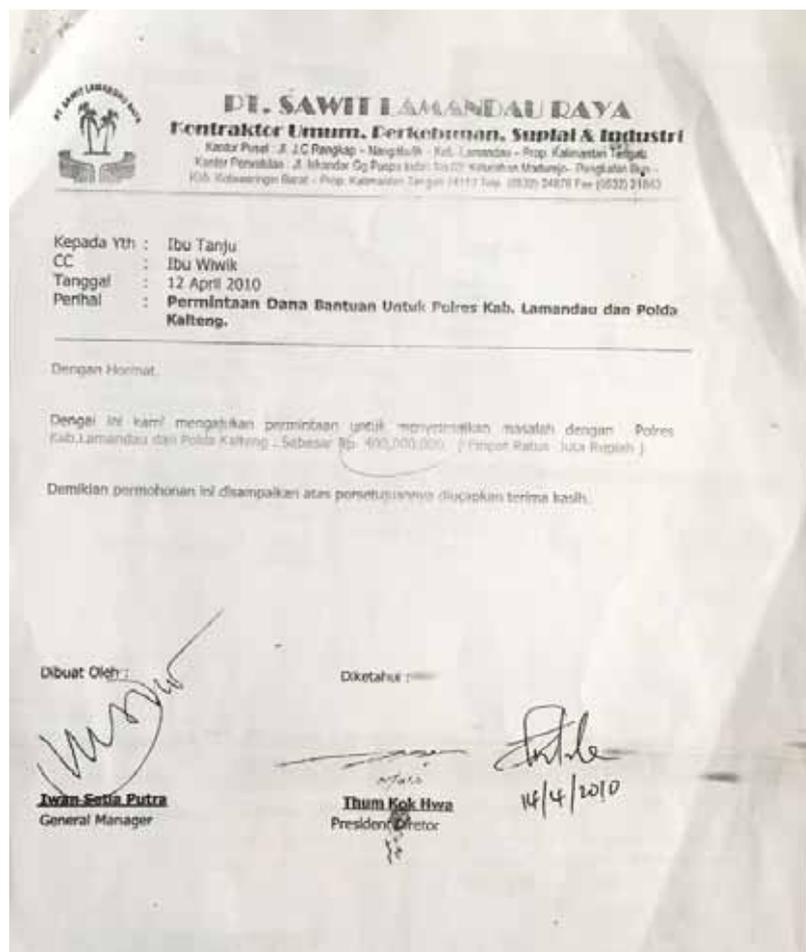
### PT Sawit Lamandau Raya

EIA and JPIK have obtained evidence relating to one case indicative of the role corruption plays in enforcement.

In 2010, the company PT Sawit Lamandau Raya (SLR) was reported to the police after clearing almost 2,000ha of dense forest, allegedly without all the necessary permits and provoking a bitter dispute with local communities whose land it had annexed.<sup>65, 66</sup>

In March 2010 the Regent of Lamandau wrote to the management of SLR instructing them to cease land clearing. A confidential letter from the chief of police in Lamandau to the head of the regency legislature, obtained by EIA, reveals that an investigation into the company’s activities was triggered on April 7.<sup>67</sup>

Five days later, on April 12, Iwan Setia Putra, the General Manager of SLR, wrote an internal memo to the company’s head office in Jakarta. The memo, also obtained by EIA, is titled “Request for assistance funds for Regency Police Lamandau and Provincial Police Kalteng”. In it, Putra asks for Rp.400m [US\$45,000] to “solve the problem” with the police. The document is signed by both Putra and Thum Kok Hwa, listed as the company’s President Director.



Bank documents confirm that the money was transferred to Putra on April 16, with a bank receipt again confirming that the cash is for “financial assistance” for the police.

The chief of police in Lamandau reported on the progress of his investigation into the company two weeks later. In a letter dated April 29, he displays ambivalence in pursuing the case, suggesting that the “status of the area” should be determined before “stepping into the realm of law”.

The investigation went no further. Quite the opposite; in August 2010, the Governor of Kalteng wrote to the Minister of Forestry recommending the release of 5,500ha of SLR’s concession from the Forest Estate, potentially greenwashing the alleged violations of the Forestry Law.

To date, the concession remains within the Forest Estate but a judicial official in Kalteng told EIA and JPIK that the case remains with the regency.

SLR is owned by CBIP – the same company which acquired four permits from the now-jailed crony of the Regent of Gunung Mas. CBIP still declares its ownership of the concession in its annual reports.<sup>68</sup> Putra has since moved on.<sup>69</sup>



© Facebook

**TOP:**  
Letter from Putra requesting cash to pay police

**MIDDLE:**  
Iwan Setia Putra, former manager of SLR

“Putra asked for Rp.400m [US\$45,000] to “solve the problem” with the police.”

# ZERO-DEFORESTATION TO THE RESCUE?

Two movements have emerged in recent years that are intended to reduce deforestation from plantation development. An analysis of their implementation and scope, however, suggests that they alone may not prevent widespread timber production from deforestation – whether legal or illegal.

## REDD+

Reducing Emissions from Deforestation and Forest Degradation (REDD+) is an initiative that seeks to create financial incentives to stem greenhouse gas emissions from forest loss. It has been developed during negotiations to create a global, legally-binding agreement to tackle climate change.

The Government of Indonesia was an early mover under the scheme and in May 2010 signed a bilateral agreement with Norway, outlined in a Letter of Intent (LoI), under which Norway would provide up to US\$1 billion to support reductions in deforestation.<sup>70</sup>

A cornerstone of the LoI was a two year suspension, or moratorium, on new concessions for conversion of peatlands and natural forests, though Indonesia limited the latter to “primary” forest. During this period Indonesia was supposed to develop a database of “degraded” land and direct economic activity to these areas and away from forests. Under the LoI Kalteng was chosen as a REDD+ Pilot Province, in which reforms intended to reduce deforestation could be first implemented.

In September 2012 the MoF approved a revised spatial plan that is now being used to govern forest and land use in Kalteng.<sup>71</sup> That spatial plan, however still directs oil palm expansion towards some of the richest forests or peatlands left in the province. All of the case studies in this report, for example, are located on areas slated for conversion to agricultural use and are being cleared now.

A raft of policy developments, legal instruments and even a national Agency have been constructed under the umbrella of REDD+ in Indonesia. The reality is that forests are still wide open for conversion and spatial plans provide a legal basis for companies to destroy them for years to come.

## ZERO DEFORESTATION COMMITMENTS

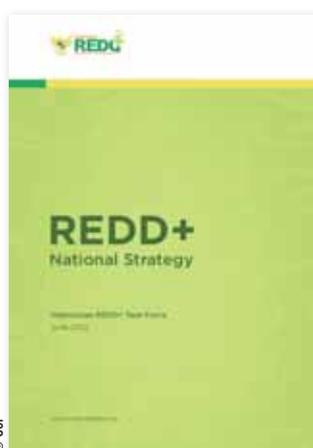
Over the past two years a series of impressive commitments have been made by major companies to cease producing, trading or buying palm oil linked to deforestation and exploitative practices. In 2013 alone, 21 major consumer goods firms adopted “zero deforestation” sourcing policies, mainly for palm oil. The three major traders of palm oil – Wilmar International, Golden Agri Resources and Cargill – adopted zero deforestation policies that collectively cover about 60 percent of all global trade in the commodity.<sup>72</sup>

While these commitments are laudable, as long as the government is making forests available for conversion there will be companies willing to clear them. Heru Prasetyo, the head of the REDD+ Agency, has suggested that there may be about 1,000 mid-sized oil palm companies “operating under the radar of international organisations”.<sup>73</sup> Companies like those included in this report display limited concern for legal procedure or environmental damage, a disregard for the rights of rural communities and may be collectively responsible for the destruction of hundreds-of-thousands of hectares of forest.

The willingness of such companies to step in when larger firms decline to develop sensitive areas has been well documented. For example, areas of high conservation value set-aside by members of the Roundtable on Sustainable Palm Oil (RSPO) are being reallocated by the government to non-RSPO members and cleared.<sup>74</sup> Aspiring “zero-deforestation” companies now report these realities fundamentally threaten their ability to meaningfully protect their forests.

Ultimately, forest friendly downstream sourcing policies and commitments by the largest growers must be built into Indonesian law in ways that spread these progressive ideas across the palm oil industry. Until then, neither these voluntary measures nor REDD+ will stop the flow of timber from Indonesia’s plantation sector.

**BELOW:**  
Indonesia’s REDD+ National Strategy, a blueprint for reducing deforestation





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# STEMMING THE ILLEGAL TIMBER FLOW

## SVLK IMPLEMENTATION FAILING TO REACH CONVERSION TIMBER

Indonesia’s Timber Legality Verification System, the SVLK, should in theory be regulating timber from forest conversion. All timber producers across the country, including those harvesting under IPK permits, are subject to the scheme and obligated to submit to legality audits.

However, the SVLK has outright failed to address this flow of timber. Only a handful of IPK holders have submitted to audits and the government has failed to compel others to do so, allowing illegal and uncertified timber to flood the supply chain. Given the proportion of timber now coming from forest conversion this failing raises doubts over the efficacy of the SVLK in preventing illegal logging in Indonesia – its main goal.

The SVLK has been adopted as a core element of the bilateral Voluntary Partnership Agreement (VPA) between Indonesia and the European Union. [See box on page 24] However, the scheme is fundamentally a much-needed domestic initiative, intended to prevent illegal logging and reform Indonesia’s historically tainted timber sector.

Closing the “IPK loophole” must be an urgent priority for the newly-merged Ministry of Environment and Forestry (MoEF). Not only because it is vital to the legitimacy and efficacy of the SVLK, but also because it provides an opportunity for the Ministry to generate greater scrutiny of widely-abused

legislation governing land use and the environment.

While improvements are required in the SVLK standard, if implemented properly the current iteration already provides scope for improved monitoring of forest conversion. The Minister of Forestry regulation governing the SVLK has been updated four times since it first entered into law in 2009. The most recent revision, in 2014, suggests an increased awareness of and willingness to address unprocedural land acquisition.

The 2014 standard now requires auditors to check that IPK holders have obtained approved Environmental Licences, recognising that plantation permits may have been issued to companies violating key environmental legislation. It also requires them to verify that concessions issued within the Forest Estate have been released from it by way of an SK-PKH. The revised standard now also applies to concessions that were issued outside the Forest Estate, closing a significant loophole and ensuring that the SVLK applies to all IPK holders.

However, in November 2014 JPIK published a study outlining its experience of monitoring SVLK implementation to the end of 2013.<sup>75</sup> It found fundamental weaknesses in mechanisms for tracing raw materials, identifying violations of spatial plans, addressing tenure conflicts and identifying corruption linked to permit acquisition.<sup>76</sup> The evidence from both the JPIK report and EIA’s investigation lays bare the critical need for improvements in the system.

**ABOVE:**  
JPIK Kalteng checking a logging concession for compliance with the SVLK

“The government has failed to compel IPK-holders to submit to SVLK audits, allowing illegal and uncertified timber to flood the supply chain.”

# CLOSING THE FOREST CONVERSION LOOPHOLE



Small sawmill in the forest in Gunung Mas, April 2014

## THE VOLUNTARY PARTNERSHIP AGREEMENT

In 2003 the European Union enacted the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan.<sup>77</sup> Central to the Action Plan is the negotiation of Voluntary Partnership Agreements (VPAs) with timber producing countries.<sup>78</sup>

VPAs involve the establishment of multi-stakeholder consultations that agree Timber Legality Assurance Systems (TLAS), which can become the basis of a FLEGT Licensing system.

Once activated VPAs require that timber exported to the EU from a partner country without a shipment-specific FLEGT Licence will be refused entry by EU member states. Conversely, FLEGT Licensed timber is exempt from the provisions of the European Union Timber Regulation (EUTR) - another core plank of the FLEGT Action Plan, which prohibits illegal timber from the EU market.<sup>79</sup>

Indonesia and the EU entered formal VPA negotiations in March 2007, and agreed the VPA in May 2011. The VPA was signed in September 2013, and ratified in April 2014.<sup>80</sup> Certification against the SVLK will be the basis for any licensing system activated under the VPA. The credibility of the EU-Indonesia VPA is therefore directly linked to that of the SVLK.

While recent Indonesian regulations on timber exports may prevent illegal or uncertified IPK timber from polluting FLEGT Licensed consignments reaching Europe, the VPA's aim is also to prevent illegal logging. If the SVLK fails to do so, the added-value of a VPA without closure of the "IPK loophole" is questionable.

In order to effectively regulate timber from land conversion, improvements are necessary in both the SVLK standard and its implementation. The 2014 revisions to the SVLK are already under review and now fall under the jurisdiction of the MoEF, presenting a vital opportunity for the new Ministry to accelerate the process of reform.

## IMPROVING THE STANDARD

The current SVLK regulation does not require auditors to assess whether IPK holder's operation areas are located in the appropriate land classification according to legally binding spatial plans - despite civil society calls for it to do so.<sup>81</sup> The consequence is that the SVLK still provides scope for the legitimization of timber produced from forest conversion for plantations in protection forests or other restricted classifications.

Further, the SVLK does not require or empower auditors to look at corruption in the permit procedure. The standard largely looks for the existence of permits, rather than the processes that led to them being issued. The evidence in this report makes it clear that unprocedural permit allocation is perhaps the foremost illegality in the plantation sector, leading to illegal land acquisition underpinning many IPKs.

The government, together with civil society, should develop indicators for both unprocedural processes and potential corruption in land acquisition. This should pay attention to the sequencing of permits, whether land areas have steadily reduced during permitting processes, and indications that they have been fast-tracked.

The government should develop a reporting mechanism to ensure that where indications of illegality or corruption are found by any party, they are brought to the attention of relevant enforcement officials. The government should ensure that all potential violations, not just sector-specific illegalities, are highlighted by audits.

Finally, it is vital to ensure that the SVLK is continuously updated and improved so that it reflects and reinforces the varied and evolving legal base that underpins the timber and plantation sectors in Indonesia.

“The 2014 revisions to the SVLK presents a vital opportunity for the new Ministry to accelerate the process of reform.”



## ENSURING IMPLEMENTATION

Implementing mandatory audits of IPKs is essential, and will need to involve far better communication of the SVLK to provincial and regency governments, the Ministry of Agriculture, and the palm oil sector and their contractors, particularly in areas where oil palm concessions are expanding.

Given the almost universal non-compliance to date, however, the government should not now wait for IPK holders to “voluntarily” submit to the SVLK. The MoEF should order SVLK audits of all IPK permit holders against the current standard, and ensure similar audits occur for each annual IPK issued to concessionaires or their subcontractors from here on in. In parallel, it should carry out an audit of all oil palm concessions to ensure that companies are not clearing forest without IPK.

Of equal importance is ensuring small and medium-sized sawmills, those licensed to process less than 6,000 m<sup>3</sup> per year, are SVLK audited. EIA documented large volumes of illegal timber being processed by such sawmills and an ignorance of the SVLK among the regency officials responsible for overseeing them. Until this gap is closed, illegal and uncertified timber will continue flowing into the supply chain through these mills, polluting the domestic timber market.

## SYNERGIZING STANDARDS

Two other certification schemes apply to the oil palm plantation sector in Indonesia: the RSPO and the ISPO. Neither yet explicitly requires compliance with the SVLK in order to achieve certification, despite the SVLK being legally mandatory. The failure to build the SVLK into their standards in Indonesia is a missed opportunity that should be resolved at the earliest opportunity.

### The RSPO:

The Roundtable on Sustainable Oil Palm is a voluntary market certification scheme that requires growers to avoid the conversion of primary and High Conservation Value (HCV) forests, respect the customary rights of communities and demonstrate legal compliance with all applicable legislation.

The RSPO's Principles and Criteria are adapted to the Indonesian context through the Indonesian National Interpretation.

Indonesia's National Interpretation pre-dates the SVLK and so does not reference it. As such, it is currently feasible that plantations may become certified under the RSPO despite violating or ignoring the SVLK.

Ensuring that SVLK certificates for IPK holders become a mandatory indicator of legal compliance in the National Interpretation would ensure the RSPO reflects all relevant legal obligations of its Indonesian members. It would also make a significant contribution to the reform of the palm oil and timber sectors, increasing scrutiny across both.

### The ISPO:

The Indonesian Sustainable Palm Oil (ISPO) system was developed by the Indonesian Ministry of Agriculture to provide assurance of “sustainability” to sensitive markets.

The ISPO is similarly structured to the SVLK. Certification is mandated against an agreed standard, that has been passed into law. All plantations are required to achieve certification by 1st January 2015. The vast majority of concessionaires have not submitted to this requirement and the target will not be met.

While the ISPO is intended to certify legal compliance, the standard is vaguely worded and lacks detailed guidance for auditors. It is seen by many observers as a tick-box scheme designed mainly to assuage environmental concerns and effectively greenwash palm oil from Indonesia.

The ISPO standard does not require auditors to verify whether growers or their sub-contractors have achieved SVLK certification prior to forest clearance. Building SVLK certification into the ISPO standard could substantially increase submission of oil palm plantation companies to SVLK audits.

# RECOMMENDATIONS

- The MoEF should immediately order SVLK audits of all IPK holders against the 2014 Standard, and revoke related permits where holders fail to submit.
- The MoEF should ensure land clearance ceases in any concessions found not compliant with the 2014 SVLK Standard, seize related timber, and initiate legal proceedings.
- The Gol should form a task force comprising the Corruption Eradication Commission (KPK), Financial Transaction Reports and Analysis Center (PPATK) and MoEF to examine and prosecute corruption in permit allocation, beginning with the cases in this report. All findings of such a Task Force must be transparently published.
- The Gol should ensure the 2014 SVLK Standard is revised to mandate and guide assessments of corruption and other legal violations in permit allocation and land acquisition.
- The Gol and EU must ensure that any implementation of FLEGT Licensing under the EU-Indonesia VPA prior to SVLK certification of IPK holders does not allow ongoing logging in illegal palm plantations in the country.
- EU timber importers must conduct robust due diligence of SVLK certified timber to ensure it is not derived from uncertified and illegal forest conversion, until FLEGT Licensing removes this legal obligation.
- The RSPO and ISPO must include SVLK certification as an indicator of legal compliance for IPK holders in their own certification standards.
- The Gol should stop allocating forests for conversion to palm oil.



Logs harvested from KAP concession in Gunung Mas, October 2014

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Forest clearing in Lamandau, Kalteng, September 2013

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