
License to Clear: The Dark Side of Permitting in West Papua

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■ Auyu (Awuyu) Indigenous People from around the Digoel and Mappi Rivers gather at the Tuan Busuh sacred site, 2019.

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Executive summary



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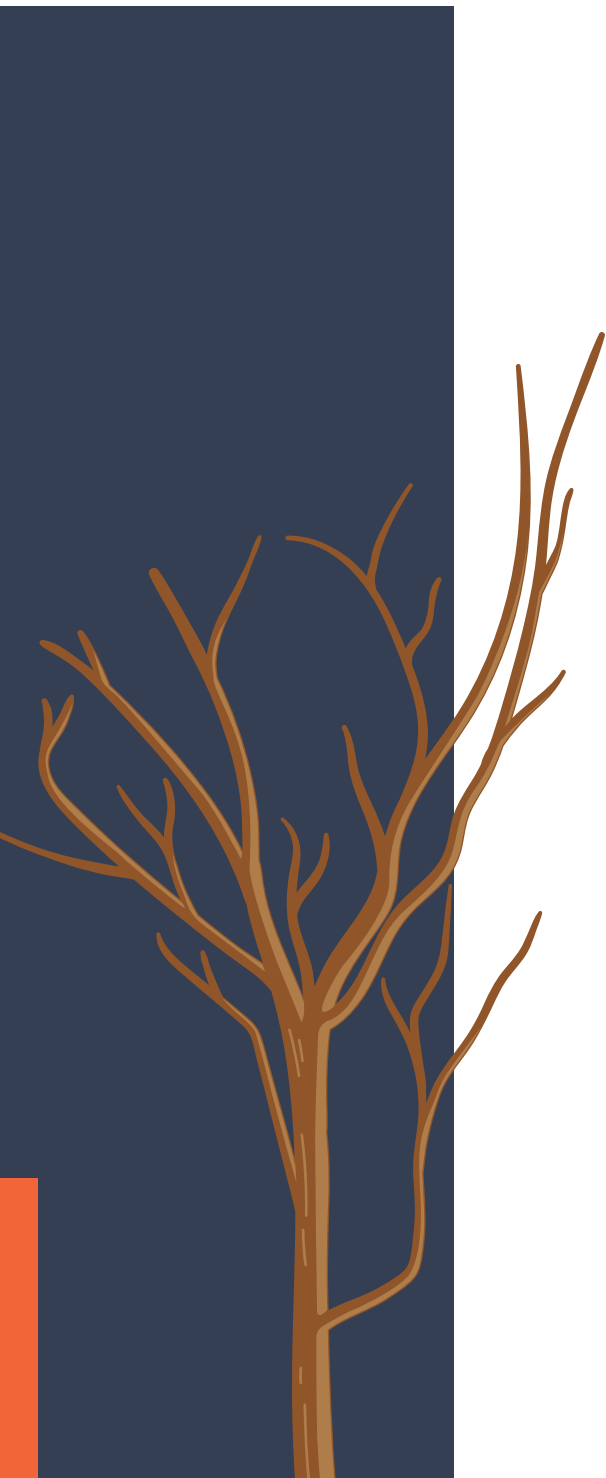
■
*A small forest area
left inside an oil palm
plantation in PT Agriprima
Cipta Persada (PT ACP)
palm oil concession, part
of the KPN Plantation
group. 31 Mar, 2018.*

In contrast with the anti-environmental policies being enacted in other rainforest nations, notably Brazil, Indonesia is often viewed as having an improving record on forest protection. In mid-2020, the Indonesian Government received payments from the Green Climate Fund (US\$103.8m)¹ and the Norwegian Government (US\$56m)² as a reward for having reduced emissions from deforestation and forest degradation between 2014 and 2017.³

1 Yong C (2020)

2 NICFI (2020)

3 2014 to 2016 in the case of the Green Climate Fund and 2017 in the case of the Norwegian Government.



While it is true that the headline deforestation rate has started to drop in recent years,⁴ the evidence shows that an important factor behind this fall has been pressure from palm oil consumer companies and civil society to ensure deforestation-free supply chains. By comparison, the Indonesian Government has little to be proud of, having largely failed to transform a non-transparent natural resources sector permit system full of regulatory loopholes and highly vulnerable to corruption. By looking in detail at the dynamics of the issuing of oil palm and other plantation permits in the country's Papua Province – a relatively new frontier of plantation industry expansion – over the last decade, this report exposes the systematic bypassing of national regulations by provincial and local authorities and by central government itself, along with other failures of governance, as a result of which new forest areas are continuing to be made available for destruction by plantation and industrial forestry companies.

While some of the forest handed over in this way has been destroyed over the past decade, large areas within plantation concessions still remain intact, albeit under the ever-present threat of the chainsaws and bulldozers moving in. As such, the potential climate impact of continued poor forest governance is enormous. Greenpeace International⁵ analysed the carbon stocks in the remaining forest areas within plantation concessions in Papua Province alone, and estimated that they add up to almost half the annual emissions of international aviation.⁶ The potential biodiversity impact is no less concerning: a recent study has shown that New Guinea, where Papua Province is located, is the most biodiverse island on the planet.⁷

4 Wijaya A, Samadhi TNK & Juliane R (2019)

5 Unless otherwise specified, subsequent mentions of Greenpeace in this report refer to Greenpeace International.

6 Source: European Commission website 'Fossil CO₂ and GHG emissions of all world countries, 2019 report'. Note that the figures in this table are CO₂ emissions and must be multiplied by 12/44 to convert to carbon equivalent.

7 Cámara-Leret R et al (2020)

Indonesia's failure to ensure effective forest governance in West Papua (the Indonesian portion of New Guinea, encompassing Papua and Papua Barat Provinces) has also had catastrophic effects on the Indigenous population. Despite clauses in Indonesia's Plantation Law⁸ and Papuan Special Autonomy Law⁹ which should ensure the participation of Indigenous peoples in decisions around plantations, and the Constitutional Court ruling that Indigenous peoples' traditional forests do not belong to the state,¹⁰ this report shows that legislation governing permits to the plantation and forestry industries does not give the necessary priority to Indigenous rights. As a result these sectors are the source of widespread discrimination and conflict.

Indonesia has publicly acknowledged the need to reform its system of forest governance and to reduce deforestation. Several policies have been put in place which have been presented as attempts to address this objective. However, Greenpeace's analysis of two promising policies shows that poor implementation has severely limited their impact.

The first is the Presidential Instruction on Moratorium on New Permits and Improving Governance of Primary Natural Forests and Peatlands, known as the 'Forest Moratorium' for short, which ostensibly prevents the issuing of new permits for development of both primary forest and peatland.¹¹ This was Indonesia's first main policy response to a pledge by the Norwegian Government to make Indonesia payments totalling up to US\$1 billion if the country succeeded in reducing deforestation. First introduced for a two-year period in May 2011, the Forest Moratorium was intended to provide Indonesia's forests with a temporary breathing space while the country's legal framework governing forest management was straightened out. This proved an elusive goal, however, and the initial moratorium was extended for three further two-year periods before being given indefinite effect in 2019.¹²

The second policy whose effectiveness Greenpeace has analysed is the Presidential Instruction on Postponement and Evaluation of Oil Palm Plantation Licenses and Increasing Productivity of Oil Palm Plantations, known as the 'Oil Palm Moratorium', established in September 2018.¹³ This policy, to remain in force for three years, not only establishes a moratorium on the issuing of some new permits and forest release decrees for oil palm plantations, but also calls on ministers,¹⁴ governors of provinces and bupati (regency heads) to review existing oil palm permits. A series of flowcharts, forming the annex to the Oil Palm Moratorium, explains the steps by which a nationwide permit review, envisaged as a policy for correcting past mistakes, is to be carried out.

8 Law 39/2014 on Plantations / Undang-Undang no. 39 tahun 2014 tentang Perkebunan, full text available at <https://peraturan.bpk.go.id/Home/Details/38807>

9 Law 21/2001 on Special Autonomy for Papua Province / Undang-Undang no. 21 tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua (full text available at <https://peraturan.bpk.go.id/Home/Details/44901/uu-no-21-tahun-2001>), as amended by Law 35/2008 / Undang-Undang no. 35 tahun 2008

10 Indonesian Constitutional Court decision no. 35/PUU-X/2012, available at https://www.aman.or.id/wp-content/uploads/2018/05/putusan_sidang_35-PUU-2012-Kehutanan-telah-ucap-16-Mei-2013.pdf

11 President of the Republic of Indonesia (2011b)

12 The current version is Presidential Instruction 5/2019 (President of the Republic of Indonesia (2019)).

13 President of the Republic of Indonesia (2018b)

14 The Coordinating Ministry for Economic Affairs, Ministry of Environment and Forestry, Ministry of Agriculture, Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, Ministry of Internal Affairs and Indonesian Investment Coordinating Board.

Greenpeace's analysis shows that despite nine years of the Forest Moratorium and two and a half years of the Oil Palm Moratorium, the Indonesian Government has failed to achieve the systemic change needed to reform the plantation and forestry industries. Suspected corruption in at least two government ministries appears to have meant that dozens of plantation companies across Indonesia have been able to get their concessions excluded from the Forest Moratorium by claiming that no peat or primary forest was present. There is strong evidence that in many cases this claim was incorrect. Many of these companies have subsequently successfully applied for land in their concessions to be released from Indonesia's forest estate, and have obtained other important permits that allow them to commence operations. In Papua Province nearly half of all concessions which have been released from the forest estate contain areas which had previously been covered by the Forest Moratorium.

Meanwhile, the 2018 Oil Palm Moratorium has been in place for over two years, but there are few signs that the government is implementing the promised permit review process. To the best of Greenpeace's knowledge,¹⁵ not a single permit has been revoked as part of this process, even though many permits have apparently been issued in violation of laws and procedures. Conversely, new permits have continued to be issued since the Oil Palm Moratorium came into force, thanks to its limited scope.

Although progress at the national level and within Papua Province has been limited, the neighbouring province of Papua Barat has recently published the results of a permit review which, if fully implemented, will lead to the cancellation of permits for all undeveloped oil palm concessions and potentially excise many still-forested areas from partially developed concessions, while also ensuring that Indigenous land saved in this way will be managed by Indigenous communities. This is a welcome development which could serve as a model for similar action in Papua Province and elsewhere.

¹⁵ Based on publicly disclosed government sources including the MoEF's WebGIS server and Freedom of Information requests by Greenpeace Indonesia to local governments in West Papua since 2016, when the intention to implement a moratorium was announced. Some of these requests were replied to with data; in other cases replies were not received or data was not supplied.



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■ Dozens of mannequins installed in front of the House of Representatives building in Jakarta to represent activists that were unable to hold a mass protest due to the Covid-19 pandemic. Greenpeace Indonesia held the action to send messages gathered from the public opposed to the enactment of the controversial Omnibus law bill, which dismantled environmental protections for the benefit of investors. 29 Jun, 2020.

During the latter half of 2020 Indonesia was rocked by a massive popular movement against the new Job Creation Law¹⁶ – better known as the ‘Omnibus Law’ – which came into force on 2 November 2020, modifying nearly 80 existing laws with the declared aim of stimulating investment and cutting red tape. The law’s critics say that it entrenches regulatory capture, furthering the interests of an oligarchic class of tycoons, politicians and political party figures, and retired police and military generals.¹⁷

16 Law 11/2020 on Job Creation / Undang-Undang no. 11 tahun 2020 tentang Cipta Kerja, full text available at https://www.setneg.go.id/view/index/undang_undang_republik_indonesia_nomor_11_tahun_2020_tentang_cipta_kerja

17 #BersihkanIndonesia & Fraksi Rakyat Indonesia (2020)


The plantation industry in Papua Province shows a high level of oligarchic control at all levels. Many of the concessions that have been issued in the province are owned by some of Indonesia's richest businesspeople, especially those that have been developed as plantations. Analysis of company records also reveals a high level of crossover between business interests and prominent national politicians and officials (including members of the House of Representatives, former cabinet ministers, influential political party members and high-ranking members of the security forces), especially during the pre-operational phase when companies are engaged in procuring permits from the government. There is a significant risk that these oligarchic interests may deflect the relevant authorities from upholding the interests of the forest and of the public, especially in the case of Indigenous West Papuans.

Although permit irregularities are abundant, which suggests a corruption risk in the state bodies that issue permits, it is important to appreciate that the problem also lies with the regulatory system itself – a system whose very design has at times been influenced by oligarchs to serve their interests. An endemic lack of clarity and precision in laws and regulations, combined with a continuing culture of non-transparency around permit data, has created a system under which it is the norm for companies to obtain permits that contravene one or more laws or regulations, without there being any clear route to enforce criminal or civil sanctions. In this poorly regulated space, the state has effectively surrendered its power to manage forests in the interests of Indigenous and rural communities, the wider Indonesian population and the non-human environment. A transfer of power has taken place, with oligarchic business interests gaining the upper hand.

Greenpeace's strong suggestion to the Indonesian Government, and to countries wishing to make donations to Indonesia to support reduced emissions from land use change, is that it is counterproductive to make public statements about the country's supposed achievements that do not stand up to detailed scrutiny. A more productive approach would be to be honest about the structural obstacles to real progress which remain, the scale of the challenge involved and the need for fundamental reform to the way the state operates. Greatly improved transparency and a better integrated, unambiguous and enforceable regulatory environment are key elements of this, along with a recognition that the sovereignty of Indigenous peoples over their ancestral lands must be sacrosanct.

01. Introduction

The future of West Papua's forests at stake



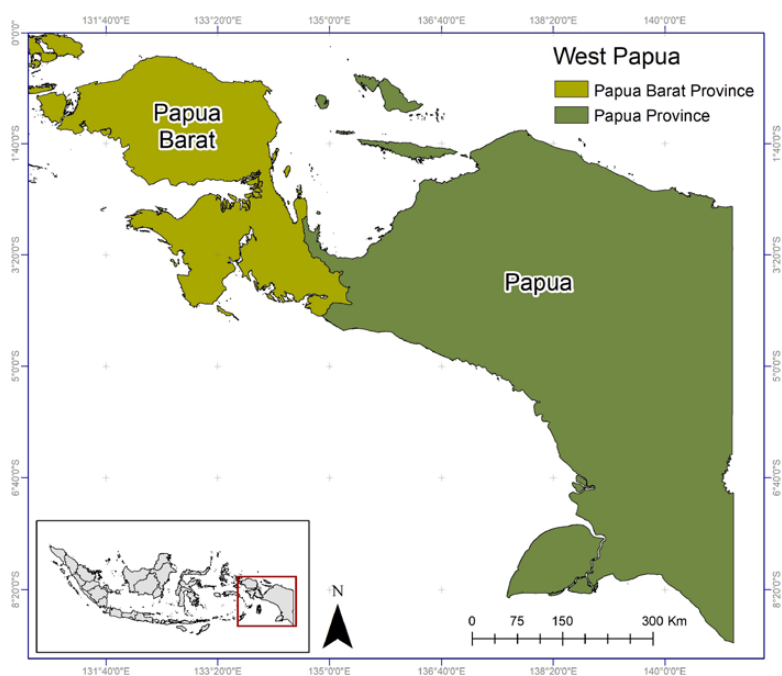
Over many years, large areas of Indonesia's rainforests have been destroyed for oil palm and pulpwood plantations and mines, or degraded by logging. But even as deforestation accelerated in Sumatra and Indonesian Borneo (Kalimantan), one major island escaped – until recently. Large-scale threats to the forests in the western, Indonesian half of New Guinea (known as West Papua) were rare until around a decade ago, but now Indonesia's last major intact forest landscape has become the new frontier for expansion of the natural resources sector, and first and foremost the palm oil industry.



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■ An aerial photo shows an winding river cutting through primary forest in Kumbis, Kimaam subdistrict, Merauke regency, Papua province. 19 Dec, 2017.

In this report Greenpeace has chosen to focus its analysis on Papua Province because as a new frontier it represents a key test of whether the Indonesian Government is serious about sustainable transformation. It is also a test of the commitment of the provincial government, since two years ago Provincial Governor Lukas Enembe signed up to the Manokwari Declaration that designated Papua and Papua Barat as 'conservation provinces'.¹⁸



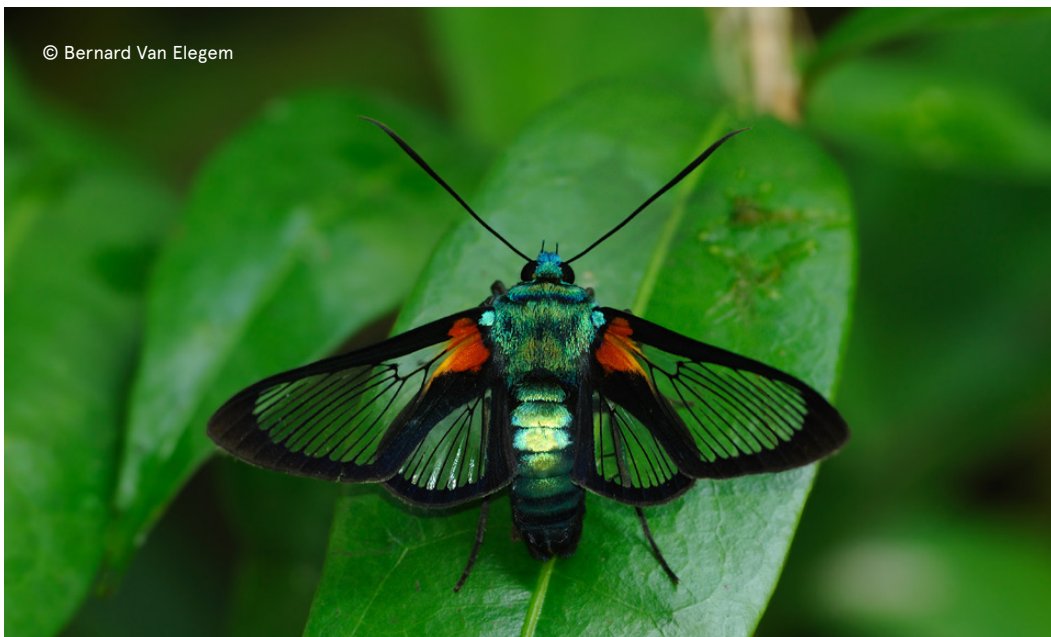
Overview map showing West Papua divided into Papua and Papua Barat Province

18 Government of Papua Province & Government of West Papua Province (2018)

Unlike in other provinces which have been devastated by the plantation, logging and coal mining industries, natural forests still cover 80% of Papua Province, with other natural ecosystems such as savannah and montane scrub and grasslands making up a significant part of the rest.¹⁹ New Guinea also has incomparable biodiversity: recent research published in the journal *Nature* shows that it has a higher level of plant diversity than any other island on Earth.²⁰ There are high levels of endemism among its fauna, too – cut

off by deep water from Indonesia's other islands, and with a greater range of habitats than the nearby tropical zones of Australia, it is home to unique animals such as birds of paradise and tree kangaroos. Much of this diversity has not even been catalogued, and West Papua's ecosystems in particular are poorly understood – the overall number of ecological studies that have been conducted is much lower for West Papua than for Papua New Guinea.²¹

© Bernard Van Elegem



Hawkmoth (*Cocytia durvillii*) in Swamp Forest close to the undeveloped oil palm concession of PT Permata Nusa Mandiri, Jayapura Regency. 9 Jul, 2011.

© Markus Mauthe / Greenpeace



The Korowai People live in the rainforests of West Papua. Although Korowai lands are still forested, the plantation industry is moving closer, with the nearest concessions now little over 100 km away. 17 Oct, 2017.

¹⁹ Direktorat Inventarisasi dan Pemantauan Sumber Daya Hutan (2019)

²⁰ Cámara-Leret R et al (2020)

²¹ Marshall AJ & Beeler BM (2007)

West Papua is also home to over 250 ethnic groups.²² As is the case in other Melanesian territories,²³ all land in West Papua is recognised as belonging to Indigenous people. Most ethnic groups are organised into clans which have a deep historical and spiritual connection with the land and the plants and animals that live on it. A clan's land is part of its identity, as well as providing food and other basic needs.

However, while Indigenous land rights are recognised in theory by Indonesia's Basic Agrarian Law and other legislation,²⁴ very few Indigenous peoples in West Papua or elsewhere in the country have been issued with any nationally recognised land title.²⁵ Even though Indonesia's Constitutional Court ruled in 2013 that Indigenous forest is not owned by the state,²⁶ most national legislation concerning development permits still assumes that the state has an almost universal right to allocate land to plantation companies,²⁷ and the scope for communities to exercise self-determination regarding their ancestral lands is severely restricted.

In West Papua the national and provincial legislative framework facilitates the widespread grabbing of Indigenous land, and is one of several factors that contribute to the marginalisation of Indigenous Papuans and diminish their control over their lands. Economic activity in West Papua (especially commerce and natural resource-based industries) is almost entirely in the hands of non-Papuans,²⁸ while many rural Papuans are becoming increasingly dependent on subsidies issued by central

government.²⁹ Additionally, state security forces have used the pretext of the long-running conflict over West Papua's political status to continually increase the numbers of military personnel stationed throughout the region, making it the most militarised part of Indonesia.³⁰ Military and Police Mobile Brigade presence and action in support of plantation companies has been well documented, and Papuans regularly report feeling under intimidation from the state to surrender their land to companies.³¹

With natural resource industry growth and strong flows of migration from other parts of Indonesia into West Papua,³² the region is changing fast, leaving the future for Indigenous Papuans uncertain. West Papua is at a crossroads. On one hand, it is still possible to imagine conservation of the region's forests going hand in hand with an approach to development based on the empowerment of Indigenous peoples and the recognition of each community's right to self-determination, as expressed in the United Nations Declaration on the Rights of Indigenous Peoples. However, a more likely scenario would see the continuation of state policies that facilitate efforts by plantation companies and members of Indonesia's business and political elite to appropriate Indigenous Papuans' land and raze their forests. The continuation of this form of structural racism against Papuans³³ would in turn be likely to prolong and deepen their conflict with the state.³⁴

22 Government of Papua Province website 'Sekilas Papua'

23 In Papua New Guinea, 97% of all land (the land that has not been 'alienated' to become freehold or leasehold) is deemed to belong to indigenous clans (see Armitage L (2001)). When Vanuatu became independent, its new constitution decreed that 'All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants' (Article 73). In both countries, customary law is used in all decisions to determine the ownership of land.

24 See Article 18(II) paragraph 2 of the 1945 Constitution of the Republic of Indonesia (available at <https://www.wipo.int/edocs/lexdocs/laws/en/id/id048en.pdf>) and Article 2 paragraph 4 of Law 5/1960 on Basic Agrarian Regulations / Undang-Undang no. 5 tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (full text available at <http://pkgppkl.menlhk.go.id/v0/en/undang-undang-no-5-tahun-1960-peraturan-dasar-pokok-pokok-agraria/>).

25 Arumingtyas L (2019)

26 Indonesian Constitutional Court decision no. MK35/PUU-X/2012, available at https://www.aman.or.id/wp-content/uploads/2018/05/putusan_sidang_35-PUU-2012-Kehutanan-telah-ucap-16-Mei-2013.pdf

27 No procedures for addressing Indigenous land rights are given in the most recent implementing regulations for location permits or release of land from the forest estate to plantation companies (Minister for Environment and Forestry (2018) and Minister for Agrarian Affairs and Spatial Planning (2015)). For plantation permits (Minister for Agriculture (2013)), companies are instructed to seek agreement with Indigenous landowners, but a detailed process is not outlined.

28 Dale CJP & Djonga J (2011)

29 Subsidies include funds distributed under the 2001 Papuan Special Autonomy Law and the village funds introduced in 2015 across Indonesia, which were weighted in such a way that they are much more significant in West Papua.

30 Araf A et al (2011)

31 For example, see the cases documented in the International Coalition for Papua's Human Rights Reports, published every two years: <https://humanrightspapua.org/hrreport>.

32 Elmslie J (2017)

33 The UN Committee on the Eradication of Racial Discrimination (UN-CERD) has dealt with several civil society submissions raising concerns around plantation development in Merauke Regency in Papua Province, and has communicated these concerns to the Indonesian Government. See eg Forest Peoples Programme (2013).

34 Racism against Papuans has been increasingly explicitly identified as a widely held grievance. Anti-racism protests were the trigger for a large-scale social uprising across Papua in August–September 2019, which resulted in many casualties and a major security clampdown. See Koman V (2020).

Simplified guide to the estate crop plantation permitting process in place from 2007 to 2018

The permitting process for plantations is complicated and involves obtaining a series of different permits, approvals and decrees from both local and central government, in a set sequence. This guide is intended to show the main steps that are discussed in this report.

The process it outlines is the one that was in force from 2007 until 2018. In July 2018 the government overhauled the permitting system across all sectors by introducing the Online Single Submission process,³⁵ which made several important changes not discussed below. Further changes were introduced in the 2020 Omnibus Law, which abolished the concept of an environmental permit. Nevertheless, nearly all the permits for the cases addressed in this report were issued prior to July 2018, and are unaffected by the changes.

- The first step for a company intending to develop a plantation was to obtain a **location permit** (*Izin Lokasi*), normally issued by a bupati (the head of a regency),³⁶ which constituted a prospective allocation of land to the company. The land needed to be within an area where the regency spatial plan allowed plantation development.³⁷ The location permit was valid for three years, and was renewable for a further year under certain conditions.³⁸ During this period the would-be plantation company was expected to obtain landholders' permission and the other permits it needed, at which point it could apply for land cultivation right (*Hak Guna Usaha* – HGU) to secure its tenure for the lifetime of the plantation, and a location permit would no longer be needed.

- **In-principle approval for a plantation business permit** (*Izin Usaha Perkebunan* – IUP) was then issued at the regency level (although in practice in Papua Province most were issued at provincial level). This approval signalled that the issuing government was prepared to grant an IUP provided that the company met the requirements for this (see below).
- According to the 2014 Plantation Law the **consent of Indigenous groups** holding customary rights over land in the concession was also required before an IUP could be issued; this was to be given through a participatory decision-making process (*musyawarah*). Prior to 2014, the (2004) Plantation Law had also required Indigenous landowners' consent to be given via *musyawarah*, but did not state explicitly that this was a condition for an IUP.
- The Indonesian state asserts ownership of much, but not all, of the nation's forest areas, classifying them as national forest estate under the authority and protection of the Ministry of Environment and Forestry (MoEF). Where land within a plantation concession was so classified, the MoEF (or until 2014 the Ministry of Forestry)³⁹ was therefore required to signal that it was prepared to **release the land from the forest estate**, thereby allowing its conversion to a plantation. The first stage in this process was the issuing of an **in-principle approval letter**.

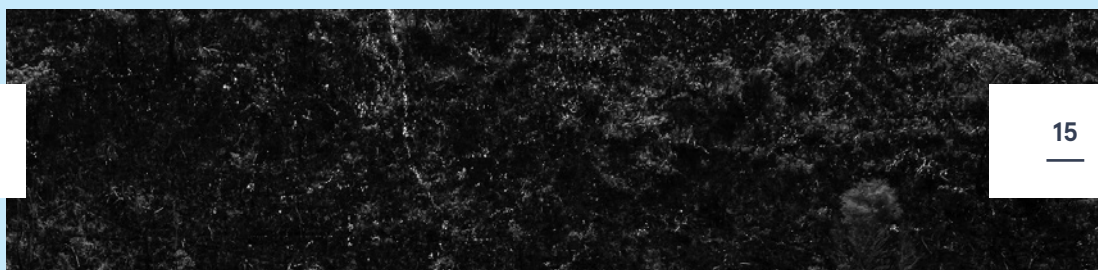
35 Introduced with Government Regulation 24/2018 (President of the Republic of Indonesia (2018a)).

36 If the location permit included land from two or more regencies, then it had to be issued by the province's governor.

37 President of the Republic of Indonesia (2010b), Articles 160, 163(1)(b) and 165(1)

38 A one-year extension could be issued only if a company had fulfilled the regulatory requirement of obtaining land rights over more than 50% of the location permit area, per Minister for Agrarian Affairs and Spatial Planning (2015), Article 5. This requirement was also present in the previous version of this regulation (1999) and remains in force in later versions (2017, 2018, 2019) of the regulation.

39 Until 2014, there were separate ministries for forestry and the environment.



- Once the relevant levels of government had signalled their in-principle agreement, the company would engage consultants to prepare an **environmental impact assessment** (EIA), to be evaluated by a commission appointed by the regency or provincial administration. This was a two-stage process, with approval being given first to the frame of reference (*Kerangka Acuan*), and then to a detailed impact assessment and management plan. If the commission approved the EIA, it then passed its decision on to the bupati, who issued an **environmental permit** (*Izin Lingkungan*).
 - The next key step was to apply for the **plantation business permit** (*Izin Usaha Perkebunan* - IUP) for which the company had already received in-principle approval. Under national law these were to be issued by the regency government if located in a single regency or the provincial governor if in more than one regency. However, under West Papua's Special Autonomy Law all IUPs were issued by the governor. To obtain this vital document a company had to present an environmental permit and proof that the company met legal and administrative requirements.
 - Once the company had obtained its IUP, the MoEF could decide to **release some or all of its concession area from the forest estate**. In 2016 the rules changed and the land could be released if the company held an environmental permit, even if it had not yet obtained an IUP. Another important condition for forest release was that a physical boundary survey had to have taken place.
 - **Land cultivation right** (*Hak Guna Usaha* – HGU) could be issued by the National Land Agency once the company held a valid IUP, its land had been released from the forest estate and it had presented proof that it had reached a settlement with landholders, including customary rights holders. This leasehold title gave a company the right to cultivate the crop it had applied for for 35 years, although there were conditions under which HGU could be revoked, including inactivity.
- Some companies chose to operate as if it were legal to run a plantation without HGU, claiming that an IUP was sufficient. This was contrary to a requirement in the plantation regulations from 2007 onwards that companies must secure land title (which for a plantation company could only be in the form of HGU),⁴⁰ and also to requirements in the Indonesian Sustainable Palm Oil (ISPO) standard, mandatory for industrial-scale plantation companies since 2015.⁴¹ This was further clarified in 2015 by a decision of the Constitutional Court, which made it clear that both HGU and IUP were legal requirements.⁴² Nevertheless, many plantations around Indonesia continued to operate without HGU.
- If a company cleared forest for a plantation, and wished to sell the timber, it had to apply for a **timber utilisation permit** (*Izin Pemanfaatan Kayu* – IPK) from the provincial Forestry Agency.⁴³

40 Minister for Agriculture (2007), Article 34(a). The requirement to secure land title (which for a plantation company means HGU) is carried on in the later version of this regulation (Minister for Agriculture (2013), Articles 40(2) and 59) and was retained in amendments in 2016 and 2017.

41 Minister for Agriculture (2015), criterion 1.4, p.41.

42 Constitutional Court ruling in case no. 138/PUU-XIII/2015. See http://www.mahkamahkonstitusi.go.id/public/content/persidangan/putusan/138_PUU-XIII_2015.pdf.

43 See Minister for Forestry (2011).

Righting the wrongs of the past: promises yet to be fulfilled



A Greenpeace Indonesia activist wears a mask depicting former Indonesian President Susilo Bambang Yudhoyono during a theatrical action in burnt peatland covered by the forest moratorium signed during his presidency. Sign reads "I saved 63.8 million hectares of forest". Sumber Jaya Village, District Siak Kecil, Bengkalis, Riau Province. 19 Apr. 2015.

© Rony Muharrman / Greenpeace

The Indonesian Government has accepted for many years that there have been problems with permits that were issued in the past, and has evoked the idea of a permit review as a way to address these problems. One early plan was to use the Presidential Instruction on Moratorium on New Permits and Improving Governance of Primary Natural Forests and Peatlands (hereafter referred to as the 'Forest

Moratorium'), initiated on 20 May 2011.⁴⁴ A major motivation for the Forest Moratorium was a letter of intent⁴⁵ signed by Norway and Indonesia the previous year, in which Norway pledged to make Indonesia payments totalling up to US\$1 billion if the country managed to reduce its emissions from forest destruction and degradation and peatland conversion.

44 President of the Republic of Indonesia (2011b)

45 Government of the Kingdom of Norway & Government of the Republic of Indonesia (2010)

The Forest Moratorium ostensibly prohibits the issuing of new permits in the most ecologically sensitive areas, namely primary forests and peatlands, for uses such as forestry, plantation and mining. It was initially intended as a temporary two-year measure to allow time for regularisation of the country's forest governance arrangements, although it remains in force to this day, having been renewed for three further two-year periods before being given indefinite effect in 2019.⁴⁶ An early draft of the moratorium called for a review of existing concessions⁴⁷ in recognition of 'a range of fundamental issues in the permit system and its implementation'.⁴⁸ Provisions for such a review did not make it into the final Presidential Instruction, but in 2012, when Indonesia published its REDD+ strategy,⁴⁹ the government claimed that it would use the two years (as then conceived) of the Forest Moratorium to identify and map all existing permits in forest and peat areas, ascertain their legal status, optimise law enforcement around any permits suspected to be improperly granted and improve the transparency and accountability of the permit process.

Although the now-defunct Presidential Delivery Unit for Development, Monitoring and Oversight (UKP4) was assigned to undertake these tasks and did intervene in some specific cases,⁵⁰ there are no indications that it conducted a comprehensive review of all concessions. The 'One Map Policy' – another linked reform initiative that the government launched at around the same time,⁵¹ seeking to harmonise geospatial data across government, including concession maps – is still a work in progress nearly a decade later.⁵²

A further indication that the government still intended to tackle problems with existing plantation permits came in 2016. In April that year, President Joko Widodo (universally known as 'Jokowi') announced that his government was preparing another Presidential Instruction, which would halt new permits for oil palm plantations.⁵³ A month after this announcement Minister for Environment and Forestry Siti Nurbaya gave her enthusiastic support, saying that this moratorium would mean that forest release decrees could be reviewed and cancelled, and citing the problem of abandoned concessions in West Papua as one of the reasons why this was necessary.⁵⁴

However, over two years passed between Jokowi's announcement and the publication of the Presidential Instruction that implemented his proposal. When the Presidential Instruction on Postponement and Evaluation of Oil Palm Plantation Licenses and Increasing Productivity of Oil Palm Plantations (known as the 'Oil Palm Moratorium') was finally introduced in September 2018,⁵⁵ it was framed in terms of recognition that the industry had long been poorly managed and environmentally damaging, that many plantations were not legally compliant and that small-scale producers were disadvantaged. The reforming agenda of the moratorium, which was to remain in place for three years, was made clear in the objectives described in its preamble: 'to improve the sustainable management of oil palm plantations, to provide legal certainty, to preserve and protect the environment including by reducing greenhouse gas emissions, as well as improving the development of small-scale oil palm farming and raising the productivity of oil palm plantations'.

46 President of the Republic of Indonesia (2019)

47 REDD-Monitor (2011a)

48 This was a draft prepared by the REDD+ Task Force, available at <https://www.scribd.com/doc/46728595/10-12-23-REDD-Plus-Task-Force>. See also REDD-Monitor (2011b) for a comparison of the draft decrees.

49 Indonesian REDD+ Task Force (2012)

50 Kompas.com (2012)

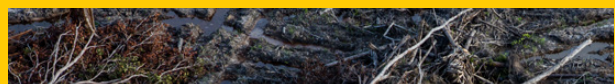
51 Myers R et al (2016)

52 Ministry of Communication and Information (2020)

53 Arumingtyas L (2016)

54 ForestHints.News (2016b)

55 Presidential Instruction 8/2018 (President of the Republic of Indonesia (2018b))



Yet despite these laudable aims, the scope of the moratorium was more limited than Jokowi originally promised, as it fell far short of suspending the issuing of all new permits and approvals. The issuing of new plantation business permits (IUPs) was suspended, but only for areas inside the forest estate, with IUPs still being issuable for areas zoned for other uses (*Areal Penggunaan Lain* – APL), even if they were forested (which is often the case in West Papua). The issuing of new location permits and environmental permits was not suspended at all, and the wording of the moratorium allowed the Minister for Environment and Forestry some leeway to issue forest release decrees if a company's application had already reached a certain stage in the process.⁵⁶ Issuing of land cultivation right (HGU) was also allowed to continue. Several oil palm plantation companies have managed to obtain further permits on the basis of these exceptions.

As well as this three-year partial prohibition on the issuing of new IUPs and forest release decrees, the Oil Palm Moratorium instructed ministers, governors of provinces and bupati (regency heads) to conduct a review of existing permits under their jurisdiction, to be carried out over the same three-year period. Their findings were to be conveyed to a team set up by the Coordinating Minister for Economic Affairs, which would produce recommendations for further action.



■ Greenpeace Indonesia Forest Campaigner Arie Rompas holds an 'award' for unwarranted secrecy as activists hold a banner reading "BPN, Not Transparent = Corruption?" at the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency in Jakarta. The coalition from Greenpeace, Walhi, Indonesian Corruption Watch (ICW) and Perdu urged the Ministry to release information on forest concessions in Papua and Kalimantan. 20 Aug, 2018.

56 Most notably if a boundary survey (*tata batas*) has already been carried out, the application is not subject to the moratorium

Unfortunately, progress in implementing the moratorium has been discouragingly slow. At the time of writing, in early 2021, two and a half years have passed since its belated introduction, meaning that its three-year term will be over before long, unless it is extended. Yet there are few, if any, indications that the review it mandated has been implemented nationally in any meaningful way. Greenpeace Indonesia has twice submitted a Freedom of Information request to the Coordinating Ministry for Economic Affairs to view the six-monthly moratorium progress updates that it was instructed to produce, but has not received a response.⁵⁷ Companies that appear to have violated multiple national laws still hold permits to clear primary forest. Despite Minister Siti Nurbaya's apparent enthusiasm in 2016, not a single area appears to have been taken back into the forest estate as a result of the permit review.

Nevertheless, the Minister has claimed significant successes for the Oil Palm Moratorium. In 2020 she credited it with protecting 1.26 million hectares (ha) of potential High Conservation Value (HCV)⁵⁸ areas within existing oil palm concessions in Papua and Papua Barat Provinces.⁵⁹ This is a misleading claim since the moratorium contains no provisions which might offer additional protection beyond what these areas already receive through the conservation obligations imposed on companies by existing regulations, or specific obligations stipulated within individual company permits.⁶⁰ The only way the moratorium could offer enhanced protection to HCV areas would be if the review of permits that it mandates led to concessions being revoked (which has not yet happened in Papua Province, as far as Greenpeace has been able to ascertain).

'If a palm oil concession is still dominated by intact forest within a certain landscape, then the government will consider attempting to take it back to be developed into a conservation forest'



Minister Siti Nurbaya

Minister Siti Nurbaya was also quoted as saying that under the Oil Palm Moratorium 'If a palm oil concession is still dominated by intact forest within a certain landscape, then the government will consider attempting to take it back to be developed into a conservation forest.'⁶¹ However, although the moratorium has been in place for over two years, Greenpeace is not aware of any cases where this process has yet begun.

57 The initial letter was sent on 29 September 2020, with a follow-up sent on 2 December 2020.

58 High Conservation Value areas are important for biological, ecological, social or cultural values – see hcvnetwork.org.

59 ForestHints.News (2020b)

60 Plantation companies may already be obliged to conserve certain HCV areas as a result of their also falling under protections afforded by environmental law or as a condition of their environmental permit or forest release decree, but there is no extra protection contained in the text of the Oil Palm Moratorium (President of the Republic of Indonesia (2018b)). The Moratorium does instruct governors and bupati to cease issuing 'land clearing permits' (*izin pembukaan lahan*), but this is not a term defined in national legislation and may therefore be considered meaningless. The legal avenues available which could offer protection to HCV areas appear far from solid – presumably limited to regulations on peat protection and the Biodiversity Conservation Law of 1990 (Undang-Undang 5/1990, available at <https://pih.kemlu.go.id/files/UU%20RI%20NO%2005%20TAHUN%201990.pdf>), which is very rarely enforced to prevent clearing inside oil palm concessions.

61 ForestHints.News (2020a)

■ An aerial photo shows primary forest canopy in Boven Digoel regency, Papua province. 18 Dec, 2017.



In West Papua, the mistakes made in the past are clear to see. Weak governance at regency, provincial and national levels has resulted in millions of hectares of forested land being allocated to companies for oil palm and other plantations. Evidence of permit irregularities can be found in almost every single concession, as presented in this report. Indigenous Papuans, the customary owners of the land, have in many cases been sidelined from the process of land allocation, as Indonesian and foreign companies have contrived to acquire rights to their forest, through a combination of non-transparent engagement with local political leaders and manipulative or coercive practices intended to give the impression that Indigenous peoples have meaningfully consented to their land being taken over.

Nevertheless, although much forest has been lost already, and many conflicts unleashed, there is still some scope for mitigation. In fact, a few simple steps by decision-makers now could produce very important gains, safeguarding the hundreds of thousands of hectares of still-forested land in oil palm concessions, including many where concession holders are no longer actively pursuing their investment. Reviewing and revoking the permits and forest release for these abandoned concessions, as well as those issued illegally or in irregular circumstances, could be an easy win if central government were to take the lead in coordinating the process (which would also require the participation of local and provincial authorities, as well as relevant ministries and state institutions). However, it would

be vital, especially in cases where concessions had been irregularly or illegally obtained, that their revocation was unconditional and not regarded as an opportunity for the state to gain income from donors through REDD+ or carbon trading programmes – to do so would mean that the government was profiting from its history of poor governance.

Ideally, such still-forested concessions would then be taken back into the forest estate with protected status, as Minister Siti Nurbaya proposed, while fully respecting the rights of Indigenous landowners. Additional gains could be made by protecting forested areas and peatlands which are classified as 'other use area' (APL) and are not part of the forest estate, some of which also have undeveloped plantation concessions awarded over them. This approach would have little negative impact on the economy or job creation, but could bring significant benefits in terms of forest conservation and climate protection, as well as to local Indigenous communities who are overwhelmingly disadvantaged by plantations.

On the other hand, if the government does not take action now to correct past illegalities and implement reforms to ensure that development in West Papua and other frontier regions is based on principles of ecological and social justice, it will become increasingly difficult to prevent the further expansion of destructive industries in those regions. This will have grave implications for biodiversity and the climate, while increasing inequality and stoking continued social unrest.

Plantation development in West Papua: a product of recent policies

The history of plantation development in West Papua is much more recent than in Indonesia's western islands. Although there have been a few oil palm plantations in Papua Province since the early 1980s, most of the companies that currently hold concessions in the province got their first location permit in 2007 or later. The bulk of forest conversion to plantations has taken place since 2010. So while in Sumatra and Borneo the long history of poor land and forest governance during Soeharto's rule has left a legacy of multi-layered and long-running land disputes which have continued to present complications for resource industry reform,⁶² the widespread irregularities and violations of regulations highlighted in this report have been almost entirely the result of bad policy and malpractice during the Susilo Bambang Yudhoyono and Joko Widodo (Jokowi) administrations.

Yudhoyono's first term as president (2004–2009) was the period when agribusiness started to show a serious interest in large-scale forest conversion in West Papua. Projects launched in the Yudhoyono era targeted the southern part of the region as a major new growth centre for the plantation sector. In January 2007, the government-appointed National Biofuels Development Team reportedly signed memoranda of understanding with plantation companies Sinar Mas and Genting Bhd to develop new oil palm estates representing a combined investment value of over US\$8 billion.⁶³ The investors reportedly projected that around 1.5 million ha of southern Papua Province could be planted with oil palm.⁶⁴ In 2010, the government-initiated Merauke Integrated Food and Energy Estate targeted a similarly large area in Merauke Regency alone for industrial agriculture development, with 50% of the area reserved for oil palm and sugar cane plantations.⁶⁵ The following year, the project became a centrepiece of the government's medium-term economic masterplan.⁶⁶ Although neither of these projects was fully implemented, both opened the door to big investment plans in the area, and some of the companies profiled in this report can trace a direct lineage to these government-initiated megaprojects.

62 Affandi D et al (2017)

63 ANTARA News (2007)

64 Down to Earth (2007)

65 Zakaria RY, Kleden EO & Franky YL (2011)

66 Coordinating Ministry for Economic Affairs (2011)

Yudhoyono's second term as president (2009–2014) was notable for seeing by far the largest amount of land released from the forest estate of any presidential term to date (both nationwide and in Papua Province), under the orders of Minister for Forestry Zulkifli Hasan. Virtually all of the areas released had good forest cover, often primary forest, and many of them did not meet the requirements set out in the ministry's own regulations for release.

Since Jokowi became president in 2014, his Minister for Environment and Forestry, Siti Nurbaya, has claimed to be doing things differently and has drawn attention repeatedly to the fact that under Zulkifli Hasan's administration much more forest land was released to plantation companies nationwide than under her own.⁶⁷ Although this is true, Minister Siti Nurbaya's own record could be better. So far under her watch the ministry has released 164,315 ha to eight companies from five groups in Papua Province, and 104,046 ha to six companies from four groups in Papua Barat Province. One of these releases, to PT Prima Sarana Graha, occurred in 2019, after the Oil Palm Moratorium came into force, making use of an exception to the moratorium for applications already in process.⁶⁸ However, releases of forest in West Papua under Siti Nurbaya's administration have been marked by the same sorts of irregularities as were evident under her predecessor's: they have violated the government's own regulations on procedures for forest release and protection of peatlands, or have been granted with respect to areas of ecologically important forest or to companies that had unresolved conflicts with local Indigenous communities.

Besides this disappointing continuation of questionable forest releases, the early years of Jokowi's administration saw the announcement of reforming initiatives that have subsequently been watered down or poorly implemented. After Indonesia suffered catastrophic forest fires in 2015, including fires in concessions belonging to the Korindo⁶⁹ and Posco International (formerly Posco Daewoo)⁷⁰ groups in Papua Province, official indications that the government would clamp down on companies that allowed fires to occur in their concessions⁷¹ failed to bear fruit, with few companies being sanctioned – only a handful of warning letters were sent to concession holders in West Papua, of which none were palm oil companies, and no companies were prosecuted.⁷² Additionally, a set of regulations limiting cultivation on peatland, introduced in 2016, was significantly rolled back in 2019, greatly reducing the area of land that was required to be preserved nationwide.⁷³

⁶⁷ Damarjati D (2018), ForestHints.News (2018)

⁶⁸ A justification for why the moratorium does not apply is stated in the decree releasing forest to PT PSG, further explanation of the loophole is given in Part 2 of this report.

⁶⁹ Forensic Architecture (2020)

⁷⁰ Awas MIFEE (2015)

⁷¹ ForestHints.News (2016a)

⁷² Greenpeace Southeast Asia (2020)

⁷³ Jong HN (2019a)

Jokowi's government has also missed a number of opportunities to take meaningful action to correct the failures of forest governance that occurred under previous administrations, thereby ensuring that hundreds of thousands of hectares of forest in West Papua are still slated for deforestation. Companies that were issued permits illegally, or in circumstances where there are strong reasons to suspect corruption, are still allowed to operate.⁷⁴ No automatic mechanism has been introduced to take problematic or abandoned concessions back into the forest estate,⁷⁵ and so it remains the case that local governments can easily issue new permits to other companies on the same land. Land-use maps of the forest estate⁷⁶ have not been modified to give firm protection to areas of primary forest and peatland included in the Forest Moratorium, and the ruling of the Constitutional Court that Indigenous forest does not belong to the state⁷⁷ has not been fully incorporated into national law.

Alongside this inaction, policies actually enacted by Jokowi's government have increased the risk to West Papuan forests. The officially mandated percentage of palm biodiesel that must be blended into fuel in Indonesia continues to be increased, driving up demand for palm oil.⁷⁸ With no regulatory safeguard to prevent this causing further deforestation,⁷⁹ it could have a serious impact, especially in terms of additional pressure on development frontier areas such as West Papua. Furthermore, Jokowi's emphasis on new infrastructure development, including accelerating road-building in West Papua, directly threatens conservation areas and will also open up the region's interior, facilitating the entry of new agricultural projects, transmigrant settlers and illegal logging operations.⁸⁰

In September 2020, in a sign that the Indonesian Government has yet to move away from the paradigm of treating West Papua as a new frontier to be exploited, President Jokowi announced once again that swathes of southern Papua Province were to be earmarked for a food estate (see Part 4).⁸¹ Up to 3.2 million ha are currently under assessment for inclusion in the programme,⁸² billed as part of the urgent economic recovery plan in response to the COVID-19 pandemic.⁸³

⁷⁴ See eg Jong HN (2019c) and some of the other cases discussed later in this report.

⁷⁵ A mechanism for establishing forest estate areas does exist, and is elaborated in Ministry of Forestry Regulation 44/2012 (Minister for Forestry (2012) as amended by Minister for Forestry (2013)). Although this mechanism is not specifically designed for returning concessions which have been abandoned or revoked into the forest estate, it could nevertheless be applied in such cases.

⁷⁶ Forest estate maps are made publicly available at <https://geoportal.menlhk.go.id>.

⁷⁷ Indonesian Constitutional Court decision no. MK35/PUU-X/2012, available at https://www.aman.or.id/wp-content/uploads/2018/05/putusan_sidang_35-PUU-2012-Kehutanan-telah-ucap-16-Mei-2013.pdf

⁷⁸ Basri F & Putra GA (2020), Halimatussadiah A (2020)

⁷⁹ Christina B (2019)

⁸⁰ Laurance W (2019)

⁸¹ Ihsanuddin (2020)

⁸² Direktorat PDLKWS (2020)

⁸³ Director General of Forestry Planning and Environmental Management (2020)

Deforestation: a brief window of opportunity for change



■ Forest clearance and plantation development in PT Megakarya Jaya Raya (PT MJR) oil palm concession. The Hayel Saeed Anam Group's palm oil refining and trading division, Pacific Inter-Link, adamantly denies a connection with this concession, but Greenpeace believes the weight of evidence is sufficient to demonstrate that the HSA Group and its ultimate beneficial owners, members of the Hayel Saeed family, have been and may still be linked to it. Much of the 39,505 ha concession is still primary forest. 31 Mar, 2018.

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Plantations have been the principal cause of large-scale forest loss in West Papua in recent years.⁸⁴ According to analysis by the Center for International Forestry Research (CIFOR), a total of 168,471 ha of forest in Papua Province were converted to plantations between 2000 and 2019.⁸⁵ While this is an alarming figure, it could easily have been much higher – vast areas of forests in the province remain under threat due to permits that are still active.

⁸⁴ This refers to clear cutting of areas over 100 ha, to distinguish from small-scale clearing for food gardens etc.

⁸⁵ CIFOR 'Papua Atlas'. The Indonesian Government's figure (from 2019) is slightly smaller, 110,000 ha; see Minister for Agriculture (2019a).

168,471 ha

of forest in Papua Province has been converted to plantations between 2000 and 2019



Since 2000, the land released from the forest estate for plantations in Papua Province alone has totalled nearly a million hectares (951,771 ha) – an area more than one and a half times the size of the island of Bali. The majority of this land is currently still forested. Greenpeace’s analysis shows that across Papua Province 685,388 ha of forest remain in concessions released from the forest estate since 2000. Of this total remaining forest, 447,073 ha

were classed as primary forest on the 2019 Ministry of Environment and Forestry (MoEF) land cover map. These concessions also contain 108,032 ha of (mainly forested) peatland,⁸⁶ which are mostly also undeveloped. In 2020 Minister for Environment and Forestry Siti Nurbaya referred to an even larger total of 870,000 ha of potential HCV areas identified within oil palm concessions in the province.⁸⁷



951,771 ha

the land released from the forest estate for plantations in Papua Province since 2000



1.5 x

the size of the island of Bali



685,388 ha

of forest remains in concessions released from the forest estate since 2000 across Papua Province



447,073 ha

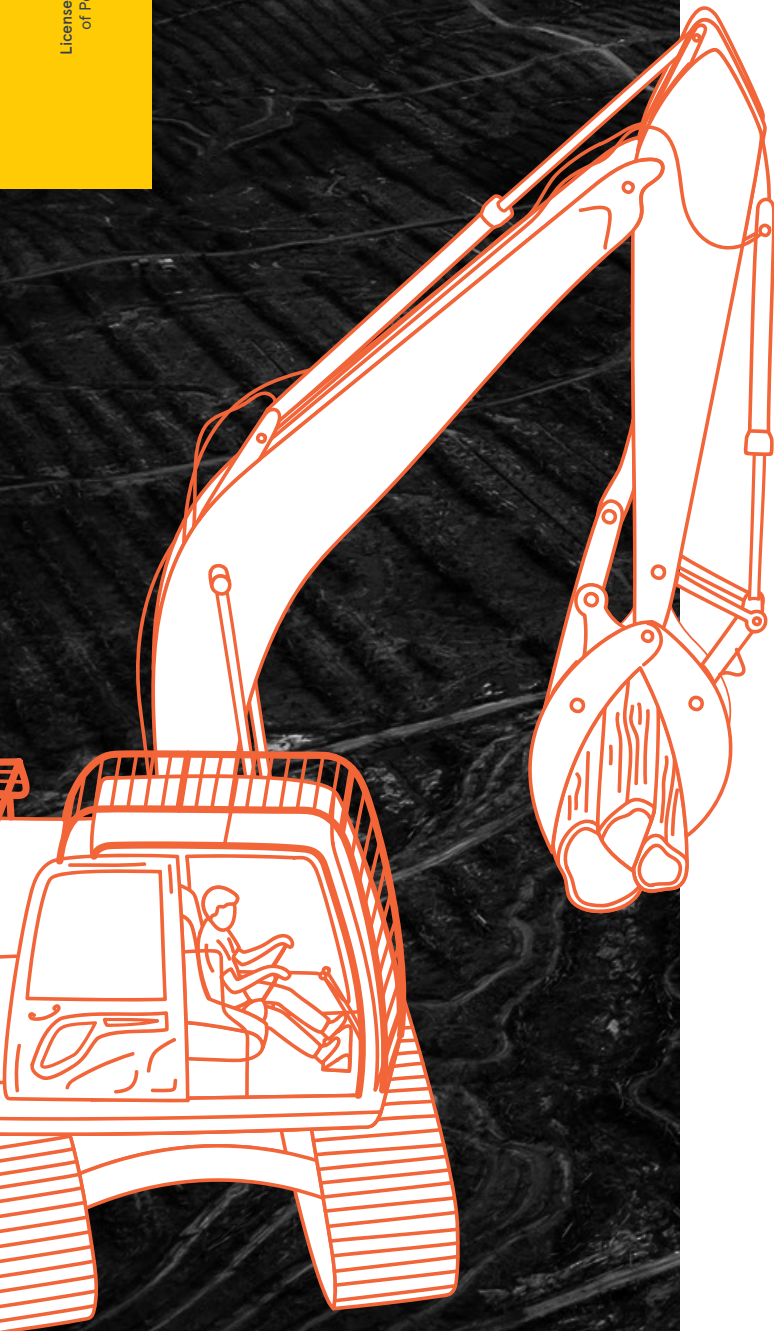
was classed as primary forest on the 2019 MoEF land cover map



108,032 ha

(mainly forested) peatland

⁸⁶ Based on the Ministry of Agriculture’s 2011 peat map.
⁸⁷ ForestHints.News (2020b)



These as yet undeveloped concessions have been described as ‘planned deforestation’, because unless permits are revoked the forest can be expected to be cleared sooner or later.⁸⁸ In a February 2021 report the MoEF attempted to defend the 17 forest release decrees across West Papua issued under the watch of Minister Siti Nurbaya by pointing out that large-scale deforestation has not yet occurred in the areas concerned.⁸⁹ It must be stressed that this is a specious argument because by issuing a forest release decree, the MoEF is giving its approval that deforestation may occur. Once the decree is issued the ministry has no effective power to prevent conversion to plantation – unless the concession permits are revoked and the necessary changes are made (such as revoking forest release and returning the area to the forest estate) to ensure the areas are protected and new permits will not be allocated.

However, in that same report the MoEF also indicated that the forest areas it was monitoring in the two West Papuan provinces which had been released from the forest estate between 1992 and 2019 had now reached 1.26 million ha, and that these areas were currently under consideration for potential conservation. This is a hopeful sign that with political will from all branches of government, meaningful action could be on the table. A subsequent article⁹⁰ on ForestHints.news, a news website close to Minister Siti Nurbaya, noted that the provincial governor is tasked with evaluating the implementation of forest release, and that governors should propose areas to be returned to the forest estate to the ministry.⁹¹ While noting that such proposals had not been received from the governors of Papua and Papua Barat Provinces, the article appeared to imply that the MoEF would be prepared to act on such recommendations.

88 Koalisi Indonesia Memantau (2021)

89 Ministry of Environment and Forestry (2021)

90 ForestHints.news (2021)

91 The responsibility for evaluating forest releases is delegated to provincial governors through Minister for Environment and Forestry (2018) Article 35.

‘We will push for Indigenous communities to sustainably manage the land which could potentially be saved as a result of this licence review’

Governor Dominggus Mandacan



In Papua Barat Province at least, this is starting to look like a realistic prospect. In late February 2021 a palm oil licence review team headed by the governor provided its own recognition of the potential forest areas which could be saved in the province. The team, which collaborated with the Corruption Eradication Commission (KPK), examined 24 concessions covering over half a million hectares, and found that 383,431 ha of that land remained forested.⁹² The evaluation determined that the majority of the concessions (13) had not begun operations, and the review team recommended that their permits be revoked by each issuing office (from bupati to national government). In many concessions where some planting had taken place but large areas remained undeveloped, the review proposed mechanisms to excise this land from concessions.⁹³ ‘We will push for Indigenous communities to sustainably manage the land which could potentially be saved as a result of this licence review’, Governor Dominggus Mandacan said.⁹⁴

Progress in Papua Province appears to be slower than in its neighbouring province. In a letter to Greenpeace Indonesia dated 18 February 2021, the Papua Province Development Planning Agency (*Bappeda*) confirmed that it had also been working with the KPK on a licence review for oil palm permits, but stated that more work would be needed in 2021.⁹⁵

The scale of the potential conservation and climate gains to be achieved by revoking existing concessions in Papua Province alone is huge. Moreover, a current – but perhaps temporary – downturn in plantation-related deforestation makes this a particularly opportune moment to ensure that abandoned concessions are protected, as well as those that were illegally or irregularly awarded. However, as well as cancelling IUPs and returning the concessions to the forest estate, comprehensive government action is needed to ensure important forest areas that are saved are effectively protected. This would include applying the Forest Moratorium where relevant, and not issuing any further permits at least until Indigenous land rights in the area have been fully mapped and recognised.

⁹² Papua Barat Province Licence Review Team (2021a)

⁹³ Papua Barat Province Licence Review Team (2021b). The **final report** notes that in some cases companies had replied to letters from the evaluation team stating they would not seek to develop certain areas in their concessions. In concessions which already possessed HGU, the review suggested that undeveloped areas be evaluated under the procedures for determining abandoned land. If there were undeveloped areas within a concession which held an IUP but had not obtained HGU, then a company would have failed to meet the obligations under its IUP, which in theory would mean that the IUP should be revoked.

⁹⁴ Papua Barat Province Licence Review Team (2021a)

⁹⁵ Letter from Bappeda Provinsi Papua to Greenpeace Indonesia, dated 18 February 2021.

Calculating the climate impact of developing hitherto undeveloped concessions



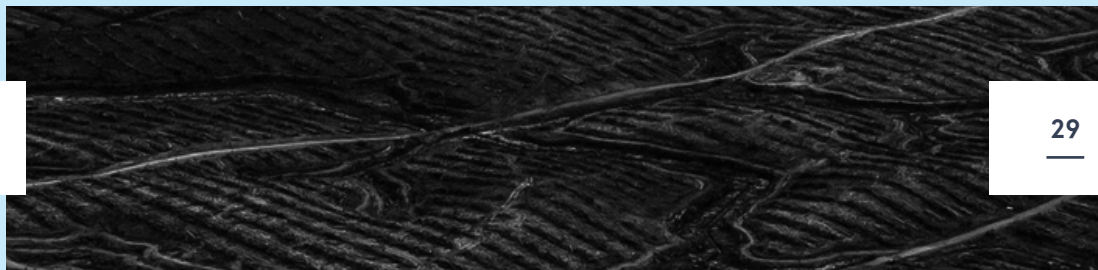
© Ardiles Rante / Greenpeace

Smoke rises from burning stacks of cleared forest in a concession owned by PT Berkas Cipta Abadi, part of the Korindo Group. PT Berkas Cipta Abadi has cleared forest for one oil palm plantation in Merauke Regency, but also holds permits for another undeveloped plantation in Boven Digoel Regency. 26 Mar, 2013.

If the forest in all of Papua Province's undeveloped concessions were to be developed, the amount of greenhouse gas emissions produced would be enormous. One way to estimate just how much carbon is stored in the forest is to apply the methodology used by countries to assess forest carbon stocks for reporting to the UN Framework Convention on Climate Change,

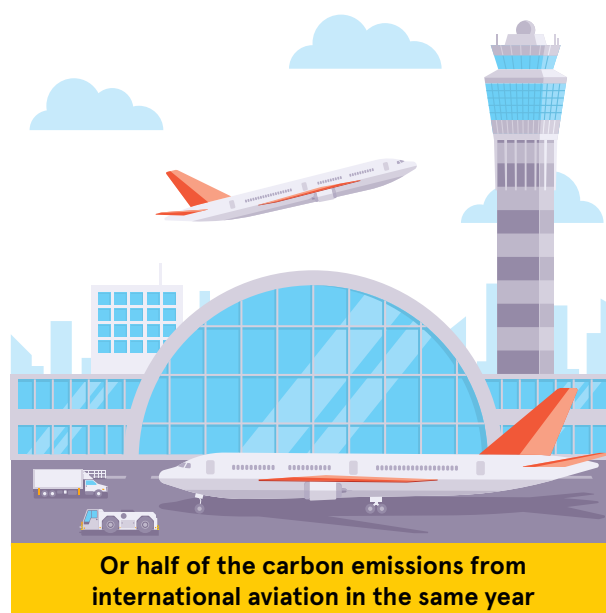
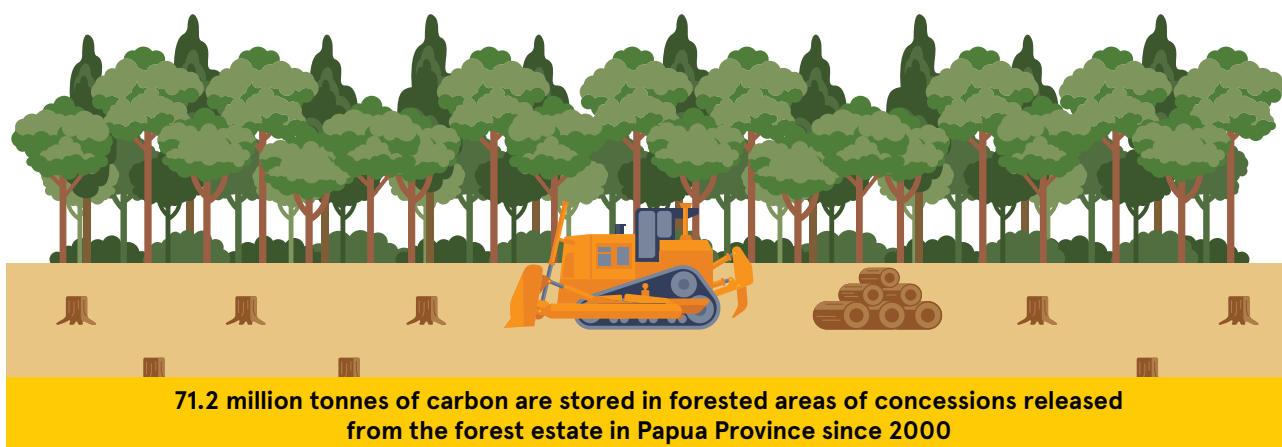
which is also used as the basis for REDD+ programmes.⁹⁶ In Indonesia's case, an average value of carbon contained in above-ground biomass has been estimated for each major forest class (primary and secondary dryland forest, swamp forest and mangrove) and for each major island.

96 UNFCCC REDD+ web platform 'Forest reference emission levels'



When these estimated values are applied to the forest remaining in 2019 within concessions released from the forest estate in Papua Province since 2000, based on the government's 2019 land cover map, they indicate that 71.2 million tonnes of carbon are stored in the forest.

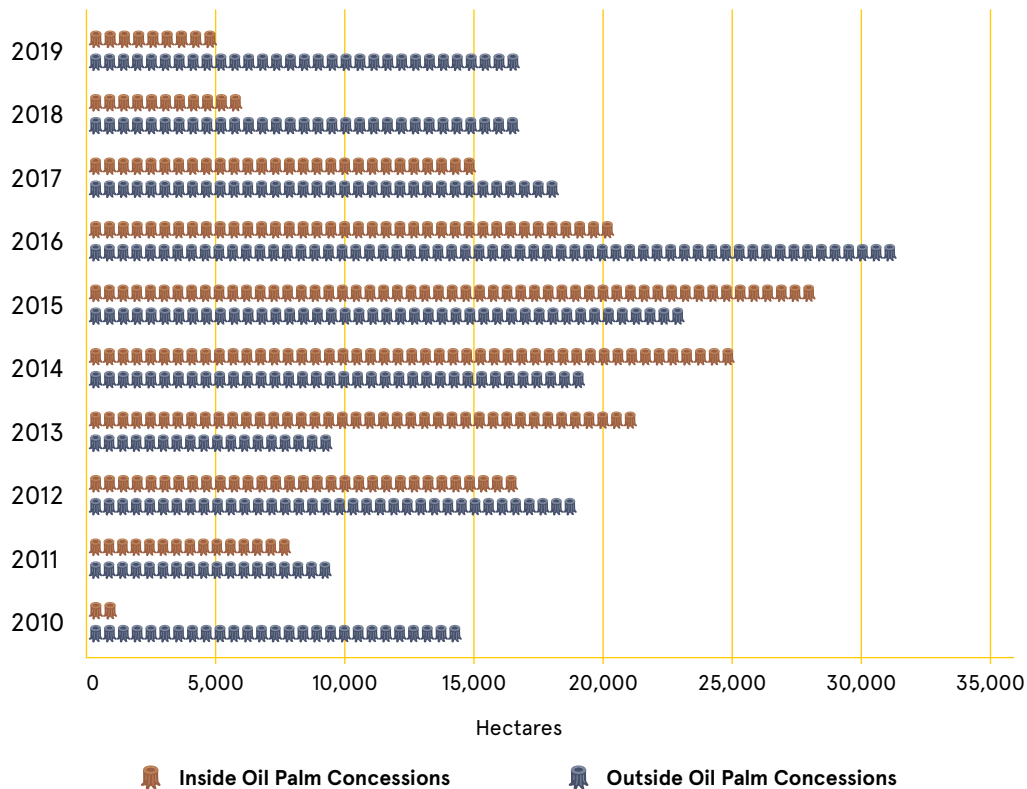
This is equivalent to almost half of Indonesia's entire carbon emissions in 2018, or half of the carbon emissions from international aviation in the same year.⁹⁷ Note that this figure would be even higher with the inclusion of carbon stored in below-ground biomass such as peat, which is also at risk of being emitted as a result of forest clearance and drainage.



⁹⁷ Source: European Commission website 'Fossil CO₂ and GHG emissions of all world countries, 2019 report'. Note that the figures in this table are CO₂ emissions and must be multiplied by 12/44 to convert to carbon equivalent.

After climbing to a peak in 2015 and 2016 the rate of deforestation has in fact been falling in Papua Province for the last three years, and this is due in large part to a decrease in forest clearance for plantations. Figure 1 shows the trends in forest loss⁹⁸ inside and outside oil palm concessions in Papua Province over the last decade. Forest conversion to plantations, which represents the vast majority of forest loss within concessions, has been responsible for around half of all forest loss in the province in this period. From very low levels in 2010, conversion to plantations rose year-on-year to a peak in 2015, but has shown a significant decline every year since then.

Figure 1: Forest Loss in Papua Province (2010-2019)



The evidence and analysis presented in this report attempt to address the key questions of the extent to which government policies have contributed to this downward trend in deforestation, and whether it will continue. Alongside any effect due to government action, however, two other factors must be recognised as contributing to a reduction in deforestation: global pressure from civil society groups and consumer companies to cut deforestation out of commodity supply chains, and local opposition by Indigenous groups that hold customary land rights on concession land.

In 2010 the members of the Consumer Goods Forum, a coalition of some of the world's biggest food product manufacturers and retailers, pledged to transform their supply chains to eliminate deforestation by 2020.⁹⁹ Although they have failed to meet this goal,¹⁰⁰ it is undeniable that, in the case of palm oil

⁹⁸ Forest loss data from the Hansen/UMD/Google/USGS/NASA dataset on <http://www.globalforestwatch.org>

⁹⁹ Consumer Goods Forum (2010)

¹⁰⁰ This partial success is acknowledged by the Consumer Goods Forum; see Consumer Goods Forum (2020).

at least, progress has been made. According to Chain Reaction Research, 75% of all palm oil refineries in Indonesia and Malaysia are now operating under some form of No Deforestation, Peat or Exploitation (NDPE) policy.¹⁰¹ While policy implementation by many of these companies is still imperfect, it has become much more difficult for producers that deforest to sell their products in the last few years.

This development has had a clear impact on deforestation in Papua Province. The companies that have cleared forest in the province over the last decade are listed in Table 1 below. Since 2015 almost all of the groups of which they are a part have been targeted by campaigns highlighting their deforestation in West Papua and elsewhere. As a result of this pressure, as well as the market's growing insistence on NDPE-compliant sources, some groups, including Eagle High,¹⁰² Goodhope¹⁰³ and KPN Group,¹⁰⁴ have developed their own NDPE policies, and Korindo has also undertaken¹⁰⁵ not to clear areas of HCV or high carbon stock (HCS).¹⁰⁶ Others, including Noble and DTK Opportunity, do not have public policies but have not cleared forest for over two years, which has enabled them to protect their market access. In some cases, involving both companies that have published NDPE policies and those that have not, this has meant that concessions have been only partially developed. For the Musim Mas and Sinar Mas groups, meanwhile, implementation of group-wide NDPE policies meant that they were obliged to abandon 93,601 ha of concessions in the northern part of Papua Province before any forest clearance took place at all (hence their absence from Table 1). While it is not always possible to ascertain why particular projects have not gone ahead, smaller producer groups may also have decided to abandon plantation developments on forested land because of difficulties in attracting the capital they need in the face of market uncertainty.

In many cases, there has also been Indigenous opposition to plantations, which may have led some companies not to proceed with plantation projects. For example, the Mayora and Astra Groups abandoned sugar cane plantation plans in Merauke Regency at an early stage in the permit process after Indigenous protests.¹⁰⁷ The use of customary law to try to prevent companies from clearing contested land has also succeeded in stopping or slowing down development, for example in KPN Plantations' PT Agriprima Cipta Persada concession, also in Merauke.¹⁰⁸

The evidence that action from the Indonesian Government has contributed significantly to the deforestation slowdown is considerably less clear. The Forest Moratorium, the Oil Palm Moratorium and the permitting process are examined in detail in this report, highlighting ways their effectiveness in protecting forests has been compromised. For example, as highlighted in Part 2 of this report, the flagship Forest Moratorium has been severely weakened by the government's willingness to make widespread changes to the moratorium map at the request of concession holders. It is beyond the scope of this report to evaluate the impact of all other relevant government policies, but it is probably fair to say that no single measure taken by the government stands out as an unqualified success.

In view of the weakness of its stance to date, it is vital that the Indonesian Government builds on the recent fall in deforestation levels, implementing policies which can ensure that forest cover and biodiversity are maintained and Indigenous rights protected in the long term. With plantation-linked deforestation in Papua Province at its lowest level for a decade, there is an unparalleled opportunity now to implement decisive reforms with minimal economic disruption and to set a new course based on pro-forest, pro-Indigenous policies for the sake of future generations.

¹⁰¹ Chain Reaction Research (2020)

¹⁰² Eagle High Plantations Tbk (2018)

¹⁰³ Goodhope Asia Holdings Ltd (2017b)

¹⁰⁴ KPN Plantation (2019)

¹⁰⁵ Korindo website 'Sustainability: ESG Charter'

¹⁰⁶ High carbon stock is identified via a methodology (the High Carbon Stock Approach) that distinguishes forest areas for protection from degraded lands with low carbon and biodiversity values that may be developed – see <http://highcarbonstock.org>.









¹⁰⁷ Awas MIFEE (2013a)

¹⁰⁸ ELSAM (2016)

Who has profited from deforestation?

Over the last decade (2010–2020), a dozen groups have cleared forest land in Papua Province for plantations (excluding pulpwood/industrial tree plantations), as shown in Table 1.

**Table 1:
Groups in
whose Papua
Province
plantation
concessions
forest has been
cleared, 2010–
2019**

| | |
|--|--|
|  <p>Seung Eun Ho</p> <p>Korindo</p> <p>1. PT Dongin Prabhawa 2. PT Berkat Cipta Abadi 3. PT Tunas Sawa Erma 4. PT Papua Agro Lestari</p> <p>40,773 ha</p> <p>2011–2017</p> <p> South Korea</p> |  <p>Unknown</p> <p>Posco International</p> <p>PT Bio Inti Agrindo</p> <p>25,681 ha</p> <p>2012–2017</p> <p> South Korea</p> |
|  <p>Richard Elman (formerly largest shareholder)</p> <p>Noble Group</p> <p>PT Pusaka Agro Makmur</p> <p>9,727 ha</p> <p>2012–2017</p> <p> Hong Kong</p> |  <p>Hayel Saeed Family</p> <p>Hayel Saeed Anam Group¹¹³</p> <p>1. PT Megakarya Jaya Raya 2. PT Kartika Cipta Pratama 3. PT Graha Kencana Mulia</p> <p>8,828 ha</p> <p>2014–2019</p> <p> UAE & Yemen</p> |

- Key figures¹⁰⁹
- Forest loss 2010–2019¹¹¹
- Years significant deforestation took place¹¹²
- Group name¹¹⁰
- Group companies that have cleared land
- Country of origin

¹⁰⁹ Largest shareholder, except where marked otherwise.

¹¹⁰ Greenpeace attributes group status using the rationale provided by the Accountability Framework Initiative. For further discussion on how this works, see Methodological notes at the end of this report.

¹¹¹ Forest loss data from the Hansen/UMD/Google/USGS/NASA dataset on <http://www.globalforestwatch.org>. Note that these figures show all forest loss within concessions during the time period. A small fraction of this may be unrelated to company activity.

¹¹² CIFOR 'Papua Atlas'

| | | | |
|---|--|---|--|
|  <p>Ganda, Martua Sitorus and family</p> <p>KPN Corp (Gama)</p> <p>1. PT Agriprima Cipta Persada 2. PT Agrinusa Persada Mulia</p> <p>15,092 ha¹¹⁵ </p> <p>2013–2018</p> <p> Indonesia</p> |  <p>Peter Sondakh</p> <p>Eagle High Plantations</p> <p>PT Tandan Sawit Papua</p> <p>11,910 ha </p> <p>2010–2014</p> <p> Indonesia</p> |  <p>Rosna Tjuatja</p> <p>Indonusa Group</p> <p>PT Internusa Jaya Sejahtera</p> <p>10,556 ha </p> <p>2015–2020</p> <p> Indonesia</p> |  <p>Selvanathan Family</p> <p>Carson Cumberbatch / Goodhope Asia Holdings</p> <p>1. PT Nabire Baru 2. PT Sariwana Adi Perkasa</p> <p>10,314 ha </p> <p>2011–2015¹¹⁴</p> <p>  Singapore & Sri Lanka</p> |
|  <p>Sukanto Tanoto (suspected former/ current beneficial owner)¹¹⁶</p> <p>DTK Opportunity</p> <p>PT Rimba Matoa Lestari</p> <p>5,567 ha </p> <p>2011–2015</p> <p>  Hong Kong & British Virgin Islands</p> |  <p>Rumangkang Family/ Neville Mahon</p> <p>Digoel Agri / Bumi Mitratrans Marjaya Group</p> <p>1. PT Perkebunan Bovendigoel Sejahtera 2. PT Bovendigoel Budidaya Sentosa</p> <p>310 ha </p> <p>2019</p> <p>  Indonesia & New Zealand</p> |  <p>Anthoni Salim (suspected beneficial owner)¹¹⁷</p> <p>Salim Group</p> <p>PT Permata Nusa Mandiri</p> <p>298 ha </p> <p>2019</p> <p> Indonesia</p> |  <p>Yulius Lim</p> <p>Victory</p> <p>PT Victory Cemerlang Indonesia Wood Industries</p> <p>171 ha </p> <p>2016</p> <p> Indonesia</p> |

¹¹³ The Hayel Saeed Anam Group's palm oil refining and trading division, Pacific Inter-Link, adamantly and categorically denies that any company affiliated with HSA – including PIL – has, or has ever had, any connection with these Papuan concessions. Although the ultimate owner is concealed by holding companies in secrecy jurisdictions, Greenpeace believes the weight of evidence is sufficient to demonstrate that the HSA Group and its ultimate beneficial owners, members of the Hayel Saeed family, have been and may still be linked to these companies. The HSA Group has not provided Greenpeace with any compelling evidence to substantiate their denial. HSA's responsibility in connection with these concessions is the subject of an ongoing RSPO complaint to which Greenpeace is a party. See references in Case Study 1 of this report.

¹¹⁴ Goodhope Asia Holdings responded to this date range that 'Period of major land clearing is from 2012 to 2015'. Greenpeace stands by the date range in the table as imagery indicates almost 200 ha clearance in 2011.

¹¹⁵ KPN responded to this figure saying that it 'did not verify the total hectareage of forest clearance in the 2010–2018 period' but provided only a figure for clearance after 2015, which it claimed amounted to 5,771 ha.

¹¹⁶ Montpelier International Group Ltd, registered in the British Virgin Islands, was the majority shareholder of PT RML's immediate parent PT Gemilang Bangun Sejahtera until 2015 and has maintained a 20% stake. It was linked to Sukanto Tanoto's RGM International Pte Ltd in the 2010 Offshore Leaks data (see ICIJ Offshore Leaks Database 'Montpelier International Group Ltd').

¹¹⁷ See discussion in Greenpeace (2018a) pp130–131

A small majority of groups that have cleared forest in Papua Province over the last decade are foreign-owned, although several Indonesian corporations are also on the list. These Indonesian groups, most of which also operate elsewhere in the country, are controlled by some of its richest individual tycoons and families. In Forbes' 2019 list of the richest 50 Indonesians, Anthoni Salim comes in at number 4, Martua Sitorus at number 12, Peter Sondakh at 18 and Sukanto Tanoto at 22.¹¹⁸ Several other individuals who appear in Forbes' rich list have also obtained concessions in Papua which have not been developed,¹¹⁹ or had already developed their plantations before 2010.¹²⁰

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Greenpeace Indonesia activists climb the iconic Dirgantara statue adjacent to the Korindo headquarters in Pancoran, Jakarta, and unfurl a banner which translates as "Fight Forest Destroyers". 23 Oct, 2019.

¹¹⁸ Forbes website 'Indonesia's 50 richest' accessed 25 January 2021

¹¹⁹ For example Bachtiar Karim, whose Musim Mas Group had four plantation concessions in Papua Province but chose not to develop them after adopting a no deforestation policy.

¹²⁰ For example the children and grandchildren of Eka Tjipta Widjaja, whose Sinar Mas group has had a plantation in Jayapura Regency since 1996.



■ A palm cockatoo (*Probosciger aterrimus*) in Wasur National Park, Merauke Regency, 2012.

02.

Analysis of findings from Papua Province

Off the map: changing the Forest Moratorium map at companies' request

The Forest Moratorium, a moratorium on new permits in primary forest or peatland for uses such as forestry, plantation and mining, was initiated on 20 May 2011 through a Presidential Instruction.¹²¹ Not all areas of primary forest and peatland are included in the map, however. Areas already under permit in 2011 are excluded, as are areas allocated to certain activities deemed vital to national development.¹²²

Although the 2019 version of the moratorium is described by the Indonesian Government as 'permanent',¹²³ there is actually considerable fluidity in the areas which it covers, as there has been ever since the original 2011 moratorium. Every six months a new map is issued showing the areas of primary forest and peatland covered by the moratorium, and each new map invariably includes changes from the previous version.

¹²¹ President of the Republic of Indonesia (2011b)

¹²² This includes nationally strategic infrastructure projects, land for rice and other crops in which Indonesia is not self-sufficient, and energy, defence and security needs, as well as a few other exemptions.

¹²³ Winata DK (2019)

Greenpeace Indonesia activists wear masks depicting current Indonesian President Joko Widodo and his predecessor Susilo Bambang Yudhoyono as other activists hold a banner reading "Extend and Strengthen Forest Moratorium" in a burnt forest moratorium area at Sumber Jaya Village, District Siak Kecil, Bengkalis, Riau Province. 20 Apr. 2015.



There is little transparency around the changes to the map, which is prepared by the Ministry of Environment and Forestry (MoEF). There are undoubtedly legitimate reasons for some of them. However, Greenpeace analysis has shown that many of the areas excised from the map by these regular revisions lie within plantation concessions, and it appears highly unlikely that these changes can be explained by ongoing attempts to correct inaccuracies in the mapping of forest cover or peat, since they do not correlate to changes in Indonesia's national land cover maps, produced annually, or to general government-issued peat maps.¹²⁴ Importantly, in most cases changes are made only within the concessions concerned, exactly matching concession boundaries, while areas just outside the concession boundaries have not been modified at all. Furthermore, Greenpeace has found strong evidence that most of these excised areas do actually appear to contain peat or primary forest.

¹²⁴ Indonesia has not officially published any peat maps for several years; however, maps of peatland hydrological units, produced to facilitate implementation of the 2016 peat regulations, give a fairly recent view of the peat maps being used by the government.

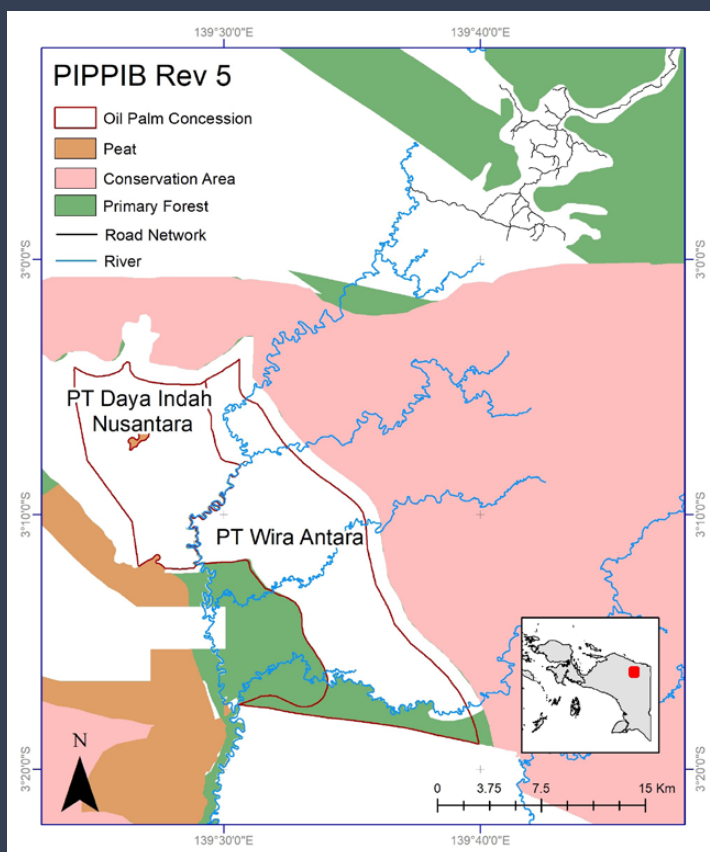
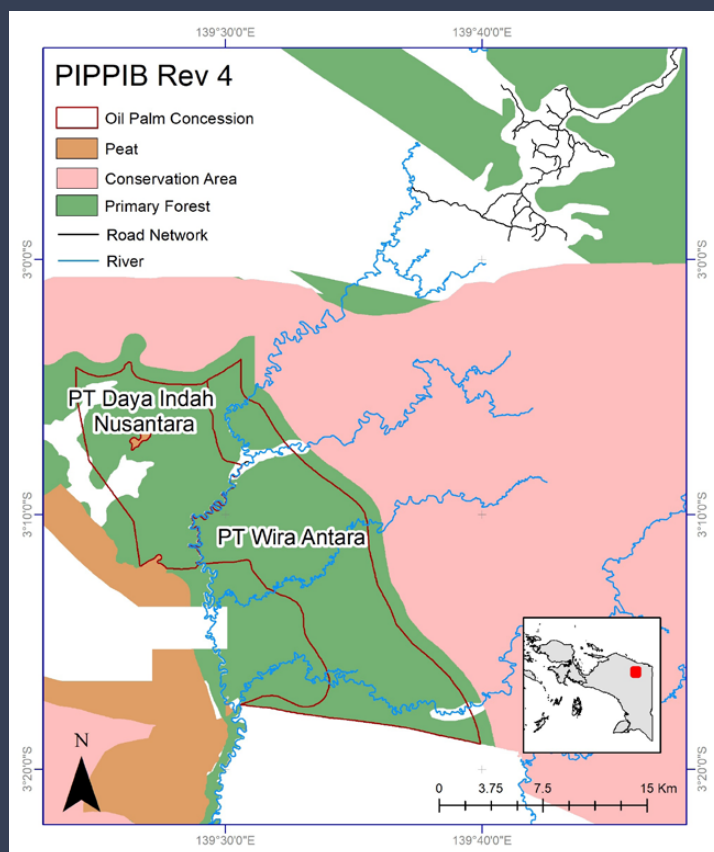
In many cases areas have been removed from the Forest Moratorium map at the request of the companies themselves. We know this because between 2013 and 2015 the then Ministry of Forestry (now MoEF) posted tables of all correspondence on its website.¹²⁵ During this time 11 plantation companies and one forestry company with concessions in Papua Province were recorded as having requested land within their concessions be removed from the moratorium map: all these requests were successful. After 2015 the ministry stopped publishing the identities of companies that had requested such changes.

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Primary forest area side by side with oil palm plantation development inside PT Berkas Cipta Abadi oil palm concession, part of the Korindo group. 1 Apr. 2018.

125 Several of these tables are still online, covering October 2012–November 2013 (http://appgis.menlhk.go.id/appgis/Matrik%20dari%20Pemangku%20Kepentingan%20dan%20Respon%20thdp%20PIPIB5_renaksi.pdf), March–November 2014 (<http://appgis.menlhk.go.id/appgis/Matrik%20Masukan%20dari%20Pemangku%20dan%20Respon%20terhadap%20PIPIB%20Revisi%20%20VII.pdf>) and December 2014–April 2015 (http://appgis.menlhk.go.id/appgis/moratorium_rev8/Input_dan_Respon_PIPPIB.pdf). The table for the period November 2013–May 2014 could not be found on the ministry's website, but has been archived by file-sharing sites (<https://fdokumen.com/document/matrik-dari-pemangku-kepentingan-dan-respon-thdp-pipib-mei-dari-pemangku.html>).



■ An example of the moratorium map changes in PT Wira Antara/PT Daya Indah Nusantara.

The removal of concessions' primary forest and peat areas from the moratorium map prior to their release from the forest estate appears to have been a common practice, affecting a little under half of the 32 concessions with land released from the forest estate in Papua Province since the Forest Moratorium first came into force in May 2011. As shown in Table 2, 14 concessions contain areas previously included in the moratorium as primary forest which were removed from the moratorium map before forest release was granted. Seven also contain areas previously marked as peat which were again removed from the map before forest release was granted. Three concessions where areas of peat were removed from the moratorium map after forest release decrees were issued are also shown in the table. Most of the concessions in Table 2 obtained their location permits over Forest Moratorium land,¹²⁶ issued by bupati who face no legal repercussions if they fail to implement the moratorium since a Presidential Instruction cannot impose penalties.

126 It was not the case for the primary forest in PT Duta Visi Global, PT Tunas Sawa Erma, PT Visi Hijau Lestari and PT Wahana Agri Karya, where the areas only became part of the moratorium on the fourth revision in May 2013. However, since the areas were shown as primary forest on the land cover maps on which the moratorium maps are based, the reason for this earlier exclusion is presumably some older concession permit which then expired or was revoked.

Table 2: Companies whose concessions in Papua Province include land that has been excised from the Forest Moratorium map and subsequently released from the forest estate.

| Company name | Group | Regency | Commodity | Primary forest removed from moratorium? | Peat removed from moratorium? | Forest Moratorium changes made after company request? | Date of forest release |
|----------------------------|---|--------------|---------------------------|---|---|---|------------------------|
| PT Berkas Cipta Abadi | Korindo | Boven Digoel | Oil palm | Yes, 2nd revision (May 2012) | | Not known | 29/09/2014 |
| PT Wira Antara | Musim Mas | Jayapura | Oil palm | Yes, 5th revision (November 2013) | | Yes | 16/09/2014 |
| PT Daya Indah Nusantara | Musim Mas | Sarmi | Oil palm | Yes, 5th revision (November 2013) | | Yes | 19/09/2014 |
| PT Visi Hijau Nusantara | Edi Yosfi / Star Vyobros | Boven Digoel | Oil palm | Yes, 5th revision (November 2013) | | Yes | 29/09/2014 |
| PT Duta Visi Global | Edi Yosfi / Star Vyobros | Boven Digoel | Oil palm | Yes, 5th revision (November 2013) | Yes, 6th and 11th revisions (May 2014 and November 2016 – after forest release) | Yes (primary forest) | 26/09/2014 |
| PT Wahana Agri Karya | Edi Yosfi / Star Vyobros | Boven Digoel | Oil palm | Yes, 5th revision (November 2013) | After forest release, 11th revision (November 2016) | Yes (primary forest) | 29/09/2014 |
| PT Tunas Sawa Erma | Korindo | Boven Digoel | Oil palm | Yes, 5th revision (November 2013) | After forest release, second period 2020 (August 2020) | Yes (primary forest) | 29/09/2014 |
| PT Tunas Agung Sejahtera | Salim / Indogunta | Mimika | Oil palm | Yes, 6th revision (May 2014) | Yes, 6th revision (May 2014) ¹²⁷ | Yes (primary forest) | 29/09/2014 |
| PT Bangun Mappi Mandiri | Himalaya | Mappi | Food crops | Yes, 6th revision (May 2014) | Yes, 7th revision (November 2014) | Yes (peat) | 03/07/2017 |
| PT Mappi Sejahtera Bersama | Himalaya | Mappi | Rubber | Yes, 6th revision (May 2014) | Yes, 7th revision (November 2014) | Yes (peat) | 09/10/2017 |
| PT Himagro Sukses Selalu | Himalaya | Mappi | Rubber | Yes, 6th revision (May 2014) | Yes, 7th revision (November 2014) | Yes (peat) | 03/07/2017 |
| PT Prima Sarana Graha | Mega Masindo | Mimika | Oil palm | Yes, 3rd, 4th and 7th revisions (Nov 2012, May 2013 and Nov 2014) | | Not known | 30/08/2019 |
| PT Sawit Makmur Abadi | Individuals – group name unknown | Nabire | Oil palm | Yes, 8th revision (May 2015) | Yes, 7th Revision (November 2014) | Yes (primary forest and peat) | 10/04/2018 |
| PT Global Papua Abadi | Sulaidy / (Fangiono family linked) ¹²⁸ | Merauke | Sugar cane ¹²⁹ | Yes, 8th revision (May 2015) | Yes, 8th Revision (May 2015) | Not known | 24/10/2017 |

¹²⁷ Land marked on the moratorium map as peat was also removed from PT Tunas Agung Sejahtera's concession on the second revision of the map. However, unlike the other cases identified, this area is not included on more recent maps of peat, and so the change is likely to have been due to improved peat surveys.

¹²⁸ See discussion of this link in Greenpeace (2018a) pp60–61.

¹²⁹ Note that sugar cane plantations are not subject to the Forest Moratorium, so permits could have been issued without needing to change the map. No sugar cane had been planted at the time of writing, but the land remains outside the moratorium area.

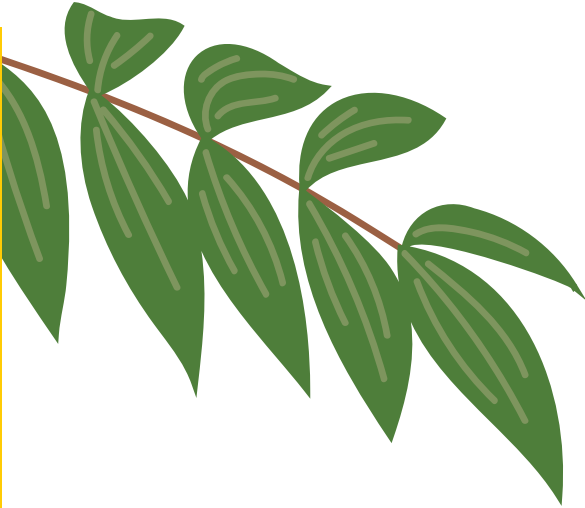


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■ A road cuts directly through an isolated patch of rainforest surrounded by rows of rainforest timber in the PT Internusa Jaya Sejahtera (PT IJS) oil palm concession, part of the Internusa group 1 Apr 2018.

Companies whose concessions were already outside the forest estate have also benefited from changes to the Forest Moratorium map. In Merauke Regency PT Agriprima Cipta Persada (PT ACP), PT Agrinusa Persada Mulia (PT APM) and PT Internusa Jaya Sejahtera have all planted oil palm on areas shown as primary forest on land cover maps which were removed from the moratorium map at different times, from the second to 11th revisions. It is unknown whether these changes were made after requests by the companies, and if so, what the reason was. (NB PT ACP and PT APM already held location permits when the moratorium was issued, so may have legitimately requested their concessions be excluded on this basis).

The procedure to apply for a change in the moratorium map varies depending on whether the land has been included as primary forest or as peat (or both). If a company wishes to claim that land in its concession is not primary forest, it must ask the provincial forestry agency to conduct an analysis of satellite photographs, followed by a field survey. If the agency agrees that the forest is not primary, then the company can write to the MoEF requesting a change to the next revision of the moratorium map.



However, despite appearing in legislation, the term 'primary forest' does not have a standard definition in Indonesia, which means that subjective interpretations are often used when vested interests are involved. Moreover, until 2017 there were no ministerial regulations setting out a standard survey methodology for proposed changes to the primary forest component of the moratorium map,¹³⁰ so until this point provincial agencies were free to interpret the requirement in whatever way they chose, potentially to the advantage of the companies concerned. It is likely that they used an analysis of single medium-range satellite images (eg Landsat), an unscientific methodology which has nevertheless become standard practice, for example among consultants preparing environmental impact assessments (EIAs) or Roundtable on Sustainable Palm Oil (RSPO) High Conservation Value assessments¹³¹ for companies. In some cases the ministry itself used this technique when issuing forest release decrees,¹³² even though it is inadequate as a means of making judgements about the condition of forest, with the result that the conclusions drawn misrepresent primary forest as secondary.

If a company wishes to claim that there is no peat present in its concession, it must engage the Indonesian Centre for Agricultural Land Resources Research and Development (BBSDLP – *Balai Besar Penelitian dan Pengembangan Sumber Daya Lahan Pertanian* – an agency of the Ministry of Agriculture) to survey the area. The MoEF will then act on the BBSDLP's findings, changing the moratorium map if appropriate. The BBSDLP has not placed reports of its surveys in the public domain, and has also refused to provide them to Greenpeace Indonesia in response to written requests; the MoEF did not respond when Greenpeace Indonesia sent it the same written request.¹³³

The results of surveys conducted after companies dispute the presence of peat and primary forest have not been integrated with other mapping work carried out by the government – they have only been used to justify changes to the moratorium map. This raises obvious questions about the validity of the survey findings. The land cover maps produced every year by the MoEF continue to show primary forest in cases where the ministry itself has removed the same land from the moratorium map. Notably, the MoEF's land cover maps are based on a more scientific analysis of multiple satellite images over time¹³⁴ using a methodology which has been assessed and approved by the UN Framework Convention on Climate Change.¹³⁵

Similarly, maps of peatland hydrological units published in 2016, based on the government's national peat maps, include areas that had by then been excised from the moratorium map. Since the national peat maps are also produced by the BBSDLP, it makes no sense for it not to have incorporated the results of the surveys carried out for companies.

Most damning of all is the evidence suggesting that in several cases in Papua Province and beyond where areas have been removed from the moratorium map, primary forest and/or peat have in fact still been present subsequent to the removal, as shown by the evidence set out in the case studies in this report.

¹³⁰ This was done in Director General of Forestry Planning and Environmental Management (2017), dated 6 April 2017.

¹³¹ The RSPO has strengthened its requirements somewhat in recent years, but there are many examples of this technique having been used previously to circumvent its principle of not clearing primary forest – eg Nyoto Santoso's assessments of PT Permata Putera Mandiri's concession in South Sorong Regency, Papua Barat Province.

¹³² For example, the analysis referred to in the decree releasing forest estate land in Boven Digoel to PT Kartika Cipta Pratama, PT Megakarya Jaya Raya and PT Usaha Nabati Terpadu analysed land cover on the basis of a single Landsat 5 image.

¹³³ The BBSDLP's reply on 26 June 2019 instructed Greenpeace Indonesia to request the data from the MoEF, even though the reports had been produced by the BBSDLP itself. A further letter sent to the BBSDLP on 14 January 2021 emphasising the request pertained to documents created by and held by BBSDLP has not resulted in information being provided. To date the MoEF has not responded to the request.

¹³⁴ Margono BA et al (2016)

¹³⁵ UNFCCC (2016)



An aerial photo shows a primary swamp forest in the concession of PT Tunas Agung Sejahtera which was removed from the Forest Moratorium map in 2014. 18 Dec, 2017.



An aerial photo shows an area identified as primary forest in the concession of PT Duta Visi Global which was removed from the Forest Moratorium map in 2013. 18 Dec, 2017.



An aerial photo shows an area identified as primary forest in the concession of PT Tunas Sawa Erma which was removed from the Forest Moratorium map in 2013. 18 Dec, 2017.

Because of limitations on travel due to the COVID-19 pandemic, Greenpeace was unable to undertake planned field visits during 2020 in order to verify independently whether peat or primary forest is present in the locations concerned. However, satellite images from all concessions and aerial photography from our previous investigations in PT Tunas Agung Sejahtera, PT Duta Visi Global and PT Tunas Sawa Erma do show closed canopy forest which appears to be primary forest.

As far as peat is concerned, Greenpeace is aware of two cases, both outside Papua Province, in which researchers have taken soil samples in areas previously protected as peat under the moratorium map but which have been removed from the map after company request, and have found that peat soils were in fact present:

- In 2018, a local NGO, Panah Papua, took soil samples in the concession of PT Rimbun Sawit Papua (Salim Group) in Fakfak Regency, Papua Barat Province, in areas which were removed from the Forest Moratorium map on its seventh revision in 2014. The samples were analysed by Universitas Papua in Manokwari city and were found to contain peat.¹³⁶
- In 2014, following NGO reports, the UKP4, a body set up by the Susilo Bambang Yudhoyono administration to address complaints regarding government performance, conducted its own checks in the concession of PT Persada Era Agro Kencana (Mulia Sawit Group), Katingan Regency, Kalimantan Tengah Province, and found that there was peat to a depth of three metres in areas removed from the Forest Moratorium on its second revision.¹³⁷

The UKP4's investigation was cut short when Jokowi became president and disbanded the body, but it had reportedly already communicated its findings to the MoEF at this time. We can therefore expect that the MoEF was aware that peat surveys conducted by the BBSDLP were potentially unreliable. Nevertheless, under Siti Nurbaya's leadership the ministry appears to have taken no action to rectify this problem and has continued to release forest estate land to companies that had previously requested the removal from the moratorium map of areas marked as peatland in their concessions. In Papua Province this applies to four companies that were given forest release in 2017 and 2018: PT Bangun Mappi Mandiri (PT BMM), PT Himagro Sukses Selalu (PT HSS), PT Mappi Sejahtera Bersama (PT MSB) and PT Sawit Makmur Abadi (PT SMA).¹³⁸

Greenpeace has not extended its analysis of moratorium map changes beyond Papua Province, but the correspondence tables published by the Ministry between October 2012 and May 2015 show multiple requests for such changes from companies with concessions all over Indonesia.

It appears that the effectiveness of the Forest Moratorium has been seriously compromised: the protection of forests and peatlands has on a number of occasions been removed at companies' request, with the involvement of officials from two government ministries. This raises the question of whether corruption was involved in these cases to produce a result favourable to the companies concerned. The failure to enforce the moratorium in turn calls into question Indonesia's capacity to meet, and its commitment to meeting, the climate goals it has signed up to.

Nevertheless, in West Papua at least, there is still scope to remedy the situation. None of the 14 concessions in Table 2 which had land released from the forest estate after changes to the moratorium map has yet been developed. There is still time for the government to review why the map changes were made, and if it finds that they were based on false or inaccurate surveys, to revoke the concessions and return the areas of peat and primary forest to the moratorium map.

¹³⁶ Pantau Gambut (2018)

¹³⁷ Saturi J (2015)

¹³⁸ PT Global Papua Abadi is not included here because although it was also issued a forest release decree by Siti Nurbaya, it is not known whether this was at the company's request. Also, since the concession is for a sugar cane plantation, which is exempt from the moratorium, this forest release did not break the moratorium.

Ministers Zulkifli Hasan and Siti Nurbaya break their own rules

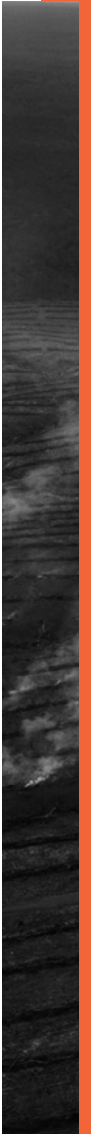
In Papua Province, since the year 2000, a total of 951,771 ha has been released from the forest estate for plantations, to 37 concessions.¹³⁹ The majority of these releases (30) were for oil palm, the others being for rubber (3), food crops (1) and sugar cane (3).

However, only 11 of those concessions have so far begun to be developed as plantations.¹⁴⁰ That means that 26 concessions, a total forest release of 630,033 ha, have not yet been developed at all. In the case of 22 companies (542,467 ha) the forest release occurred more than three years ago, with no clear indication that the company concerned intends to follow through on its plantation plans.

Furthermore, in nine of the 11 concessions which have been developed, large areas of forest remain, and plantation development is currently stalled (with no new clearance observed on satellite images for over two years). Taking these stalled concessions together with the undeveloped ones, there is thus a very substantial amount of forest that could be saved if the permits for these concessions were to be reviewed and renegotiated.

By far the largest number of forest release decisions were taken during the period when Zulkifli Hasan was Minister for Forestry (2009–2014). He released 617,510 ha, much more than his predecessor MS Kaban (70,459 ha between 2004 and 2009) and (so far) his successor, the current Minister for Environment and Forestry Siti Nurbaya (164,315 ha).

In the weeks before he stepped down as Minister for Forestry, the rate at which Zulkifli Hasan signed new decrees accelerated. He signed at least 100 decrees of different kinds during his last week alone, including new logging concessions, forest release for oil palm, and signing off on the controversial spatial plans for Riau¹⁴¹ and Papua Barat¹⁴² provinces. In Papua Province between 13 August and 29 September 2014, the last day of Zulkifli Hasan's tenure as Minister for Forestry, he issued forest release decrees for nine concessions¹⁴³ and a further five in-principle approvals for forest release.¹⁴⁴



¹³⁹ Ministry of Environment and Forestry data on forest estate releases, available at <https://dbgis.menlhk.go.id/portal/home/>.

¹⁴⁰ Not included in this figure are three concessions where small areas have been cleared but not planted and two concessions which were abandoned after trials.

¹⁴¹ CNN Indonesia (2020b)

¹⁴² Awas MIFEE (2018). The changes were controversial because of the amount of land which was taken out of the forest estate through this spatial plan; see Amafnini P (2014).

¹⁴³ To PT Berkas Cipta Abadi, PT Daya Indah Nusantara, PT Duta Visi Global, PT Pernata Nusa Mandiri, PT Tunas Agung Sejahtera, PT Tunas Sawa Erma, PT Visi Hijau Nusantara, PT Wahana Agri Karya and PT Wira Antara.

¹⁴⁴ To PT Anugerah Rezeji Nusantara, PT Bangun Mappi Mandiri, PT Global Papua Abadi, PT Prima Sarana Graha and PT Surya Lestari Nusantara.



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■ Landcover and oil palm plantation development in PT Tunas Sawa Erma (PT TSE), part of the Korindo group. 31 Mar 2018.

Our research has shown that several of these last-minute decisions were implemented without due care and attention and that serious mistakes were made which could impact on ecologically important areas. In three concessions in Boven Digoel Regency, areas of peatland which were still included in the Forest Moratorium were released from the forest estate. The largest area of peat was in the Korindo Group's PT Tunas Sawa Erma (PT TSE) concession, with smaller areas in the concessions of PT Duta Visi Global (PT DVG) and PT Wahana Agri Karya (PT WAK) (see Case Study 4).

In Papua Barat Province, a forest release decree dated 29 September 2014 stated that 19,369 ha would be released to a Salim Group company, PT Bintuni Agro Prima Perkasa (PT BAPP). The decree noted that the original application had been for 32,391 ha, but that areas of primary forest would not be released. However, the map accompanying the decree showed the area to be released as the entire

32,391 ha, including the 13,022 ha of primary forest. This discrepancy has subsequently been carried over into government zoning maps, meaning that in effect the entire area has been released, in contradiction of the decree.¹⁴⁵

None of these mistakes have been acknowledged or corrected, and the areas released to PT TSE, PT DVG, PT WAK and PT BAPP remain classified as 'other use area' (APL) to the present day.

However, it is not only the decrees issued at the end of Zulkifli Hasan's time in office that are problematic. Almost all the forest release decisions concerning West Papua that he made throughout his term in office can be shown to deviate from the procedures in the ministry's own regulations as to how forest release should be issued. Minister Siti Nurbaya's record has also been poor, with four of eight forest release decrees violating the ministry's rules.

145 Forest release decree SK873/Menhut-II/2014 for PT Bintuni Agro Prima Perkasa / SK pelepasan kawasan hutan PT Bintuni Agro Prima Perkasa

Legal requirements for land to be released from the forest estate for plantations

The MoEF (before 2014, the Ministry of Forestry) uses a ministerial regulation to establish the procedures for the release of forest estate to plantation companies. The Regulation on Procedures for Release of Convertible Production Forest (HPK) ('the regulation') used during (then) Minister Zulkifli Hasan's time was issued in 2010 and was slightly amended three times during his tenure (twice in 2011 and again in 2014).¹⁴⁶ Under Minister Siti Nurbaya the MoEF issued new regulations in 2016¹⁴⁷ and 2018¹⁴⁸ (amended in 2019¹⁴⁹).

Each regulation has set out the conditions that need to be met before a company can be given forest release. The 2010, 2016 and 2018 versions differ slightly, but all contain various restrictions, including safeguards to ensure that land is released only to plantation companies that have already obtained certain permits from local government and are capable of developing a plantation on the land:

- In the 2010 version and each subsequent version of the regulation, a valid location permit is required.¹⁵⁰
- The 2010 version (and as amended in 2011 and 2014) required a plantation business permit (IUP).¹⁵¹ This was to be issued by local or provincial government only after an environmental permit had been issued, which in turn was dependent on a favourable EIA. In the 2016 and 2018 revisions of the regulation, an environmental permit is still listed as a requirement but an IUP is not.
- The regulation places limits on the total forest estate area that can be released to any company or corporate group. The 2010 version placed a maximum limit of 200,000 ha (or 300,000 ha if the commodity to be grown was sugar cane) on the land that could be released to any one group in West Papua. If the group's concessions were located only on other

islands the limits for forest release were half that size. In the 2016 and 2018 versions the limit is changed from a single overall limit to a limit per province. Each group can apply for 60,000 ha of plantation crops per province (100,000 ha if the crop is sugar cane), with this same limit applying to each of West Papua's two provinces.¹⁵²

- After each release of forest estate land an evaluation stage is required, in order to check that the company is developing the land, before any more land can be released to the same group. Under the 2010 version of the regulation, no more than 40,000 ha could be released to a group at one time, and then the provincial forestry agency was asked to evaluate its progress in obtaining land cultivation right (*Hak Guna Usaha* – HGU) from the National Land Agency (BPN) and developing a plantation, before the next release could occur. In the 2016 and 2018 versions of the regulation, the maximum area to be released at one time is reduced to 20,000 ha, or 25,000 ha for sugar cane. The conditions for the evaluation are also more specific: 50% of the previous forest release area must have been developed, the company must have obtained HGU, and 20% of the land released must have been developed as a partnership scheme with local communities.
- The 2016 and 2018 versions of the regulation state that forest release must be in areas zoned as Convertible Production Forest which are not currently forested, unless there is no such land in the province. Although there is little if any non-forested Convertible Production Forest land in West Papua, it is worth noting that in provinces with less forest cover the government's stated intention is that forested land should not be used for plantations where possible.

146 Permenhut P.33/Menhut-II/2010 (Minister for Forestry (2010)), issued 29 July 2010. Three amendments were made to these regulations between 2011 and 2014.

147 PermenLHK P.51/Menlhk/Setjen/Kum.1/6/2016 (Minister for Environment and Forestry (2016)), issued 22 June 2016

148 PermenLHK P.96/Menlhk/Setjen/Kum.1/11/2018 (Minister for Environment and Forestry (2018)), issued 13 November 2018


149 PermenLHK P.50/Menlhk/Setjen/Kum.1/9/2019 (Minister for Environment and Forestry (2019)), issued 23 September 2019

150 Permenhut P.33/Menhut-II/2010 (Minister for Forestry (2010)), Article 7(1)(b)

151 Permenhut P.33/Menhut-II/2010 (Minister for Forestry (2010)), Article 7(1)(c)

152 In this legislation a group is defined as 'two or more business units where a part of the shares are held by the same person or legal entity, whether directly or through other legal entities, in such a way as the number of shares or form of ownership means that this share ownership may directly or indirectly determine the administration or the running of the company'.

**Table 3: Release of forest estate land
in Papua Province by Zulkifli Hasan and
Siti Nurbaya's administrations**



Minister responsible:
Zulkifli Hasan

| Concessions issued forest release under 2010/2011/2014 regulations | Date of forest release | Area released (ha) | Commodity | Compliance with ministry regulations | | | |
|--|------------------------------|--------------------------|------------|--|-------------------------------------|--|---|
| | | | | Location permit at time of forest release ¹⁵³ | IUP at time of forest release | Total group ¹⁵⁴ area in West Papua under 200,000 ha | No more than 40,000 ha released before development evident |
| PT Berkas Cipta Abadi POP C | 2011 | 14,526 | Palm oil | ✓ | X | ✓ | ✓ |
| PT Montelo | 2011 | 7,020 | Rubber | ✓ | No data | ✓ | ✓ |
| PT Manunggal Sukses Mandiri | 2011 | 38,552 | Palm oil | No data | ✓ | X | X |
| PT Trimegah Karya Utama | 2011 | 39,716 | Palm oil | No data | ✓ | X | X |
| PT Siringo-Ringo | 2012 | 29,278 | Palm oil | ✓ | X | ✓ | ✓ |
| PT Cenderawasih Jaya Mandiri | 2012 | 22,117 | Sugar cane | ✓ | X | ✓ | ✓ |
| PT Megasurya Mas | 2012 | 13,390 | Palm oil | ✓ | X | ✓ | ✓ |
| PT Kartika Cipta Pratama | 2012 | 39,338 | Palm oil | ✓ | ✓ | X | X |
| PT Megakarya Jaya Raya | 2012 | 39,505 | Palm oil | ✓ | ✓ | X | X |
| PT Karyabumi Papua | 2012 | 15,628 | Sugar cane | ✓ | X | ✓ | ✓ |
| PT Graha Kencana Mulia | 2012 | 39,478 | Palm oil | ✓ | ✓ | X | X |
| PT Energy Samudera Kencana | 2012 | 36,206 | Palm oil | No data | ✓ | X | X |
| PT Sumber Indah Perkasa | 2012 | 20,143 | Palm oil | No data | ✓ | ✓ | ✓ |
| PT Papua Agro Lestari | 2012 | 32,347 | Palm oil | No data | X | ✓ | ✓ |
| PT Usaha Nabati Terpadu | 2013 | 37,467 | Palm oil | No data | ✓ | X | X |
| PT Permata Nusa Mandiri | 2014 | 16,182 | Palm oil | ✓ | ✓ | ✓ | ✓ |
| PT Wira Antara | 2014 | 20,264 | Palm oil | No data | X | ✓ | X |
| PT Daya Indah Nusantara | 2014 | 10,526 | Palm oil | ✓ | X | ✓ | X |
| PT Duta Visi Global | 2014 | 33,975 | Palm oil | ✓ | X | ✓ | ✓ |
| PT Tunas Agung Sejahtera | 2014 | 39,500 | Palm oil | ✓ | X | ✓ | ✓ |
| PT Berkas Cipta Abadi POP D | 2014 | 14,435 | Palm oil | No data | X | ✓ | ✓ |
| PT Tunas Sawa Erma POP E | 2014 | 19,002 | Palm oil | ✓ | X | ✓ | ✓ |
| PT Visi Hijau Nusantara | 2014 | 24,187 | Palm oil | No data | X | ✓ | X |
| PT Wahana Agro Karya | 2014 | 14,728 | Palm oil | ✓ | X | ✓ | X |



Minister responsible:

**Siti
Nurbaya**


| Concessions issued forest release under 2014 regulations | Date of forest release | Area released (ha) | Commodity | Compliance with ministry regulations | | | |
|---|------------------------|--------------------|------------|---|--|--|---|
| | | | | Location permit at time of forest release | IUP at time of forest release | Total group area in West Papua under 200,000 ha | No more than 40,000 ha released before development evident |
| PT Agrinusa Persada Mulia* | 2016 | 12,246 | Palm oil | No data | ✓ | ✓ | ✓ |
| Concessions issued forest release under 2016/2018 regulations | Date of forest release | Area released (ha) | Commodity | Compliance with ministry regulations | | | |
| | | | | Location permit at time of forest release | Environmental permit at time of forest release | Total group area in Papua Province under 60,000 ha | No more than 20,000 ha released before development evident ¹⁵⁵ |
| PT Agriprima Cipta Persada | 2017 | 6,090 | Palm oil | No data | ✓ | ✓ | ✓ |
| PT Global Papua Abadi | 2017 | 20,201 | Sugar cane | No data | ✓ | ✓ | ✓ |
| PT Himagro Sukses Selalu | 2017 | 38,212 | Rubber | ✓ | ✓ | ✓ | X |
| PT Bangun Mappi Mandiri | 2017 | 17,892 | Food crops | ✓ | ✓ | ✓ | ✓ |
| PT Mappi Sejahtera Bersama | 2017 | 19,775 | Rubber | ✓ | ✓ | ✓ | X |
| PT Sawit Makmur Abadi | 2018 | 28,817 | Palm oil | ✓ | ✓ | ✓ | X |
| PT Prima Sarana Graha | 2019 | 21,082 | Palm oil | No data | ✓ | ✓ | X |

*) The release for PT Agrinusa Persada Mulia is by Siti Nurbaya but comes under the older 2014 regulations.

¹⁵³ Full location permit data is not published systematically. Initial location permits are valid for three years and then expire. They may be renewed, but the renewal is valid for only one year, and many permit lists supplied by local governments do not list permit renewals. Where there is uncertainty whether a location permit had expired at the time of release, it is listed as 'no data'.

¹⁵⁴ Using the definition of corporate group endorsed by the Accountability Framework Initiative (see AFI website 'Definitions').

¹⁵⁵ 25,000 ha for sugar cane plantations.

Table 3 above shows that during Zulkifli Hasan's time as Minister for Forestry it appears it became normal to ignore the regulations governing the release of forest in Papua. He signed more forest release decrees for companies that did not possess valid IUPs (14 releases), in breach of the regulations, than for companies that did hold those permits (9 releases).

Because location permits are usually issued at the regency level (where transparency is often poor) and expire after three years, it has been harder to verify how many of the concessions had a valid location permit at the time their land was released from the forest estate. Although many of the concession companies were granted forest release more than three years after their first location permit, it is possible that one-year location permit extensions were issued to some of these companies. However, this should have been the case only if they had fulfilled the regulatory requirement of obtaining land rights over more than 50% of the location permit area.¹⁵⁶ Cases whose location permit status is unclear for the above reasons are marked as 'no data' in the table.

Zulkifli Hasan's administration also acted contrary to, or at least went against the intention of, the 200,000 ha group concession limit imposed by the regulations when it released 270,352 ha of land to seven companies in the Menara Group (see Case Study 1). In this case the shares in each company had been placed in different names, meaning that the group may have been able to claim a loophole in the 2010 legislation, which uses a group definition based on share ownership – even though investigations by Tempo and the Gecko Project have interviewed some of the shareholders involved, who have admitted that they were acting as nominees and did not actually control the companies.¹⁵⁷

When these different types of violations are considered together, of the 24 concessions in Papua Province that received forest release during Zulkifli Hasan's period in office, a maximum of three concessions received their forest release in compliance with the spirit and letter of the rules produced by Zulkifli Hasan's own ministry. This may have been due to oversight or pro-company bias by ministry staff, but the frequency at which the rules were violated should also raise suspicion of systematic malpractice at the ministry.

During Minister Siti Nurbaya's time in office, violations of the rules have continued – notably the requirement in the 2016 regulations that no more than 20,000 ha can be released to a group at one time, and that the initial area released must have met certain criteria, including obtaining HGU and being at least 50% developed, before a further tranche of no more than 20,000 ha can be released. Between July and October 2017, forest release decrees were issued to three companies in Mappi Regency, Papua Province, belonging to the Himalaya Group.¹⁵⁸ Two of these companies (PT MSB and PT HSS) were applying for rubber plantations, for areas totalling 57,987 ha, nearly three times the limit for an initial release. PT HSS's whole concession of 38,212 ha was released through a single decree.

¹⁵⁶ Per Minister for Agrarian Affairs and Spatial Planning (2015), Article 5. This requirement was also present in the previous version of this regulation (1999) and remains in force in later versions (2017, 2018, 2019) of the regulation.

¹⁵⁷ The Gecko Project (2018b)

¹⁵⁸ The three companies are registered at the same address, and the residential address provided by their majority shareholders is the same, suggesting a family group and shared office space used for company management. The 2016 forest release regulations do not give a definition of a group; however, other regulations such as Minister for Agriculture (2013) do recognise shared management as part of a group definition.



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■ A river running through PT Mappi Sejahtera Bersama's (PT MSB) rubber concession, part of the Himalaya group. 29 Mar 2018.



© Ulet Ifansasti / Greenpeace

■ Wetland in a rubber concession allocated to PT Himagro Sukses Selalu (PT HSS), part of the Himalaya group. 28 Mar 2018.



© Ulet Ifansasti / Greenpeace

■ The forest landscape PT Bangun Mappi Mandiri's (PT BMM) concession. The permit is for agricultural food crops. 28 Mar 2018.

A further 17,892 ha was released to a third company from the same group, PT BMM. Since this meant that the total area released to the group was 75,879 ha, this would normally mean that the maximum 60,000 ha for forest release to one group in a single province had also been exceeded. However, this limit only applies to plantation crops, and PT BMM's permits are for corn, cassava and soy, which are normally regarded as 'food crops' and regulated by a different directorate general at the Ministry of Agriculture,¹⁵⁹ so can be claimed as exempt. Other single-season crops such as sugar cane do count as plantation crops.

At present no development has taken place in any of the three concessions, and in its reply to an information request from Greenpeace Indonesia, the provincial office of the National Land Agency has confirmed that the concessions still do not possess HGU.

In 2018 and 2019, Siti Nurbaya's administration broke its rules again by releasing in one go forest estate areas of over 20,000 ha to two more companies, PT SMA and PT Prima Sarana Graha (PT PSG).

In Papua Barat Province, the team commissioned by the provincial government under the supervision of the Corruption Eradication Commission (KPK) to evaluate permits found that three of the six forest release decrees issued by Siti Nurbaya's ministry in the province did not (and still do not) possess an environmental permit: PT Menara Wasior and PT Persada Utama Agromulia in 2017 and PT Anugerah Sakti Internusa in 2019.¹⁶⁰

159 Minister for Agriculture (2006)

160 Papua Barat Licence Review Team (2021b)

Minister Siti Nurbaya bypasses the Oil Palm Moratorium

By the time PT PSG's forest estate land was released in 2019, the Oil Palm Moratorium was already in force – which on the face of it forbade the ministry to grant forest release to palm oil companies.

However, this release was only part of a much wider pattern. In fact, the wording of the Oil Palm Moratorium contains a major loophole, which has been exploited by Siti Nurbaya's MoEF to continue to issue forest release decrees. A clause in the Oil Palm Moratorium's instructions to the MoEF only explicitly orders it to turn down forest releases where no boundary survey (*tata batas*) has taken place, meaning that cases where a survey has been conducted remain at the minister's discretion.

PT Prima Sarana Graha had submitted an application for forest release in May 2014 and received an in-principle forest release approval by Zulkifli Hasan's administration on 26 September 2014. This was during Zulkifli Hasan's last week in office when, as described above, he was signing dozens of new permits and decrees each day, sometimes with insufficient attention to detail. A boundary survey was then carried out in 2016, and the MoEF stated in the 2019 forest release decree that this justified treating the case as an exception to the moratorium.¹⁶¹

It is unclear why this approach was chosen in drafting the moratorium, but the resultant loophole has had the effect of allowing the ministry to continue to process old applications for forest release. Since the moratorium came into force in September 2018, Siti Nurbaya's ministry has released forest estate land to 22 palm oil companies across Indonesia.¹⁶² The land her ministry released includes one other area in West Papua: 14,529 ha were released to PT Anugerah Sakti Internusa in Papua Barat Province, which has large areas of peat and primary forest in its concession. The Papua Barat Licence Review Team concluded that the in-principle forest release approval for PT Anugerah Sakti Internusa had expired in 2016, three years before the forest release decree was issued.¹⁶³

As minister, Siti Nurbaya has also been criticised for granting forest release to PT Hardaya Inti Plantations in Buol Regency, Sulawesi Tengah Province, issued on 1 November 2018 after the Oil Palm Moratorium had already come into force; she defended this by saying that the company already had in-principle approval for forest release issued in 1997,¹⁶⁴ and that the Oil Palm Moratorium did not apply to concessions that had already been in process for so long (this argument would appear to have no basis in the text of the moratorium, unless it was a way of alluding to a boundary survey having taken place). The decision caused additional controversy because the KPK had already successfully prosecuted company owner Siti Hartati Murdaya for bribing the bupati to obtain that company's location permit¹⁶⁵ (which was nevertheless allowed to remain valid).

Minister Siti Nurbaya has often drawn attention to ex-Minister Zulkifli Hasan's profligacy in issuing forest release decrees during his term in office.¹⁶⁶ But instead of using the Oil Palm Moratorium to review the decrees he issued and cancel those that are irregular, and deferring the processing of existing forest release applications until the completion of that review process, she has continued to process forest release applications dating from his term as minister, claiming (without obvious justification) that she has no choice. However, given that the moratorium mandates a review of companies that already hold permits based on input from different ministries and local government, it makes little sense to issue new forest release decrees to companies that have received in-principle approvals and/or boundary surveys, unless and until their permit processes are also reviewed for irregularities. The Coordinating Ministry for Economic Affairs has yet to publicly release any indication that this has taken place, and did not reply to Greenpeace Indonesia's formal Freedom of Information requests on the matter.

161 Forest release to PT Prima Sarana Graha, [SK636/MENLHK/SETJEN/PLA.2/8/2019](#)

162 The latest data issued by the MoEF (downloaded from http://sikutan.menlhk.go.id/alamat_google_drive.php) is valid up to August 2020.

163 Papua Barat Licence Review Team (2021b)

164 Jong HN (2019b)

165 Maharani D (2013)

166 See eg Damarjati D (2018).

Ignoring abandoned concessions tantamount to planned deforestation



Of the 37 concessions that have received forest release in Papua Province, only 11 have gone on to develop plantations. In the other 26 cases the land remains for the most part forested and no meaningful plantation development has taken place.¹⁶⁷ 24 of these undeveloped concessions were granted their forest release more than three years ago, a long enough time for them legitimately to be considered abandoned. The usual meaning of abandoned land (*tanah terlantar*) in Indonesian regulations refers to land where HGU or another title has been issued but the land has not been worked for at least three years.¹⁶⁸ In this report Greenpeace has chosen, on a similar basis, to consider as abandoned those concessions which have not developed plantations for over three years since the forest release decrees were issued, even in cases where the concession owners failed to obtain HGU.

¹⁶⁷ This includes the following concessions where small areas (under c.150 ha) have been cleared, but then work has appeared to stop and no further development has taken place: PT Bovendigoel Budidaya Sentosa, PT Cenderawasih Jaya Mandiri, PT Karya Bumi Papua, PT Perkebunan Boven Digoel Sejahtera and PT Permata Nusa Mandiri.

¹⁶⁸ Government Regulation 11/2010 (President of the Republic of Indonesia (2010a))



There are several reasons why concessions have been abandoned. In the case of oil palm concessions, one has been the pressure on the industry to reduce its environmental impact. Some groups, after obtaining permits covering forested areas, have adopted sustainability policies in which they have committed to avoiding deforestation and have therefore abandoned their concessions. The Musim Mas and Sinar Mas groups, which had permits for new concessions¹⁶⁹ in Jayapura Regency, have both stated that they will not develop any more forested areas and have accordingly left the concessions undeveloped. The location permits for these concessions will have expired some years ago. However the concessions, despite predominantly consisting of primary forest, remain outside the forest estate and unprotected by the Forest Moratorium.

In other cases, companies may have failed to raise sufficient capital to follow through on their investments in concessions. Because many palm oil traders now have no-deforestation policies, the difficulty of selling palm oil from recently deforested land makes new plantations in forested areas a risky investment.

It seems likely, however, that another major reason why many concessions have not been developed may be that the companies that originally obtained the permits were speculator companies. These are companies whose owners have no intention of developing a plantation themselves, but instead plan to sell their concession companies once they have obtained the necessary permits over their concessions.

169 Musim Mas: PT Daya Indah Nusantara, PT Megasurya Mas, PT Siringo-Ringo and PT Wira Antara. Sinar Mas: PT Sumber Indah Perkasa.



Areas of grassland interspersed with primary rainforest in a concession which was left undeveloped by PT Energy Samudera Kencana and reallocated to PT Indo Asiana Lestari in 2017. 19 Dec, 2017.

Whatever the reason for their abandonment, having been granted forest release in full these abandoned concessions remain outside the forest estate. Under earlier versions of the forest release regulation (from 2003 until 2010), if a company failed to progress to obtaining HGU and/or developing a plantation, that release was subject to cancellation by the minister.¹⁷⁰ However, under the current forest release regulation there is no similar mandate to revoke unused forest release and thereby restore the land to the forest estate. The mechanism for establishing forest areas 'from scratch' under the forest estate designation regulation¹⁷¹ could be used, but it is a lengthy process. Since these abandoned concessions are no longer part of the forest estate, it is easy for local government to reallocate them to new companies if the original companies' permits have lapsed or been revoked. This has already occurred with several abandoned concessions in Boven Digoel¹⁷² situated in areas of primary forest, for which new companies have been issued location permits. Two of these companies, members of the Digoel Agri Group, have also obtained IUPs and even cleared small areas of forest, although they have not yet planted oil palm. The way this process occurred is explored in Case Studies 2 and 3.

¹⁷⁰ Under Minister for Forestry (2003) Article 15(1)(c), if a plantation had not been developed and/or HGU had not been secured within one year of forest release, the release was liable to be cancelled; in the later regulation Minister for Forestry (2008), Article 4(2) called for utilization of forest release areas to be evaluated by the ministry and then to be cancelled by the minister if a plantation was not developed, although a deadline was no longer specified.

¹⁷¹ Minister for Forestry (2012) as amended by Minister for Forestry (2013).

¹⁷² Areas released from the forest estate to PT Energi Samudera Kencana, PT Manunggal Sukses Mandiri, PT Trimegah Karya Utama and PT Usaha Terpadu Mandiri.

Permit speculation: establishing concessions under the radar

As noted above, permit speculators operate by setting up companies to obtain some or all of the permits and authorisations required by a plantation concession, and then selling the companies on to a plantation group. A good indicator of whether a company is acting as a speculator is whether or not it already operates any plantations elsewhere in Indonesia.

On this basis, permit speculation appears to be rampant in Papua Province. Greenpeace has investigated the ownership of all 32 concessions that have been given forest release in the province since 2010, for all plantation commodities. Only 13 (41%) belonged to companies or individuals with a background in plantation industries or downstream processing of plantation commodities at the time the permits were issued. For the other 19, no evidence could be found that they had any previous experience of operating plantations. While some of them may be genuinely making a new venture into the plantation sector, or may have existing plantations that we have not discovered, it seems likely that many are acting as speculators.

The following groups and individuals either have a proven history of obtaining plantation permits in West Papua in order to sell on the concession companies, or are companies with no existing plantations which may be suspected to have obtained concessions in order to sell on:

- The Menara Group has been the most ambitious company to engage in permit speculation in Papua. Although it had never operated a plantation before, between 2007¹⁷³ and 2013 it acquired environmental permits, IUPs and forest release for 270,352 ha in Boven Digoel, as well as for 484,000 ha in Maluku Province's Aru Islands, south of West Papua – in total a larger area than any other plantation group in Indonesia has acquired. (The Aru Islands concessions were later cancelled after popular opposition.¹⁷⁴) Although it has described itself as the 'Menara Group' in dealings with local government and Indigenous people, it is not a formal business entity. Each of its concession companies in Boven Digoel was fronted by an entirely different pair of shareholders, believed to be nominees concealing the real beneficial owner. Majority shares in six of the seven Menara Group companies in Boven Digoel were sold to other companies shortly after they received forest release; the seventh remained with the Menara Group until its IUP was revoked in 2017.
- The Pusaka Agro Sejahtera Group also specialised in setting up companies to acquire permits for plantation concessions around West Papua, then selling the companies to established plantation groups. The group was controlled by an individual called Budi Yasa and also obtained most of its permits between 2007 and 2014. In Papua Barat Province, three concession companies that obtained their permits while owned by the Pusaka Agro Sejahtera Group were sold to the Austindo Nusantara Jaya Group, while in Papua Province two were sold to the Salim Group and another to Noble Plantations. However, Greenpeace has failed to uncover any evidence that the Pusaka Agro Sejahtera Group has ever started work on a plantation itself.

¹⁷³ Note that there remains some uncertainty over the beneficial owner of the concessions between 2007 and 2010. It is possible that Menara Group acquired the concessions only in 2010.

¹⁷⁴ The Gecko Project (2019)

- Mega Masindo Group is a group of companies controlled by Paulus George Hung, who is the owner of several timber companies in West Papua but is not known to have ever operated a plantation company. Siti Nurbaya's administration granted forest release to two of his companies in Papua Barat Province in 2015,¹⁷⁵ but their concessions have neither been developed nor sold (perhaps because of growing market pressure against deforestation for palm oil). Nevertheless, in 2019 Siti Nurbaya's ministry granted forest release to another concession company, PT Prima Sarana Graha (see Case Study 6), which is part of the same group.
- Kim Nam Ku is an Indonesian citizen of Korean origin who acquired concessions and permits in Merauke Regency between 2007 and 2014. Of the four known concession companies owned by Kim Nam Ku which were issued location permits, two went on to obtain forest release and IUPs and were sold on to Korean plantation companies Posco International and Korindo.

The practice of speculators with a low public profile setting up companies that can be profitably sold once they have acquired concessions and permits raises many concerns around corruption risk. Although the authorities that issue permits make no official charge for doing so, this activity can be highly profitable. Undeveloped concessions with permits can be sold for tens of millions of dollars. For example, in 2012 Tadmax Resources Bhd paid US\$80 million for two Menara Group companies that had been issued forest release decrees and IUPs (but not HGU).¹⁷⁶

Could the value of such assets itself be an indication that systematic corruption is widespread? Could concern that bribes might be demanded by officials to issue permits be the reason that established plantation groups find it attractive to deal with speculators, saving them from the risk of reputational damage? The questions warrant further investigation.

■ An aerial photo from 2017 shows young oil palms in the concession of PT Papua Agro Lestari of Korindo Group. 18 Dec 2017.



© Jurnasyanto Sukarno / Greenpeace

¹⁷⁵ PT Papua Lestari Abadi and PT Sorong Agro Sawitindo.

¹⁷⁶ The sale was first proposed in 2011 (see <https://disclosure.bursamalaysia.com/FileAccess/viewHtml?e=257027>) but the final share transfer took place in 2012 (see <http://disclosure.bursamalaysia.com/FileAccess/viewHtml?e=277259>).

A recent investigation by the Gecko Project into PT Papua Agro Lestari (PT PAL), the company sold to Korindo by Kim Nam Ku, investigated the nature of the relationship between buyer and seller. There appeared to be a very close link between them, since some of the directors listed in PT PAL's company profile during the period before Korindo bought it had also been directors of Korindo companies. The Gecko Project reported that in 2013 Korindo made a payment of US\$21.4 million to Kim Nam Ku, which Korindo initially accounted for as a consultancy fee before later saying it was a purchase, describing Kim Nam Ku as a 'share seller'.¹⁷⁷ However, at the same time as PT PAL was obtaining its permits, Korindo itself was engaged in obtaining permits for other concessions that it intended to operate in Merauke. It therefore remains a mystery why it did not simply seek permits for PT PAL's concession itself via a company of its own, assuming that it intended all along to operate the concession.¹⁷⁸

In addition to the concerns it raises around corruption, permit speculation is also bad news for Indigenous land rights. A company that actually intends to operate a plantation has an incentive to build a good relationship with local Indigenous landowners and engage in a meaningful process to obtain their free, prior and informed consent (FPIC), because to do so may prevent conflicts arising which could run on for many years. A group that is intending to sell the company by means of which it is obtaining permits for a concession does not have this incentive, and may therefore be more likely to use coercive, manipulative or dishonest techniques to obtain Indigenous landowners' signatures which can be presented as proof of consent to surrender land.

■ A king bird of paradise (*Scicinnurus regius*) near the undeveloped oil palm concession of PT Permata Nusa Mandiri, Jayapura Regency. 12 Jul 2011.



© Bernard van Elegem

¹⁷⁷ According to The Gecko Project (2020) Korindo said it viewed the total cost of the company, including the \$21.4 million payment, as a fair reflection of its value and had agreed to pay it as part of the deal: 'PAI [PT PAL's parent company] had no obligation to investigate the details of the rights and obligations between the seller and consultant.'

¹⁷⁸ The Gecko Project (2020)

Involvement of political elites in the natural resources sector



© Jurnasyanto Sukarno / Greenpeace

Dozens of mannequins feature in a demonstration against the enactment of the controversial Omnibus law bill, in front of the House of Representatives building in Jakarta. 29 Jun, 2020.

Indonesia's political economy has been described as being dominated by oligarchic interests, characterised by a concentration of wealth and power developed and maintained through close and potentially corrupt relationships between businesspeople, political elites and members of the state security forces (and frequently involving people whose careers span two or three of those categories).¹⁷⁹ Most recently this accusation was levelled by the movement which coalesced around opposition to the new Job Creation ('Omnibus') Law in 2020.¹⁸⁰

¹⁷⁹ Hadiz VR & Robison R (2013)

¹⁸⁰ See eg Awas Omnibus Law (2020).

The development of a powerful oligarchy gained momentum throughout the three decades of President Soeharto's rule, and the exploitation of Indonesia's vast natural resource wealth provided early oligarchs with an easy means of enrichment.¹⁸¹ It is widely believed that Soeharto shrewdly offered incentives to businesspeople knowing that he would gain allies by doing so. Most early beneficiaries were Chinese-Indonesian entrepreneurs,¹⁸² who were largely excluded from political office due to their ethnicity but were favoured by Soeharto with lucrative contracts, concessions and monopolies. In return they were allegedly expected, at the president's request, to channel funds to any beneficiary that could not be a recipient of government funding, such as members of Soeharto's family or his purportedly charitable foundations.¹⁸³ Many of Indonesia's richest people made their first fortunes during this time, including several whose families still control the biggest palm oil empires today, such as Liem Sioe Liong (Salim Group), Eka Tjipta Widjaja (Sinar Mas) and Sukanto Tanoto (RGE Group).

According to his biographers Liem Sioe Liong, who was especially close to the president, was given a monopoly over wheat imports and milling, allowing him to build up capital for other projects.¹⁸⁴ When he decided to move into oil palm cultivation and processing, he partnered first with Sukanto Tanoto and then in 1983 went on to launch a joint venture with Eka Tjipta Widjaja. As would become increasingly the case towards the closing years of the dictatorship, Soeharto's family was also financially involved, with his son Sigit Harjojudanto taking a 10% stake in the joint venture company.¹⁸⁵

During the upheaval of the 1997–1998 Asian financial crisis and the post-Soeharto transition to democracy, oligarchic power was forced to adapt but managed to survive.¹⁸⁶ A new generation of business conglomerates sprang up, led by individuals and families from a wide range of Indonesia's ethnic groups. Some business empires, such as Sinar Mas¹⁸⁷ and the Salim Group,¹⁸⁸ came close to collapse due to huge debts, though the controlling families were able to rebuild their empires within a few years. Much of Indonesia's palm oil production is still controlled by tycoons,¹⁸⁹ many of whom are billionaires and also control vast cross-commodity empires including timber and coal mining interests.¹⁹⁰

Due to their enormous wealth, such tycoons can exert considerable influence on governance of natural resource industries, and patterns of co-operation with political elites established in Soeharto's time could sometimes provide them with a template for this influence. However, their success can also act as inspiration for others who may aspire to join their ranks, and one contemporary route to this may be by taking advantage of the possibilities offered by combining business and political careers.

Greenpeace's investigations into company shareholdings and directorships have revealed an alarming number of individuals connected with natural resource companies who are also members of Jakarta's political elite or ex-officials of the state security forces. As documented in Table 4 for plantation companies in one area of Papua Province, such connections appear to be especially evident during the pre-operational phase when companies are still applying for permits from government. Former cabinet ministers, members of the House of Representatives, influential members of political parties and retired high-ranking military and police officers have all been identified as shareholders or board members of companies featured in the case studies in this report.

181 Winters JA (2011), Chapter 4

182 Dick H & Mulholland J (2018)

183 See Borsuk R & Chng N (2014), Chapter 1, and Koerner B (2004).

184 Dieleman M (2007), Chapter 2

185 Borsuk R & Chng N (2014), Chapter 14

186 Winters JA (2011), Chapter 4

187 Barr C (2001)

188 Borsuk R & Chng N (2014), Chapters 16–19

189 TuK Indonesia (2018)

190 See Forbes website 'Indonesia's 50 richest' accessed 25 January 2021.



■
A representative
of West
Wits Mining
addressing
Papuan at
Degeuwo in
2013 (before the
agreement with
PT TRS)

An example from the mining industry in Papua Province offers a rare written admission of what some companies may hope to gain by engaging politically connected individuals in their activities in order to secure influence over the apparatus of government. PT Madinah Qurrata'ain (PT MQ), a subsidiary of Australian mining company West Wits Mining, held a gold mining concession at Degeuwo on the Derewo River in Paniai Regency. In this area there is already an established artisanal mining industry involving both Papuans and non-Papuans, who exploit the alluvial gold reserves without permits and have consistently opposed any industrial mining company moving in.¹⁹¹ In 2016, with PT MQ's Derewo River mine not yet operational, and with local opposition and a nationwide review of mining permits making the company's future look uncertain, West Wits entered into an agreement with PT Tambang Raya Sejahtera (PT TRS),¹⁹² which included PT TRS acquiring a 30% share in PT MQ.¹⁹³ PT TRS is part of the Toba Sejahtera Group owned by former general and minister in Jokowi's government Luhut Panjaitan. Luhut Panjaitan, possibly the most influential member of Jokowi's inner circle,¹⁹⁴ held two different coordinating ministerial portfolios consecutively in

2016. The following year, West Wits described in its annual report the benefits which it hoped would flow from its alliance with such a powerful figure, stating unambiguously that Luhut Panjaitan's company would use its influence with government, the police and military to support the Derewo River project:

'The team at TRS has deep experience in obtaining outcomes in a system that is often confusing and opaque to foreigners. As part of the Toba group TRS also has access to a range of expertise within Toba as well as the connections to key decision makers in government and law enforcement. TRS is actively leveraging these assets to advance the Derewo River project on behalf of the business alliance. ...

*'TRS has met with the key decision makers including regional government, police and military heads. TRS is currently organising a plenary meeting of all the parties and senior central government Ministers to obtain authority for the clearing of all illegal miners from the area. The police and military have agreed in principle to support efforts to eradicate illegal mining but are seeking central government authority to undertake the task.'*¹⁹⁵

191 International Crisis Group (2012)

192 Formerly PT Tobacom Del Mandiri.

193 West Wits Mining (2016)

194 Strangio S (2020)

195 West Wits Mining (2017) pp9-10



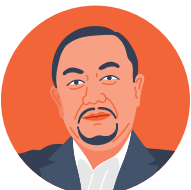

Boven Digoel: local political turmoil as national politicians vie for the forests






■ A twelve year old boy in Boven Digoel shows a bird he hunted with a catapult.
4 Aug, 2019.

The highest concentration of political figures and former members of the security forces who are or have been involved with plantation companies in Papua Province is in Boven Digoel Regency: some of them are listed in Table 4. As well as having the largest number of plantation concessions granted forest release of any regency in Papua Province, Boven Digoel has also seen local political upheaval which has impeded stable and effective government in the regency, providing a fertile climate for oligarchic influence and corruption.

Table 4: Prominent national politicians and ex-officials with current or recent connections to plantation permit-holding companies in Boven Digoel Regency

| Name | Political link | Involvement in Boven Digoel |
|--|---|---|
|  <p>Mohamad Hekal</p> | Member of the Indonesian House of Representatives 2014–present, representing the Gerindra party. He currently sits on Commission VI, which is responsible for investment. ¹⁹⁶ He is also the son of Fuad Bawazier, an economy minister in the New Order period. ¹⁹⁷ | Along with businessman Chairul Anhar, he is a central figure in the Menara Group, whose companies obtained key permits and forest release for seven concessions between 2007 and 2013. ¹⁹⁸ He maintained a minority stake in four of those companies until 2016, by which time two of them had started clearing forest. (See Case Study 1.) |
|  <p>Da'i Bachtiar</p> | Former national police chief (2001–2005), and subsequently Indonesian Ambassador to Malaysia (2008–2012). ¹⁹⁹ | He joined the board of directors of Tadmax Resources Bhd ²⁰⁰ shortly before it purchased two plantation companies from the Menara Group. However, he has also been reported to be linked to the Menara Group itself. Local people in both Boven Digoel and the Aru Islands, where the Menara Group also acquired concessions which were later cancelled after strong popular opposition, reported that his name had been mentioned as linked to the group, although he has never been an official director or shareholder of any Menara Group company. The two companies purchased by Tadmax never developed plantations and their IUPs were revoked in 2017. (See Case Study 1.) |
|  <p>Edi Yosfi</p> | Party activist in the National Mandate Party (PAN). He has extensive business interests, reportedly including ventures with two former heads of the State Intelligence Agency, Hendropriyono ²⁰¹ and Sutanto. ²⁰² | Three companies ultimately owned by Edi Yosfi were issued location permits in Boven Digoel in 2012. The ownership of these companies changed in 2013, but to individuals who have held positions in other companies owned by Yosfi and are therefore believed to be his associates, including his younger sister Desi Noferita. The three companies were able to get forest release in 2014 despite not yet having IUPs (at the time IUPs were a precondition of forest release). Desi Noferita also took a minority stake in four Menara Group companies shortly before those companies were granted forest release in 2012. The forest releases to both sets of companies are of concern because when they occurred Yosfi was reportedly already involved in PAN, ²⁰³ the same party of which Zulkifli Hasan, the Minister for Forestry at the time, was a member. (See Case Study 4.) |
|  <p>Vence Rumangkang</p> | One of the founders of former President Susilo Bambang Yudhoyono's Democratic Party. ²⁰⁴ | After some of the Menara Group companies failed to develop plantations, the Bupati of Boven Digoel, Yesaya Merasi, decided to reissue permits for their concessions to new companies. Three companies belonging to Vence Rumangkang and family were issued new location permits; this was done less than three weeks before Yesaya Merasi was standing for re-election. Merasi also tried to revoke the former Menara Group companies' IUPs, which were still valid, although he had no authority to do so since they had been issued by the province (they were ultimately revoked two years later). (See Case Study 2). |

| Name | Political link | Involvement in Boven Digoel |
|--|--|--|
|  <p>Jackson Kumaat</p> | <p>Formerly a member of the Central Leadership Council of the Democratic Party,²⁰⁵ he later changed party to Hanura, where he led the party's Provincial Leadership Council (DPD) for Sulawesi Utara Province until resigning in September 2020.²⁰⁶</p> | <p>A company for which Jackson Kumaat was the majority shareholder, PT Tolitoli Primanusa Resources, was issued in-principle approval for an IUP in 2016. Four other companies linked to Kumaat also appear on investment lists provided to Greenpeace Indonesia by local government officials in Boven Digoel in 2017. Exact permit data is unavailable, but this evidence suggests that the companies were issued location permits, possibly around 2015. No records have emerged of any further permits issued to these companies.</p> |
|  <p>Alwi Abdurrahman Shihab</p> | <p>Minister for Foreign Affairs under Gus Dur (1999–2001), and later Coordinating Minister for People's Welfare under Susilo Bambang Yudhoyono (2004–2005). Chair of the National Awakening Party (PKB) (2002–2005).²⁰⁷ In June 2015 he was also appointed as President's Special Envoy to the Middle East and the Organisation for Islamic Cooperation, a post which the organisation describes as being ministerial-level on its website.²⁰⁸</p> | <p>He became President Commissioner of former Menara Group companies PT Megakarya Jaya Raya (PT MJR) and PT Energi Samudera Kencana (PT ESK) on 31 May 2018. This was at the time when significant changes to the boards were made and most individuals who were board members of other companies in the Hayel Saeed Anam Group, the suspected beneficial owners of the companies, were removed. There is no evidence that the ownership changed at this time – majority stakes in PT MJR and PT ESK remained with offshore companies based in the United Arab Emirates. Shihab remained on the boards of PT MJR and PT ESK for almost a year, stepping down on 23 May 2019. (See Case Study 1.)</p> |
|  <p>Tommy Sagiman</p> | <p>A retired police general, he was deputy head of the National Narcotics Agency from 2009 to 2012.²⁰⁹ He stood unsuccessfully as a candidate in the 2014 West Kalimantan People's Representative Council election, representing the Indonesian Democratic Party of Struggle (PDIP).²¹⁰</p> | <p>He became a commissioner of two other former Menara Group companies suspected of being owned by the Hayel Saeed Anam Group, PT Kartika Cipta Pratama (PT KCP) and PT Graha Kencana Mulia (PT GKM), on 31 May 2018, and remains on the boards of both companies. (See Case Study 1.)</p> |

196 Dewan Perwakilan Rakyat website 'Mohamad Hekal, MBA'

197 Hekal M (2013)

198 Note that there remains some uncertainty over the beneficial owner of the concessions between 2007 and 2010. It is possible that Menara Group acquired the concessions only in 2010.

199 Merdeka website 'Profil: Da'i Bachtiar'

200 Bursa Malaysia (2012)

201 Tempo.co (2015a)

202 Tempo.co (2012)

203 Tempo.co (2014)

204 Merdeka website 'Profil: Ventje Rumangkang'

205 Pandjaitan HIP (2020)

206 Alfrits (2020)

207 UKP-TTOKI website 'Profil Dr. Alwi Shihab'

208 UKP-TTOKI website 'Tentang UKP-TTOKI'

209 PT Veritas Dharma Satya website 'Dewan Komisaris'

210 Caleg KalBar (2013)

As explained in the case studies in Part 3, companies with which these politically connected individuals were or are involved in Boven Digoel can be shown to have obtained permits in contravention of national laws and regulations, as well as reportedly violating the rights of Indigenous Papuans. These influential individuals, many of whom have become known for their careers in lawmaking or law enforcement, are potentially benefiting indirectly from the activities of these companies.

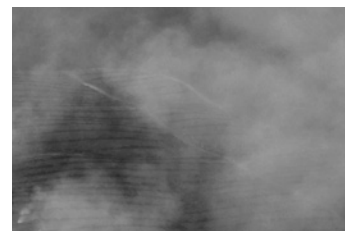
In return, it warrants questioning whether some of these individuals could have exerted their political influence in the companies' favour, including to protect them from sanctions. For example, as Case Study 1 explains, PT MJR appears to have operated since 2014 without finishing the EIA process, without HGU and with an IUP that provincial officials believe was forged, and to have used people's identities without their knowledge or consent as nominee shareholders and directors. With the exception of operating without HGU, these violations are all criminal offences, yet the company has been allowed to continue operating and clearing primary forest. By bringing onto the board of directors Alwi Shihab, an influential figure who has held high-profile government roles under three presidents, could the company's owners have been hoping to bolster the company against the threat of its permits being revoked?

Several factors have contributed to the weakness of governance in Boven Digoel, a new regency which was split off from Merauke Regency in 2002. Across West Papua in recent decades, the central government has created a large number of such new regencies – since the end of the New Order period, the number of regencies or autonomous city governments (*kotamadya*) in the region has increased from 10 to 42. These newly established regencies have taken a number of years to acquire the infrastructure and experience necessary to deliver a functional administration. However, in addition to the problems that may arise directly from a new and inexperienced local government, the process of creating new administrative divisions is often criticised as serving the interests of local political elites rather than those of the general population.²¹¹

211 See eg IPAC (2013).

These factors were exacerbated in Boven Digoel by a series of problematic events that unfolded over the period when the politically connected individuals featured in Table 4 were involving themselves in the plantation sector. This worrying saga offers an extreme example of the lack of functional government and its effects. Towards the end of his first term in office, the first democratically elected Bupati of Boven Digoel, Yusak Yaluwo, was arrested by the Corruption Eradication Commission (KPK) and held in detention, accused of corruption (unrelated to the plantation industry).²¹² At the end of his first term in office, in 2010, he was controversially allowed to stand for re-election because his trial was not due to take place by the time of the election.²¹³ He won the election and on 8 September 2010 (the day the Election Commission was meeting to decide whether the result should be allowed to stand²¹⁴), while still in detention, he signed environmental permits for at least five (and probably all seven) concession companies in the Menara Group,²¹⁵ even though there had not been a valid process to evaluate their EIAs. The companies then used these permits to obtain IUPs and forest release.

Yaluwo was found guilty on 2 November 2010 and sentenced to four and a half years in prison.²¹⁶ However, despite being unable to carry out his duties he was inaugurated as bupati along with his deputy Yesaya Merasi on 7 March 2011. Since Yaluwo was in prison on Java, the ceremony could not take place in the regency capital, Tanah Merah. Instead, Merasi and Barnabus Suebu, the governor of Papua Province, had to travel to Jakarta and conduct the inauguration in the Interior Ministry with Yaluwo present.²¹⁷ A few hours later the Minister for Home Affairs issued a decree suspending Yaluwo from his duties.



Although Yesaya Merasi should have taken over the duties of the bupati on a caretaker basis, a question persists whether Yusak Yaluwo continued to direct the Boven Digoel local government from his prison cell.²¹⁸ This question arises because of permit documents, copies of which have been seen by Greenpeace, which were signed by Yusak Yaluwo after he had been sentenced to prison and suspended. This included PT MJR's and PT KCP's Boundary Survey Reports (*Berita Acara Tata Batas*), an important legal step towards obtaining forest release, which he signed on 4 July 2011, and location permit extensions for the same two companies, signed on 20 February 2012.

Yusak Yaluwo was not officially removed from his position until May 2013,²¹⁹ and even after that it took more than a year before Yesaya Merasi was officially inaugurated as bupati in June 2014.²²⁰ Until then, most regency government decision-making was stalled, but the issuing of permits to the plantation industry proceeded. It was during this period of uncertainty that the seven Menara Group companies were granted forest release by the MoEF and the three concession companies controlled by Edi Yosfi were issued location permits.²²¹

²¹² Tempo.co (2010)

²¹³ Beritasatu.com (2010)

²¹⁴ As noted in court records; see Supreme Court of the Republic of Indonesia (2011a).

²¹⁵ Greenpeace has obtained copies of environmental permits for PT Kartika Cipta Pratama and PT Megakarya Jaya Raya signed on this date. Documents released by Tadmax Resources Bhd note that similar permits were also released to PT Manunggal Sukses Mandiri and PT Trimegah Karya Utama on the same day (see Bursa Malaysia (2011)). A timber legality audit report for PT Graha Kencana Mulia also refers to a permit issued on the same day (PT Inti Multima Sertifikasi (2019)). It therefore seems likely that all seven companies under control of the Menara Group received permits that day.

²¹⁶ detikNews (2010)

²¹⁷ See Supreme Court of the Republic of Indonesia (2011a).

²¹⁸ Jurnalinfo.com (2014), TribunNews (2013)

²¹⁹ Ninditya F (2013)

²²⁰ Jubi.co.id (2014)

²²¹ Forest release decrees were issued to seven ex-Menara Group companies between 14 December 2011 and 15 February 2013. Location permits were issued to PT DVG, PT VHN and PT WAK on 31 August 2012.

In November 2015, with the next set of elections only three weeks away, Yesaya Merasi, who was standing for re-election as bupati, issued three new location permits to companies belonging to Vence Rumangkang and family, even though there were still valid IUPs for companies controlled by the Menara Group and Tadmax Resources Bhd in the same area. Merasi was unsuccessful in his election attempt and the post of bupati was taken by Benediktus Tambonop. Yaluwo had not been allowed to stand due to his prior conviction.²²²

However, the most recent election saw Yusak Yaluwo re-elected as bupati, and then disqualified again, amid a series of reversals of decisions over the legitimacy of his candidature, and outbreaks of violence. After he had obtained the backing of the Democratic, Golkar and Perindo parties to stand in the December 2020 election,²²³ his candidature was disallowed a few weeks before election day.²²⁴ Yaluwo lodged an appeal against the ban with the General Election Supervisory Agency;²²⁵ meanwhile, his supporters reportedly took to the streets, burning down the house of one of his rivals and attempting to do the same to the local election office.²²⁶ The election was delayed pending the appeal decision, which reinstated Yaluwo's candidature,²²⁷ and he won the postponed election on 29 December to become bupati once again.²²⁸ Three months later in March 2021 the Constitutional Court, acting in its capacity as final arbiter of election disputes, annulled Yaluwo's victory and ordered a fresh election in which he will not be permitted to run.²²⁹

Endemic corruption in local politics is widely accepted as fact in Indonesia, and is often linked to the vast sums of money expended in election campaigns to win influence.²³⁰ Former Interior Minister Tjahjo Kumolo reportedly said he believed that a candidate for bupati could get through up to IDR75 billion (US\$5.25 million) during an election campaign.²³¹ As a bupati has the power to create valuable assets by issuing permits to companies, there could be a temptation to look to potential investors in the plantation and other industries for campaign funds, and investigations have documented that this practice indeed appears to be widespread.²³² Research has also indicated that patronage relationships between business and local politicians tend to be stronger in regencies where there is high dependence on state subsidy and an undiversified local economy (eg one dominated by resource extraction),²³³ both of which are the case in Boven Digoel.

Without specific evidence of money changing hands, it is difficult to prove conclusively that businesses have benefited improperly from their association with political figures. However, a flurry of permit activity around election time is certainly a warning sign. Yusak Yaluwo's issuing of environmental permits before the Election Commission declared him the winner of the 2010 election and Yesaya Merasi's issuing of location permits during the campaign period of the 2015 election should both be cause for concern, especially as in both cases the permits were issued in contravention of normal procedures, as documented in Case Studies 1 and 2.

222 Anjarsari L (2016)

223 Suara Papua (2020)

224 CNN Indonesia (2020a)

225 Nathaniel F (2020)

226 Suwandi D (2020)

227 Mashabi S (2020)

228 Isidorus RV (2021)

229 CNN Indonesia (2021)

230 Novianto RD (2020)

231 Akhir DJ (2015)

232 The Gecko Project (2017, 2018a)

233 Aspinall E & Berenschot W (2019), Chapter 9

■ A male Papuan hornbill (*Rhyticeros plicatus*). 2012



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Regulations that fail to regulate

Greenpeace believes that the considerable linkage and overlap between on the one hand members of the oligarchy involved in resource industries, and on the other hand policymakers and their backers, not only results in individual companies profitably exploiting the weaknesses in the regulatory system thanks to their influential allies, but also weakens the entire system of natural resources sector governance.

Weak natural resources sector governance is a matter not simply of poor implementation and enforcement of regulations, but of regulations not being fit for purpose in the first place. In Indonesia, many regulations governing land tenure, forests and agriculture have been drafted (perhaps by design) in such a way that they provide ample openings for unjust outcomes and outright corruption. Ambiguous phrasing, overlaps in the authority and incompatibilities in the rules of the various government agencies and departments responsible for licensing plantations in forests and on Indigenous lands, overly broad official discretion and an aversion to transparency all combine to create a regulatory landscape that facilitates misappropriation of public natural resource assets by private interests, and engenders severe corruption risk.²³⁴

■
Logs stacked
after land
clearing for
an oil palm
plantation in
Boven Digoel,
2016



The permitting process for plantations is governed by a combination of national laws and regulations, local legislation and the Presidential Instructions decreeing the two moratoria. Laws passed by the House of Representatives are often ambiguous or insufficiently detailed, and their interpretation is often excessively reliant on implementing regulations drawn up by the executive branch of government containing the necessary practical provisions to apply them. These regulations set out the process for obtaining each separate permit or other requirement, and as such are issued by several different ministries: the Ministry of Agrarian and Spatial Planning is responsible for regulations governing location permits and HGU, the Ministry of Agriculture for IUP and the MoEF for forest release. These various regulations are poorly integrated with one another and sometimes mutually contradictory.²³⁵ Furthermore, to obtain the permits, companies will have needed to engage with a range of government bodies at the local, provincial and national levels, each of which may have chosen to interpret legislation selectively. If there are irregularities in how permits are issued, local government can always claim that inexperienced staff did not have the knowledge to be aware of all relevant documents in the regulatory labyrinth or to resolve their contradictions. Especially in Papua's new regencies, this may well be true.

This lack of clarity amplifies the possibilities for companies to operate pseudo-legally. This is to say that in many cases, although a company may have all the permits it needs, fulfilling the technical requirements to develop a plantation, on closer inspection those permits will be seen to exploit loopholes in the regulations or to have been issued in breach of regulations. In other words, the permit system undermines the purpose of the laws that are supposed to govern it, but has a sufficient veneer of legitimacy that permits are unlikely to be challenged.

Such pseudo-legality has become the norm in the palm oil industry. A 2019 audit by the Audit Board of the Republic of Indonesia found that 81% of oil palm plantations are legally problematic.²³⁶ The Papua Barat Licence Review Team found permitting irregularities in every single one of the eleven companies which had obtained HGU or started land-clearing in the province.²³⁷

In a pseudo-legal culture, even if a company does not possess a full set of permits, or certain permits were not issued in accordance with legal requirements, provided that it is able to exert power in its dealings with the authorities it can be confident that they will turn a blind eye to any irregularities. Accordingly, it is in the interest of companies whose existing concessions are based on problematic permits, or who feel that a more accountable and coherent process may hamper their chances of obtaining new permits, for laws and regulations to remain imprecise, contradictory or open to interpretation.

It is impossible to know to what degree business interests are involved in shaping laws and regulations. In some cases they are explicitly invited to participate in framing laws (as was the case with the 2020 Omnibus Law – see below). Although such consultation is legitimate and indeed desirable in a democracy as long as it is transparent and all affected stakeholders are given similar opportunities, this is not always the case in Indonesia. The process of drawing up ministerial regulations or other executive decrees is especially non-transparent. It is therefore of great concern that so many companies that have problematic permits are linked either to decision-makers themselves or to people likely to have privileged access to and/or leverage over decision-makers, such as former members of the government or House of Representatives, power-brokers in political parties or high-ranking officials in the state security apparatus.

²³⁵ For example, Regulation 98/2013 (Minister for Agriculture (2013)) states that companies are required to provide 20% of their concession area as community plantations (*plasma*) and that this should be located outside the IUP area. However, MoEF Regulations 51/2016 and 96/2018 concerning forest release allocate 20% of the forest release area for plasma. The Ministry for Agrarian Affairs and Spatial Planning is also different, saying in its regulation 7/2017 concerning HGU that 20% of HGU areas is to be allocated for plasma. The lack of harmonisation between these policies has led to confusion in how the law should be implemented.

²³⁶ Nugraha I & Jong HN (2019)

²³⁷ Papua Barat Licence Review Team (2021b)

Sometimes government inaction appears to support the hypothesis that vested interests may be intervening to hold up needed reforms. Of the few initiatives which have been attempted to improve Indonesia's forest governance and transparency, most have been delayed or implemented poorly. For example, the government has been promising for nearly a decade to develop a 'One Map Policy'²³⁸ to harmonise geographical datasets used by different branches of government, but this has still not materialised, and government entities continue to order companies and industry bodies not to share concession maps with NGOs and other civil society stakeholders.²³⁹ Meanwhile, the issuing of the Oil Palm Moratorium took two years after it was announced by President Jokowi, and after a further two years there are few signs that it will successfully address mismanagement and corruption in the industry. Natural resources sector oligarchs as much as legislators must be aware that drastically increased transparency and an effectively implemented review of permits would potentially open a Pandora's box of irregular concessions against which the government would then have little choice but to take action. Since neither initiative is especially complicated, it is hard to see another plausible explanation for such long delays other than a wish to avoid impinging on vested interests.

While the fallout from the 1997 Asian financial crisis led to sweeping revision of Indonesia's banking regulations to reduce rampant corruption, the drive for anti-corruption reform in the natural resources sector has been much slower to materialise, even though such reform is direly needed. Indonesia Corruption Watch estimated in 2020 that state losses from corruption were four times greater in the natural resources sector than in banking.²⁴⁰

One welcome initiative has been the KPK's 'National Movement to Save Natural Resources' (GNPSDA) which commenced work in 2015 primarily as a preventative programme to discourage corruption in the natural resources sector. In a 2018 evaluation report,²⁴¹ the KPK described the governance of Indonesia's natural resources sector as showing signs of structural corruption, and used the term 'state capture corruption', to describe a state becoming ever more distant from its constitutional mandate as oligarchic power consolidates control over its institutions. According to the KPK, this situation is characterised by poor governance, weak state institutions, ineffective law enforcement, poor transparency and public participation, unchecked conflicts of interest and a lack of political will to change. Evidence of all these elements has been clearly identified in the case studies presented in Part 3 of this report.

238 Gokkon B (2018)

239 Some recent examples include a letter dated 18 May 2020 from the Director General of Plantations to the Indonesian Growers' Caucus of the RSPO and a letter dated 26 June 2020 from the General Secretary of the MoEF to the Association of Indonesian Forest Concessionaires (*Asosiasi Pengusaha Hutan Indonesia*).

240 Adjie MFP (2020)

241 Corruption Eradication Commission (2018)

Failure to protect the rights of Indigenous Papuans



Indigenous Korowai people pounding sago starch, the traditional staple food for most lowland Papuans 17 Oct. 2017.

© Markus Mauthe / Greenpeace

Land conflicts are a common feature of new plantation development in West Papua. Typically they arise between a company and Indigenous people who maintain that the company has not obtained their full consent before developing land belonging to them. Conflicts have also emerged, or been exacerbated, between two ethnic groups when both claim that land used by a plantation company is their customary land, but one claim has been ignored by the company. For example, there has been conflict between the Marind and Mandobo people around PT Bio Inti Agrindo's concession in Merauke Regency. The prevalence of such 'horizontal' conflicts is a strong indicator that Indigenous communities are not able freely to choose the fate of their traditional lands.²⁴²

²⁴² ELSAM (2017). Posco International, writing to Greenpeace International in regards to this, said that PT Bio Inti Agrindo has "explained the business and its impact to the community and sought understanding of community members including indigenous people" and that the company lawfully provided compensation and did not directly select the parties entitled to it.

It is widely recognised that under customary law in West Papua all land is customary land belonging to an ethnic group. Customary legal systems vary from ethnic group to ethnic group, but the most common arrangement is that customary land rights (*hak ulayat*) are held collectively by clans (*marga*), rather than individuals. These customary rights are enshrined in the Indonesian Constitution,²⁴³ and have also been recognised by the Constitutional Court²⁴⁴ and in the 1960 Basic Agrarian Law.²⁴⁵ This means that if a plantation company wishes to use an area of land it must first negotiate with the customary landowners, as set out in several pieces of legislation governing the plantation industry, including the 2014 Plantation Law. Article 12 of this law states:

'(1) Where land which is required for a plantation business is subject to customary land rights of an Indigenous customary law community, the plantation business entity must conduct musyawarah (consensus decision-making process) with the Indigenous customary law community which holds customary land rights to obtain an agreement to surrender the land and any payment due.

*(2) Musyawarah with the Indigenous customary law community holding customary land rights as described in clause (1) is to be carried out in line with regulations.'*²⁴⁶

For West Papua, this is underlined in Article 43 of the 2001 Papuan Special Autonomy Law, which contains an almost identical provision:

*'The supply of customary land and land individually owned by members of Indigenous customary law communities for any purpose, must be through musyawarah between the indigenous customary law communities and other relevant parties, in order to obtain agreement over the surrender of land which is required and any payment due.'*²⁴⁷

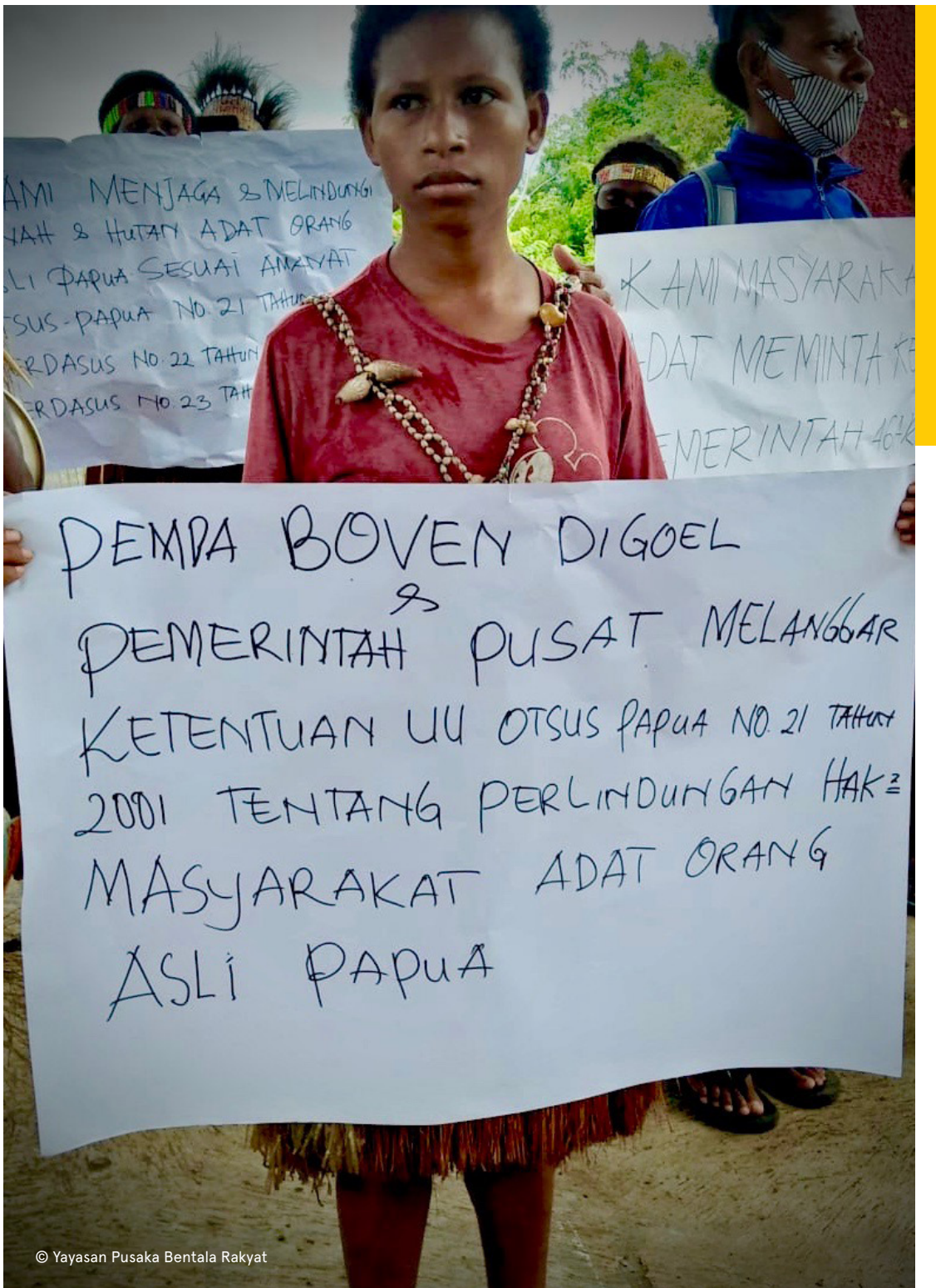
²⁴³ Article 18(II), paragraph 2 (full text available at <https://www.wipo.int/edocs/lexdocs/laws/en/id/id048en.pdf>)

²⁴⁴ Indonesian Constitutional Court decision no. MK35/PUU-X/2012, available at https://www.aman.or.id/wp-content/uploads/2018/05/putusan_sidang_35-PUU-2012-Kehutanan-telah-ucap-16-Mei-2013.pdf

²⁴⁵ Basic Agrarian Law 5/1960

²⁴⁶ The full text of Law 39/2014 on Plantations / Undang-Undang no. 39 tahun 2014 tentang Perkebunan is available at <https://peraturan.bpk.go.id/Home/Details/38807>. Clause 12 states: '(1) Dalam hal Tanah yang diperlukan untuk Usaha Perkebunan merupakan Tanah Hak Ulayat Masyarakat Hukum Adat, Pelaku Usaha Perkebunan harus melakukan musyawarah dengan Masyarakat Hukum Adat pemegang Hak Ulayat untuk memperoleh persetujuan mengenai penyerahan Tanah dan imbalannya. (2) Musyawarah dengan Masyarakat Hukum Adat pemegang Hak Ulayat sebagaimana dimaksud pada ayat (1) dilaksanakan sesuai dengan ketentuan peraturan perundang-undangan.'

²⁴⁷ The full text of Law 21/2001 on Special Autonomy for Papua Province / Undang-Undang no. 21 tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua is available at <https://peraturan.bpk.go.id/Home/Details/44901/uu-no-21-tahun-2001>. Clause 43 states: 'Penyediaan tanah ulayat dan tanah perorangan warga masyarakat hukum adat untuk keperluan apapun, dilakukan melalui musyawarah dengan masyarakat hukum adat dan warga yang bersangkutan untuk memperoleh kesepakatan mengenai penyerahan tanah yang diperlukan maupun imbalannya.'



© Yayasan Pusaka Bentala Rakyat

A participant in a protest in Boven Digoel, August 2020 holds a sign reading "The Boven Digoel local government and national government are violating the provisions of the 2001 Papuan Special Autonomy Law concerning Protecting the rights of Indigenous Papuans"

Unfortunately, these pieces of legislation do not provide further clarification on the process that should be employed, beyond the vague term *musyawarah*, signifying a process where parties try to reach a consensus decision. Often, when laws are open to interpretation in this way, the relevant ministry (or provinces in the case of the Special Autonomy Law) issues a detailed regulation on how the clause in question is to be implemented, but this has not been the case for either of these laws

– the 'regulations' referred to in clause 2 of Article 12 quoted above simply do not exist. In practice this has meant that companies are able to interpret this requirement more or less as they wish. Although companies do for the most part engage in some form of negotiation with customary landowners, this often falls so far short of FPIC that in reality, Indigenous communities have little real choice over whether or not to surrender their lands.

Reports by advocacy NGOs working in West Papua indicate that companies in the region have used the following techniques of deceit, intimidation and manipulation to obtain documents they can claim represent the consent of Indigenous communities:

- Isolating individual clan members who can be persuaded to sign a document, without there being consensus among the whole clan.²⁴⁸
- Taking easily influenced individuals away from their home area to an unfamiliar city, where they can be more easily pressured into giving their signatures.²⁴⁹
- Visiting villages and offering money using unclear terms such as '*uang tali asih*' or '*uang ketuk pintu*' (roughly translating as 'visit money') and then claiming that this constitutes compensation for customary land being surrendered.²⁵⁰
- Claiming that attendance lists from meetings with communities represent the consent of all those who have signed.
- Failing to ensure that participatory mapping of customary land takes place, involving all potentially interested groups, before engaging in negotiations.²⁵¹
- Negotiating only with men, and so excluding Indigenous women from any part in the decision-making process.²⁵²
- Taking advantage of the militarised situation in Papua and the fear that many Papuans have of the state security forces after decades of systematic human rights violations. Police and military officers are routinely present in negotiations over land, ostensibly as observers or witnesses, which is frequently intimidating. Cases of officers directly threatening individuals opposed to plantations have been reported.²⁵³
- Not giving full information about what the proposal entails, including such fundamentals as the nature of the business or the size of the proposed plantation.²⁵⁴
- Promising that the company will provide employment to local Indigenous people and develop community infrastructure, health and education facilities, but then failing to meet these promises.²⁵⁵
- Not accepting a community's decision to refuse a plantation, but instead continuing to put pressure on it to accept the plan.²⁵⁶

248 Paino C (2017)

249 Anecdotes were related in unpublished interviews with the Gecko Project in Boven Digoel in 2018 and Awas MIFEE in Merauke in 2017.

250 Awas MIFEE (2013b)

251 ELSAM (2016)

252 SKPKC Jayapura (2011)

253 SKPKC Fransiskan Papua (2017), Chapter 8

254 SKPKC Fransiskan Papua (2017), Chapter 8

255 Mambor V (2015), Tekege S (2015), Yayasan Pusaka Bentala Rakyat (2014b)

256 Paino C (2017)

That reports of such practices are so prevalent in the plantation sector shows that the government is failing to protect the constitutional rights of Indigenous Papuans. Although many of the practices highlighted go against the spirit of the relevant clauses in the Plantation Law and Papuan Special Autonomy Law, the ambiguity of those laws means that any legal challenges or criminal prosecutions would be unlikely to be successful.

Indonesia has signed the UN Declaration on the Rights of Indigenous Peoples,²⁵⁷ which embodies the rights to self-determination,²⁵⁸ FPIC²⁵⁹ and self-determined development.²⁶⁰ However, none of these principles have been encoded into national law in such a way as to effectively protect Indigenous rights. The principle of FPIC is increasingly seen as a core standard internationally, and is applied by many intergovernmental and private sector bodies, but the Indonesian Government only appears to refer to it when foreign finance is at stake. For example, Indonesia's REDD+ National Strategy commits to FPIC for relevant projects under the auspices of REDD+,²⁶¹ and FPIC is mentioned in a related ministerial regulation from 2017.²⁶² No piece of national legislation effectively sets out an FPIC procedure for development projects.

In addition to the shortcomings of the law on customary land rights, the plantation permit system fails to provide adequate protection to Indigenous land rights and the right of Indigenous peoples to give or withhold FPIC to developments which affect them. At each step of the permit process, the government is assumed to have full authority to issue permits regardless of preexisting rights, and a lack of transparency means that Indigenous communities often report that permits are issued without their prior knowledge. The upshot is that Indigenous peoples' interests are systematically marginalised at every stage, as set out in detail below.



257 See United Nations website 'United Nations Declaration on the Rights of Indigenous Peoples'.

258 Article 3: 'Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'

259 Article 10: 'Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.'

260 Article 23: 'Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development.'

261 Indonesian REDD+ Task Force (2012)

262 PermenLHK P.70/Menlhk/Setjen/Kum.1/12/2017 (Minister for Environment and Forestry (2017))

Location permits

A location permit, giving the boundaries of a concession, is the first key permit a plantation company will need. Bupatis are responsible for issuing location permits unless they fall in more than one regency. National location permit regulations require the local land office head to hold ‘consultations’ with affected communities before a permit can be issued, informing them of the plantation company’s plans, the area expected to be impacted, and the processes for land acquisition, compensation and conflict resolution – though there is no explicit requirement for the land office head actually to seek the communities’ consent at this point.²⁶³ Unsurprisingly, there are few reported instances of local land offices in West Papua consulting with communities prior to the issuing of a location permit to find out whether they are potentially amenable to a plantation on their land, nor do the authorities announce when location permits have been issued. The implication for Indigenous peoples is that they may only become aware that a location permit exists over their ancestral lands when the company arrives to persuade them to surrender those lands. Moreover, a lack of transparency can enable corruption, and the KPK has identified the location permit and IUP issuing processes as being especially susceptible to bribery in Indonesia as a whole.²⁶⁴

■
The Muyu
river in
Boven
Digoel
Regency,
2012



263 See Minister for Agrarian Affairs and Spatial Planning (2015), Article 10, or, prior to this, Minister for Agrarian Affairs and Spatial Planning (1999), Article 6.

264 Tempo.co (2020)

Environmental impact assessments and environmental permits

The 2009 Environment Law stipulates assessment of potential social impacts and community consultation as important requirements of the EIA process. Unfortunately, assessments (which are carried out by independent consultants commissioned by the plantation companies) are often poorly implemented – in particular, community concerns are often not solicited or not taken seriously into account. Such poor-quality assessments are routinely approved by provincial EIA commissions, meaning that bupati can then issue environmental permits to the concession companies concerned. The KPK also believes that there are frequent cases of corruption in the EIA process.²⁶⁵ Provincial and local EIA commissions will be scrapped under the 2020 Omnibus Law, but there is so far no indication of meaningful reforms to ensure their replacements will require higher-quality assessments.

At least four of the plantations currently operating in Papua Province are believed to have cleared land either without an environmental permit altogether or without getting an EIA approved before an environmental permit was issued. This is a criminal offence under the 2009 Environment Law,²⁶⁶ but also means that there is no assurance that EIA procedures to ensure Indigenous participation were followed, and the impact on Indigenous communities evaluated, before the land was cleared. PT Nabire Baru (owned by Goodhope Asia Holdings), in Nabire Regency, only had an EIA evaluated and approved in 2014, three years after the company started clearing land and after it had destroyed thousands of hectares of forest.²⁶⁷ Goodhope Asia Holdings has defended this action saying 'both provincial and regional governments endorsed the start of corporate land

clearing pending issuance of EIA permit', however has not explained why such endorsements would override the 2009 Environment Law.²⁶⁸ The other companies, all of which are believed to be still operating without having had an EIA study evaluated and approved, are PT MJR, PT KCP and PT GKM (all part of the HSA Group – see Case Study 1) in Boven Digoel Regency. In addition to these cases in Papua Province, PT Bintuni Agro Prima Perkasa (Salim Group) has obtained HGU and started planting corn in Tamberau Regency, Papua Barat Province, despite not having an approved EIA or an environmental permit.²⁶⁹ In all these cases conflict between local Indigenous communities and the companies has emerged once clearance work started.²⁷⁰

However, the offending companies and their directors have not been prosecuted. Instead, they have been allowed to retrospectively obtain permits and carry on developing and operating their plantations.

Strengthening the laws and processes around EIAs could be a way to ensure that Indigenous people have an opportunity to decide whether to accept or refuse a plantation as an element of an FPIC process, as well as protecting ecologically valuable areas of forest. Unfortunately, Jokowi's government is moving in the opposite direction. As well as other changes to EIAs and environmental permitting, the 2020 Omnibus Law reduces the role of the public in the EIA process, restricting the right to participate to people directly impacted by the proposed project²⁷¹ and thereby introducing the possibility that Indigenous stakeholders will be excluded on the subjective grounds that the impact they face is not direct enough.

²⁶⁵ Kompas.id (2017)

²⁶⁶ Article 109 of the 2009 Environment Law sets out a criminal offence for anyone, including companies, carrying out business activities with substantial environmental impact (set out under Article 23 and including land clearing) without an environmental permit. Article 111 creates a criminal offence for a government official who issues an environmental permit without an EIA being approved for such activities.

²⁶⁷ Goodhope Asia Holdings Ltd (2017a) tables 1 and 2; see also Cuddy A (2017). In a letter dated 24 March 2021 responding to an opportunity to comment on a draft of this report, Goodhope Asia Holdings wrote that 'PT Nabire Baru commenced operations as requested by government authorities of the Nabire region and Papua province'.

²⁶⁸ Goodhope Asia Holdings referred to a legal review carried out by the RSPO which supposedly clears Goodhope, however despite multiple requests and an ongoing RSPO complaint, neither Goodhope nor the RSPO has been willing to share this review with Greenpeace or other NGOs therefore it is not possible to evaluate any legal argument advanced within it.

²⁶⁹ Arumingtyas L (2018)

²⁷⁰ Yayasan Pusaka Bentala Rakyat (2015, 2018, 2020b)

²⁷¹ Pasinringi T (2020)

Forest release



- A sign erected by the Wambon people living near PT Merauke Rayon Jaya's pulpwood concession erect a sign which reads 'Subur village Indigenous Forest - Not State Forest' recalling Constitutional Court decision MK35/PUU-X/2012.

There is no requirement for Indigenous communities to be consulted before a company is issued with a forest release decree, a process which takes place in Jakarta with little transparency.²⁷² To make matters worse, the regulation concerning this single step in the plantation licensing process has been through no less than 13 revisions since 1993, making it difficult for lawyers to follow, let alone communities affected by it.²⁷³

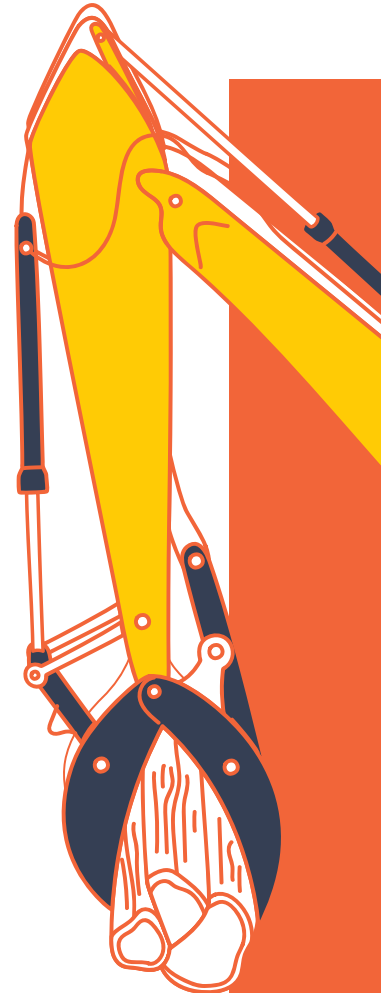
²⁷² The current regulation is Minister for Environment and Forestry (2018), as amended by Minister for Environment and Forestry (2019).

²⁷³ From the original decree no. 418/Kpts-ii/1993 (Minister for Forestry (1993)).



The Indonesian Government has still not incorporated changes to all relevant national legislation in response to the 2013 Constitutional Court decision which changed certain precepts in the Forestry Law, notably to clarify that Indigenous land should be treated as subject to rights claims and therefore is not state forest land.²⁷⁴ As a consequence Indigenous forest land must be treated differently from state forest. The minister's authority over Indigenous forest is limited to determining its intended function in a participatory process alongside Indigenous communities.²⁷⁵ The court's decision means that local government should draw up regulations recognising Indigenous peoples. Once this takes place, the MoEF can define areas as Indigenous forest, based on applications from Indigenous communities. While still in process, there should be no permits issued on areas indicated as potential Indigenous forest.²⁷⁶ However, the step involving local government is a long process, and no Indigenous communities in West Papua have yet managed to obtain this form of recognition.²⁷⁷ Where official recognition of customary forest has not occurred the MoEF has continued to release forest estate land to companies, without any indication that it has checked whether the Indigenous owners of a forest area may be planning to make an application for official recognition.²⁷⁸ As a result, despite legal recognition that all land in West Papua is subject to traditional Indigenous ownership (*hak ulayat*) except where the traditional connection has been thoroughly extinguished,²⁷⁹ the MoEF continues to treat it as if it belongs to the state.

Another process which also fails to fully recognise the constitutional rights of Indigenous peoples is the surveying and designation of areas which are part of the forest estate. A regulation²⁸⁰ describing this forest estate designation procedure was revised in 2013 in the wake of the Constitutional Court's decision, proposing a crude mechanism: if Indigenous territory was recognised through a local regulation then it could be excluded from the forest estate. This was a sign that at the time the government viewed forest subject to Indigenous land rights (*hutan adat*) as incompatible with forest estate status.²⁸¹ However the need to revise the forest estate designation regulation has been recognised,²⁸² and this could be a chance for genuine Indigenous sovereignty over customary territory to be upheld while at the same time allowing forest areas to benefit from the state's involvement in protection and management.



274 Indigenous forest (*hutan adat*) may still be classed as forest estate (*kawasan hutan*), as forest estate is considered to include both state forest (*hutan negara*) and forest subject to land claims (*hutan hak*).

275 Indonesian Constitutional Court decision no. MK35/PUU-X/2012, available at https://www.aman.or.id/wp-content/uploads/2018/05/putusan_sidang_35-PUU-2012-Kehutanan-telah-ucap-16-Mei-2013.pdf

276 The current national legislation governing the process of recognising customary forest is Ministerial Regulation 17/2020 (Minister for Environment and Forestry (2020a)), which replaced Ministerial Regulation 21/2019.

277 Elisabeth A (2020)

278 As for example in the numerous forest release cases dating from 2014 onwards, listed in Table 2.

279 Law 21/2001 on Special Autonomy for Papua Province / Undang-undang Republik Indonesia no. 21 tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua, clauses 1, 42, 43 and explanatory text p2. Full text available at <https://peraturan.bpk.go.id/Home/Details/44901/uu-no-21-tahun-2001>.

280 Minister for Forestry (2012), as amended by Minister for Forestry (2013)

281 AMAN (2014)

282 SIKUTAN website 'Penetapan kawasan hutan' accessed 12 February 2021

Plantation business permit

The 2014 Plantation Law states unequivocally that officials with the authority to issue IUPs are prohibited from issuing permits over Indigenous land, and companies are prohibited from operating on such land, unless an agreement has been reached through *musyawarah*. Violation of these provisions is designated as a criminal offence and is punishable with a fine or a prison sentence of up to five years for officials²⁸³ and four years for company staff.²⁸⁴

The 2013 implementing regulation which stipulates the process for issuing an IUP also contains the requirement for the company to reach an agreement with customary rights holders. The bupati or governor who issues the IUP should be made aware of the agreement, and it should be concluded prior to the IUP being issued.²⁸⁵ It is not clear whether this requirement has in practice been implemented at all in Papua Province – no record of any such agreement is noted on any of the IUP documents which Greenpeace Indonesia has been able to obtain.²⁸⁶

The implementing regulations were revised in 2019 as part of a wider overhaul of the permitting system to accommodate the government's Online Single Submission policy.²⁸⁷ However, in the new regulations²⁸⁸ the administrative requirement is substantially weakened – now the company applying is asked merely to submit a statement that agreement has been reached. There is therefore no requirement on any official to verify that the on-paper protection which the Plantation Law gives to Indigenous land has been applied.

Land cultivation right

In order to obtain HGU a company must show that the land it wishes to cultivate is no longer part of the forest estate, and that it has negotiated with local communities its right to cultivate Indigenous land. However, there are numerous cases in which the National Land Agency has issued HGU when there is clearly ongoing conflict over the land. There is no regulation mandating the agency to engage directly with Indigenous communities to check that they agree that documentation presented by a company represents a consensus decision reached within the community; nor must communities be made aware that they may appeal against the agency's decisions. The National Land Agency is also very reluctant to issue information on or maps of HGU land titles,²⁸⁹ leaving Indigenous people in uncertainty as to whether a company has HGU over their land.

The question of HGU is a frequent cause of tension between Indigenous peoples and the state or companies, because the law states that when HGU title expires, the land returns to the state²⁹⁰ – in other words, it is no longer Indigenous land. For many Indigenous people, the thought that they – or indeed someone claiming to represent them – may have signed away the land which has nourished generations of their ancestors and that the generations of children to come after them will never have access to this land, along with the associated loss of their identity as a people, is too terrible to contemplate.

283 Law 39/2014 on Plantations / Undang-Undang no. 39 tahun 2014 tentang Perkebunan, Articles 17 and 103. The full text of this law is available at <https://peraturan.bpk.go.id/Home/Details/38807>.

284 Law 39/2014 on Plantations / Undang-Undang no. 39 tahun 2014 tentang Perkebunan, Articles 55 and 107.

285 Regulation 98/2013 (Minister for Agriculture (2013)), Article 24

286 Not all IUPs cite the full range of documents that were submitted to obtain the permit. When they do, they do not mention agreements with Indigenous communities. For example, the 2015 IUP of PT Tunas Sawa Erma (Korindo Group) does list other documents, but not an agreement with Indigenous landowners.

287 Introduced with Government Regulation 24/2018 (President of the Republic of Indonesia (2018a)).

288 Regulation 45/2019 (Minister for Agriculture (2019b)), Article 23

289 Jong HN (2020a)

290 This is stated in Article 17 of Government Regulation 40/1996 (President of the Republic of Indonesia (1996)). There is no procedure to recognise this land as Indigenous customary land after a lease has expired.

Protecting rights in theory, ignoring them in practice

In 2008, the government of Papua Province issued local regulations to implement key clauses of the 2001 Papuan Special Autonomy Law concerning Indigenous rights. One of these, the Special Regulation on Protection and Management of Natural Resources of Papuan Customary Law Communities,²⁹¹ outlined the process by which Indigenous rights could be recognised: through a local regulation which detailed the names, territorial boundaries, customary law, language, institutional structures and leadership system of each Indigenous customary law community. Signed the same day, the Special Regulation on Collective Land Rights of Customary Law Communities and Individual Land Rights of Indigenous Peoples²⁹² described a process to map the customary land boundaries for each Indigenous group, which would end with the bupati issuing a decree. That regulation explicitly stated that once a decree had been issued, an Indigenous community could negotiate with a third party wishing to use its land and decide whether to cede or lease the land. Only after this could a location permit be issued.

A similar mechanism was introduced nationally after the successful challenge to the 1999 Forestry Law in the Constitutional Court confirmed that customary forest was not state forest. Regulations in the forestry sector, including those on permitting and forest release, were modified to recognise Indigenous rights, but only for cases where Indigenous traditional ownership had been mapped and acknowledged through a local regulation.

In West Papua, progress on such mapping and formal recognition has been very slow. Over a decade after the 2008 special regulations were issued, no regency in Papua Province has produced a local regulation as mandated. No areas have been officially certified as customary forest (*hutan adat*).²⁹³

Processes to formally define Indigenous customary law and territorial boundaries can never be perfect, since they fail to recognise the fluidity inherent in relationships between different groups and their environment.²⁹⁴ Nevertheless, they do at least provide a stronger degree of legal protection for Indigenous lands. Unfortunately, due to the complexity of customary law, local government inefficiency and poor capacity and the low priority afforded to Indigenous affairs, producing the local regulations recognising Indigenous communities and their territories requires time, resources, diplomacy and political will. While this process is underway, it is imperative that regulations on permits should take a precautionary approach to avoid extinguishing Indigenous land rights, by presuming Indigenous ownership of all forest within traditional domains where the local government has not yet managed to produce a regulation formalising this. The logic behind such an approach is especially clear in West Papua, where all areas are subject to traditional Indigenous ownership.

A moratorium on issuance of new permits until Indigenous land rights have been fully acknowledged and mapped is the only fair basis to protect Indigenous sovereignty. Such a policy must ensure the protection of Indigenous people's rights, especially customary land rights, and guarantee Indigenous people's right to sustainable livelihoods, including the right to sustainably harvest forest products.²⁹⁵ It must also include safeguards to ensure that Indigenous communities make decisions affecting their land on a collective basis and do not feel pressured into selling their land or releasing it for development.



291 Governor of West Papua Province (2008a)

292 Governor of West Papua Province (2008b)

293 Badan Registrasi Wilayah Adat (2020)

294 Chao S (2017)

295 LifeMosaic (2017)

03.

Case Studies

The Tanah Merah project



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■ An aerial photo shows destruction of virgin peatland rainforest for palm oil in part of the Tanah Merah project, Boven Digoel. 20 Jan, 2020.

The first three case studies in this report concern a large block of forest in Boven Digoel Regency, which has been earmarked for oil palm development since 2007.

This area, sometimes referred to as the Tanah Merah project (although it is no longer being developed as a single entity), comprises 270,372 ha of land,²⁹⁶ mostly primary forest, making it potentially the largest ever oil palm project to reach the licensing stage anywhere in the world.

There is good reason to regard the area as a test case for the effective implementation of the permit review mandated by the Oil Palm Moratorium. Shortly after President Jokowi announced plans for an oil palm moratorium in April 2016, Siti Nurbaya claimed that her Ministry of Environment and Forestry (MoEF) was already preparing a permit review, and that the provinces of Papua and Papua Barat were top priorities. In an interview with ForestHints.News, she reportedly said:

‘Several of our findings indicate that in areas where forest release permits have been granted since 2011 in Papua, nothing has been done there and they are simply land banks. We even found that some of these permits have been traded. For example, seven forest release permits for oil palm development in that province, amounting to almost 300 thousand hectares, were sold to a number of business groups in Malaysia.’²⁹⁷

Minister Siti Nurbaya



Although Minister Siti Nurbaya did not mention the company names in the interview, it is clear that the development she was talking about was the Tanah Merah project in Boven Digoel, which was divided into seven concessions, each of between 36,000 and 40,000 ha. Many of the early permits for these concessions were applied for by companies within the loosely constituted Menara Group. In subsequent years some of the companies have been sold (NB. not the permits held by the companies, as Siti Nurbaya is quoted as saying above), and permits issued to new companies have replaced inactive permits in four of the seven concessions.

Investigations by Greenpeace and other organisations into the various companies involved in the project and how they obtained their permits have revealed a string of irregularities at every stage in the process, demonstrating a comprehensive and ongoing failure of forest governance.



²⁹⁶ This project area is based on the forest release decrees for the seven concessions in the project.

²⁹⁷ ForestHints.News (2016b)

The future of the seven Tanah Merah project concessions is a vital test of whether the Indonesian Government is serious about using the permit review mandated in the Oil Palm Moratorium to address irregularities and risk of corruption in the issuing of permits. It is clear from Minister Siti Nurbaya's comments in 2016 that specific concerns related to these concessions were among the reasons the Oil Palm Moratorium policy was instituted.



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■ An aerial photo shows the destruction of virgin peatland rainforest in Tanah Merah, Papua Province. 20 Jan, 2020.

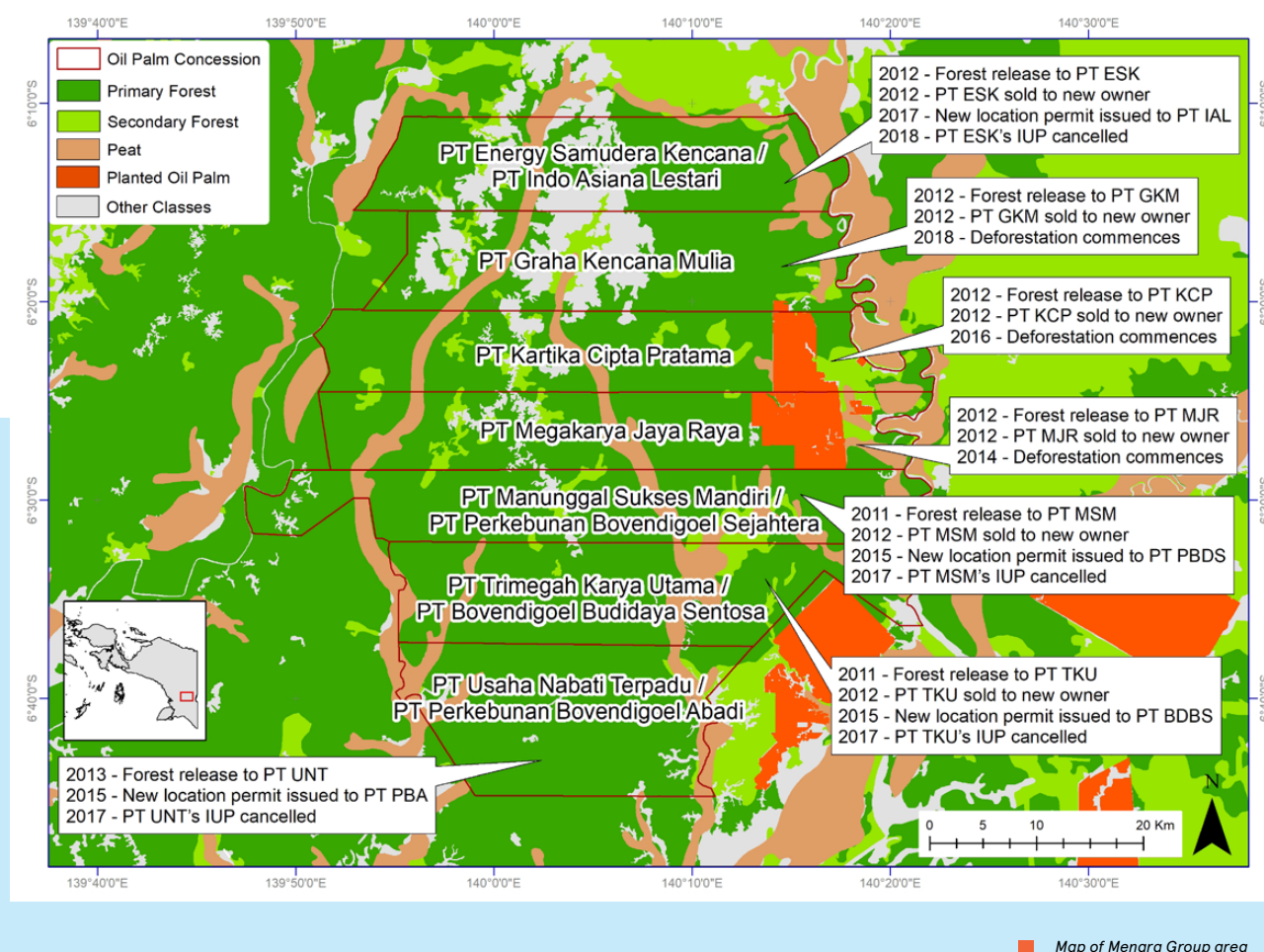
In October 2020, when speaking about the Oil Palm Moratorium, the minister once again chose to focus not only on Papua Province, but on the Tanah Merah project, presenting Google Earth images showing intact forest within the project area to support her claim that the moratorium was working.²⁹⁸ Yet the images she showed proved nothing – they were located within the concession of PT Perkebunan Bovendigoel Sejahtera (PT PBDS), which holds a plantation business permit (IUP) issued six days before the moratorium came into force, meaning that the company remains at liberty to complete its permitting process and then clear the forest unless the IUP is revoked. The MoEF has taken no effective action under the moratorium to preserve this forest.

Moreover, Minister Siti Nurbaya's optimism obscured the fact that not all the forest in the Tanah Merah project area has survived. Although most of the forest has yet to be felled (meaning that the permit review could still ensure its preservation if permits were revoked and the land returned to the forest estate), 8,518 ha have been planted with oil palm across three of the concessions, and small amounts of land have been cleared in two others, including PT PBDS.²⁹⁹

The belated introduction of the Oil Palm Moratorium, and the ongoing delay in its promised review of permits, has meant that this deforestation has simply continued. It took more than two years after Minister Siti Nurbaya's 2016 ForestHints.News interview before the Oil Palm Moratorium was eventually imposed. During this time 3,794 ha of forest³⁰⁰ were converted into plantations in the Tanah Merah project concessions alone. Even

after Jokowi signed the Oil Palm Moratorium, new deforestation has continued within the project area: a further 1,924 ha have been cleared, including 1,000 ha by just one of the companies – PT Megakarya Jaya Raya (PT MJR) – after it was issued a timber utilisation permit on 20 March 2019.

The first three case studies below are concerned with the Tanah Merah project. Case Study 1 examines the original permits that were issued to the Menara Group and the current situation regarding the three original concession companies that still hold some of those permits. Case Studies 2 and 3 address the four new concession companies that have been issued new permits over some of the same areas since 2015, and look at how they have benefited from the legacy of the Menara Group's previous permits.



299 From CIFOR's Papua Atlas analysis: <https://atlas.cifor.org/papua/#en>.

300 Greenpeace analysis of satellite images on <http://planet.com>.

Case Study 1: Boven Digoel, Menara Group/ Hayel Saeed Anam Group

Issues of potential concern:

- *Deforestation*
- *Forged permits*
- *Links to political figures*
- *No EIA*
- *No HGU*
- *Permits did not follow procedures*
- *Lack of transparency*
- *No FPIC*
- *Permit speculation*
- *Violations of investment law*
- *Concealed beneficial ownership*



© Ulet Ifansasti / Greenpeace

Forest clearance and plantation development in PT Megakarya Jaya Raya (PT MJR) palm oil concession. The Hayel Saeed Anam Group's palm oil refining and trading division, Pacific Inter-Link, adamantly denies a connection with this concession, but Greenpeace believes the weight of evidence is sufficient to demonstrate that the HSA Group and its ultimate beneficial owners, members of the Hayel Saeed family, have been and may still be linked to it. 31 Mar, 2018.



On the same day in December 2007, seven companies were issued with location permits covering a block of mostly primary forest lying to the west of the Digoel River in Boven Digoel, not far from its administrative centre, Tanah Merah, and covering a total of 270,352 ha with extensive areas of peat. Each of the seven companies had two shareholders who also served as director and commissioner, with no individual being a shareholder of more than one company, thereby obscuring who was really spearheading the project which together they constituted.

Information about the project first emerged in 2013 when company representatives were reported to have toured local villages distributing cash and talking about a plantation project (by which time the seven concessions had already been issued with environmental permits and IUPs and granted forest release).³⁰¹ The investors reportedly identified themselves as the Menara Group, which, although not a formally constituted business entity, has been linked (through media articles and research into related companies) to businessman Chairul Anhar³⁰² and various associates, including member of the House of Representatives Mohamad Hekal.³⁰³

Six of these companies were sold once they had obtained IUPs and forest release decrees for their concessions. Two (PT Trimegah Karya Utama and PT Manunggal Sukses Mandiri) were bought by Tadmax Resources Bhd³⁰⁴ (now renamed Maxim Global Bhd),³⁰⁵ a Malaysian property company with a background in the logging industry;³⁰⁶ and another four – PT Energi Samudera Kencana (PT ESK), PT Graha Kencana Mulia (PT GKM), PT Kartika Cipta Pratama (PT KCP) and PT MJR – were sold to offshore companies registered in the United Arab Emirates (UAE), which ranks in the global top 10 financial secrecy jurisdictions.³⁰⁷ The composition of the boards³⁰⁸ and a compelling dossier of other evidence³⁰⁹ indicate that these UAE companies (Green Resources Ltd, Crescent Investments Ltd, Prestige Holdings Ltd and Malindo Investments Ltd) were connected to a Yemeni conglomerate, the Hayel Saeed Anam Group (HSA Group), and its Malaysian palm oil processing and trading subsidiary Pacific Inter-Link.

301 Awas MIFEE (2013b)

302 Musa Z (2012)

303 Mohamad Hekal was a shareholder in one of the companies, PT Graha Kencana Mulia, and retained a small stake indirectly in the three companies which have planted oil palm until 2016.

304 See <https://disclosure.bursamalaysia.com/FileAccess/viewHtml?e=257027>.

305 Maxim Global Bhd website 'Home'

306 Under a former name, Wijaya Baru Global Bhd. See Faeh D (2011).

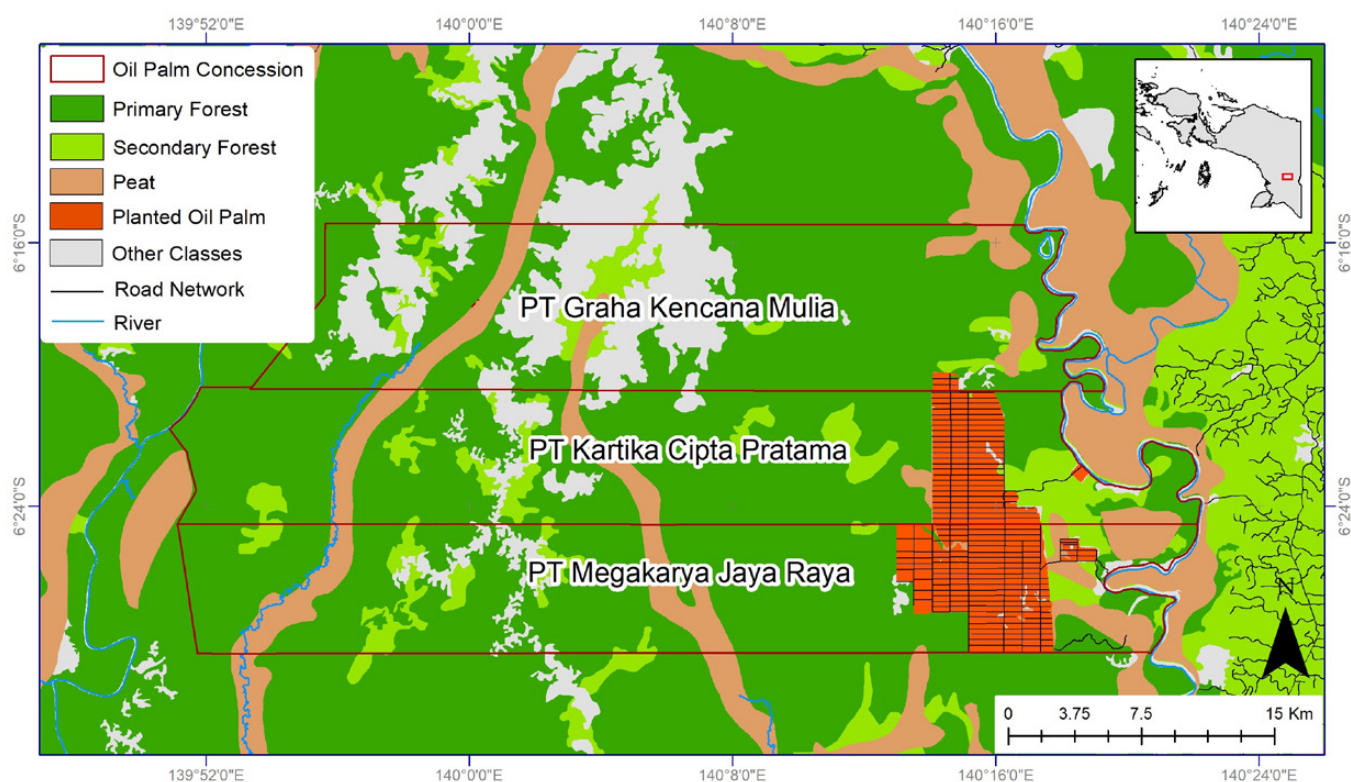
307 According to the Tax Justice Network's Financial Secrecy Index 2020 (see Tax Justice Network (2020)).

308 The registry profiles of PT Energi Samudera Kencana, PT Graha Kencana Mulia, PT Kartika Cipta Pratama and PT Megakarya Jaya Raya show that a majority of directors and commissioners also held official roles in Pacific Inter-Link and associated companies.

309 EIA (2018)

Despite all the evidence to the contrary, Pacific Inter-Link claims that neither it nor the HSA Group has ever owned any of the four concession companies sold to UAE companies.³¹⁰ The question of whether the HSA Group controls these companies is the subject of an ongoing investigation by the Roundtable on Sustainable Palm Oil's Complaints Panel.³¹¹ At the time of writing, the HSA Group had not provided evidence that could show that it is not involved.

Oil palm has been planted in three of the concessions of companies linked to the HSA Group: PT MJR, PT KCP and PT GKM. The fourth concession company, PT ESK, had its IUP revoked in 2018 on the grounds of inactivity and a location permit covering the same area has been issued to a new company (see Case Study 3).



310 Pacific Inter-Link (2018)

311 RSPO website 'Pacific Inter-Link Sdn Bhd, Pacific Oils & Fats Industries Sdn Bhd, PT. Pacific Indopalm Industries, PT. Pacific Medan Industri, PT. Pacific Palmindo Industri'

No environmental impact assessment approval?

Environmental permits were issued to at least four of the seven Menara Group companies on 8 September 2010.³¹² Under applicable laws these permits should only have been issued if an environmental impact assessment (EIA) evaluation commission had approved the EIAs for the concessions, but this appears not to have been the case. PT MJR's and PT KCP's environmental permits state that the evaluation commission had met on 1 and 3 September 2010. However, despite repeated appeals by NGOs to see copies of the EIAs which were supposedly evaluated, no government body of Boven Digoel Regency, Papua Province or the Indonesian Government has ever been able to produce copies of the approved assessments; indeed, several offices have stated that they do not possess the documents. When Greenpeace Indonesia recently made a request for information to the Papua Province Environment and Forestry Agency, the official response was that the EIAs for the Menara Group companies had not been processed by the Papua Province EIA Evaluation Commission,³¹³ the only body with the authority to do so.

The only known evidence that these documents ever existed is provided by copies of the first few pages of PT MJR's and PT KCP's EIAs, which were part of the documentation that the companies themselves supplied to consultants who certified the timber extracted under the Timber Legality Verification System (SVLK), and which the consultants shared with researchers. However, far from proving that the EIAs were legitimately assessed, these initial pages give further cause for doubt. A foreword to PT KCP's EIA attributed to a director of the company is dated October 2010, which is one month after the environmental permits were issued. The foreword requests stakeholders to suggest ways the study could be improved, making it clear that the EIA had not been finalised or approved by this point.

The only plausible explanation for this chronological inconsistency is that environmental permits were issued illegally, without the proper procedure of EIA evaluation having been followed.

³¹² Greenpeace has obtained copies of the permits for PT Kartika Cipta Pratama and [PT Megakarya Jaya Raya](#), and documents published by Tadmax refer to the issuing of environmental permits for PT Manunggal Sukses Mandiri and PT Trimegah Karya Utama on the same day. Although no documentation is available for the other three companies, it is considered likely that they also received environmental permits at this time.

³¹³ [Letter from Papua Province Forestry and Environment Agency](#) dated 2 July 2020, with reference 552.02/PPID/DKLH/VI/2020

There are additional reasons why the date of issue of the environmental permits suggests that the process may not have been carried out correctly. An election for the position of Bupati of Boven Digoel had been held on 31 August 2010. Yusak Yaluwo, the previous bupati, had obtained the most votes in the ballot. However, he was at the time detained by the Corruption Eradication Commission (KPK) awaiting trial on unrelated corruption charges. On the day he signed the environmental permits, the Election Commission was meeting to decide whether or not his election as bupati could be considered valid. Furthermore, according to court documents from an appeal against the election result, the Minister for Home Affairs had appointed the Regional Secretary to act as bupati while this tense situation was being resolved, meaning that Yusak Yaluwo had no authority to sign documents on that day.³¹⁴ Moreover, each company's EIA should normally be evaluated separately, so the fact that at least four environmental permits were signed on the same day is a further indication that this process may not have taken place according to procedures established by law.

■ Forest is cleared including along watercourses in parts of PT Megakarya Jaya Raya's concession without leaving riparian buffers to prevent erosion. 1 Apr, 2018.



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© Greenpeace

■ The Kiobo River in Anggai village has reportedly become muddy and polluted since oil palm was planted in the area. 2019

If however the four companies' proposals were actually subjected to EIAs carried out in the prescribed manner, they would then have been expected to comply with the monitoring and management plans that are assessed alongside the EIA and are intended to provide a set of standards which a company must adhere to during the lifetime of its plantation. The company is supposed to report regularly to the Provincial Environment Agency, which will monitor its performance and ensure that it meets environmental regulations. One standard obligation is to maintain a forested buffer zone along watercourses, to prevent erosion and degraded water quality.³¹⁵ Aerial and satellite images clearly show that in the first years of PT MJR's operation, it did not respect this condition, but cleared right up to the banks of rivers. Villagers in Anggai village report that these rivers, whose clear waters were formerly the main water sources for the village and important fishing grounds, are now shallow and muddy.³¹⁶ In addition to the flouting of EIA obligations, this suggests a possible breach of Indonesian environmental law including prevention of turbidity resulting from site runoff.³¹⁷

Another reason why it is important to follow the proper EIA process is because it requires formal consultation with local Indigenous people: EIAs must include social impact analysis, necessitating research and discussions with communities.³¹⁸ Multiple reports from villages indicate that the first time people became aware of the Menara Group companies was in 2013, two and a half years after their EIAs were supposedly completed.³¹⁹

³¹⁵ Per Government Regulation 38/2011 (President of the Republic of Indonesia (2011a)).

³¹⁶ Greenpeace Indonesia (2020)

³¹⁷ Per Law 32/2009 on Protection and Management of the Environment / Undang-Undang no. 32 tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup (full text available at [https://jdih.esdm.go.id/storage/document/UU%2032%20Tahun%202009%20\(PPLH\).pdf](https://jdih.esdm.go.id/storage/document/UU%2032%20Tahun%202009%20(PPLH).pdf)) and Government Regulation 82/2001 (President of the Republic of Indonesia (2001)).

³¹⁸ President of the Republic of Indonesia (1999), Environmental Impact Control Agency Head (2000)

³¹⁹ See eg Suara Papua (2014).

Forged environmental permit for timber factory?



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■ The PT Tulen Jayamas Timber Industries plywood factory under construction in 2018 on the banks of the Digoel River, Boven Digoel. 1 Apr, 2018.

A similar situation involving environmental permits allegedly being issued without the required EIA process has emerged concerning a timber milling and plywood factory set up to use the logs cleared from the Tanah Merah concessions. PT Tulen Jayamas Timber Industries is owned by a joint venture including the UAE-based offshore owner of plantation company PT KCP and Malaysian timber giant Shin Yang,³²⁰ one of the six big logging groups which built its fortune in Sarawak, reportedly using licences issued by former Chief Minister of Sarawak Abdul Taib Mahmud to decimate the forests there.³²¹ The factory, which is located within PT KCP's plantation concession, received a timber industry business permit (IUIPHHK) from the MoEF in 2015, and is believed to have started processing logs in 2019. But on 5 November 2019, the head of the Investment Agency and One-Stop Permit Centre (hereafter 'Investment Agency') for Boven Digoel,

320 The original structure of the joint venture companies was given in a stock market disclosure by Tadmax Resources Bhd (<https://disclosure.bursamalaysia.com/FileAccess/viewHtml?e=324379>). Malaysian company records obtained on 10 July 2018 show that some of the joint venture partners withdrew, resulting in a 60% stake for Bumimas Raya.

321 Global Witness (2015)

Djukmarian, issued a letter ordering work to be stopped,³²² alleging that an environmental permit issued to the factory on 18 September 2014 had been forged.³²³ In response to this development, certification agency PT Borneo Wanajaya Indonesia froze PT Tulen Jayamas's timber legality certificate on 17 April 2020, and three months later revoked the certificate.³²⁴ As a result, the sawn timber and plywood produced by the factory in 2019 and 2020 can be considered illegal. However, the MoEF appears not to have revoked the IUIPHHK.³²⁵ There is no news of any further investigation into the alleged fraud or penalties to be imposed, but the local government has confirmed that PT Tulen Jayamas is currently preparing an EIA study to obtain a new environmental permit, which would allow it to rehabilitate its legal status.³²⁶

Officials claim business permits falsified

Officials at the Papua Province Investment Agency, which was responsible for issuing the IUPs to the Menara Group companies, have said that they believe those permits bore forged signatures.³²⁷ In a meeting to discuss problems with the permits of the four ex-Menara Group companies subsequently acquired by companies linked to the HSA Group (PT ESK, PT GKM, PT KCP and PT MJR), which took place in the Indonesian Investment Coordination Board headquarters in Jakarta on 9 May 2019, Jamal Tawarutubun of this agency³²⁸ claimed that the IUPs for all seven of the ex-Menara Group companies, which were issued in January and February 2011 and bore the stamp of the Papua Province Investment Agency and the signature of its head, Purnama, were not issued by his office, and had therefore been falsified. Jhoni Way, Purnama's successor as the head of the Papua Province Investment Agency, reportedly speculated that someone from within the agency might have been involved in falsifying the permits.³²⁹ Such falsification is a crime punishable with up to six years' imprisonment,³³⁰ while anyone knowingly using such a falsified document is also potentially liable to the same punishment.

322 Letter no. 570/146/DPMPTSP/XI/2019

323 Yayasan Pusaka Bentala Rakyat (2019a)

324 Earthsight (2020), Jong HN (2020b)

325 In the audit by PT Borneo Wanajaya Indonesia on 17 April 2020 (reference PH-030/BWI/S-VLK/IV/2020), no issue was raised about the IUIPHHK, suggesting that it was still valid at that time.

326 Boven Digoel Housing, Settlement Areas, Environment and Land Agency Statement 09/DPKPLHP/KBD-LH/I/2021, January 2021, supplied to Greenpeace by PT Borneo Wanajaya Indonesia

327 The Gecko Project & Mongabay (2019)

328 The agency's current full title in Indonesian is *Dinas Penanaman Modal dan Pelayanan Terpadu Satu Pintu*.

329 The Gecko Project & Mongabay (2019)

330 Under Article 263 of the Penal Code of Indonesia (full text available at <https://www.wipo.int/edocs/lexdocs/laws/en/id/id039en.pdf>).

In an apparent acknowledgement of Jamal's allegation, a compromise was reportedly later reached whereby the companies that had already developed plantations would be allowed to continue to operate but would be required to restart the entire permitting process from the beginning; the alleged falsification would not be investigated further.³³¹ When Greenpeace Indonesia tried to obtain updates on whether this compromise is being implemented, the Papua Province Investment Agency refused to answer, claiming that the Indonesian Government had ordered that information about palm oil permits must remain confidential.³³²

The Boven Digoel Investment Agency was more forthcoming, however, and supplied copies of a new location permit it had issued to PT MJR in 2019 and a new IUP issued in 2020, the latter being signed by Jhoni Way.³³³ This raises several concerns. Simply issuing replacement permits serves to whitewash the alleged falsifying of the original IUPs: an investigation should have been conducted to identify who was involved in the alleged falsification and to evaluate the social and environmental losses that may have resulted from it, with appropriate penalties being imposed. As well as escaping the possible consequences of such an investigation, the company was not asked to reapply for all permits 'from the beginning', as required by the compromise agreement. Specifically, it was not required to submit a new EIA study for assessment; instead the 2010 environmental permit was apparently accepted as fulfilling this requirement for the issuing of the new IUP, despite the fact that the Papua Province Investment Agency should have been aware of the problems with that permit, as detailed above. The replacement permits cover not only the areas already planted, but the entire 39,505 ha concession, which is mostly still primary forest,³³⁴ implying the purpose of the agreement was not only to safeguard existing jobs on the plantation, but to facilitate further expansion.

331 The Gecko Project & Mongabay (2019)

332 In a letter to Greenpeace Indonesia with reference 503/21/PTSP, dated 28 July 2020, the office claims that a 2019 letter from the Coordinating Ministry for the Economy prevents it from sharing data on palm oil companies. Greenpeace Indonesia is continuing to appeal for this information to be shared.

333 The IUP, with reference number 05/SK.IUP/KS/2020, was not dated. The location permit, dated 9 August 2019, had the reference number 660/01/2019.

334 Based on MoEF land cover maps (<http://webgis.menlhk.go.id:8080/pl/pl.htm>).



© Ulet Ifansasti / Greenpeace

Greenpeace Indonesia investigator points from helicopter at forest clearance and plantation development in PT Megakarya Jaya Raya (PT MJR) palm oil concession. 31 Mar, 2018.

Furthermore, this whole process aimed at restoring legitimacy to PT MJR's operations has taken place since the Oil Palm Moratorium came into force. Instead of properly implementing the comprehensive permit review mandated by the moratorium, which would have meant evaluating the overall legality of PT MJR's plantation operations, officials decided to take matters into their own hands with this improvised solution designed only to resolve one problem with a single set of permits, the allegedly falsified IUPs. This approach failed to take into account the fact that subsequent decisions were taken on the basis that PT MJR and the other companies had valid IUPs, and these decisions continue to affect the availability of the land for new permits. This includes exclusion of the concessions from the Forest Moratorium in 2011, the allocation of their areas for plantations in regency and provincial spatial plans since 2011 and the granting of forest release decrees in 2011–2013. A comprehensive review could have called for those decisions to be re-evaluated before any new permits were issued.

The data supplied by the Boven Digoel Investment Agency did not include new location permits or IUPs for PT GKM or PT KCP, the other HSA Group-linked ex-Menara Group companies that have planted oil palm, and Greenpeace cannot confirm whether these companies have been or will be offered a similar lifeline.

Did forest release meet conditions?



© Ulet Ifansasti / Greenpeace

Forest clearance and plantation development in PT Megakarya Jaya Raya (PT MJR) palm oil concession. The dense forest with large trees seen at the forest edge contrasts with the low estimate for commercial timber in the forest release decree. 1 Apr, 2018.

Ministerial regulations set out the conditions for issuing forest release decrees to companies that apply for their concession to be released from the forest estate. In the ministerial regulation in force during the period (2011–2013) when forest release was granted to the seven Menara Group companies,³³⁵ no company or group of companies was allowed to have more than 200,000 ha of land released to it in West Papua. Although its seven companies had different shareholders, the Menara Group presented itself to officials including the bupati as a group, and applied for permits for all concessions together, indicating shared management. Furthermore, forest release to companies considered part of the same group is required to take place in stages, with each tranche being released only after the previous release had been evaluated to check that the company was developing the land (see boxed text, Part 2). Since none of the land released was developed during this period, it is clear that this requirement was also ignored.

335 P.33/Menhut-II/2010 (Minister for Forestry (2010))

In four of the concessions – those belonging to PT MJR, PT KCP, PT GKM and PT Usaha Nabati Terpadu (PT UNT) – estimates of the timber potential of the area (based on trees of >30 cm trunk diameter) were given in the forest release decrees. In each case the timber density was estimated at less than 7 m³ per hectare, a very low figure, and the majority of the concession was classed as *hutan rawang* (degraded, unproductive forest), a classification which indicates that the timber is not economically viable. In fact, Indonesia's own land cover maps show the area as primary forest and visits to the area have shown that it consists of thick forest full of large trees. In November 2011, before two of the other former Menara Group companies – PT Trimegah Karya Utama (PT TKU) and PT Manunggal Sukses Mandiri (PT MSM) – were sold to Tadmax, Tadmax commissioned its own study³³⁶ which calculated that each hectare contained 271 m³ of timber, almost 40 times the figure given in the forest release decrees for the other concessions, and much more in line with the typical timber density of the thick rainforest known to exist in the area. It remains a mystery why the forest release documents contained such obviously underestimated figures, but it seems likely that they were intended to portray the area as less ecologically important or of lower economic value than it actually is. This possibility may warrant a KPK investigation into the forest release decrees and supporting documents, in view of the very large potential monetary loss to the state.



No land cultivation right

None of the former Menara Group concessions is believed ever to have obtained land cultivation right (HGU). Although the Indonesian Government has repeatedly refused to provide comprehensive HGU data, the Papua provincial office of the National Land Agency confirmed to Greenpeace Indonesia in July 2020 that none of the former Menara Group companies is on its list of companies that hold HGU. Company officials from PT MJR also discussed the lack of HGU during the previously mentioned meeting at the Indonesian Investment Coordination Board headquarters in May 2019.

Besides an IUP, companies must have HGU in order to cultivate land.³³⁷ While plantation companies sometimes claim that they are operating legally without possessing HGU, this point was clarified by the Constitutional Court in 2015, which found that a plantation company does need HGU before it can operate legally.³³⁸

³³⁶ Bursa Malaysia (2011)

³³⁷ Minister for Agriculture (2007) Article 34(a), p15. The requirement to secure land title (in practice HGU) is carried on in the later version of this regulation (Minister for Agriculture (2013) Articles 40(2) and 59, pp15,19) and was retained in amendments in 2016 and 2017.

³³⁸ The Constitutional Court ruled (in case no. 138/PUU-XIII/2015) that the correct and valid interpretation of Article 42 of the 2014 Plantation Law is that for a company to legally carry out plantation operations it must have secured both land rights and a plantation business permit. See http://www.mahkamahkonstitusi.go.id/public/content/persidangan/putusan/138_PUU-XIII_2015.pdf, point 1.8, p294.



***Musyawarah* not followed for negotiations with Indigenous peoples?**

According to the 2001 Papuan Special Autonomy Law and the 2004 and 2014 Plantation Laws, Indigenous land can only be surrendered to a plantation company through *musyawarah* (a consensus decision-making process). All indications suggest that this did not take place for any of the former Menara Group concessions. An account from a local priest in 2013 suggested that when the companies first visited communities in the area in April of that year, local people did not understand the intention behind the so-called 'visit money' (*uang permissi*) that the Menara Group reportedly distributed to at least four villages on those visits.³³⁹ In fact such payments are commonly used by companies to support their subsequent claims that Indigenous people have surrendered their land and received compensation.³⁴⁰ Other accounts³⁴¹ are broadly consistent, and there is no evidence that a collective process took place with the free and informed participation of all community members. Some accounts include claims of violence on the part of police and military officers present at events at which the Menara Group sought to obtain development permission from Indigenous communities.³⁴²

The failure to obtain the consensus agreement of all members of affected communities has stirred up inter-clan disagreement. Anthropologists visiting the area for research commissioned by Greenpeace Indonesia in 2019 found that there was still an ongoing conflict between clans that supported the plantation companies and others that opposed all plantations.³⁴³ Organisations established to represent Indigenous interests have taken different positions in this conflict. While the leadership of the Boven Digoel Regency Indigenous People's Association has at times played a major role in convincing local communities to support plantation projects,³⁴⁴ the Auyu (Awuyu) Indigenous People's Association has taken a strong stance against plantations. In a statement released on 27 August 2020 calling for the companies' permits to be revoked, the Auyu Indigenous People's Association explained some of its reasons:

³³⁹ Awas MIFEE (2013b)

³⁴⁰ Forest Peoples Programme, Pusaka & Sawit Watch (2013) pp31-34

³⁴¹ Unpublished monitoring reports by Merauke Archdiocese Justice and Peace Secretariat and interviews conducted by the Gecko Project, both held by Greenpeace.

³⁴² The Gecko Project (2018b)

³⁴³ Greenpeace Indonesia (2020)

³⁴⁴ In particular under the leadership of Fabianus Senfahagi, who reportedly introduced many of the palm oil companies that have obtained permits in Boven Digoel to the Auyu communities in the area; see the Gecko Project (2018b).

*'We feel that individuals in power and company operatives have subjected us to pressure, and forcible and dishonest methods which have violated both our customary law and national law in order to take our customary land and erase our rights, and this has taken place in front of law enforcement officials. This situation has given rise to fear, disharmony and tensions between the community and companies, between the community and community members who benefit from company facilities, between the community and individuals in powerful positions and with the government. We want to press for a change in this situation, which has left us feeling insecure and anxious since the companies moved in.'*³⁴⁵

A group of around 50 Auyu people reportedly demonstrated the following day outside the Boven Digoel People's Representative Council building in Tanah Merah. The Council leader and the bupati's representative both promised to follow up on their demands.³⁴⁶



© Yayasan Pusaka Bentala Rakyat

Indigenous Auyu people use traditional dress to welcome people who will support the participatory mapping of their customary territory in 2019

345 Lembaga Masyarakat Adat Suku Awuyu (2020)

346 Yayasan Pusaka Bentala Rakyat (2020b)

Identity theft, falsification of company records and violation of investment law?

There is evidence of suspected criminal identity theft and falsification of company registry data relating to the Menara Group companies at the time that they were obtaining permits. Each of the seven companies was established with two shareholders, who also served as the director and commissioner, with no individual serving as shareholder of more than one company.³⁴⁷ *Tempo* magazine traced some of these original shareholders, and discovered that they had no knowledge of ever being linked to the companies in question – proving that their identities had been used without their consent. They were in general poor people living in Jakarta and working as cleaners, drivers or housewives.³⁴⁸ Using data from identity documents without consent to create a falsified company record could be prosecuted as a criminal offence under article 263 of Indonesia's penal code.³⁴⁹ However, the identity of the beneficial owner or owners of the companies at this time, who would presumably have been responsible for this fraud, remains a mystery. The Gecko Project has interviewed Yusak Yaluwo, the bupati who issued location permits to the companies, who said that, as far as he could recall, in 2007 the Menara Group was not yet involved and that he had dealt with Genting, a Malaysian company known to be interested in getting permits in the area at the time. But Genting has denied that it was issued location permits for any of the Tanah Merah project concessions.³⁵⁰

The nominal ownership of all the companies changed on the same day in January 2010, to a new set of shareholders (once again two per company) who were to remain listed as the companies' owners as they obtained IUPs and forest release. Some were individuals that *Tempo* and the Gecko Project have reported to be connected to the Menara Group, while others had a more tenuous connection, including someone who reportedly worked as a chauffeur for a Menara Group executive and his wife. According to *Tempo*, a source inside the Menara Group confirmed to its journalists and to the Gecko Project that the shareholders were nominees, individuals whose names were used to obscure the identities of the real (beneficial) owners.³⁵¹ The use of nominees in this way is a common practice in Indonesia, even though it is expressly prohibited by the 2007 Investment Law.³⁵²

Six of the seven companies were eventually sold to new owners during 2012, in each case shortly after receiving forest release. The buyers were Tadmax Resources Bhd and the UAE-registered companies believed to be affiliated with the HSA Group. As a result of buying the companies once most of their concessions' permits had been obtained, the new owners would have been in a position to claim that they had no knowledge of any illegal or unlawful acts that may have taken place in the course of the permit acquisition process.

347 Per the registry profiles for PT Energi Samudera Kencana, PT Graha Kencana Mulia, PT Kartika Cipta Pratama, PT Manunggal Sukses Mandiri, PT Megakarya Jaya Raya, PT Trimegah Karya Utama and PT Usaha Nabati Terpadu.

348 *Tempo.co* (2018)

349 Pramesti TJA (2014)

350 The Gecko Project (2018b)

351 The Gecko Project (2018b)

352 Article 33 of Law 25/2007 on Capital Investment / Undang-Undang no. 25 tahun 2007 tentang Penanaman Modal (full text available at <https://peraturan.bpk.go.id/Home/Details/39903/uu-no-25-tahun-2007>).

Case Study 2: Boven Digoel, Digoel Agri Group

Issues of potential concern:

- *Deforestation*
- *Abandoned concessions*
- *Links to political figures*
- *Overlapping permits*
- *Lack of transparency*
- *No FPIC*
- *Permit speculation*



On 26 November 2015 the Bupati of Boven Digoel, Yesaya Merasi, issued three new companies with location permits over land previously covered by concessions held by three of the original Menara Group companies, two of which (PT MSM and PT TKU) had been sold to Tadmax Resources Bhd while the other (PT UNT) remained in the hands of the Menara Group. Neither Tadmax nor the Menara Group had developed plantations on the land, despite holding IUPs for over four years. For the new companies taking over the same land, the permit process has proved much easier because some of the key bureaucratic obstacles had already been surmounted by their predecessors: the land had already been released from the forest estate, and was included in the provincial spatial plan as land earmarked for plantations.

These new companies are part of a group which refers to itself as the Digoel Agri Group. At the time their location permits were issued, the three companies – PT PBDS,³⁵³ PT Perkebunan Bovendigoel Abadi (PT PBDA)³⁵⁴ and PT Bovendigoel Budidaya Sentosa (PT BDBS)³⁵⁵ – were owned by a politically connected individual and his family: Vence Rumangkang (who died in 2020), one of the founders of the Democratic Party.³⁵⁶ Merasi issued the location permits less than three weeks before the 2015 election in which he was seeking a second term as bupati.³⁵⁷ Under the 2015 law on elections for heads of regional and local government, Merasi was required to have been on ‘campaign leave’ and therefore should not have issued permits during this campaign period.³⁵⁸ The timing suggests the possibility that corruption may have been involved, since local politicians are reported to regularly finance their election campaigns by selling permits to resource industry companies.³⁵⁹

The new location permits covered the same land³⁶⁰ as the still-valid IUPs for PT MSM, PT TKU and PT UNT. Less than two months previously, on 1 October 2015, Merasi had issued a decree revoking these IUPs,³⁶¹ but this decree would have been considered invalid because the 2011 permits had been issued by the provincial administration and a bupati, as the head of a different authority (the local administration), had no authority to revoke them.³⁶² Since the question of whether there were any existing rights over the land that might preclude the issuing of the location permits should have been addressed in the technical considerations presented prior to the issuing of the permits, the existence of still-valid IUPs should have been flagged as a problem and the location permits should not have been issued.³⁶³ Moreover, a new regulation signed in April 2015 governing the process of issuing location permits prevented new location permits being issued unless the permission of any holders of existing business permits has been obtained.³⁶⁴

353 Location permit for PT PBDS

354 Location permit for PT PBDA

355 Location permit for PT BDBS

356 Partai Demokrat website ‘Sejarah Partai Demokrat’

357 Digoel Agri Group denies any connection between these permits and the election campaign.

358 Article 70 of Law 1/2015 on the Election of Governors, Regents [Bupatis] and Mayors / Undang-Undang no.1 tahun 2015 tentang Penetapan Peraturan Pemerintah pengganti Undang-Undang no. 1 tahun 2014 tentang Pemilihan Gubernur, Bupati, dan Walikota Menjadi Undang-Undang (full text available at <https://peraturan.bpk.go.id/Home/Details/37341/uu-no-1-tahun-2015>).

359 Wijaya T (2018)

360 Concession maps for the three companies were included in their EIA studies, showing that they did indeed cover the same area as the earlier permits.

361 Decree by the Bupati of Boven Digoel no. 522/539.a/BUP/2015 purporting to revoke IUPs for PT MSM, PT TKU and PT UNT.

362 This is based on the principle of *contrarius actus*, described in Hasanah S (2017).

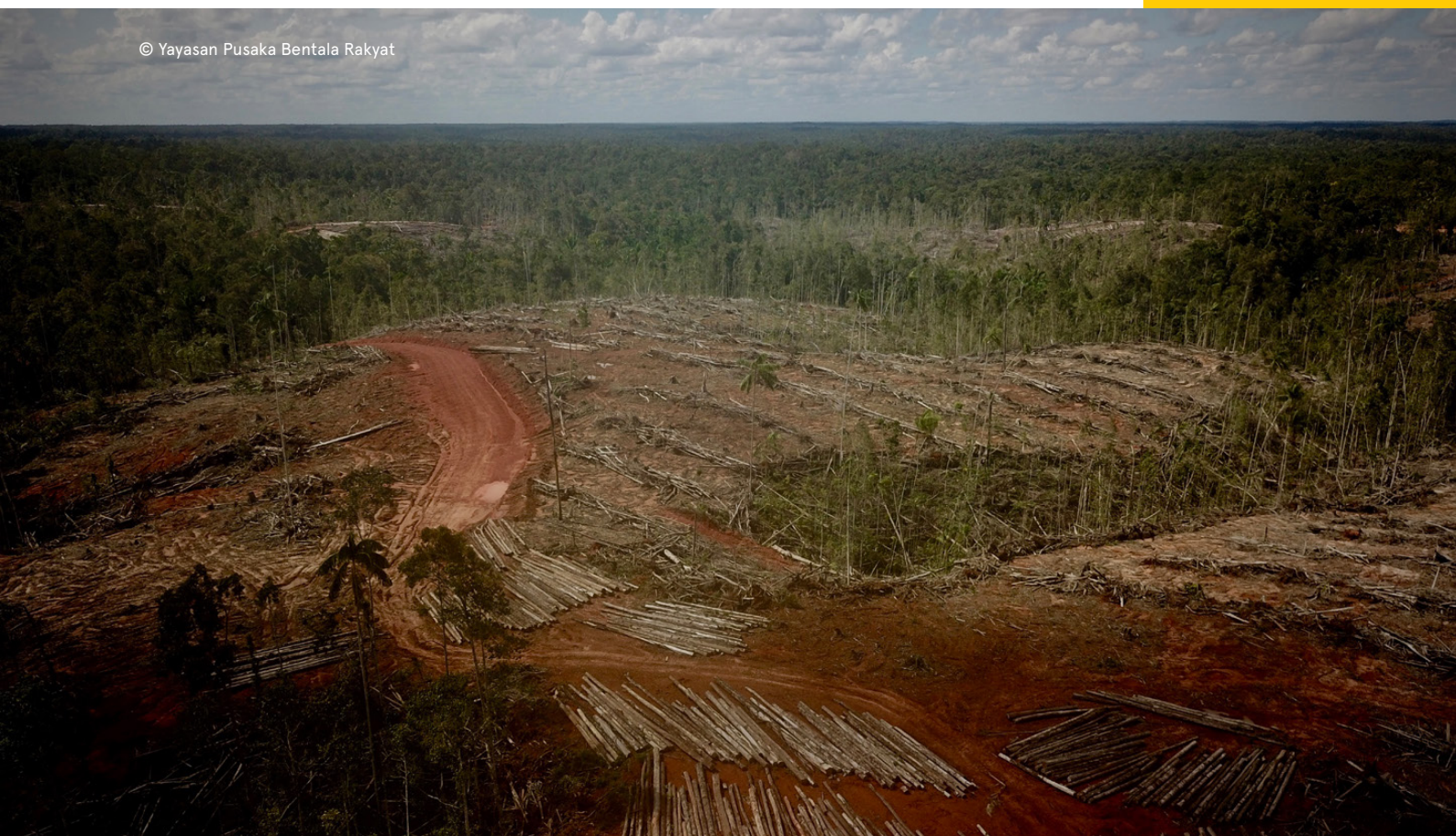
363 The three location permits state that this technical evaluation was carried out by the Regency Forestry Agency and sent on 3 November 2015. At the time, the relevant regulation (Head of the National Land Agency (2011)) stated in Article 7 that among the factors to be considered is that of ‘land availability’.

364 See Article 11 of Minister for Agrarian Affairs and Spatial Planning (2015).

However, by falsely asserting that the IUPs had been revoked through his decree, Yesaya Merasi could claim that he had the authority to issue new location permits without the consent of holders of existing IUPs. While this was bad governance, issuing the new permits may not have been strictly illegal because the regulations concerning location permits (issued by the Ministry of Agrarian Affairs and Spatial Planning) and those concerning IUPs (issued by the Ministry of Agriculture) are not synchronised, and therefore do not stipulate what is to be done in such cases. This makes it possible for pseudo-legal situations to arise in which two unrelated companies have overlapping permits on the same land.

Eventually, on 2 November 2017, the Papua Province Investment Agency revoked the three old IUPs and on the same day issued in-principle approval for the new companies to apply for IUPs. This action can be seen as an implicit acknowledgement that Yesaya Merasi's earlier decree revoking the IUPs had been invalid, while retrospectively validating that revocation and setting the new companies on a path to obtain legitimate IUPs after going through the EIA process.

© Yayasan Pusaka Bentala Rakyat



■ Deforestation in the Digoel Agri Group concessions in January 2020. No oil palm was planted at that time. Satellite images show that clearance work recommenced in late 2020.

One implication of these overlapping permits, however, is that the new companies have successfully avoided the moratorium on new permits covering primary forest and peatland. The concessions were not included in the Forest Moratorium because the Menara Group held current IUPs at the time the moratorium came into force in 2011. Since the concessions were largely composed of primary forest, with areas of peatland along the main river valleys,³⁶⁵ the land they covered should have gone back into the moratorium if they were ever revoked. However, because new concessions over the same land were issued before the old ones were revoked this did not occur.

Greenpeace Indonesia has written to several agencies in Boven Digoel Regency and Papua Province requesting information about the current permit status of the new companies. The Provincial Forestry and Environment Agency replied to say that the EIAs for all three companies had been evaluated, and that it had communicated the results to the bupati, who is responsible for issuing environmental permits.

The Papua Province Investment Agency, which issues IUPs, refused to supply data. However, its counterpart in Boven Digoel did provide a copy of some licensing documents, issued at the provincial level. An IUP for PT PBDS was signed on 13 September 2018, one week before the Oil Palm Moratorium came into force. PT BDBS is believed to also possess an IUP.³⁶⁶ Conversely, a letter dated 19 December 2018 revoked the in-principle permission for PT PBDA, citing the new moratorium, apparently signalling that the permitting process was to go no further. These developments appear not to have been effectively communicated to Indigenous communities in the area, who are reportedly unsure of what permits the Digoel Agri Group's three companies currently hold.³⁶⁷

At some point between February 2017 and August 2018, a majority share in all three companies was transferred to a New Zealand citizen, Neville Christopher Mahon. Neville Mahon has a history of property development projects in New Zealand³⁶⁸ and Fiji,³⁶⁹ but Greenpeace has been unable to find any evidence of his prior involvement in the plantation sector. Members of Vence Rumangkang's family hold most of the remaining shares in the three companies.

Between July and September 2019 a new road into PT PBDS's and PT BDBS's concessions was built and an area of around 100 ha of forest was cleared, divided between the two concessions. According to a 2020 report citing local community members, there is confusion and little understanding of the company's activities; the area cleared in 2019 had not subsequently been planted with oil palm and the Digoel Agri Group appeared to have abandoned it from November 2019.³⁷⁰ However, satellite images show that deforestation recommenced towards the end of 2020 and accelerated in early 2021. Digoel Agri Group wrote to Greenpeace prior to publication of this report 'we are now preparing to launch the Sustainability Policy shortly based on the NDPE vision' and '[t]he Companies sustainability policy provides for free, prior and informed consent of the indigenous communities affected'.³⁷¹

In a reply to Greenpeace Indonesia in July 2020, the provincial office of the National Land Agency confirmed that the Digoel Agri Group companies had not obtained HGU.

365 Digoel Agri Group states that they are launching a policy not to develop on peatland. However Greenpeace believes that peat protection should not rest on company policy alone.

366 Greenpeace has not obtained a copy of this document, but it is referred to in a timber legality audit carried out in February 2020 (Mutu Certification International (2020)).

367 Yayasan Pusaka Bentala Rakyat (2020c)

368 Mountain Scene (2017)

369 Slade M (2010)

370 Yayasan Pusaka Bentala Rakyat (2020c)

371 Letters to Greenpeace International from PT. Digoel Agri Group dated 23 March 2021 and 27 March 2021; The letters can be viewed in full [at this location](#).

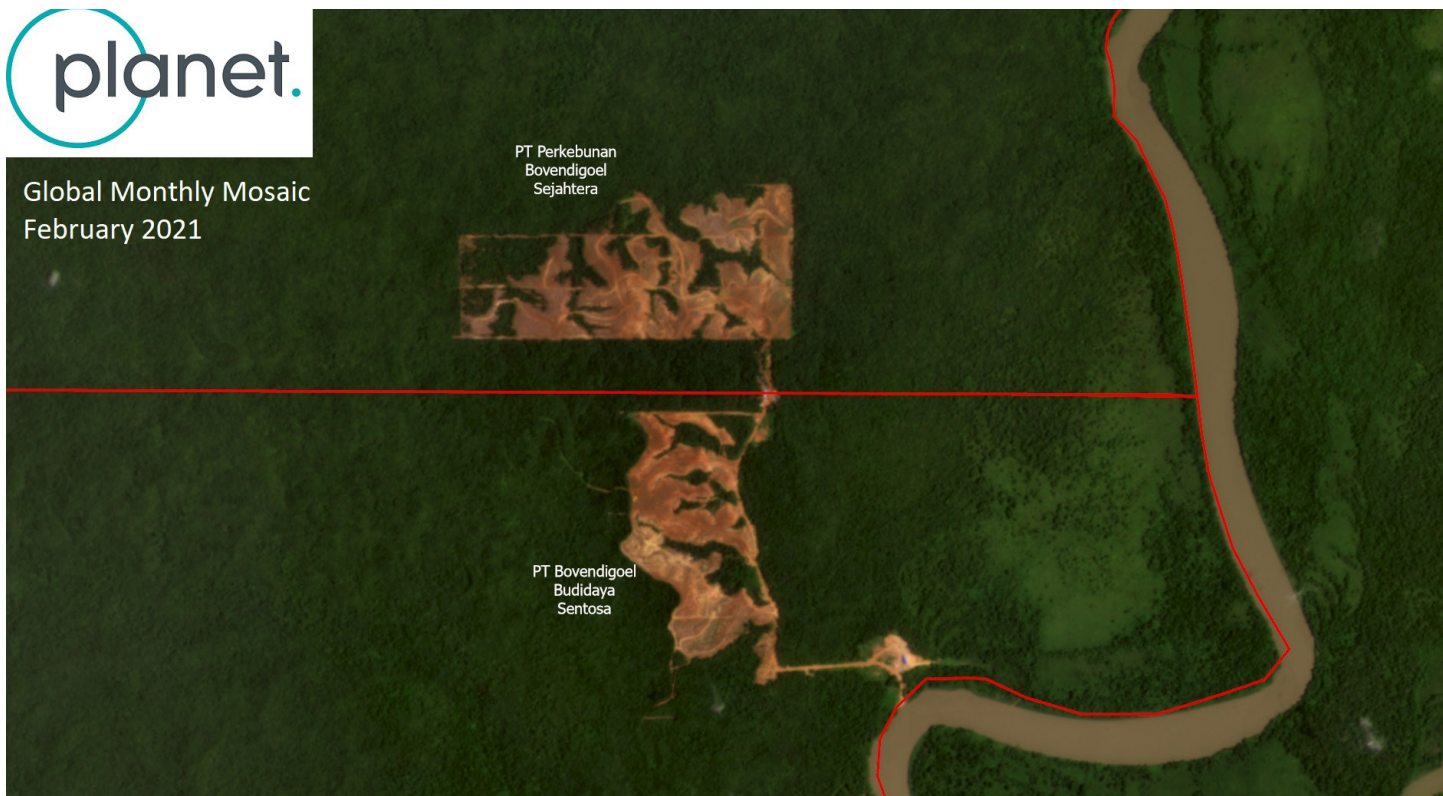




Global Monthly Mosaic
November 2019



Global Monthly Mosaic
February 2021



Case Study 3: Boven Digoel, PT Indo Asiana Lestari

Issues of potential concern:

- *Overlapping permits*
- *Abandoned concessions*
- *No FPIC*
- *Horizontal conflict within Indigenous community*
- *Concealed beneficial ownership*



© Yayasan Pusaka Bentala Rakyat

Indigenous Auyu people protest at local government offices about PT Indo Asiana Lestari. Signs include a call for licence cancellation. Aug 2020.

In 2017 the same situation of overlapping permits as had occurred two years previously with the three Digoel Agri Group concessions arose over another concession that had formed part of the Tanah Merah project. On 7 July of that year Yesaya Merasi's successor as Bupati of Boven Digoel, Benediktus Tambanop, issued a decree purporting to revoke the IUP of the northernmost (and by then abandoned) Menara Group concession, PT ESK, and on the same day issued a location permit for the same land to a new company, PT Indo Asiana Lestari (PT IAL).³⁷² Like his predecessor two years before (see Case Study 2), he had no power to revoke the IUP, because it had been issued by another authority – Papua Province. Nevertheless, the provincial government legitimised the new location permit just over a year later, on 27 August 2018, by itself revoking PT ESK's IUP,³⁷³ and two days later it issued in-principle approval for PT IAL to continue to apply for an IUP.³⁷⁴ On 18 September 2018, the provincial EIA evaluation commission approved the frame of reference for PT IAL's EIA,³⁷⁵ allowing a full EIA study to be prepared.

These new approvals were issued shortly before the Oil Palm Moratorium was introduced on 19 September 2018. While the progress of PT IAL's permitting has been delayed, evidence has emerged that the company has been aggressively pushing for local acceptance of its plantation project among the Auyu Indigenous people, violating the principle of free, prior and informed consent (FPIC) and catalysing conflict within the Indigenous community, some of whose leaders support the project.³⁷⁶

In 2017, after obtaining its location permit, PT IAL reportedly began approaching the community about its plans. According to reports by the Catholic Justice and Peace Secretariat of Merauke Archdiocese, a mid-October 2017 meeting of clans that hold customary rights within the concession was broken up by a group of company supporters who threatened to kill anyone who opposed the company's plans.³⁷⁷

From that point on there have reportedly been sharp divisions within the Auyu community living in and around the concession. A number of clan leaders do support the company's plans,³⁷⁸ but other community members strongly oppose them, and conflict reportedly extends to members of the same clan in some cases.³⁷⁹ While there are valid reasons to support or oppose plantations, there are indications that actions by the company are likely to have complicated or exacerbated these conflicts. Since 2018, the company has reportedly been making monthly payments of between IDR800,000 and 1,200,000 (US\$55–85) to some heads of clans.³⁸⁰ On the other hand, opponents of the scheme appear to have been subjected to further intimidation. Greenpeace has seen a copy of a letter summoning one Indigenous man to a police station in November 2019, in connection with a complaint made by PT IAL's director Muhammad Abbas related to land rights.

372 SK Bupati Boven Digoel 522.2/731/BUP 2017

373 SK Kepala BPMPSTSP Papua 10/2018

374 SK Kepala BPMPSTSP Papua 11/2018

375 SK Ketua Komisi AMDAL Papua 10/2018

376 InfoPublik (2020)

377 Yayasan Pusaka Bentala Rakyat (2017)

378 InfoPublik (2020)

379 Yayasan Pusaka Bentala Rakyat, notes of discussion held in Boven Digoel, November 2020, unpublished

380 Yayasan Pusaka Bentala Rakyat, report in preparation. See also Lubis Y (2020).



© Yayasan Pusaka Bentala Rakyat

PT Indo Asiana Lestari's field office in Boven Digoel, Papua Province.

As PT IAL's location permit expired in 2020, it was obliged to apply for an extension to that permit. According to villager accounts compiled by Yayasan Pusaka Bentala Rakyat, on 13 November 2020 about 12 Indigenous opponents of the plantation visited the office of the Boven Digoel Investment Agency to convey the reasons for their opposition. The agency head responded that he would wait for supporters and opponents of the company to reach an agreement before he issued the permit extension. The same day, Indigenous people who supported the company held a demonstration at the office, threatening to burn it down if the permit extension was not issued. Three days later, three opponents of the plantation were summoned to the local police station, purportedly for the purposes of mediation. However, due to the presence once again of a crowd of angry company supporters (some armed and/or drunk) and police officers pushing for a rapid resolution, the men felt that they had no option but to sign the letter presented to them, withdrawing their opposition.³⁸¹

The Boven Digoel Investment Agency was correct to inform local Indigenous communities and seek their views before renewing the permit – this is required according to the 2015 regulation on location permits,³⁸² although it is rare to hear of it being applied in practice. Nevertheless, this story shows the importance of paying attention to how this requirement is implemented – for the consent to be meaningful, the government must be sure that a consensus agreement was obtained without coercion or manipulation and that conflicts were resolved when necessary.

Greenpeace Indonesia has not been able to confirm whether or not the location permit was renewed. However, opponents of the plantation reportedly continued their protests in January 2021.³⁸³

³⁸¹ Monitoring report by Yayasan Pusaka Bentala Rakyat (unpublished), based on interviews with Indigenous opponents of PT IAL.

³⁸² See Minister for Agrarian Affairs and Spatial Planning (2015), Article 10.

³⁸³ Kompas.tv (2021)



■ Docking facilities at the site of recent land clearance in PT Indo Asiana Lestari's concession. 2021

Worryingly, satellite images show that starting in November or December 2020 four hectares of forest was cleared within PT IAL's concession on the banks of the Digoel River. Local people believe that it was for a new logging compound. If this new clearance is indeed by the company as a first step towards plantation development, and it still does not possess an environmental permit, IUP and timber utilisation permit, it could be breaching several laws including the Environment Law and Plantation Law.

PT IAL is owned by a Malaysian company registered in Sabah, Mandala Resources Sdn Bhd. An analysis of shared directors and office addresses used by PT IAL indicates a probable connection with the All Asia Agro group, which operates oil palm plantations in Sabah and marble quarries in Sulawesi. The sole shareholder of Mandala Resources Sdn Bhd is not on the board of All Asia Agro according to the latter's website,³⁸⁴ but could theoretically be a nominee appointed by a beneficial owner to hold shares in their name, a practice which is legal in Malaysia.³⁸⁵

384 All Asia Agro website 'Board of Directors' accessed 29 January 2021

385 Azmi & Associates (nd)

Case Study 4: Boven Digoel, Edi Yosfi/Star Vyobros Group/Korindo

Issues of potential concern:

- *Changes to Forest Moratorium*
- *Abandoned concessions*
- *Links to political figures*
- *Permit speculation*
- *Forest release violated regulations*
- *Concealed beneficial ownership*

Korindo plywood mill and palm oil bulking facilities at Asiki on the river Digoel. Korindo has operated timber and palm oil concessions in Southern Papua since the 1990s and still holds undeveloped concessions. 1 Apr, 2018.

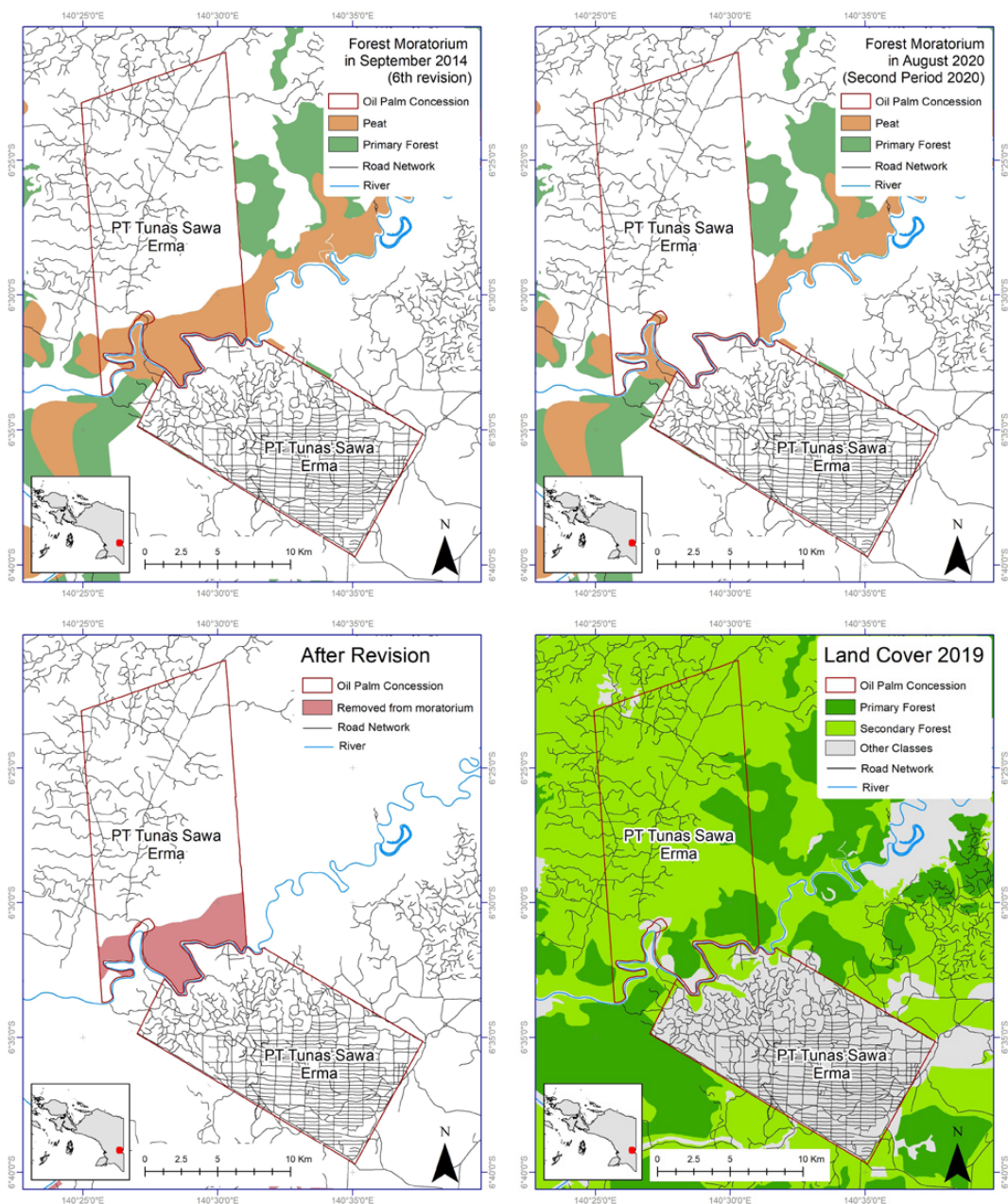


© Ulet Ifansasti / Greenpeace

On 31 August 2012 the Bupati of Boven Digoel issued new location permits to four companies. One, PT Tunas Sawa Erma (PT TSE), is part of the Korindo Group, and already operated two plantations in Boven Digoel. The other three companies, PT Visi Hijau Nusantara (PT VHN), PT Duta Visi Global (PT DVG) and PT Wahana Agri Karya (PT WAK), were at that time subsidiaries of PT Star Vyobros, owned by businessman Edi Yosfi, a prominent figure in the National Mandate Party (PAN).³⁸⁶

PAN is also the party of Zulkifli Hasan, the Minister for Forestry between 2009 and 2014. As minister, Zulkifli Hasan released land from the forest estate to all four of these companies during his last few days in office. In doing so, he broke his own ministry's regulations on the procedure for releasing forest estate land, which at the time stipulated that one of the conditions for forest release was a valid IUP. This also implies that a company's EIA process should have been completed and an environmental permit issued. None of the four companies at that time had an IUP or an environmental permit.³⁸⁷

Moreover, the land released to the companies from the forest estate included areas marked as peat under the Forest Moratorium. The largest area was in PT TSE's concession (2,650 ha), but smaller areas in PT DVG's and PT WAK's concessions (313 ha and 76 ha respectively) were also released. These areas were eventually removed from the moratorium map.³⁸⁸ Greenpeace Indonesia wrote to the MoEF on 1 December 2020 asking the reason for this, but had not received a reply by the time this report was published.



Map of PT Tunas Sawa Erma Pop E showing the Forest Moratorium map revision at the time of forest release (29 September 2014) - Revision 6 and the second period of Forest Moratorium Map 2020 (26 August 2020)

³⁸⁷ Based on replies to Freedom of Information requests sent by Greenpeace Indonesia to the Papua Province Forestry and Environmental Agency (reply received 02/07/20) and to Papua Province Plantation Agency (reply received 22/07/2020). Note that PT TSE did eventually obtain an environmental permit and IUP, but this was after the forest release decree.

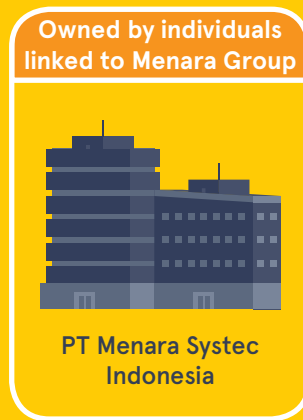
³⁸⁸ Changes to the moratorium map were made in PT Duta Visi Global and PT Wahana Agri Karya's concessions in 2016, and in PT Tunas Sawa Erma in 2020.

Other instances of Zulkifli Hasan's administration breaking its own regulations, eg by releasing forest land to companies which do not possess IUPs, have been presented in this report, but this case is of particular interest because Edi Yosfi and Zulkifli Hasan were both prominent in PAN. Notably, on the same day that then Minister Zulkifli Hasan issued forest release decrees to PT VHN and PT WAK, he released another 11,404 ha of forest in Maluku Utara Province to PT Manggala Rimba Sejahtera, a company that Edi Yosfi had bought in December 2013.³⁸⁹

At the time of the forest release, Edi Yosfi was no longer the legal owner of the companies – in 2013 80% of the shares of each of PT VHN, PT WAK and PT DVG had passed to other individuals, who are believed to be associates of his on the grounds that they are involved in other companies linked to him. One of the individuals who received shares was his younger sister, Desi Noferita. It seems plausible that she may hold these shares as a nominee on behalf of her brother – a role that it appears she may also fulfil with respect to some of the former Menara Group concessions on the other side of the Digoel River. When former Menara Group companies PT MJR, PT KCP, PT GKM and PT ESK were sold to new owners believed to be linked to the HSA Group in July 2012, a 20% stake in each was issued to holding companies registered to an address linked to many of Edi Yosfi's companies. Records for these holding companies reveal that Desi Noferita had taken ownership of a 70% stake in each of these companies in December 2011, and that the remaining 30% of each company was owned by the Menara Group's leader Chairul Anhar and his associate Mohamad Hekal via another holding company called PT Menara Systec Indonesia. This took place before Zulkifli Hasan's administration granted forest release to any of the plantation companies. Seven months later, when the holding companies took minority stakes in the four ex-Menara Group plantation companies at the time they were sold to their new owners, all four of the plantation companies had been released from the forest estate. The date of Desi Noferita's acquisition of stakes in the future minority holding companies suggests that the sales may have been planned for some time.

³⁸⁹ Source: company registry profile for PT Manggala Rimba Sejahtera.

Edi Yosfi link to Tanah Merah Project plantations



70% shares
(since December 2011)

30% shares



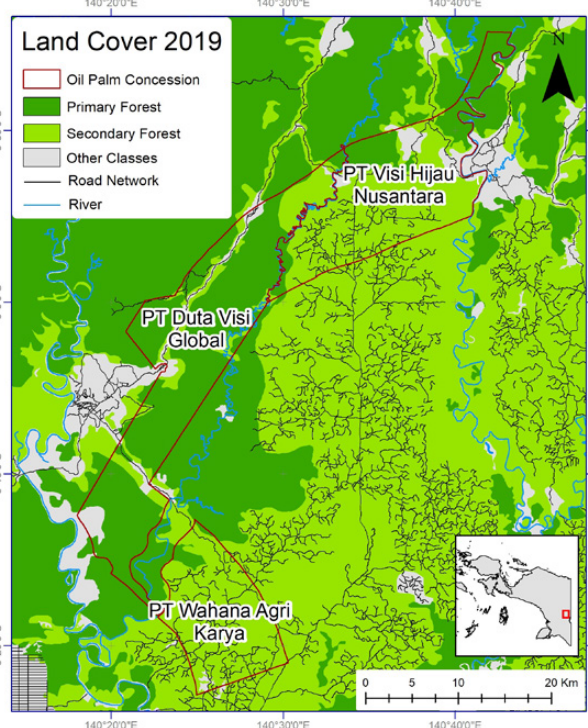
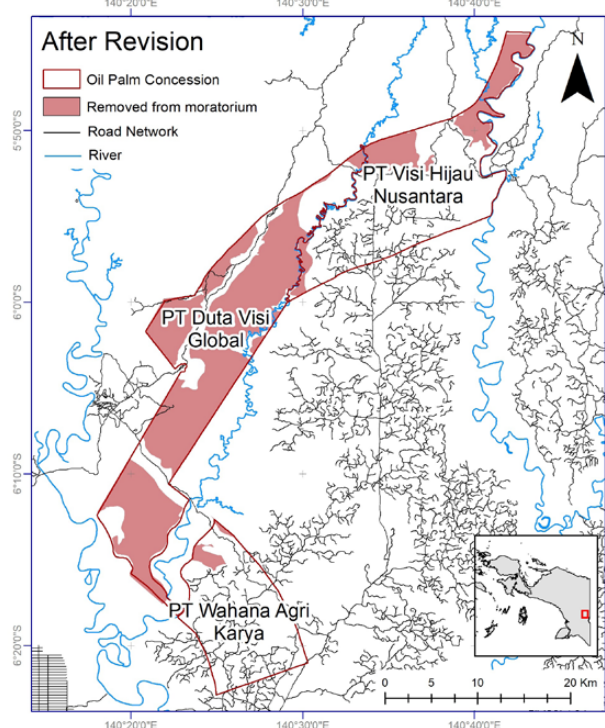
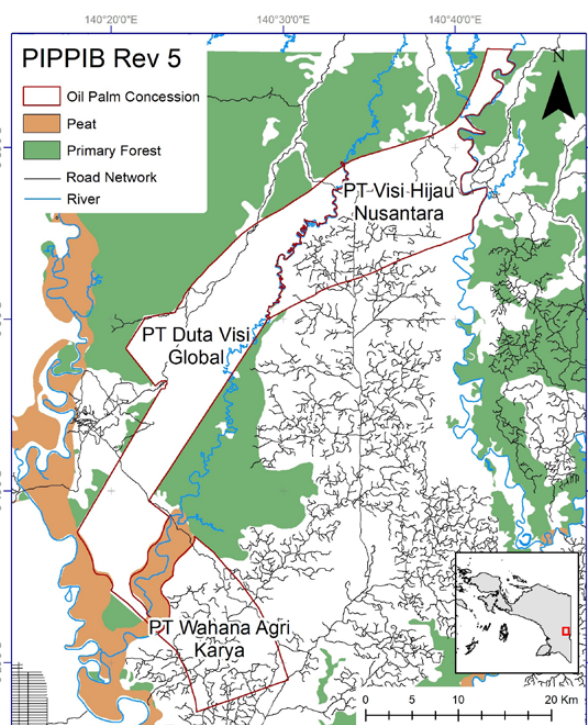
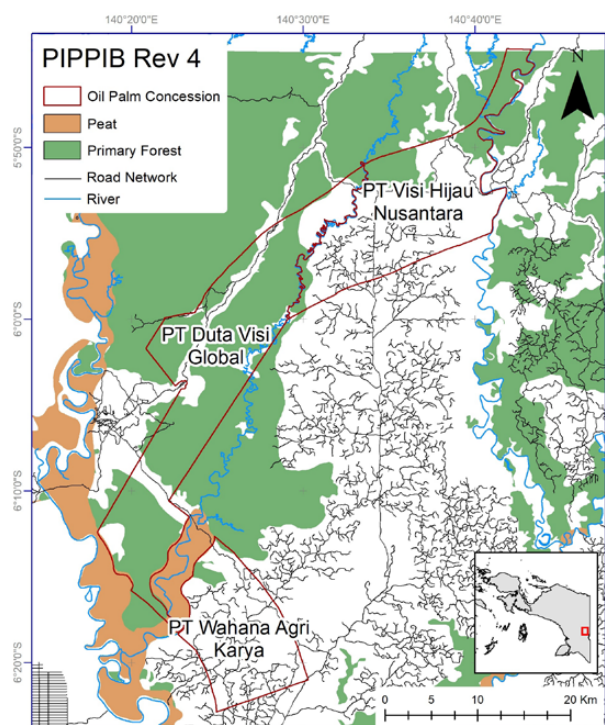
20% shares
(since July 2012)

80% shares
(since July 2012)



The issuing of forest release decrees to PT DVG, PT VHN and PT WAK was not the first time that these three companies linked to Edi Yosfi had received what appears to have been a special favour from the Ministry of Forestry. Ministry correspondence tables show that in November 2013, representatives of the same three companies plus PT TSE wrote a batch of letters to the ministry, asking that land in their concessions be removed from the Forest Moratorium,

on the basis that a survey had supposedly shown that the land was secondary forest. All land marked as primary forest in the four concessions was subsequently removed from the Forest Moratorium map on its fifth revision that same month. A small area of peat was removed from the moratorium map in PT DVG's concession on the sixth revision in May 2014.



Map of PT Visi Hijau Nusantara, PT Duta Visi Global, PT Wahana Agri Karya showing moratorium changes revision 4 and revision 5.

However, the MoEF's 2019 annual update of its land cover dataset, based on analysis of changes to Landsat images, continues to show the presence of primary forest in all the concessions, including 25,184 ha in PT DVG's concession, 5,226 ha in PT VHN's, 617 ha in PT WAK's and 1,150 ha in PT TSE's. Data from one of the companies also indicates that primary forest is present: in a draft EIA prepared for PT WAK in 2017, a land cover analysis based on a single satellite image shows a small area of primary forest in the extreme north of the concession.³⁹⁰ PT DVG and PT VHN did not submit EIA studies at this time. Based on information received from provincial and regency-level government agencies, Greenpeace has not found any evidence that PT WAK's EIA was ever approved, and believes that none of the three ex-PT Star Vyobros companies linked to Edi Yosfi has ever managed to obtain an environmental permit or IUP, with their concessions simply being abandoned. PT TSE did obtain an environmental permit and IUP in 2015, followed by HGU in 2018, but satellite images show it has not cleared land.

On 25 July 2018 the Bupati of Boven Digoel issued Decree SK 525/215/2018 revoking the location permits of PT WAK, PT DVG and PT VHN. However, although the concessions are still forested and Edi Yosfi's companies no longer hold any permits, the land remains outside the forest estate – thanks to then Minister Zulkifli Hasan granting the companies forest release before they had proved they were capable of acquiring the permits they needed to operate a plantation. Moreover, the land remains excluded from the Forest Moratorium. Unless the land is returned to the forest estate (a process for which no routine legal mechanism currently exists, but which could be implemented through the Oil Palm Moratorium), local leaders may choose to award the concessions to other companies. In fact, companies belonging to the Indonusa Group (PT Indoagro Surya Alam, PT Indoagro Persada Lestari, PT Indoagro Daya Adimulia and PT Indoagro Alam Sejahtera) are believed already to have approached Indigenous communities in the area. In October 2019 the Indonusa Group reportedly distributed rice, instant noodles and money to villagers in Miri village.³⁹¹ The Indonusa Group company PT Internusa Jaya Sejahtera already operates a plantation in nearby Merauke Regency.

Greenpeace Indonesia wrote to the Boven Digoel Investment Agency asking for the latest permit information. The agency responded, but did not provide any data on whether any permits had been issued to the Indonusa Group.

³⁹⁰ Other areas which are classed as primary forest on the national land cover maps within PT Wahana Agri Karya's concession were not analysed in the EIA, as they were covered with cloud in the satellite image chosen for the analysis.

³⁹¹ Yayasan Pusaka Bentala Rakyat, personal communication.

Case Study 5: Mappi, Himalaya Group

Issues of potential concern:

- *Changes to Forest Moratorium*
- *Forest release violates regulations*

Land cover in PT Bangun Mappi Mandiri, part of the Himalaya group. The concession permit is for agricultural food crops. 28 Mar, 2018.

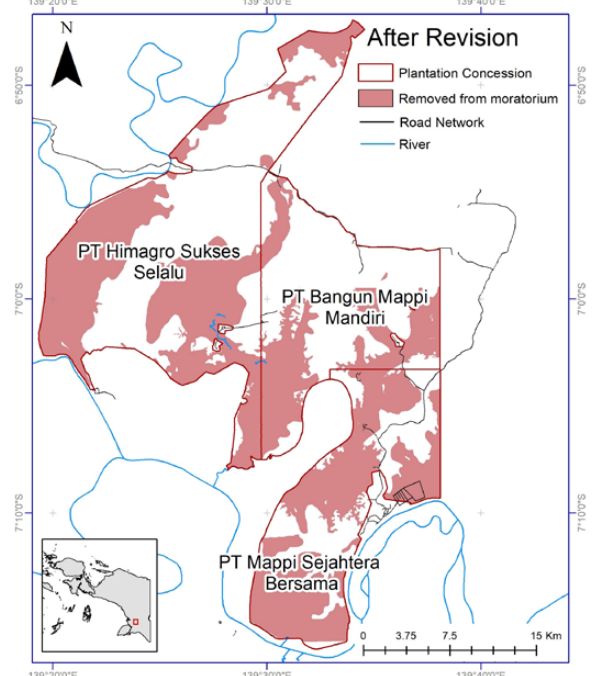
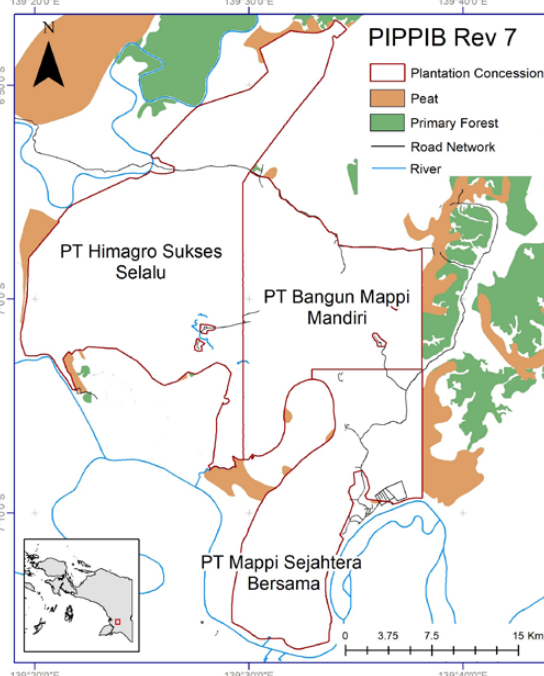
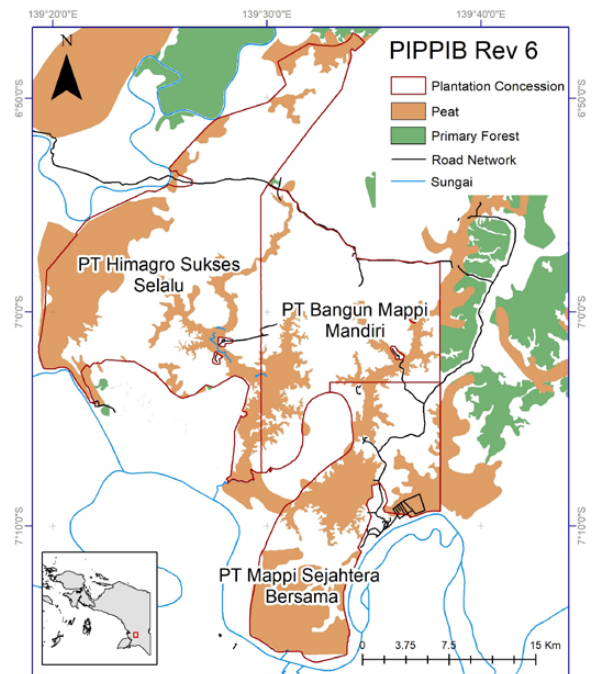
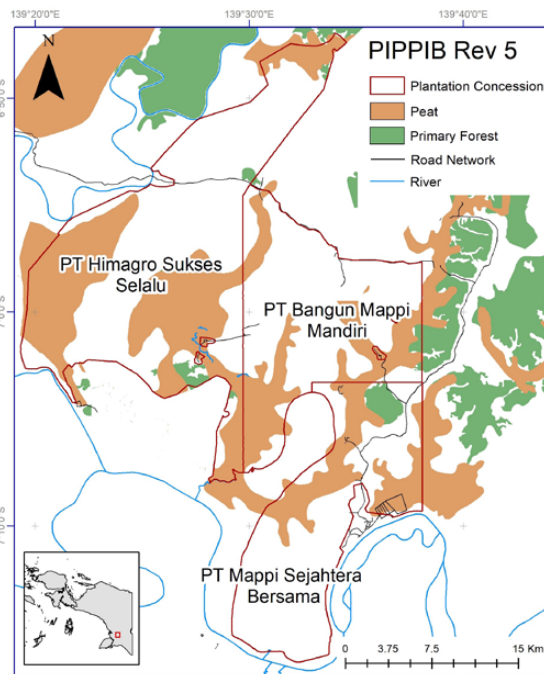
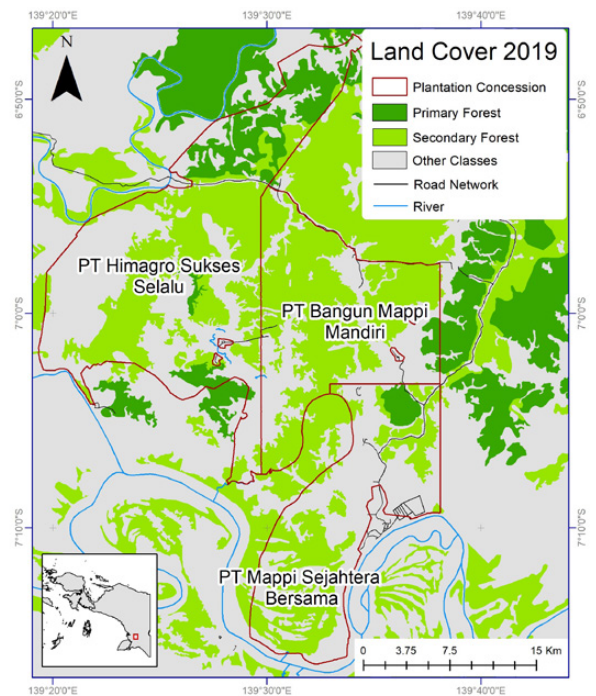


This case involves three concessions in Mappi Regency which were given location permits in July 2013. PT Bangun Mappi Mandiri (PT BMM) received a location permit to plant food crops, while PT Mappi Sejahtera Bersama (PT MSB) and PT Himagro Sukses Selalu (PT HSS) got location permits for rubber plantations. PT BMM and PT MSB are owned by members of the Asmadi family, which owns the Himalaya Group of companies. PT HSS is assumed to be part of the same group, as it is registered to the same address and its majority shareholder Liong Lily Endah Sintawati's personal address listed in the company records matches that of Asmadi family members. There are no other known plantation concessions belonging to this group, which has previously specialised in the production of industrial machinery.³⁹²

³⁹² Himalaya Group website 'Home'

Controversy surrounds the Forest Moratorium status of these three concessions. In the fifth revision of the moratorium map in November 2013, all areas within the concessions previously marked as primary forest were removed from the map, and changes were made to the boundaries of the peat area. During the sixth moratorium revision in May 2014 all areas previously indicated as peat within the boundaries of the three concessions were removed from the map.

Map of PT Himagro Sukses Selalu, PT Bangun Mappi Mandiri and PT Mappi Sejahtera Bersama showing moratorium changes revision 5, revision 6 and revision 7.



The 2016 frame of reference for an EIA for one of the companies, PT BMM, explains that the basis for the companies' claim that no primary forest was present was a survey purportedly carried out by the Papua Province Forestry and Conservation Agency on 14 December 2013. Similarly, Peat Identification Survey no. 87 conducted by the Indonesian Centre for Agricultural Land Resources Research and Development (BBSDLP) in April 2014 is said in the same document to have been the basis for the claim that no peat was present. The cover page for BBSDLP's survey is included and shows that the survey was for PT BMM's concession only, so that it is reasonable to conclude that it was carried out at PT BMM's request. Ministry correspondence tables record letters sent from the directors of the three companies in August 2014, stating, presumably on the basis of this and similar surveys for PT HSS and PT MSB, that the entirety of the three concessions was mineral soil, not peat.

The chronology of events implied by the above-mentioned documents appears to be inconsistent with the dates when the map was changed: the date given by the EIA frame of reference document for the Papua Province Forestry and Conservation Agency survey was one month after all primary forest had

already been removed from the moratorium map. Similarly, the letters from the company concerning the supposed absence of peat were apparently received by the ministry three months after a new revision had already removed the peatland from the map. These inconsistencies may point to informal deals outside the documented process.

Even more seriously, there is a weight of evidence that extensive peat and primary forest are indeed present in the concessions and that the areas removed from the moratorium map should not have been removed at all. The MoEF and other government bodies have continued to develop management strategies for the area on the basis of evidence that peat is present within the three concessions. Mapping of Peatland Hydrological Units³⁹³ as mandated by the MoEF 2016 regulation on peat management³⁹⁴ has identified a network of peat areas in the unit Sungai Jaman Kawarga – Sungai Samaleki Digul, including parts of all three concessions.³⁹⁵ The Peat Restoration Agency even identified the unit as one of its three priorities in Papua for 2020.³⁹⁶ After extensive surveys, the agency recommended parts of PT MSB's and PT HSS's concessions for inclusion in a restoration program for peatland that burned in the fires of 2015.



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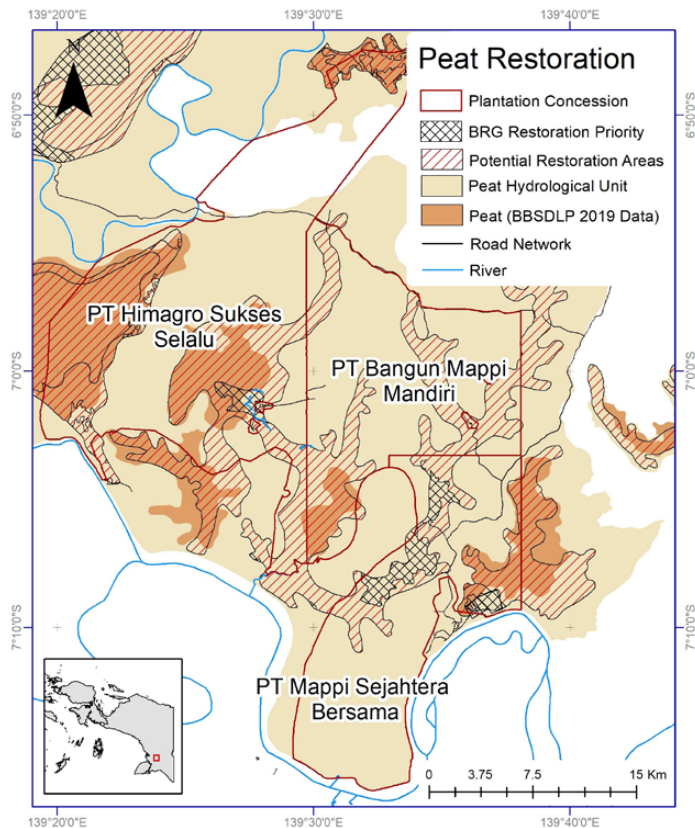
■
Burnt area in PT Himagro Sukses Selalu's rubber plantation concession. Significant areas of peat in the three Himalaya Group concessions burnt in the 2015 dry season, according to government burnscar data. Some have been identified as priorities for peat restoration. 28 Mar, 2018.

³⁹³ The relevant peat regulation refers to Peatland Hydrological Units (*Kesatuan Hidrologi Gambut*) as self-contained peat areas bordered by rivers and/or the sea, or comprising individual swamp areas.

³⁹⁴ Government Regulation 57/2016 (President of the Republic of Indonesia (2016b))

³⁹⁵ Maps can be seen at http://appgis.dephut.go.id/appgis/KHG/PAPUA_KHGAMBUT.jpg or in greater detail via the MoEF WebGIS service: <http://geoportal.menlhk.go.id/arcgis/home/webmap/viewer.html?webmap=0387032be5f648f99f8be9ba30f4d2ca>.

³⁹⁶ Badan Restorasi Gambut (2020)



Map of PT HSS, PT BMM and PT MSB showing extent of peatland hydrological units, BRG priority areas for peat revitalisation, and 2019 BBSDLP peat survey data.

Additionally, the latest (2019) survey by the BBSDLP – the agency responsible for the 2014 survey that led to some of the changes in the moratorium map – shows extensive areas of peat between 50 cm and 100 cm deep present in all three concessions. The companies' claim that there is no peat present in these concessions cannot therefore be regarded as credible.

The supposed absence of primary forest is in turn called into question by 2019 land cover maps issued by the MoEF, which show areas of primary forest in all three concessions, just as all previous issues of the maps have done, despite these areas' removal from the Forest Moratorium map. Furthermore, the three

companies' own EIAs admit the presence of both peat and primary forest. PT MSB's EIA study indicates that 14% of the concession consists of histosols (the scientific term for soils – principally peat – that consist largely of organic material) and that 19.4% of it is primary forest. PT HSS's EIA study shows 13% of the concession as peat (labelled organosol – a synonym for histosol), and 21% as primary forest. The figures given in PT BMM's EIA study are 2% organosol and 49% primary forest.

Greenpeace Indonesia's requests for information about the surveys and the methodology behind changes to peat and primary forest mapping in this and other cases from the BBSDLP, the MoEF and the Papua Province Forestry and Environmental Agency³⁹⁷ have been rebuffed or ignored.

Despite available evidence that the land cover and peat surveys by the Papua Province Forestry and Conservation Agency and the BBSDLP apparently contained false information, Siti Nurbaya's ministry issued forest release decrees to all three concessions between July and October 2017. For the two rubber concessions, a total of 57,987 ha was released in this period, thus also violating her ministry's regulation imposing a limit of 20,000 ha to be released to a group in one province until evaluation of the previous release determines whether the concession has been developed.³⁹⁸ PT BMM's concession is exempt from this requirement as the planned commodities are classed as food crops rather than plantation crops.

None of the companies has cleared land in the three years since the ministry released the concessions from the forest estate, but the land remains outside the forest estate and excluded from the Forest Moratorium map. In a recent consultation organised by the MoEF, an official from Mappi Regional Development Planning Board (*Bappeda*) observed that the board was uncertain of the status or plans of the three companies.³⁹⁹

³⁹⁷ Previously named the Papua Province Forestry and Conservation Agency.

³⁹⁸ See Regulation 51/2016 (Minister for Environment and Forestry (2016)).

³⁹⁹ Direktorat PDLKWS (2020)

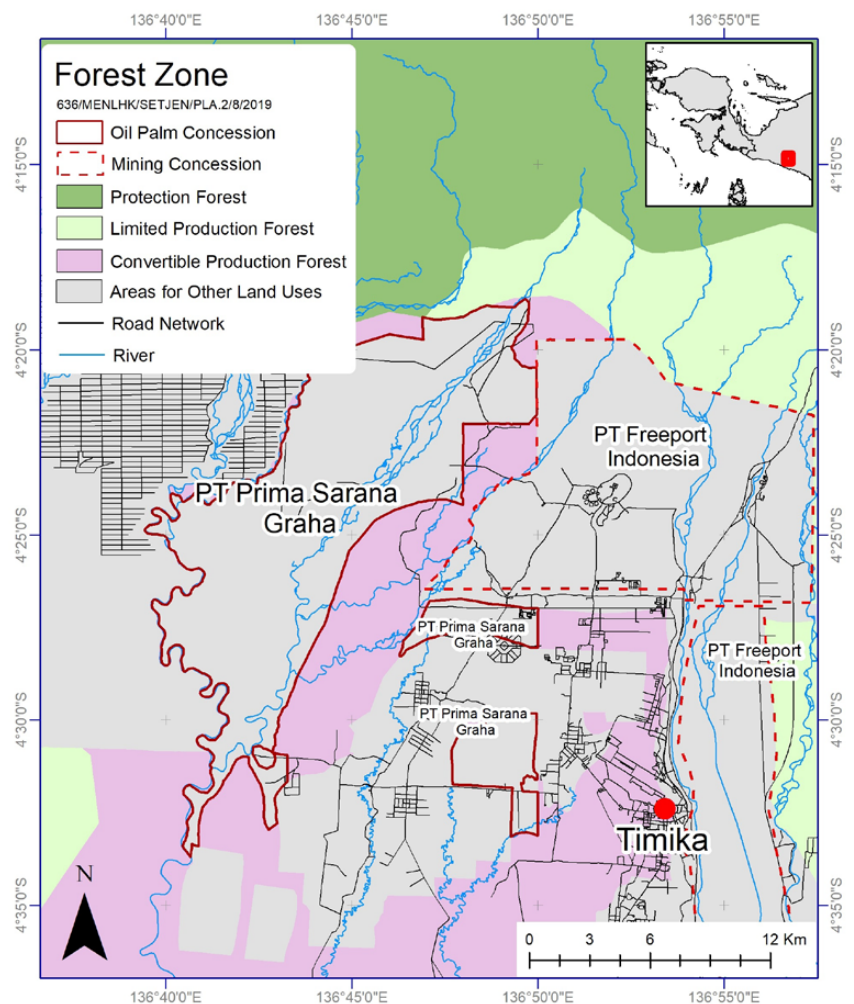
Case Study 6: Mimika, PT Prima Sarana Graha

Issues of potential concern:

- *Exploiting loophole in Oil Palm Moratorium*
- *Violation of forest release regulations*
- *Abandoned concession*
- *Violation of and changes to Forest Moratorium*

On 30 August 2019, nearly one year after the Oil Palm Moratorium came into force, Siti Nurbaya's ministry released 21,082 ha of forest estate in Mimika Regency to PT Prima Sarana Graha (PT PSG) for an oil palm plantation, for which the company had been issued a location permit in 2012. The same decree also released 52 ha for sports facilities in the same area.⁴⁰⁰

PT PSG was in possession of an in-principle approval for forest release, which means that a company can apply for a forest release decree once all conditions have been met. This approval had been issued by Zulkifli Hasan on 25 September 2014 – during his last week as minister, when he issued a large number of permits, decrees and approvals throughout Indonesia, including for many of the companies featured in this report.



PT PSG Forest Estate Map

400 Permit (map) reference: SK636/Menlhk/Setjen/Pla.2/8/2019. This concession is shown on maps of areas released from the forest estate on the MoEF WebGIS service, <http://geoportal.menlhk.go.id/arcgis/home/webmap/viewer.html?webmap=0387032be5f648f99f8be9ba30f4d2ca>.

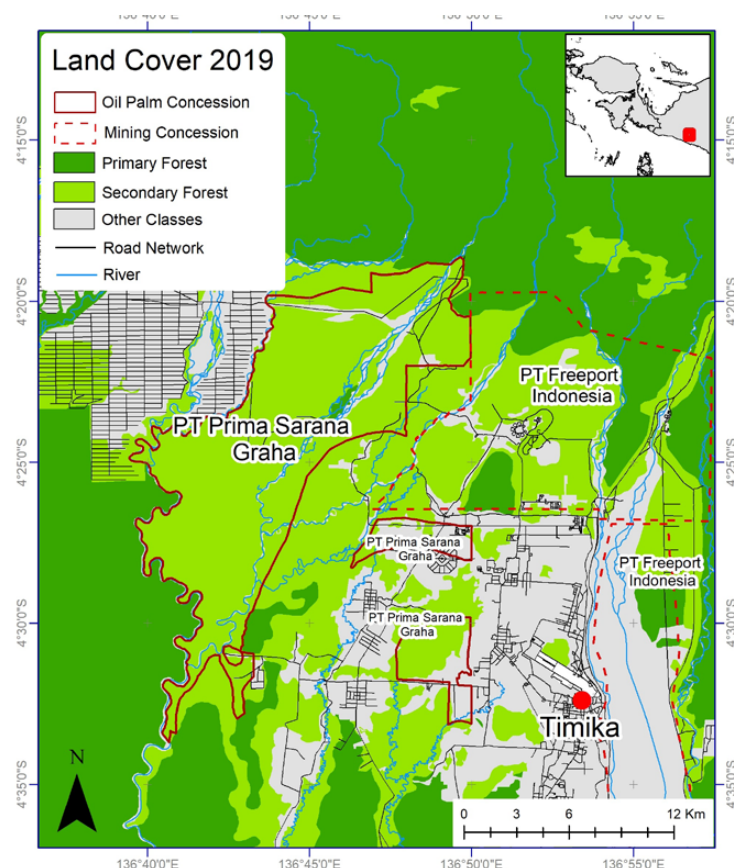


PT PSG also possessed an environmental permit, issued by the Governor of Papua on 26 August 2014. As such it met one of the main requirements under the 2018 Ministerial Regulation on Procedures for Releasing Forest Estate Land.⁴⁰¹ However, our investigations have not been able to show that the issuing of an environmental permit was followed by the issuing of an IUP. PT PSG is not named on any of the lists of companies possessing an IUP provided by the provincial government in response to data requests from Greenpeace Indonesia, including the most recent list, sent by the Provincial Plantation Agency on 22 July 2020. The apparent failure to obtain an IUP for five years after obtaining an environmental permit should have raised concern at the ministry that PT PSG may have been unable (or not intending) to develop its concession, leading to a risk that the area released would be abandoned.

In any case, the release of forest by Siti Nurbaya's administration did not comply with the regulation then in force because it exceeded the 20,000 ha limit on how much land could be issued to a single company or group at one time.

As regards the compatibility of the forest release with the Oil Palm Moratorium, in the forest release decree for PT PSG, the MoEF justifies its action by stating that it is only instructed to apply the moratorium if applications for forest release have not reached the stage of boundary survey (*tata batas*), which in PT PSG's case took place in November 2016. This is nevertheless an important loophole in the moratorium (see discussion in Part 2 of this report).

The concession is mostly marked as secondary forest on national land cover maps, meaning that most of it is unaffected by the Forest Moratorium, which prohibits only the issuing of new permits on primary forest and peatland. However, there is a small area of primary swamp forest within the concession, which was still included within the moratorium map when PT PSG obtained its location permit from the Bupati of Mimika Regency, Klemen Tinal, in 2012, meaning that the issuing of the location permit violated the Forest Moratorium. Since then, this primary forest has gradually been removed from the Forest Moratorium map in the course of its third, fourth and seventh revisions – the last of these after the company had already been given in-principle approval for forest release. The area is nevertheless still shown as primary forest on the latest (2019) land cover map. The forest release decree itself refers to an area of 118 ha of primary swamp forest in the concession, which appears to correspond to the area removed from the moratorium map.



PT PSG 2019 Land Cover Map

401 Regulation 96/2018 (Minister for Environment and Forestry (2018))



PT PSG is part of the Mega Masindo Group, owned by Paulus George Hung, a timber baron from Malaysia who owns several logging concessions throughout West Papua. Although his name appeared on a list of operatives suspected of illegal logging targeted by a 2006 crackdown, and he was reported to have been declared a formal suspect, he was able to avoid prosecution and re-establish himself in the logging business, reportedly changing his name from Ting Ting Hong and taking Indonesian citizenship.⁴⁰² A source inside the Ministry of Forestry reportedly told *Tempo* magazine in 2011 that Hung obtained new logging permits after several meetings to lobby then Minister for Forestry Zulkifli Hasan.

The Mega Masindo Group is not known to operate any oil palm plantations, but prior to her 2019 granting of forest release to PT PSG, in 2015 Siti Nurbaya's administration had already granted forest release for oil palm plantations to two other companies in the group: PT Papua Lestari Abadi and PT Sorong Agro Sawitindo, both with concessions in Sorong Regency, Papua Barat Province. To date, neither company has developed its concession.

Greenpeace Indonesia has also been unable to find any reports from local Indigenous groups or in the media that PT PSG has been active on the ground since 2014, and therefore suspects that its concession may be abandoned. This lack of activity on the part of both PT PSG and its sister companies in Papua Barat casts doubt on whether the Mega Masindo Group has a serious intention to develop plantations. However, PT PSG's concession is located very close to Timika City, the town which services Indonesia's largest mine, the Grasberg gold and copper mine, and therefore attracts a certain wealth. As a result, developable land near the city and outside the forest estate constitutes a potentially valuable asset.

The city's expansion plans have already started to encroach onto the concession. In February 2019, several months before the forest release decision was signed, the local government reportedly met with the MoEF because some of the land included in the in-principle forest release approval issued to PT PSG was needed for a sports complex.⁴⁰³ However, when Siti Nurbaya's administration decided to release 52 ha of land for this sports complex, it is not clear why the same moment was chosen to release 21,082 ha for a plantation, on the basis of an in-principle approval issued nearly five years previously.

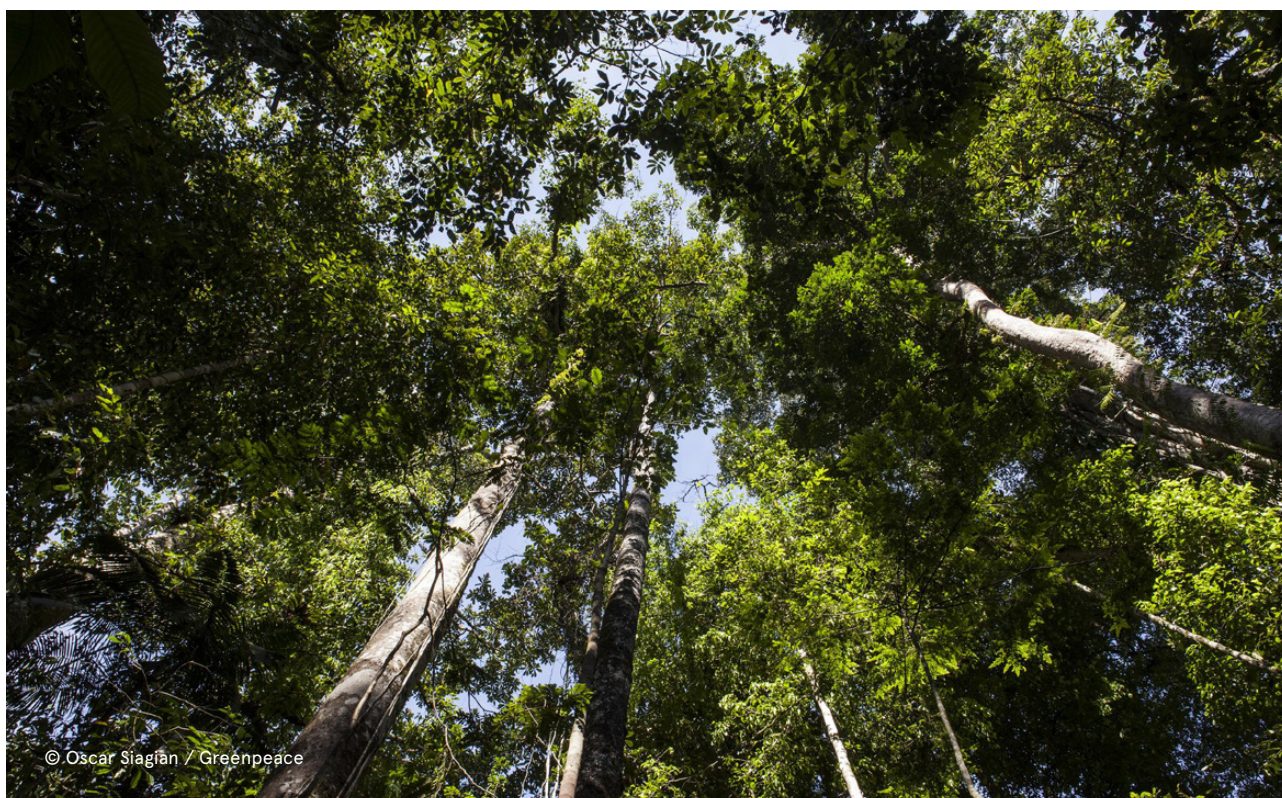
402 *Tempo.co* (2011a)

403 Djuma A (2019), *Seputar Papua* (2019)

Case Study 7: Jayapura/Sarmi, Musim Mas Group

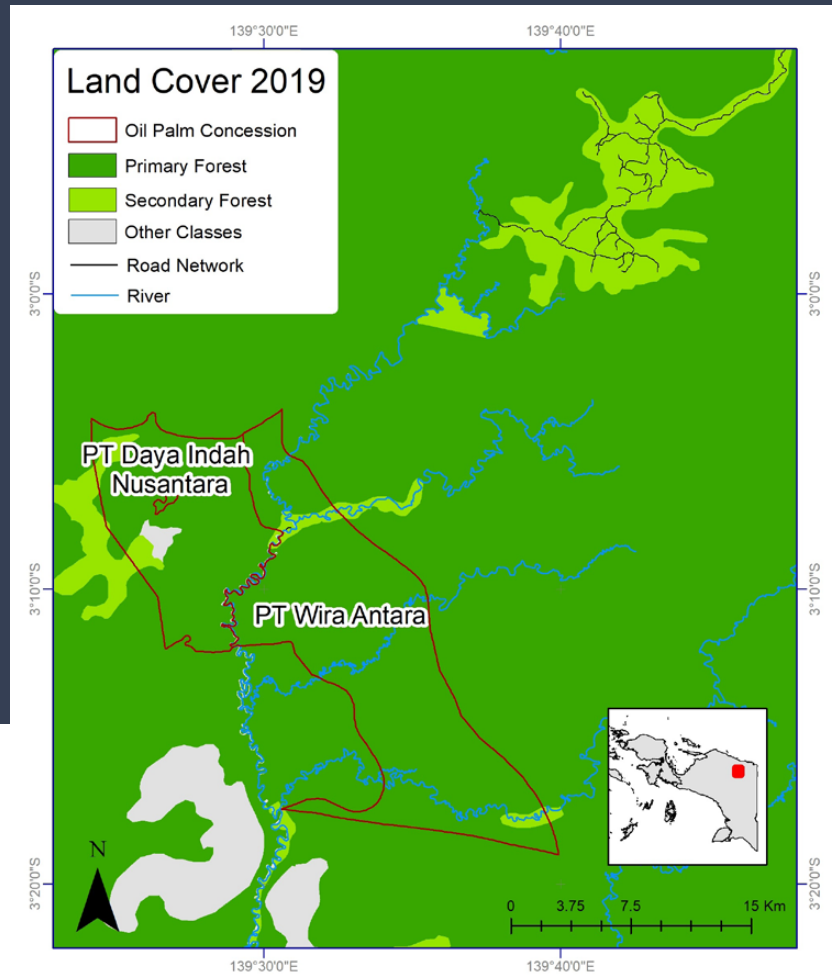
Issues of potential concern:

- *Changes to Forest Moratorium*
- *Abandoned concessions*



■ Merbau tree (*Intsia* spp., also known as Kwila) inside the forest in Kaureh sub-district, Jayapura regency close to the palm oil concessions issued to the Musim Mas group. 12 Mar, 2014.

In 2011, the Musim Mas Group started obtaining permits for four concessions located in remote primary forest in the Mamberamo River basin in Jayapura and Sarmi regencies, in the north of Papua Province, registered to PT Daya Indah Nusantara (PT DIN), PT Wira Antara (PT WA), PT Siringo-Ringo (PT SRR) and PT Megasurya Mas. By late 2014, all four concessions had been released from the forest estate. PT WA and PT DIN were both granted forest release by then Minister Zulkifli Hasan in September 2014, his last month in office.



Land cover map PT Wira Antara and PT Daya Indah Nusantara

The concessions have never been developed and are currently abandoned, because shortly after the last ones were released from the forest estate Musim Mas enacted a sustainability policy in which it committed not to engage in deforestation. In November 2020 all four Musim Mas companies confirmed to Greenpeace Indonesia in writing that they have no plans to develop plantations. In the case of PT Megasurya Mas and PT SRR, they stated that they no longer possess valid permits to do so.

All four concessions are marked on national land cover maps as being primary forest. In the original 2011 Forest Moratorium map, PT DIN's and PT WA's concessions were included in the area under moratorium (the other two concessions being excluded because they had obtained their location permits before the moratorium came into force).



However, ministry records of correspondence show that on 21 May 2013, two Musim Mas subsidiaries (PT Intibenua Perkasatama and PT DIN) wrote to the Ministry of Forestry, claiming that their concession land was secondary forest and asking for the concessions to be removed from the moratorium map. The ministry accepted PT DIN's request and its concession was removed from the moratorium map on its fifth revision in November 2013.⁴⁰⁴ PT WA then wrote to make a similar request in March 2014,⁴⁰⁵ and the ministry agreed to make the change on the sixth revision of the moratorium – in fact, however, PT WA's concession had already been removed along with that of PT DIN, on the fifth revision, for reasons which Greenpeace has been unable to ascertain – though it is possible that the letter from PT Intibenua Perkasatama may have been related to PT WA's concession.⁴⁰⁶

It is hard to see how the areas concerned could possibly have been logged or otherwise degraded to such a degree that they were no longer primary forest and therefore warranted removal from the moratorium. Parts of the concessions removed from the map were more than 50 km from the nearest road and a similar distance from the nearest village, and had limited river access. Satellite images show a continuous forest canopy with no roads or cleared areas. As such it is difficult to understand why the concessions might have been removed from the moratorium, other than to accommodate the companies' interests.

Six years later, the primary forest remains in good condition. The areas to the north, east and south of the concessions are protected forest and there is a large area of peatland immediately to the west. Musim Mas's plans have long been abandoned. However, the concessions remain outside the forest estate and the Forest Moratorium map, and so could be reallocated to new investors. If a plantation was created here, it would pose a major risk to the entire landscape, as it would be the first major industrial development in the entire Mamberamo River basin, notable as the world's second-largest 'unfragmented' river system.⁴⁰⁷

404 See http://appgis.menlhk.go.id/appgis/Matrik%20dari%20Pemangku%20Kepentingan%20dan%20Respon%20thdp%20PIPIB5_renaksi.pdf.

405 See <http://appgis.menlhk.go.id/appgis/Matrik%20Masukan%20dari%20Pemangku%20dan%20Respon%20terhadap%20PIPIB%20Revisi%20%20VII.pdf>.

406 PT Intibenua Perkasatama appears in court records (see Supreme Court of the Republic of Indonesia (2011b)) as having had a location permit in Jayapura issued in 2011, but no maps were shown and no further record of other permits has been found under this name. One explanation could be that PT Intibenua Perkasatama's location permit was reissued or transferred to PT Wira Antara, but Greenpeace has been unable to verify this.

407 Nilsson C et al (2005)

Case Study 8: Mimika, Salim Group/PT Tunas Agung Sejahtera

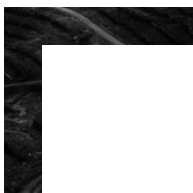
Issues of potential concern:

- *Changes to Forest Moratorium*
- *Abandoned concessions*
- *Permit speculation*
- *Use of HGU for land-banking*
- *Concealed beneficial ownership*



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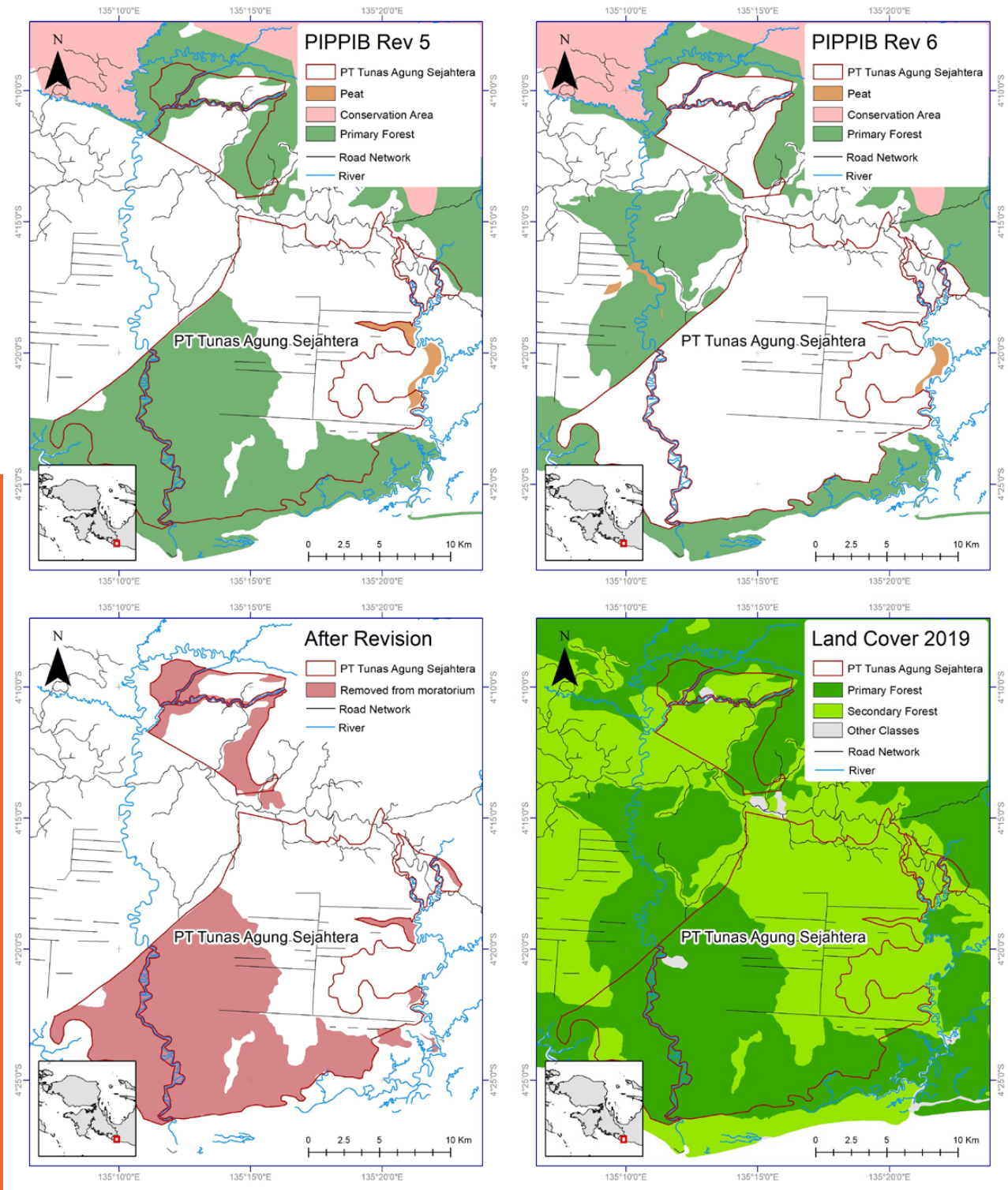
■ An aerial photo shows a primary swamp forest at concession PT Tunas Agung Sejahtera of Salim Group, in Umar Village, West Mimika subdistrict, Mimika district, Papua province. 18 Dec, 2017.



PT Tunas Agung Sejahtera (PT TAS) holds a 39,500 ha plantation concession in a very remote part of the south coast of Papua Province, in Mimika Regency. 2019 national land cover maps show that the concession is entirely forested, including large areas of primary forest (part of the area was formerly included in a logging concession, but this has regrown, and while old logging roads remain and the area is accessible by sea and river, it is 200 km from the nearest town). Much of the concession is classed on national land cover maps as lowland swamp forest bordering an area of mangroves. This was confirmed by Greenpeace aerial photography taken in 2017 which reveals the presence both of dense rainforest and of forested wetlands dominated by sago palms. It is undoubtedly a very ecologically rich landscape.

PT TAS was issued its location permit in June 2013, despite much of its concession being covered by the Forest Moratorium. Correspondence tables published by the Ministry of Forestry⁴⁰⁸ show that five months later, in November 2013, the company's director wrote to the ministry claiming that, on the basis of surveys and interpretation of satellite images from 2012, all the forest in the concession was secondary. The ministry accepted this claim, and removed the previously included forest areas from the Forest Moratorium map. An area of 79 ha of peatland within the concession was also removed from the moratorium map at the same time, meaning that the concession was now entirely outside the moratorium. However, no changes have been made to the ministry's own annually updated land cover maps, which have continued to show large areas of primary forest in the concession every year since.

408 See http://appgis.menlhk.go.id/appgis/Matrik%20dari%20Pemangku%20Kepentingan%20dan%20Respon%20thdp%20PIB5_renaksi.pdf.



Map of PT Tunas Agung Sejahtera showing revisions 5 and 6 of the moratorium map.

On 29 September 2014, PT TAS's concession became one of those released from the forest estate by Zulkifli Hasan on his last day as a minister. Like most of the other concessions to which he issued forest release decrees at the time, it did not have an environmental permit or an IUP at this point, meaning that the release broke ministry regulations.⁴⁰⁹ PT TAS was to obtain these two key permits only on 30 December 2014 and 10 September 2015, respectively.

PT TAS changed ownership several times during the permitting process, suggesting that it may have been established for the purpose of permit speculation. It was established in 2007, and until 2013 was owned by companies which were in turn owned by an individual named Budi Yasa and his family. Then in August 2013 a majority share in PT TAS was transferred to a company registered in the British Virgin Islands, Ichiko Eastspring Ltd. The British Virgin Islands are a secrecy jurisdiction, so there is no way of knowing the beneficial ownership of this company, but since several new directors and commissioners were appointed at this time, it appears likely that new owners unrelated to the Yasa family were preparing to take over the company, perhaps subject to the fulfilment of certain conditions.

On 26 June 2016, however, plans appeared to have changed, as the new directors left the board and the shares in PT TAS reverted to a Yasa family company, PT Pusaka Agro Sejahtera. On the same day PT Pusaka Agro Sejahtera also resumed the ownership of PT Permata Nusa Mandiri (PT PNM), another plantation company, with a concession in Jayapura Regency, which had previously been owned by the Yasa family before passing to another British Virgin Islands holding company whose beneficial ownership cannot be determined, Farmiana Investment Ltd. It would appear that if a conditional sale of the two companies had been planned, it had fallen through.

However, the Yasa family still held a valuable asset, and in early 2017 a new buyer appeared. PT TAS was sold to PT Bumi Surya Kencana (PT BSK), a company which has proven management overlap with the Salim Group,⁴¹⁰ one of Indonesia's largest business empires. PT BSK is believed to be a 'shadow company' – a company whose beneficial ownership is concealed through nominee shareholders or offshore holding companies, thereby preventing it from being recognised as part of a wider group. (In the same year PT PNM was also sold to what appears to be another shadow company linked to the Salim Group.)

⁴⁰⁹ The forest release regulation in force at the time was signed by Zulkifli Hasan himself on 16 May 2014; see Minister for Forestry (2014).

⁴¹⁰ One specific example of management overlap is that F.X. Purwanto – the director of PT Menara Wasior, another subsidiary of PT Bumi Surya Kencana – was in 2017 also director of a company majority-owned by Anthony Salim, PT Duta Rendra Mulya. More general evidence linking the Indogunta Group to the Salim Group is discussed in Greenpeace (2017, 2018a).

In this way the Salim Group apparently managed to acquire, in the shape of PT TAS, a concession including 17,619 ha of primary forest that should have been covered by the Forest Moratorium, and whose forest release had violated the ministry's own regulations. If allegations of corruption were ever to be made in the future, the Salim Group would be able to claim to have had no knowledge of any transactions prior to its presumed purchase of the company.

The acquisition of PT TAS and PT PNM appears to be part of a wider process by which the Salim Group has expanded its landholdings in West Papua through purchases of companies with existing permits. As well as PT TAS and PT PNM in Papua Province, the group has bought another four companies from suspected permit speculators in Papua Barat Province within the last decade. Three of these have a history of similar irregularities to PT TAS, having either received forest release in breach of ministry rules⁴¹¹ or had peatland removed from the Forest Moratorium despite the demonstrable presence of peat.⁴¹²

Over three years after its IUP was issued, PT TAS obtained HGU on 26 July 2018, despite the fact that the Oil Palm Moratorium, which was to require a review of existing oil palm permits (which could potentially have shown that there was no valid basis for issuing HGU), was on the point of being signed by the president. In fact HGU was issued to the Salim Group's other concession company in Papua Province, PT PNM, on 15 November 2018, after the Oil Palm Moratorium had come into force.

Did the issuing of HGU to PT PNM break the terms of the Oil Palm Moratorium? Unlike in its instructions to regencies and provinces concerning the issuing of IUPs and to the MoEF concerning forest release, the moratorium does not require the National Land Agency to stop issuing HGU immediately. HGU data is supposed to be included in the permit review, however, and the agency is instructed to pass this data on to a cross-ministry evaluation team led by the Coordinating Minister for Economic Affairs to be considered alongside other permits and approvals. Only after receiving feedback from that team is the National Land Agency instructed to stop the process of issuing HGU in cases where the permitting process that is the precondition for HGU had already breached regulations (this presumably would include any problems with earlier permits, forest release or land acquisition from customary owners). Based on this feedback the agency is also instructed to decide which concessions should be declared abandoned and to cancel HGU for those concessions if they had previously been part of the forest estate. It would therefore have been more appropriate for the National Land Agency to have waited for the outcome of the permit review process before issuing new HGU certificates, especially to a company that had apparently been inactive since obtaining an IUP and forest release four years previously.

⁴¹¹ PT Bintuni Agro Prima Perkasa, which did not have valid location permits and IUPs at the time of forest release, and PT Menara Wasior, which exceeded the 20,000 ha limit for each tranche of forest release imposed by the regulations in force at the time (2017).

⁴¹² This was the case in PT Rimbun Sawit Papua's concession in Fakfak Regency.



© Bernard van Elegen

■ A pair of Victoria Crowned Pigeons (*Goura victoria*) in an area of forest near to PT Permata Nusa Mandiri's oil palm plantation, Jayapura Regency. 10 Jul 2011.

A similar argument can be made in the case of PT TAS, even though in that instance HGU was issued shortly before the Oil Palm Moratorium came into force. The permit review mandated by the moratorium would likely have found irregularities in PT TAS's permitting process (such as the breach of forest release regulations highlighted above) or else concluded that it should be considered abandoned, given that it had seen no activity since it had received its IUP three years previously. Instead, because PT TAS was issued HGU just as the moratorium was being finalised, it has consolidated its right to the land, as a result of which it would be more complicated for the government to revoke the company's permits as part of the permit review mandated in the moratorium. For example, existing regulations concerning abandoned land require three years to pass from the time HGU was issued before action can be taken.⁴¹³ The issuing of HGU has effectively legitimised the violations of regulations and pseudo-legal circumstances that characterised the earlier stages in its permitting process.

⁴¹³ Under the 2014 Plantation Law, HGU can be revoked if there has been no development in a concession for three years. Government Regulation 11/2010 on abandoned land (President of the Republic of Indonesia (2010a)) makes it clear that this period starts when the HGU is issued. Therefore, as there has been no activity in the concession to date, HGU could presumably be revoked without compensation in July 2021. If provisions in the new Omnibus Law are implemented, this period will be reduced to two years.

Case Study 9: Merauke, PT Merauke Rayon Jaya

Issues of potential concern:

- *Changes to Forest Moratorium*
- *Concession issued by Soeharto still valid*
- *Weak regulations*
- *Indigenous opposition*



© Yayasan Pusaka Bentala Rakyat

■ A view over PT Merauke Rayon Jaya's concession 2 Oct. 2020.

The largest change to the Forest Moratorium map in Papua Province has been made to accommodate not an oil palm plantation, but an industrial timber plantation, PT Merauke Rayon Jaya (PT MRJ).⁴¹⁴ Its case also differs from the other case studies in this report because the change was made not in response to a company request, but after the MoEF lost a court case brought by the company. However, it is relevant to this report because it illustrates clearly how the

government's long-term failure to produce a clear and unambiguous system of forest regulation allows flawed projects instigated many years ago to continue to pose a threat. The sheer amount of primary forest at risk of being destroyed in this concession, as well as the scale of the threat to Indigenous people's land rights, culture and livelihoods, also demand attention.

414 Formerly named PT Maharani Rayon Jaya.

PT MRJ was issued a forest utilisation business permit for plantation forest (IUPHHK-HT) on 5 January 1998 – in the last months of Soeharto’s presidency – to plant an industrial forestry plantation on 206,800 ha of mostly primary forest in Merauke Regency. The company was owned by the Texmaco Group of Marimutu Sinivasan, reportedly a close friend of Soeharto.⁴¹⁵ The current president director of the company, Martin Hutabarat, is a member of the Indonesian House of Representatives, representing an area in North Sumatra for the Gerindra party.

At the time the permit was issued, the Asian financial crisis was gathering force and the Texmaco Group was in trouble, reportedly borrowing US\$2.7 billion from state banks.⁴¹⁶ Even though the company’s debts were taken over by the Indonesian Bank Restructuring Agency, the body set up to salvage casualties in the financial sector in the aftermath of the crisis, which offered Marimutu Sinivasan generous terms to recover his assets, he nevertheless lost many of them.⁴¹⁷ He did recover PT MRJ, but left the concession undeveloped for many years.

In July 2014, Zulkifli Hasan’s administration issued a decision revoking PT MRJ’s permit, on the basis of inactivity.⁴¹⁸ The company appealed against the decision in the administrative court (PTUN). It claimed that since 2010, although it had not actually cleared forest or built facilities, it had carried out surveys, been in communication with local Indigenous communities and tried to get further permits to enable it to carry out development-related activities, some of which (including yearly work plans and a permit to build an access route) had been rejected by the local government.⁴¹⁹

The case reached the Supreme Court, which decided in favour of the MoEF, but PT MRJ appealed against this decision. On 20 June 2017 the Supreme Court delivered its decision in favour of PT MRJ and ordered that its permit be reinstated.⁴²⁰

By that time, 133,481 ha of primary forest and 2,109 ha of peatland within the concession had been included in the Forest Moratorium map,⁴²¹ but this land was removed from the map on the moratorium’s 15th revision in December 2018 on the basis that, with the validity of the 1998 permit reaffirmed, the justification for its inclusion in the moratorium had disappeared. During 2019 and 2020 the company reportedly approached Indigenous communities around the concession, but encountered opposition from both the Marind ethnic group around Selouw village in Merauke Regency⁴²² and the Wambon Tekamerop people, who live in several villages in Subur sub-district of Boven Digoel and Ulilin sub-district of Merauke.⁴²³

415 Fung N & Sentana IM (1999)

416 International Crisis Group (2001) p21

417 International Crisis Group (2001) p21

418 SK251/Menhut-II/2014

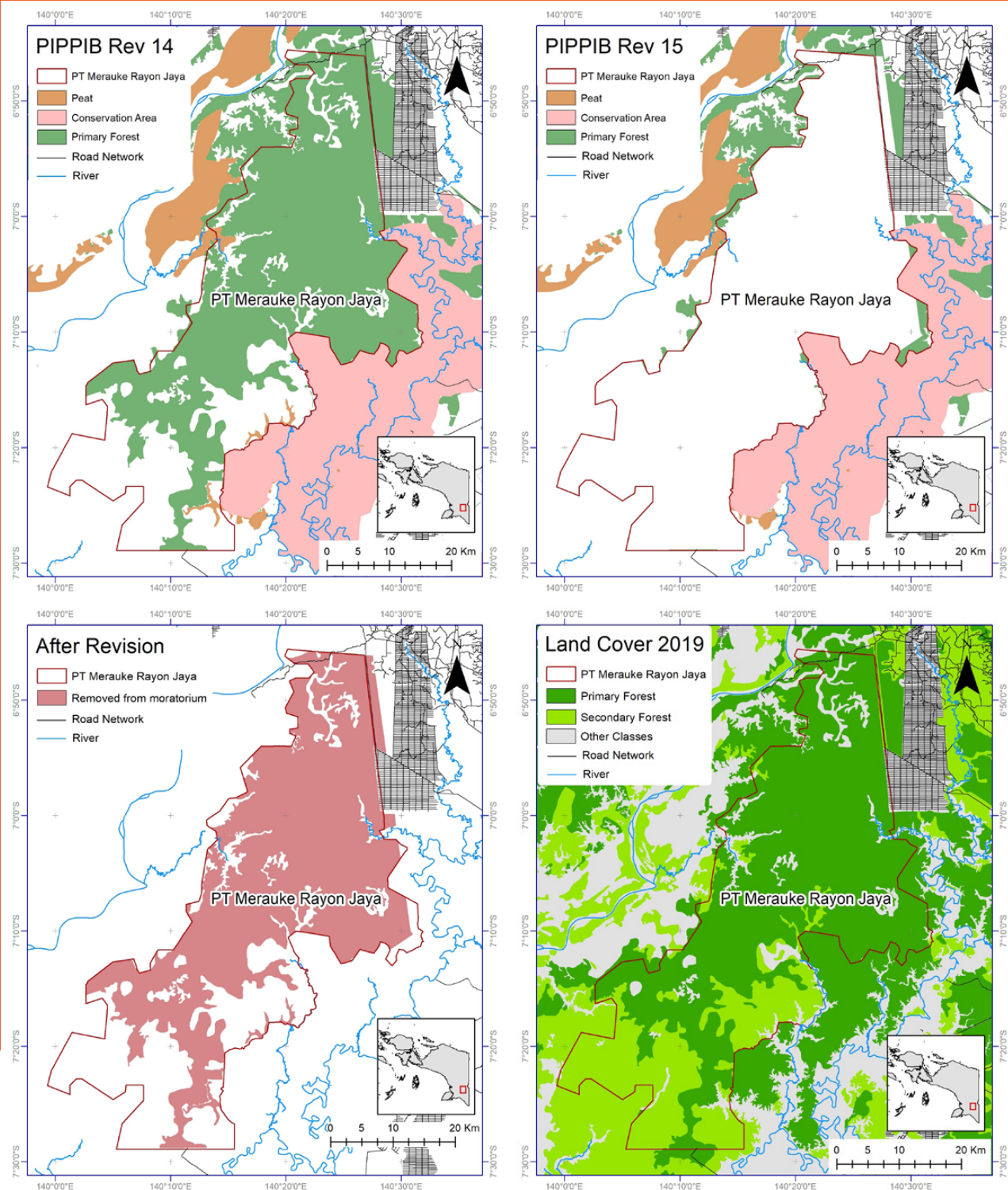
419 Supreme Court of the Republic of Indonesia (2017)

420 Supreme Court of the Republic of Indonesia (2017)

421 Yayasan Pusaka Bentala Rakyat (2019b)

422 Yayasan Pusaka Bentala Rakyat (2020a)

423 Yayasan Pusaka Bentala Rakyat (2019b)



Map of PT Merauke Rayon Jaya (HTI concession) showing moratorium revisions 14 and 15.

A lot has changed since 1998, when PT MRJ's permit was issued. Soeharto has long since fallen, and his system of offering lucrative logging permits to cronies⁴²⁴ has been challenged. The Papuan Special Autonomy Law was introduced in 2001, reaffirming Indigenous Papuans' customary rights over their ancestral land. On the debit side, other nearby areas of primary forest have become oil palm plantations, breaking up the ecological integrity of the Southern Papua Lowland Rainforest Ecoregion.⁴²⁵

Around the world, however, there is a much greater acceptance of the need for urgent action to confront the climate and biodiversity crisis and to respect Indigenous land rights, all of which means conserving remaining forests and peatland. Counting above-ground biomass alone, there are 18.9 million tonnes of carbon stored in the forests of PT MRJ's concession – more than the amount emitted annually by Austria.⁴²⁶

It is therefore unacceptable that the Indonesian Government is acting as though there is no further means to challenge a concession undeveloped since its permit was issued two decades ago, and which is poised to destroy an area of primary forest twice the size of Singapore. If the government has until now failed to ensure a sufficiently strong legal framework then it must issue well-designed and unambiguous regulations enabling the ministry to step in regarding cases like PT MRJ's where the social and ecological case for revocation is clear.



Indigenous people erect a sign reading "The Wambon Tekamerop people in Subur village oppose PT Merauke Rayon Jaya, in accordance with [Constitutional Court Decision] 35/PUU-X/2012 2 Oct. 2020.

424 Human Rights Watch (2003), Chapter 3

425 One of WWF's Global 200 ecoregions (see WWF website 'Southern New Guinea lowland rain forests').

426 Calculated using the carbon stock averages for each vegetation class contained in Indonesia's 2015 Forest Reference Emission Level submission (Ministry of Environment and Forestry (2016)) and the MoEF's 2019 land cover map.

04.

The scale of the challenge ahead



The findings described in Part 2 and the case studies in Part 3 highlight how irregular and/or unlawful decisions by all levels of government have led to a situation where there are multiple problems surrounding the permits of most of the companies which have sought to develop plantations in Papua Province. This has resulted in Indigenous peoples being denied free, prior and informed consent (FPIC) and unique forest being destroyed. Hundreds of thousands more hectares are still under direct threat of deforestation if existing concessions are developed, yet there is still no real sign that the Oil Palm Moratorium will remove that threat, just as the Forest Moratorium failed to stop the permits being issued in the first place.

In this final part, the roots of poor governance are explored further, focusing especially on understanding who stands to benefit from corrupt or lax oversight of natural resource industries, and how these same interests may be standing in the way of meaningful reform.

Solutions to the problems that result from poor governance can be found if decision-makers have the courage to be open about past failings and show a commitment to justice and transparency. International partners aiming to reduce the impact of their own consumption can also play a role in supporting Indonesia to improve its natural resources sector governance.

Transparency at stake

To analyse the situation in Papua Province, Greenpeace Indonesia searched online and sought information directly from government agencies involved in managing the province's forests – agencies which operate at national, provincial and regency levels. Although some agencies did respond swiftly to information requests, other agencies did not respond, or only responded after repeated requests. In some cases the information they supplied was incomplete. These experiences reflect the dire situation in Indonesia's information management and natural resources governance.

After breaking free from decades of repression under Soeharto's New Order regime, in 2008 Indonesia enacted a Freedom of Information Law;⁴²⁷ in 2011 it became a founding member of the multilateral Open Government Partnership,⁴²⁸ and Indonesia's then President Susilo Bambang Yudhoyono introduced a so-called One Map Policy on natural resources transparency.⁴²⁹ These legal and policy frameworks commit all levels of Indonesia's government to proactive and timely publication of information, including maps of plantation concessions; guarantee the public's right to request access to specific information; and establish an Information Commission to adjudicate freedom of information disputes.

A decade after this initial wave of transparency reform, however, it is clear that Indonesia's government has not lived up to the promise of openness it made to its citizens and to the world – and one result is a failure to rein in forest destruction and land-grabbing by the plantation industry. The One Map Policy, conceived by President Yudhoyono but championed by his successor Joko Widodo both domestically and in his address at the Paris Climate Change Conference,⁴³⁰ promised to instigate a process of proactively collating and publishing detailed maps of concessions in order to address problems of overlapping claims between communities, the plantation industry and forest protection goals. To date, however, the government has published little more than figures for the area of oil palm plantations licensed and estimated total oil palm cover.⁴³¹ It has stated that there are around 3.4 million ha of oil palm within the forest estate (where plantations are not allowed),⁴³² but has not disclosed the all-important spatial data and licensing information which would allow public participation in addressing this issue.

427 Law 14/2008 on Freedom of Information / Undang-Undang no. 14 tahun 2008 tentang Keterbukaan Informasi Publik (full text available at <https://peraturan.bpk.go.id/Home/Details/39047/uu-no-14-tahun-2008>).

428 Open Government Partnership website 'Indonesia'

429 Kurniawan NI (2016)

430 Tempo.co (2015b)

431 Minister for Agriculture (2019a). See also Timorria IF (2020).

432 Alika R (2020)

To ensure that forests, their biodiversity and the land rights of those who live in them are protected, the public must have access to information, especially the permits, maps and other documents that show who controls forest lands, who has granted that control and under what conditions. Many palm oil traders and producers have recognised this fact and, bowing to public pressure, have pledged to make their supply chains transparent as part of No Deforestation, No Peat, No Exploitation (NDPE) commitments. Industry body the Roundtable on Sustainable Palm Oil (RSPO) now provides downloadable versions of its grower members' concession maps – everywhere except in Indonesia.⁴³³ This is because many government institutions in Indonesia insist that this information must be kept from the public, despite the Freedom of Information Law, and even when the Information Commission and the courts have ordered it released. Government departments have refused to comply with an order to release data on land cultivation right (HGU) in Papua, won in court by Greenpeace Indonesia;⁴³⁴ an order to release data on land title information, won from the provincial Information Commission by the Papua Legal Aid Foundation;⁴³⁵ and an order to release HGU data for the whole of Kalimantan, won in the Supreme Court by Forest Watch Indonesia.⁴³⁶

Despite several Supreme Court rulings that the government must provide the public with information related to oil palm concessions,⁴³⁷ a number of senior ministers have reportedly spoken out against this principle and taken steps to prevent the release of such information, even when plantation companies themselves wished to publish it.⁴³⁸ Officials who have been reported as having spoken out against transparency or made moves to block it include Coordinating Minister for Maritime Affairs and Investment Luhut Panjaitan,⁴³⁹ (then) Coordinating Minister for Human Development and Culture Puan Maharani (now Speaker of the House of Representatives),⁴⁴⁰ (then) Coordinating Minister for Economic Affairs Darmin Nasution⁴⁴¹ and Minister for Agrarian Affairs and Spatial Planning Sofyan Djalil.⁴⁴² In view of his position as the minister directly responsible for land title data, NGOs have reported Sofyan Djalil to the police for withholding public information,⁴⁴³ a crime under the Freedom of Information Law.⁴⁴⁴

433 RSPO (2020)

434 PTUN Jakarta no. W.2/TUN.1/552/HK.06/II/2020 tentang amar putusan perkara no. 225/G/KI/2019/PTUN-JKT

435 Putusan Komisi Informasi (KI) Papua no. 004/III/KI-Papua/PSA/2018

436 Putusan Mahkamah Agung (MA) no. 121 K/TUN/2017

437 See Putusan MA no. 121 K/TUN/2017, Putusan MA no. 83 K/TUN/2014, Putusan MA no. 322 K/TUN/KI/2017 and Antara Bengkulu (2016).

438 According to a statement by Tiur Rumondang, the RSPO's Indonesia Director, as quoted in Elisabet A et al (2020).

439 CNN Indonesia (2019a)

440 CNN Indonesia (2019b)

441 Alika R (2019)

442 Bayu DJ (2019)

443 Rahma A (2019)

444 See Article 52 of Law 14/2008 on Freedom of Information / Undang-Undang no. 14 tahun 2008 tentang Keterbukaan Informasi Publik (full text available at <https://peraturan.bpk.go.id/Home/Details/39047/uu-no-14-tahun-2008>).



© Jurnasyanto Sukarno / Greenpeace

- An award is placed near activists as they hold a banner reading "BPN, Not Transparent = Corruption" during a photo op in the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) in Jakarta. The coalition from Greenpeace Indonesia, Walhi, Indonesian Corruption Watch (ICW) and Perdu urged the Ministry office to improve transparency around concession maps in Papua and Kalimantan. 20 Aug, 2018.

The National Land Agency does include HGU boundaries on its cadastral website,⁴⁴⁵ but does not give details of the title holders. Comparison of this data with maps of planted oil palm and of other permits shows that many companies across Indonesia are operating plantations without HGU. According to a member of the National Audit Board this includes millions of hectares operated by large listed companies.⁴⁴⁶ Since revealing the names of these companies and the reasons why they were not able to obtain HGU could prove costly to those companies (as well as being embarrassing for the government), it is reasonable to suspect that the National Land Agency's reason for maintaining secrecy may be connected to pressure from companies or others who would stand to lose.

445 <https://bhumi.atrbpn.go.id/>

446 Thomas VF (2019)

The new Omnibus Law: consolidating oligarchic power

Students hold a protest to reject the Omnibus Law that was already passed by the Indonesian Parliament in front of Central Java Parliament building in Semarang, Central Java. 7 Oct, 2020.



© Aji Styawan / Greenpeace

In 2019, President Jokowi announced that he would prioritise a pro-investment deregulatory push, via a new 'Omnibus Law on Job Creation'.⁴⁴⁷ In his second term inauguration speech he set out the main thrust of his plan, saying 'we have to simplify, cut and trim every regulatory obstacle'.⁴⁴⁸ The resulting Omnibus Bill, running to over a thousand pages and modifying dozens of existing laws, provoked massive demonstrations across Indonesia in October 2020,⁴⁴⁹ during the final stages of deliberation by the House of Representatives. It became law on 2 November 2020.⁴⁵⁰

447 Kompas.com (2019)

448 Mashabi S & Prihatin IU (2019)

449 Idhom AM (2020)

450 Law 11/2020 on Job Creation / Undang-Undang no. 11 tahun 2020 tentang Cipta Kerja, full text available at https://www.setneg.go.id/view/index/undang_undang_republik_indonesia_nomor_11_tahun_2020_tentang_cipta_kerja

It has been roundly criticised and opposed by a broad spectrum of civil society groups, including environmental organisations, trade unions and religious groups, who claim that it marginalises existing social and environmental safeguards in order to achieve this objective. A frequent accusation has been that it facilitates and consolidates the oligarchic style of business characterised by crossover between political and business interests; the law has even been called the Oligarchy's Rulebook.⁴⁵¹

Among the actors who were involved in conceiving and drafting the bill were national sectoral business associations, representatives from which were included in a 127-strong team known as the Omnibus Law Task Force,⁴⁵² which included entrepreneurs in sectors which pose a major threat to the environment and Indigenous rights such as mining and plantations.⁴⁵³ Moreover, there are serious conflicts of interest within the House of Representatives in relation to the purpose of the Omnibus Law. A joint media-NGO investigation found that 45% of House members (262) occupy high-level positions or hold financial stakes in companies. According to the investigation their names appear in the company registry records of 1,016 Indonesian companies spanning various sectors.⁴⁵⁴

It is noteworthy that the apparent weakening of environmental standards and safeguards which the law brings about has provoked criticism from investors who are not part of the national oligarchy, and who view unsustainable practices as increasing investment risk. A group of 36 global investors representing funds worth US\$4.1 trillion wrote an open letter, stating that *'we fear that proposed changes to the permitting framework, environmental compliance monitoring, public consultation and sanctioning systems will have severe environmental, human rights and labor-related repercussions that introduce significant uncertainty and could impact the attractiveness of Indonesian markets'*.⁴⁵⁵ The IMF's mission chief to Indonesia, Thomas Helbling, has also expressed concern, being quoted as saying that *'The implementing regulation that is now under way should be guided by the need to ensure sustainable and inclusive growth.'*⁴⁵⁶

'The implementing regulation that is now under way should be guided by the need to ensure sustainable and inclusive growth.'

Thomas Helbling



451 #BersihkanIndonesia & Fraksi Rakyat Indonesia (2020)

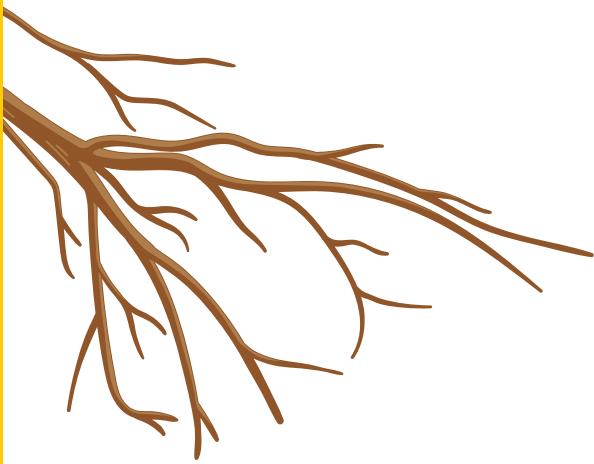
452 Established by the Coordinating Minister for Economic Affairs in decision 378/2019 on 9 December 2019.

453 Taher AP (2019)

454 Tempo.co (2019)

455 ACTIAM et al (2020)

456 Akhlaq AW (2020)



One of the principal threats to the environment in the Omnibus Law lies in the changes it makes to the permitting process for the plantation sector. Environmental permits have been replaced by a weaker 'environmental approval' as part of a wider business permit. Requirements for environmental impact assessment (EIA) have been weakened – notably by removing the explicit right of stakeholders to raise objections. Regional EIA evaluation commissions, which under the Environment Law had to include local community representatives, environmentalists, and environmental experts,⁴⁵⁷ are to be abolished, with their function to be taken over by central government.

In addition to its changes to the structure and requirements of the permitting regime, the Omnibus Law has taken much of the decision-making power around permits away from local governments and centralised it in Jakarta.⁴⁵⁸ Although local governments will retain some involvement in the administrative procedures required to issue new permits, their role may be reduced to rubber-stamping as they will have less discretion to refuse permits which meet the norms, standards, procedures and criteria (NSPK) determined by central government but which would be unpopular locally.⁴⁵⁹

This power grab by Jakarta is a highly political act, as it is a reversal of key democratic reforms which were implemented after the end of the Soeharto dictatorship. In particular, the Omnibus Law contains no special provisions acknowledging the laws granting special autonomy status to Papua and Aceh, which, despite their shortcomings, were intended as attempts at peacekeeping after protracted conflicts. In practical terms, this could hamper efforts by local and provincial governments in Papua to pursue development strategies that protect the rights of Indigenous communities, if these strategies conflicted with central government priorities – including Papua Barat Province's initiative to establish itself as a conservation province,⁴⁶⁰ aiming to set aside 70% of its land area for conservation.⁴⁶¹

Centralisation of power may also have the effect of exacerbating corruption and oligarchic control. As the analysis and case studies in this report show, under the current model of governance, ambiguities in legislation, poor integration of legislation concerning different types of permits and a lack of transparency combine to allow irregular, unprocedural or illegal permits to be issued and remain valid, with few legal avenues being available to challenge or revoke them. This state of affairs tends to encourage a mode of enterprise founded on political cronyism. Although the Indonesian Government has argued that the Omnibus Law will help to prevent corruption in permitting at the local and provincial level,⁴⁶² the evidence presented in this report demonstrates that there is no reason to assume that corruption risk is lower at the national level than at the provincial or local level. Indeed, Transparency International Indonesia has raised concerns that the new law would not fix the underlying causes of corruption, but simply shift corruption from the regions to the centre.⁴⁶³

457 See clause 30 of Law 32/2009 on Protection and Management of the Environment / Undang-Undang no. 32 tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup (full text available at [https://jdih.esdm.go.id/storage/document/UU%2032%20Tahun%202009%20\(PPLH\).pdf](https://jdih.esdm.go.id/storage/document/UU%2032%20Tahun%202009%20(PPLH).pdf)).

458 Wahyuningroem SL (2020)

459 Komite Pemantauan Pelaksanaan Otonomi Daerah (2020)

460 Hafsyah SS (2020)

461 Hariandja RY (2018)

462 Al-Qodariah F (2020)

463 Transparency International Indonesia (2020)

This risk appears to be exacerbated by provisions in the Omnibus Law that amount to a massive transfer of power at national level from the legislature to the executive. Research by the Indonesian Center for Environmental Law (ICEL) has pointed out that many fundamental clauses that had previously been included in laws approved by the House of Representatives have been erased, with their replacements to be contained in new regulations that will be drawn up by the executive branch of central government.⁴⁶⁴ In February 2021, 49 Government Regulations and Presidential Regulations were issued to implement the Omnibus Law.⁴⁶⁵ Prior to this ICEL had calculated that 454 new Government Regulations were mandated by the Omnibus Law,⁴⁶⁶ while the Indonesian Center for Law and Policy Studies (PSHK) put the number at 516;⁴⁶⁷ in any case most are not yet written, suggesting the likelihood of legislative chaos for years to come. There is a real risk that the lack of legal clarity this generates, or the contents of the new regulations themselves, may render the permit system even more susceptible to corrupt oligarchical control by a national elite. ICEL has also pointed out inconsistencies in the mammoth document itself, which will have the effect of introducing new ambiguities into Indonesia's legal system.

The Omnibus Law has also extinguished the principle of strict liability for environmental damage and fires on land controlled by companies.⁴⁶⁸ This has removed a key plank in the forest fire prevention regime, which relied on companies being held accountable through the courts.

As well as reforms to laws concerning the licensing and governance of business activities, the Omnibus Law mandates the creation of new central government agencies, including a Land Bank which will build up (by means not fully specified) a reserve of land to be used for a variety of purposes such as agrarian reform and any other projects deemed to be in the national interest.⁴⁶⁹ This Land Bank will have the authority to distribute land, though the procedures by which it will do so are not stipulated. It will be overseen by a Board of Supervisors consisting of three members chosen by central government and four members from professional backgrounds. The potential for corruption is clear, as is the danger that central government may use the Land Bank to impose development projects on unwilling regions.



⁴⁶⁴ ICEL (2020b)

⁴⁶⁵ Farisa FC (2021)

⁴⁶⁶ ICEL (2020b)

⁴⁶⁷ Putra A (2020)

⁴⁶⁸ Greenpeace Indonesia (2019)

⁴⁶⁹ The Indonesian Government conceives agrarian reform not in terms of the redistribution of large landholdings to poor farmers, but rather as a process of identifying unallocated land to be used for agriculture. In West Papua, many of the areas being evaluated for agrarian reform are forested areas.

Minister for Agrarian Affairs and Spatial Planning Sofyan Djalil has attempted to provide reassurances about the Land Bank, reportedly saying that its purpose is to focus on abandoned land, and that Indigenous land will not be not considered to be abandoned.⁴⁷⁰ However, the Omnibus Law does not include any specific safeguards for Indigenous or community land. It specifies only one mechanism by which the Land Bank may acquire assets, namely by taking over concessions that have been revoked after being inactive for two years – such cases would be a cause for concern if companies had claimed to have ‘released’ the land from Indigenous owners, since this process rarely if ever meets standards for FPIC. It is unclear whether the Land Bank may also be intended to acquire land through other mechanisms. The Omnibus Law introduces a new term, *hak pengelolaan* (management rights), which is not included in the 1960 Basic Agrarian Law and is likely to lead to legal confusion.⁴⁷¹

In drafting the Omnibus Law, the government has missed an opportunity to make fundamental changes in natural resource governance, particularly in the plantation sector. Overhauling the permitting system could have been an opportunity to put in place strong legal protection for Indigenous rights, and to legislate for FPIC at all stages of the permitting process and as part of spatial planning reviews. Environmental legislation could have been strengthened so that EIAs became authoritative documents that could ensure that projects went ahead only when they met the highest social and environmental standards. Proper transparency legislation could have been introduced, such as mandatory online disclosure of documents relating to permit decisions, thereby ensuring that provincial and local governments could be held to account more effectively than has been the case and corruption risk minimised without the need for recentralising power.

Far from strengthening environmental protection and governance in the natural resources sector, the Omnibus Law is a disaster. The many loopholes and weaknesses introduced by the new law will worsen natural resource management, including in the plantation industry. Indigenous rights will continue to be sidelined, while the EIA process looks likely to become even less effective as a safeguard against environmentally destructive projects. Meanwhile the law’s centralisation of power over the permitting process, and its provisions for wide-ranging replacement of legislation by executive regulation, may well exacerbate the corruption and cronyism that characterise the plantation sector, even if they shift the focus of corruption from a local to a national level.

470 Novika S (2020)

471 Yuliawati O (2020)

Food estates: paving the way for future land grabs



© Yayasan Pusaka Bentala Rakyat

■ Newly planted rice-fields in Tanah Miring, Merauke Regency in 2016. Merauke has been targetted since 2007 for a series of agricultural expansion projects.²⁰¹⁶

In July 2020 the Indonesian Government announced that it would be relaunching a policy of promoting industrial-scale agriculture as a means of stimulating the economy, avoiding potential food shortages in the wake of the COVID-19 pandemic and meeting the challenges that climate change will pose to food security.⁴⁷²

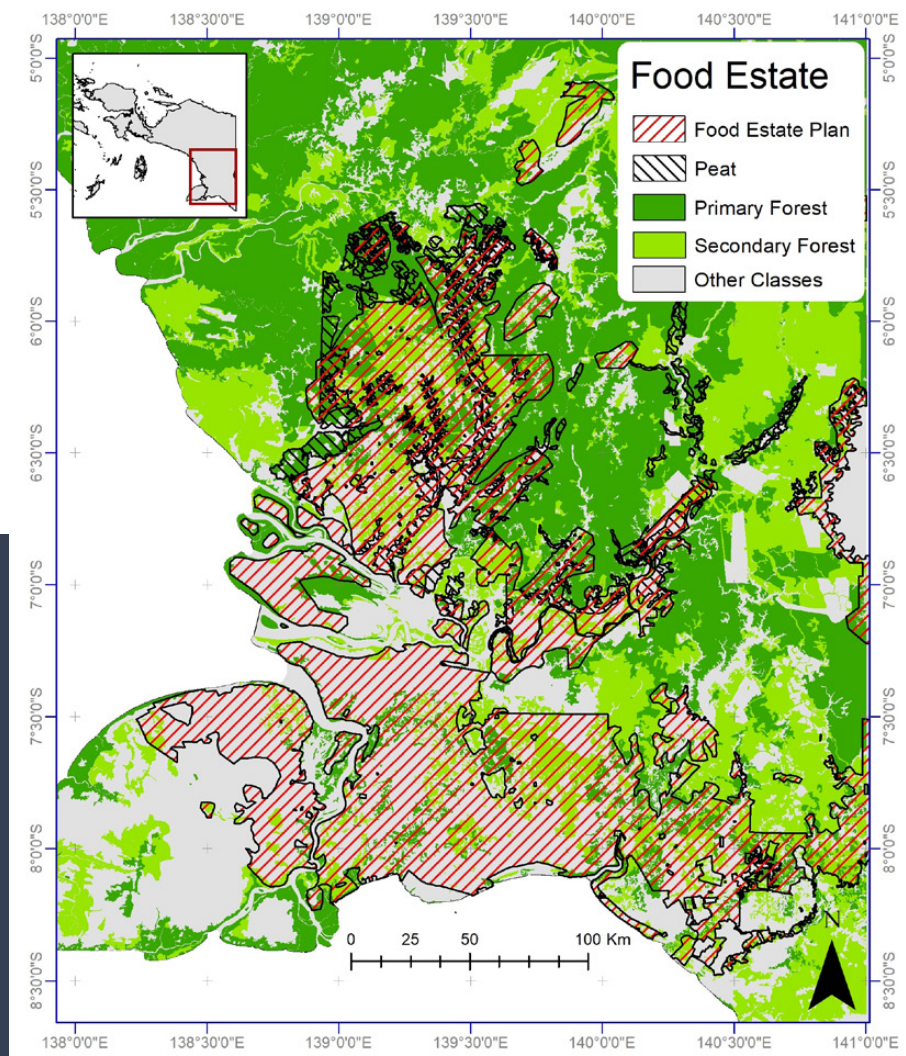
The initial areas proposed for the so-called 'food estates' were the site of a similar but failed project from Soeharto's time – the Mega Rice Project in Central Kalimantan – and an area in North Sumatra Province. In September 2020 it was announced that southern Papua Province was also being targeted (including areas in Merauke, Mappi and Boven Digoel regencies), as well as South Sumatra and East Nusa Tenggara provinces.⁴⁷³

472 Anam K (2020), Arumingtyas L, Hariandja R & Saturi S (2020)

473 Setyorini VP (2020)

The size of the proposed food estate in Papua is not yet confirmed, but it is clearly intended to be a megaproject. An initial document published on a Ministry of Environment and Forestry (MoEF) website⁴⁷⁴ referred to an area of 2,052,551 ha as being under evaluation through a Rapid Strategic Environmental Assessment (see below). However, by the time the MoEF presented a progress report on that assessment, a different and considerably larger area, covering 3,234,658 ha, was under consideration.⁴⁷⁵

This second area includes 243,622 ha of land classed as protected forest. Part of this is the 41,061 ha of mangrove swamps which line the coast of Mappi and Merauke, where coastal erosion is already a serious problem and liable to be exacerbated by any deforestation. In all, the area under consideration includes some 1.36 million ha of forested land, of which 625,557 ha are primary forest, although in this region of diverse habitats grasslands and savannahs are no less ecologically important. Some 51% of the area (1.66 million ha) is year-round or seasonal wetland,⁴⁷⁶ including 175,122 ha of peatland.⁴⁷⁷



⁴⁷⁴ Director General of Forestry Planning and Environmental Management (2020)

⁴⁷⁵ Direktorat PDLKWS (2020)

⁴⁷⁶ Land classed as swamp forest, swamp bushes, swamp or mangrove on the 2019 MoEF land cover map.

⁴⁷⁷ Using the Ministry of Agriculture's 2011 peat dataset.



1.36 million ha

of forested land



625,557 ha

are primary forest, although in this region of diverse habitats grasslands and savannahs are no less ecologically important



243,622 ha

of land classed as protected forest



41,061 ha

of mangrove swamps which line the coast of Mappi and Merauke



1.66 million ha

is year-round or seasonal wetland



175,122 ha

of peatland



This is the latest in a string of similar megaprojects proposed for southern Papua since 2007, all of which have failed to achieve anything approaching their projected extent. In 2007 the Saudi Bin Laden family was reportedly intending to be a major investor in a plan called the Merauke Integrated Rice Estate.⁴⁷⁸ In 2010, as commodity prices rose in the wake of the 2008 financial crisis, Indonesia declared that its food security was at risk and proposed a 1.28 million ha industrial agriculture project, the Merauke Integrated Food and Energy Estate (MIFEE), which catalysed a major palm oil expansion but did not significantly raise production of other food crops.⁴⁷⁹ In 2015 President Jokowi joined a rice harvest in Merauke organised by the Medco Group, one of the initial MIFEE investors, and declared that one million hectares would be converted to rice fields within three years.⁴⁸⁰ Rice-field expansion has continued, but on a much smaller scale.⁴⁸¹

The latest food estate programme marks the first time that a project of this kind has been extended beyond Merauke Regency to include Boven Digoel and Mappi.

Conversion of natural ecosystems on the scale proposed would have a devastating ecological impact. When one overlays the proposal and maps of existing plantation concessions and industrial forestry permits, it appears that almost the whole of southern Papua is destined for some kind of industrial development. The vast scale of the project means that it would span and severely reduce three unique ecoregions, as defined according to WWF's global classification: the TransFly Savanna and Grasslands,⁴⁸² the Southern New Guinea Freshwater Swamp Forests⁴⁸³ and the Southern New Guinea Lowland Rainforests.⁴⁸⁴ President Jokowi has been quoted as urging rapid construction of access roads for the proposed food estates, in order that 'large modern agricultural machinery does not have difficulty reaching the fields'.⁴⁸⁵ However, road networks of this kind could also improve access for heavy machinery used by illegal loggers.

478 C'roko Inter-Science/Theory (2010)

479 Awas MIFEE (2013c)

480 Kompas.com (2015)

481 Jubi.co.id (2019)

482 WWF website 'Southeastern Asia: Southern portion of the island'

483 WWF website 'Southeastern Asia: Southern New Guinea'

484 WWF website 'Southern New Guinea lowland rain forests'

485 Arumingtyas L, Hariandja R & Saturi S (2020)



■ Termite mound in eucalyptus forests in Wasur National Park, Merauke Regency. Merauke and Mappi regencies where the bulk of the Papuan food estate plans are located contain a wide range of unique habitats in addition to the tropical rainforests which dominate the rest of the West Papuan lowlands.¹⁵ Aug 2017

The 2010 and 2015 Merauke food estate plans could be fairly described as poorly conceived ideas, since as far as we are aware public government announcements took place before any detailed study and the government subsequently appeared to fail to devote meaningful resources to assessing their feasibility.⁴⁸⁶ As a result reports of multiple obstacles arose, including opposition from Indigenous people who assert they had not been consulted,⁴⁸⁷ conflicting permits issued by the bupati over the same land,⁴⁸⁸ crop failure⁴⁸⁹ and poor irrigation infrastructure.⁴⁹⁰ Few private companies were interested in taking the risk of investing in the projects.⁴⁹¹

There are indications that the 2020 iteration of the southern Papua food estate proposal will follow a similar trajectory. Under cover of the doubtful claim that the pandemic response necessitates rapid action, the government's plan is to undertake a 'Rapid Strategic Environmental Assessment'⁴⁹² before releasing or rezoning forest estate land.

486 Yayasan Pusaka Bentala Rakyat (2011)

487 Awas MIFEE (2013a)

488 Awas MIFEE (2013c)

489 Yazid M (2012)

490 TribunNews (2016)

491 Sulistyawati R (2020)

492 Arumingtyas L, Hariandja R & Saturi S (2020)

Ordinarily, Strategic Environmental Assessments are intended to feed into the spatial planning process, and were defined in a 2016 regulation⁴⁹³ as 'a series of systematic, thorough and participative analyses to ensure that sustainable development principles underlie and are integrated in regional development'. However, the government did not clarify what it meant in referring to 'rapid' assessments, a term with no legal basis which it has also used with reference to the planning of the new capital city in Kalimantan.⁴⁹⁴ This has led to fears being expressed that a new and less rigorous mechanism will be employed that has been chosen in order to give the green light to a socially and environmentally destructive national project.⁴⁹⁵

Following this criticism, a December 2020 MoEF briefing on the progress of the southern Papua assessment did state that it would follow the procedure set out in the 2016 regulation.⁴⁹⁶ Nevertheless, from that briefing it was clear that all the work done so far had been carried out solely by the MoEF in Jakarta, without any involvement of local or provincial government, and with no coordination with the ongoing spatial planning process. Not only is this initial top-down approach jeopardising local autonomy and Papua's Special Autonomy, it also raises doubt that Indigenous communities will ever be adequately integrated in the decision-making process or their needs and desires properly taken into account.

Alongside this potentially problematic assessment process, in recent months the government has also increased its range of legislative instruments to force through large-scale land conversion for food estates. The first important change is contained in the Omnibus Law, which modifies the 2012 Law on Acquisition of Land for Development in the Public Interest. That law, which was strongly opposed by civil society at the time,⁴⁹⁷ allowed the government to acquire land compulsorily for purposes such as new infrastructure and defence.⁴⁹⁸ In the Omnibus Law, the list of uses for which the government can acquire land compulsorily has been expanded to include purposes such as tourism development and food security programmes. This means that the central government now has a legal mechanism to appropriate land for these purposes, even if the Indigenous landowners do not consent to relinquishing their land for the project in question.

On the same day as the Omnibus Bill became law, a new ministerial regulation consolidated the threat,⁴⁹⁹ laying out the mechanism by which land in the forest estate can henceforth be used for new food estates. As was already the case, land zoned as Convertible Production Forest (*Hutan Produksi Konversi* – HPK) may be released by means of a similar mechanism to that currently used for plantation permits. However, under a new, separate mechanism other types of forest, including protected forest areas (*Hutan Lindung*), can also be used for food estates. If used for this purpose, such areas would be reclassified as 'Forest Estate for Food Security' (*Kawasan Hutan untuk Ketahanan Pangan* – KHKP) and would remain part of the forest estate, even if they were no longer forested.

493 Government Regulation 46/2016 (President of the Republic of Indonesia (2016a))

494 Ministry of Environment and Forestry (2019)

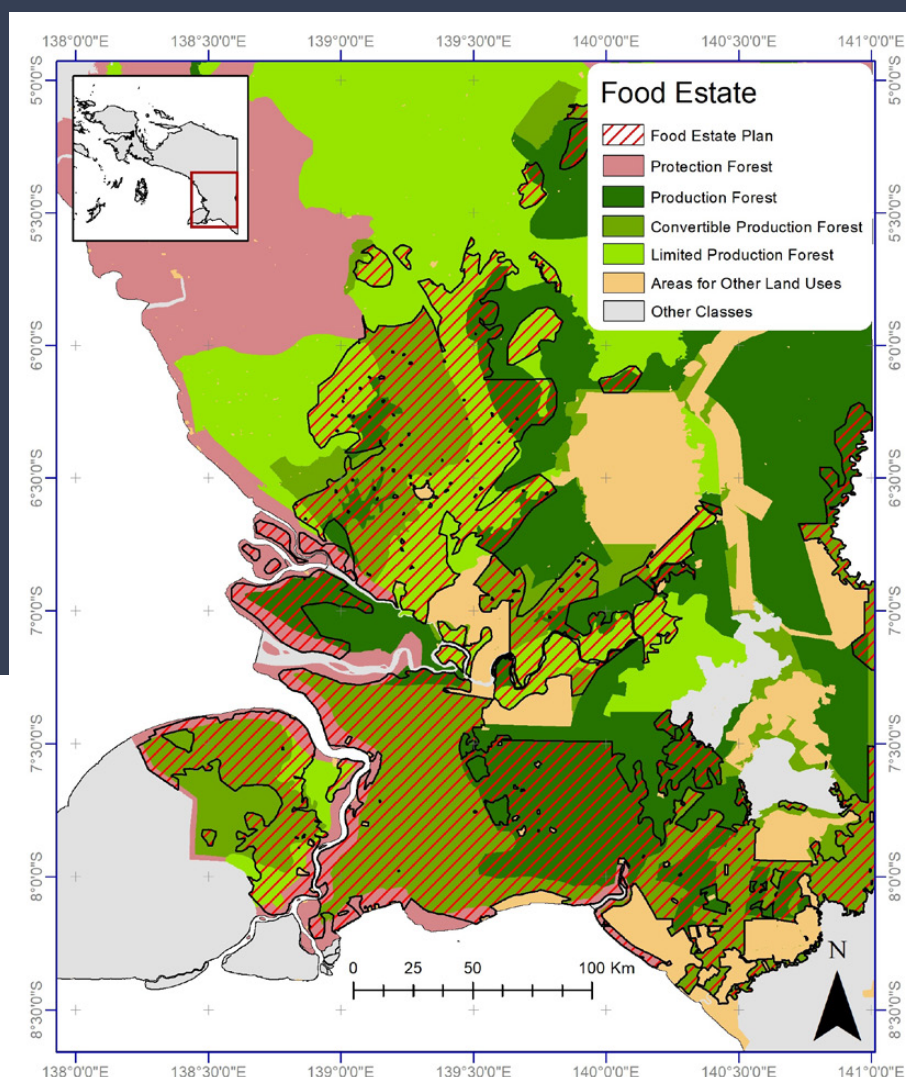
495 WALHI (2020)

496 Direktorat PDLKWS (2020)

497 Tempo.co (2011)

498 The list of purposes is given in Article 10 of Law 2/2012 on Acquisition of Land for Development in the Public Interest / Undang-Undang no. 2 tahun 2012 tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum (full text available at <https://peraturan.bpk.go.id/Home/Details/39012>).

499 Ministerial Regulation 24/2020 (Minister for Environment and Forestry (2020b))



Map of area of interest of food estate - kawasan hutan

The creation of a new forest category in this way is in clear conflict with the 1999 Forestry Law,⁵⁰⁰ which as a law has precedence over a ministerial regulation. Article 38 of the 1999 Law states that production forest and protected forest can only be used for development purposes if doing so does not alter the basic function of the area (i.e. to remain forested and provide environmental services).

The Forest Moratorium offers primary forest and peatland no protection from development of this kind, because use of land for 'national food sovereignty programmes' including crops such as rice, sugar cane, corn, soy, sago and cassava is given a specific exemption in the 2019 version of the moratorium. Further regulatory support for development was granted on 20 November 2020 when the food estate programme was added to the list of National Strategic Projects,⁵⁰¹ which are also exempt from the Forest Moratorium.

500 Fitra S (2020), ICEL (2020a)

501 Through Presidential Regulation 109/2020 (President of the Republic of Indonesia (2020)).



The power that the national government has given itself to allocate land for food estates raises important questions about the potential role being carved out for businesses owned or run by members of Indonesia's oligarchy. An immediate concern relates to the Minister for Defence, Prabowo Subianto. In July 2020 President Jokowi appointed his former rival for the presidency to a key role in developing the food estate programme, reportedly stating that rapid action was required to implement the policy and justifying his choice of Subianto on the surprising grounds that food resilience fell under the domain of national defence.⁵⁰² Meanwhile, Prabowo's Ministry of Defence has set up a company which aims 'to play a strategic role in supporting food, energy, and water security'.⁵⁰³ PT Agro Industri Nasional (Agrinas) is owned by foundations set up by the ministry, and its board of directors includes a number of Prabowo's associates: former generals, members of his Gerindra party and veterans of his campaign team.⁵⁰⁴ Greenpeace is not aware that PT Agrinas has been offered any formal role in managing the southern Papua food estate. However, the company has an office in Merauke, and according to its website has access to 40,000 ha of land in Merauke and another 20,000 ha in Jayapura, in the north of Papua Province.⁵⁰⁵

The recent regulatory changes designed to facilitate food estates stand to benefit PT Agrinas. Meanwhile, the Ministry of Defence's establishment of the company raises concerns that the executive government may be taking unaccountable control of the new enterprise, avoiding the traditional oversight by the House of Representatives.⁵⁰⁶ There is a risk that politicians may try to enrich themselves or their parties through such arrangements. Aside from farming plans, PT Agrinas has reportedly obtained a licence for the lucrative business of exporting lobster larvae, making it one of several companies linked to Gerindra that obtained licences⁵⁰⁷ from Minister for Fisheries and Maritime Affairs Edhy Prabowo (unrelated to Prabowo Subianto, but also a member of Gerindra⁵⁰⁸) after he reversed an export ban. On 25 November 2020, Edhy Prabowo was arrested by the Corruption Eradication Commission (KPK) in relation to these licences⁵⁰⁹ and subsequently removed from his post. His replacement as minister was Sakti Wahyu Trenggono, who was promoted from his previous post as deputy at the Ministry of Defence, during which time he had also been a director of PT Agrinas.⁵¹⁰

502 Fachriansyah R (2020)

503 PT Agrinas website 'About'

504 Law-Justice.co (2020)

505 PT Agrinas website 'About'

506 Kim K (2018)

507 Akbar C (2020)

508 Partai Gerindra (2013)

509 Gokkon B (2020)

510 Idris M (2020)

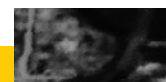
The Ministry of Defence has also announced that it intends to set up a new Body for Strategic Logistic Supplies (*Badan Cadangan Logistik Strategis*), under which the military would get involved in food production on the grounds of ensuring food security.⁵¹¹ Although this body appears not yet to have been established in law, members of the military have already been promoting it and announcing their intention to look for land and establish new food-based businesses in southern Papua.⁵¹² There are indications that this initiative is being pursued independently by the Ministry of Defence, and not fully integrated with the Strategic Environmental Assessment being developed by the MoEF.⁵¹³

As far as Greenpeace is aware, the Indonesian Government has not set out a detailed rationale for why an increase in industrial food production is a necessary and appropriate response to the COVID-19 pandemic – especially as food agriculture is reportedly the only sector which has continued to grow despite the pandemic.⁵¹⁴ In Merauke, rice farmers are reportedly producing a surplus, and are facing problems in finding a market for all the rice they produce.⁵¹⁵ On the contrary, academics have warned against repeating past food estate failures and instead recommended that Indonesia's COVID-19 food security response should focus on investment in supply chain reform in the short term and support for more diversified food production in the long term.⁵¹⁶

The palm oil industry offers a very worrying precedent which suggests that the impact of such an expansion of industrial agriculture on local food security could be devastating. The arrival of oil palm plantations in the area has already resulted in forests being lost, rivers polluted⁵¹⁷ and Indigenous Papuans becoming increasingly dependent on bought goods to meet their nutritional needs,⁵¹⁸ and similar impacts can be expected from food estate development.

Since the plantation sector arrived in Merauke and other parts of Papua in the last decade, there have been multiple reports of child malnutrition in areas around plantations;⁵¹⁹ for example, data from Muting health clinic, in the heart of Merauke's plantation zone, provides evidence of stunting in children, suggesting widespread malnutrition among both young children and their mothers.⁵²⁰ There is a great risk that any food security programme that is in conflict with the needs and desires of the Indigenous inhabitants of the land where it is situated will actually create food insecurity rather than alleviate it.

It is also ironic that another of President Jokowi's stated goals for the programme is to contribute to climate change resilience,⁵²¹ given that the proposed food estates in Papua, Kalimantan and Sumatra call for development of forest and peatland areas with the inevitable carbon emissions that this will entail.



511 Republika (2020)

512 Media Transparency (2020)

513 Direktorat PDLKWS (2020)

514 Uly YA (2020)

515 Bams (2020)

516 McCarthy JF et al (2020)

517 Abubar M (2012)

518 Chao S (2020)

519 Forest Peoples Programme, Pusaka & Sawit Watch (2013), Yayasan Pusaka Bentala Rakyat (2014a)

520 The Gecko Project (2020)

521 Arumingtyas L, Hariandja R & Saturi S (2020)

Failure to monitor beneficial ownership



■ An aerial photo shows excavator clearance for plantations in primary forest at PT Megakarya Jaya Raya oil palm concession in Boven Digoel regency. Since this company was issued a location permit in 2007, there has been a lack of transparency about its beneficial owner(s). 19 Dec, 2017.

Registry profiles for all Indonesian limited companies are available for purchase online. While these documents name a company's shareholders (the legal owner(s)), they do not always make it possible to discover who ultimately controls a company (its beneficial owner(s)). Some companies are owned by offshore companies in secrecy jurisdictions which do not require disclosure of shareholder information, making it impossible to identify the ultimate (beneficial) owners. In other cases, the legal owners named on the profiles are Indonesian citizens, but

there is reason to suspect that they are nominees, who have a contractual arrangement with the beneficial owner to act as owners of the company. Such contracts are declared to be legally invalid (i.e. unenforceable) under the 2007 Investment Law, but there are no sanctions imposed for companies who choose to use nominees anyway. The 2007 Company Law which defines what company information must be made public does not address nominee arrangements, and there is therefore no requirement on disclosure.⁵²²

522 The use of nominee agreements to conceal beneficial owners is actually declared legally invalid by the Investment Law (Article 33 of Law 25/2007 on Capital Investment / Undang-Undang no. 25 tahun 2007 tentang Penanaman Modal, available at <https://peraturan.bpk.go.id/Home/Details/39903/uu-no-25-tahun-2007>); however, the issue is not addressed in the Law on Limited Companies (Undang-Undang no. 40 tahun 2007 tentang Perseroan Terbatas, available at <https://peraturan.bpk.go.id/Home/Details/39965/uu-no-40-tahun-2007>).

Both these techniques for concealing the beneficial owners of companies are very common in Indonesia's plantation sector. Previous investigations by Greenpeace and other organisations have revealed how both techniques are employed to create 'shadow companies' – companies for which evidence can be uncovered linking them to well-known business groups. Many of Indonesia's largest plantation operators show strong links to companies which they do not publicly acknowledge are part of their groups, raising suspicion they may actually be the beneficial owners.⁵²³ Use of such companies can be a way for unscrupulous producer groups to get around the sustainability requirements of palm oil consumer companies, which require the same standards to be maintained by all companies belonging to the corporate groups they source from.

Several of the companies mentioned in this report are suspected of having concealed their beneficial owners, as they navigate the permit system and/or when operating plantations – see Case Studies 1, 3, 4 and 8.

Avoidance of sustainability requirements is not the only concern raised by the use of shadow companies: the concealment of beneficial owners can be used by companies to avoid paying tax, and by making it harder to follow the money trail can also facilitate money laundering.

In order to ensure compliance with the recommendations of the Financial Action Task Force,⁵²⁴ an international organisation with a mission to combat money laundering which Indonesia applied to join in 2017,⁵²⁵ Jokowi issued a presidential regulation in March 2018 requiring all companies to register their beneficial owners.⁵²⁶ In June 2019 the Minister for Law and Human Rights issued a further ministerial regulation setting out practical details of the scheme, including the operation of an online beneficial ownership registration system, and establishing the public's right to access this information.⁵²⁷ This would be a useful step forward towards reducing the potential for corruption in sectors which are known to have a high corruption risk, such as the plantation sector. The light it would shed on the true extent of each corporate group's business interests would also strengthen the movement for deforestation-free supply chains, and enable meaningful enforcement of other government policies, such as limits to the area of plantations one corporate group can control.

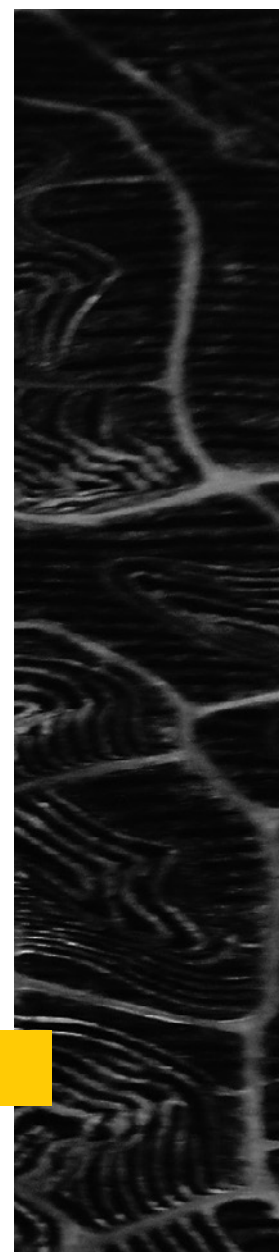
523 See Greenpeace (2018a,b) and Chain Reaction Research (2018).

524 FATF (2012–2020)

525 Herbert Smith Freehills (2018)

526 President of the Republic of Indonesia (2018c)

527 Regulation 15/2019 (Minister for Law and Human Rights (2019))





While this initiative is welcome, implementation has been predictably weak. Companies had one year after the 2018 presidential regulation was gazetted to supply their beneficial ownership information.⁵²⁸ However, after two years the government reported that only 8.3% of companies had supplied the required information.⁵²⁹ This is hardly surprising – while both the 2018 presidential regulation and the 2019 ministerial regulation mention that sanctions may be applied to companies that do not comply, neither specifies what they should be.⁵³⁰ There is so far no sign of government agencies performing verification of beneficial ownership data as envisaged in very general terms in Annex I of the 2019 ministerial regulation. Unless a stronger verification and enforcement mechanism is put in place, the regulations are thus likely to be ineffective.

One factor that could potentially help to drive compliance with beneficial ownership disclosure is the stipulation in the 2018 and 2019 regulations that companies must file their beneficial ownership details before or within seven days of obtaining a business licence. However, this requirement is unlikely to have much impact on implementation of the overall beneficial owner disclosure requirement unless it is incorporated into specific legislation governing each kind of business licence, and given a firmer legal standing through a law approved by parliament. The Omnibus Law, with its widespread reforms to the permitting system, offered an opportunity to do this, but the term ‘beneficial owner’ (*pemilik manfaat*) does not appear once in the law, casting further doubt on Indonesia’s seriousness about tackling this issue.

⁵²⁸ *Ie*, until 5 March 2019.

⁵²⁹ Suparman F (2020)

⁵³⁰ Article 24 of the 2018 regulation says that companies which do not comply with the requirement to register beneficial owners are subject to sanctions, but does not stipulate what those sanctions are.

International financial support despite Indonesia's failures



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■ A father and son in an oil palm plantation in Boven Digoel regency.

As Part 1 of this report notes, although West Papua's deforestation rate within oil palm concessions has fallen in recent years, this fall has been to a large extent market-driven, thanks to pressure from companies that buy palm oil and civil society organisations, and local Indigenous opposition to plantations. Meanwhile, as this report's analysis shows, the key national government policies aimed at reducing deforestation have not been effectively implemented in practice. New concessions covering forest areas have been issued, and old and flawed permits have been allowed to remain valid. The government has allowed the same failures of governance that have led to widespread forest destruction in the past to continue without reform, including conditions conducive to systemic corruption, poor transparency, an ambiguous regulatory environment and lack of recognition of Indigenous sovereignty.

Based on this record, the Indonesian Government deserves no reward. Nevertheless, in 2020 Indonesia was awarded significant international funds for its supposed achievements in reducing deforestation. Both the Norwegian Government and the Green Climate Fund (GCF, an organisation set up by the UN Framework Convention on Climate Change [UNFCCC]) have released results-based payments to Indonesia in 2020 under their 'Reducing Emissions from Deforestation and Forest Degradation – Plus' (REDD+) programmes.

The GCF payment covered the years 2014–2016, based on an averaged estimated reduction in emissions from deforestation, forest degradation and peat loss compared with the average in the reference period 1993–2012. In fact the calculated emissions for both 2015 and 2016 were higher than the reference period average, but because 2014's emissions were considerably lower⁵³¹ the GCF accepted that there had been a net reduction in the three-year period taken as a whole, and paid Indonesia US\$103.8 million.⁵³²

The Norwegian payment was for estimated reduced emissions from deforestation in 2017, as compared with a shorter and more recent reference period (2006–2016). Once again, the emissions reduction was not spectacular – a reduction of 17.3 million tonnes CO₂ equivalent, or just 6.2% less than the average over the reference period.⁵³³ Norway's payment to Indonesia for this reduction was US\$56 million⁵³⁴ and was the first payment made to follow up Norway's 2010 promise to donate up to US\$1 billion to Indonesia if its emissions from deforestation and forest degradation should fall.⁵³⁵

Announcing the payment in June 2020, Norway's Minister of Climate and Environment, Sveinung Rotevatn, said: 'This is a groundbreaking moment. Indonesia has embarked on a remarkable journey, and the forest and land use reforms undertaken by President Joko Widodo and Environment and Forestry Minister Siti Nurbaya are yielding impressive results.'⁵³⁶

Both payments represent a mark of donor countries' trust in Indonesia's efforts. The GCF is funded by governments around the world and the United Nations Development Programme (UNDP) applied for the grant on Indonesia's behalf.⁵³⁷

The GCF assumed that the emissions reduction that it was rewarding was the result of the implementation of Indonesia's national REDD+ strategy,⁵³⁸ although in its write-up it made no effort to verify a causal relationship. To check compliance with its social and environmental standards, the UNDP commissioned an Environmental and Social Analysis of the REDD+ strategy,⁵³⁹ focusing on two of its key elements, the country's Forest Moratorium and its Social Forestry programme (not addressed in this report). This analysis makes the direct claim that the moratorium policy was at least partly responsible for a reduction in emissions, without presenting any evidence for this.⁵⁴⁰ Indeed, although this analysis takes the Forest Moratorium as one of its main focuses, it fails to provide any assessment or criticism of the moratorium's implementation. The changes to the moratorium map to excise concession areas, and the risk that corruption may have been involved, are not addressed, even though this issue raises legitimate concerns about how this or any other Indonesian Government policy bearing on land use can be relied on not to breach the environmental and social safeguards required by the UNDP (or those of the GCF or UNFCCC).

531 The average for 1993–2012 in the Forest Reference Emission Level was calculated as 569 million tonnes CO₂ equivalent. The figures for the years 2014, 2015 and 2016 were 369, 574 and 618 million tonnes CO₂ equivalent, respectively. Source: Green Climate Fund (2020).

532 Yong C (2020)

533 Prihatno J et al (2020)

534 NICFI (2020)

535 Government of the Kingdom of Norway & Government of the Republic of Indonesia (2010)

536 NICFI (2020)

537 Green Climate Fund (2020)

538 Indonesian REDD+ Task Force (2012)

539 UNDP (2019)

540 'Nevertheless, the Moratorium, together with other national efforts (ie in some places the Moratorium increased prohibitions over areas already legally protected as conservation areas), Indonesia reported the initiative achieved a reduction of emissions during the period of 2013–2017 emission reductions [sic] of 48,978,427 t CO₂ eq annually (average of annual emissions) and 244,892,137 t CO₂ eq as the total for 2013–2017.' Source: UNDP (2019) p5.

Even leaving aside the question of whether the reduction in emissions from deforestation is attributable to the country's REDD+ strategy, multiple criticisms have been made of the basis on which the GCF's results-based payment to Indonesia was calculated. Methodological flaws that have been pointed out include a reference emission level (baseline) which is inflated by including high deforestation rates from many years ago,⁵⁴¹ and a failure to account adequately for the huge emissions caused by forest fires.⁵⁴² The resultant overly generous methodology only serves to compound the counterproductive message conveyed by awarding funds without evidence that the emissions reductions being rewarded can be attributed to government action. By giving 'money for nothing' in this way, foreign donors are squandering a potential incentive for Indonesia to rise to the challenge of reforming the structural weaknesses in its forest governance.

The Indonesian government is optimistic that the country can attract a lot more REDD money. In anticipation of a forthcoming presidential regulation on carbon trading, Coordinating Minister for Economic Affairs Luhut Pandjaitan has spoken of the potential income that could be earned by conserving and restoring the nation's forests, mangroves, peatlands, seagrass meadows and coral reefs.⁵⁴³

While it is doubtless the case that international donors and partners have a potential role in supporting Indonesia in embarking on a genuine transition to a more ecologically sustainable development pathway, it is vital that they establish clear criteria to ensure that they are contributing to meaningful change. If they do not do so, then in view of the severity of the climate and biodiversity crisis they will be open to the charge of greenwashing government failure. It is not enough for policies intended to reduce emissions from deforestation to exist on paper: they must be placed in a coherent legal framework to ensure that they are enforceable and do not contain loopholes, and they must be seen to be implemented effectively. They must also be commensurate with meeting the global climate goal of keeping warming to within 1.5 °C. At the same time the basic rights of Indigenous peoples, including the right to their ancestral lands, must be protected.

By these standards there should be extreme concern at some of the Indonesian Government's recent conduct, such as the failure to use the Oil Palm Moratorium to cancel old or problematic permits and protect the remaining forest, or the plan to create vast new food estates in areas of southern Papua with high conservation value.

541 REDD-Monitor (2020)

542 Lang C (2020)

543 Meilanova DR (2020)

Recommendations



The preceding sections of this report demonstrate that there is still a major disconnect between the reality on the ground in West Papua, and the actions that the Indonesian Government claims to be taking to improve forest governance (including preventing deforestation and safeguarding peatland). Rights of Indigenous Papuans are also not being genuinely protected.

One key contributing factor to this which has been identified is the strong relationships and overlapping interests which exist between influential players in the natural resources sector and those in government. It is feared that these dynamics may contribute to a culture where corruption and collusion become endemic, legislation and policy making are distorted, and law enforcement is weakened. Such a culture benefits elite and oligarchic interests at the expense of environmental protection and the rights of Indigenous peoples. The reform agenda and progressive measures such as the One Map Policy, the Forest Moratorium and the Oil Palm Moratorium will also fail.

Addressing this challenging situation requires systematic efforts using policy and legal instruments to control improper relationships between political actors, businesspeople and public officials. It also requires concrete action from all levels of government to review and if necessary revoke problematic concessions, and enforce sanctions where laws have been broken.

Indonesian government

- The Indonesian Government must implement and strengthen its existing regulations on beneficial ownership, and punish non-compliance, especially by companies in the natural resources sector. In addition, it must ensure public access to this information. The government must place an emphatic ban on the use of nominee shareholders, with strict sanctions for companies and their controllers who continue to use nominees.
- The government must quicken the implementation of its promised One Map Policy, including publishing concession maps through a freely accessible online platform.
- The government must ensure complete transparency in accordance with the mandate contained in the Freedom of Information Law. This includes placing copies of all permits and supporting documentation, including EIAs, online for public access.
- The quality of legislation governing the permitting process should be improved. Inconsistent and poorly integrated regulations issued by different ministries should be harmonised. Cross-sectoral issues should be governed through higher-level legal instruments (presidential regulations or higher). New regulations must provide wide-ranging government power to evaluate and revoke permits, especially in response to inactivity, suspected corruption or changing conservation priorities.
- The government should take strict action against permit speculation, wherein companies obtain concessions and permits with the intention of selling them on. The reason for this is it will hinder the implementation of FPIC. Among the necessary changes to prevent this practice are improved transparency in the permitting process and around ultimate beneficial owners of companies.
- The government must revoke the Omnibus Law and its implementing regulations, which weaken the precautionary principle in environmental management. Requirements for EIAs should be strengthened.
- The government must ensure that EIAs are conducted to high scientific research standards and accurately evaluate the full potential impact of each project. Evaluation of social impacts is an equally important part of this process, and the entire EIA must be subject to peer review. In making its decision whether to grant approval to a proposal, the government must give serious consideration to biodiversity conservation and environmental protection. In Papua, particular attention should be paid to the fact that biological diversity is poorly understood and that detailed long-term research is necessary to understand the possible environmental impacts of natural resources sector developments.

- The government must speed up the recognition of Indigenous rights by introducing and enacting the long-delayed Indigenous Rights Bill.
- The government should stop making plans for top-down food estates in West Papua and instead leave space for Papuans to devise strategies that prioritise their own food security and economic well-being – an approach which is not incompatible with increasing food production for wider consumption. It must also recognise that due to the long and continuing history of human rights abuses by the military in West Papua and the ongoing trauma and resentment this has caused, it is unacceptable for the military to be involved in food production or any other civilian activity.
- The government must ensure that all measures mandated in the Oil Palm Moratorium have been implemented by conducting an evaluation of what has been achieved under the moratorium policy as the basis for deciding whether or not it should be extended. It must provide technical directions to all relevant ministries and government agencies. This should include strict deadlines for implementing government orders, and penalties for missing them.
- The government must move rapidly to recognise Indigenous communities and to define Indigenous territories in accordance with the mandate of Constitutional Court Decision No.35/PUU-X/2012. It must suspend the issuance of any new permits in West Papua until these processes are completed.

Coordinating Ministry for Economic Affairs

- The Coordinating Ministry for Economic Affairs, as the ministry with prime responsibility for the review into oil palm permits mandated by the Oil Palm Moratorium, must ensure the task is carried out thoroughly and measurably.

Ministry of Environment and Forestry

- The MoEF should evaluate the industrial forestry permit for PT Merauke Rayon Jaya and cancel the permit if breaches are identified, taking into account the wishes of the Indigenous landowners.
- The MoEF should investigate the use of timber from oil palm plantation areas. In particular, it should revoke the timber industry business permit of PT Tulen Jayamas Timber Industries due to the lack of legally required EIA and environmental permit.
- The MoEF should initiate full rezoning of the forest estate with the purpose of ensuring stronger legal protection for primary forest, peatland and other ecologically important areas than is currently provided by the Forest Moratorium. All remaining areas of primary forest and peatland should be reclassified as protected forest (*hutan lindung*) or a conservation area, and therefore not available for commercial exploitation. To be in line with the efforts being made by the palm oil and other industries towards the goal of zero deforestation, this new zoning should also aim to ensure that natural secondary forest and other species-rich areas (such as the savannahs and wetlands of southern Papua Province) are also not available for conversion to commercial agriculture or industrial forestry.
- The MoEF should undertake a full revision of the Forest Moratorium map. All areas removed from the map should be reincluded in the Forest Moratorium area unless there is strong and methodologically sound evidence that no peat or primary forest is present.
- The MoEF should undertake an evaluation and inventory of still-forested land which has been released from the forest estate, and return it to the forest estate or class it as a conservation area.

Ministry of Agrarian Affairs and Spatial Planning

- The National Land Agency should issue HGU only when a company wishing to develop land has obtained permission from Indigenous landowners, and after the agency and an independent assessor have verified that a full and fair FPIC process has been carried out.
- The National Land Agency should revoke permits and HGU when they have been shown to be problematic and reallocate the land as Indigenous territory.
- The National Land Agency should abide by the decisions of the Indonesian Supreme Court concerning freedom of information which state that HGU data should be made available to the public.

Papua Provincial Government

- The provincial government should strengthen the protection of areas of high conservation value (HCV) and high carbon stock (HCS).
- The provincial government should expedite the recognition of customary forest throughout Papua Province.
- The governor should revoke old, inactive or problematic permits, and issue recommendations that areas previously allocated for plantations should instead be taken back into the forest estate and/or established as Essential Ecosystem Areas (*Kawasan Ekosistem Esensial*).
- A new Provincial Spatial Plan should be drawn up which recognises that Papua's forests are of global ecological importance and that their conservation is also culturally vital for Indigenous Papuans.

Bupatis and District Legislative Councils

- Bupatis and District Legislative Councils must carry out participative mapping of Indigenous lands and of potential economic opportunities for Indigenous communities. They must propose and define areas to be recognised as Indigenous territory.
- Bupatis and District Legislative Councils should issue local regulations under the mandate given by Constitutional Court Decision MK 35/PUU-X/2012 and regulations to implement the Papuan Special Autonomy Law.
- Bupatis and District Legislative Councils should issue local regulations setting out guidelines for carrying out FPIC processes.
- Bupatis and District Legislative Councils should provide assistance empowering Indigenous communities to undertake sustainable economic development.

International partners and donors

- International partners and donors must establish clear and strict criteria to ensure that they are supporting effective implementation of Indonesia's efforts to achieve good forest management and avoid a worsening climate crisis.

Glossary

- APL – Other use area (*Areal Penggunaan Lain*). A zoning for areas which may or may not be forested but are not managed as part of the forest estate and are therefore available for plantation and other development.
- BBSDLP – Indonesian Centre for Agricultural Land Resources Research and Development (*Balai Besar Penelitian dan Pengembangan Sumber Daya Lahan Pertanian*). An organisation under the Agriculture Ministry which is responsible for mapping peatlands, amongst other tasks.
- Beneficial owner – The ultimate or true owner and controller of a company; a person who enjoys the benefits of owning a company, even though they are not listed as a shareholder. Under Indonesian law, this includes someone who directly or indirectly can control a company, including appointing and sacking directors, commissioners and managers.
- Boundary survey – The administrative process to conduct a physical survey of forest estate land (*tata batas*). This is a required step before forest estate can be released for a plantation.
- Bupati – Head of regency government (*kabupaten*), which sits at an administrative level directly below provincial government.
- Forest estate – Areas which have been decreed by the government to be maintained as permanent forest, although some areas may be released from the forest estate to be converted into plantations or other uses. A constitutional court ruling has made clear that forest estate is not necessarily state forest, since it may also include forest subject to rights, including Indigenous forest. Forest estate is not identical to forested land, since it can include types of vegetation cover not usually described as forest; and because there are extensive forested areas outside the forest estate.
- Forest Moratorium – A policy first issued in 2011 through a Presidential Instruction, which is meant to ensure that no new permits are issued on primary forest and peatland.
- FPIC – Free, prior and informed consent.
- HGU – Land cultivation right (*Hak Guna Usaha*), leasehold land title for plantations.
- HPK – Convertible Production Forest (*Hutan Produksi Konversi*). A classification of forest estate land where land can be released for conversion to plantations or other uses, if conditions are met.
- Government Regulation – A regulation issued by the executive arm of government. These are often used for example to provide greater detail on the provisions contained in laws approved by the House of Representatives – in this case they are often referred to as implementing regulations. Ministerial regulations, produced by individual ministries, are also commonly used for this function.

- **IPK** – Timber utilisation permit (*Izin Pemanfaatan Kayu*). This is a permit issued to a plantation company to allow it to market any timber produced as a result of land clearing.
- **IUPHHK** – Timber industry business permit (*Izin Usaha Pemanfaatan Hasil Hutan Kayu*). This is the permit given to companies which either selectively log areas of forest estate or establish industrial tree plantations eg. for pulpwood. In contrast to other plantation crops such as oil palm, pulpwood plantations remain within the forest estate.
- **KPK** – Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*).
- **Legal owner** – The registered owner of a company through shareholding. This term is used in recognition that the legal owner may not be the same as the beneficial owner (see above).
- **Location permit** – A permit allocating an area of land to a company, allowing it to start the bureaucratic process to obtain a business licence and cultivation rights.
- **Ministry of Forestry** – In existence until 2014, when it was combined with the Ministry of Environment to produce the MoEF.
- **MoEF** – Ministry of Environment and Forestry.
- **Musyawarah** – Participatory decision-making process used in many cultural contexts in Indonesia and referred to in some legislation.
- **Oil Palm Moratorium** – A government policy, established in 2018 through a Presidential Instruction, to halt new permits for oil palm plantations for a period of three years, during which time a review of existing permits was to be carried out nationally.
- **Omnibus Law** – Popular term for the controversial 2020 Law on Job Creation, which modified dozens of existing laws.
- **Online Single Submission** – A system which came into force in 2018 to streamline the procedure for obtaining permits and licences across all sectors of business. Several pieces of legislation were modified to accommodate this new approach.
- **Papua Barat Province** – The westernmost of the two provinces in the Indonesian half of New Guinea island, created in 1999. The Indonesian name is used in this report to avoid confusion with the entire territory of West Papua ('*Barat*' means 'West' in Indonesian).
- **Papua Province** – The easternmost of the two provinces in the Indonesian half of New Guinea island.
- **Presidential Instruction** – A decree from the president, setting out directions to ministries, government agencies and/or local government. There are no legal penalties for non-compliance.
- **PT** – Limited liability company in Indonesia (*Perseroan Terbatas*).
- **REDD+** – Reducing Emissions from Deforestation and Forest Degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries – a mechanism negotiated through the UN Framework Convention on Climate Change.
- **West Papua** – Encompasses both of the provinces that comprise the Indonesian half of New Guinea island. It is the most frequently used term in English for this territory, predating the creation of Papua Barat Province (literal translation – West Papua Province).

Methodological notes

Group and ownership attributions

There is no publicly available database containing full details of Indonesia's plantation concessions and the groups that control them. Many concessions do belong to formally established, stock-listed companies with conventional parent-subsidiary structures that list their subsidiaries and/or estates more or less comprehensively on their websites or in their annual reports – sources on which Greenpeace has based its characterisation of these as groups, supplemented by information taken from permit documents and elsewhere.

However, other concessions have much less straightforward ownership and control, belonging to complex networks of companies owned by individuals or families whose links are not (or only in part) publicly acknowledged. In some cases a well-known, high-profile company may have a cluster of clandestinely linked 'shadow companies' in addition to its acknowledged plantation subsidiaries; in others there is no single ultimate parent company and the group consists largely of privately held companies, not listed on any stock exchange. Different family members may be the ultimate shareholders in different companies, or parts of the group may be held offshore, rendering the ultimate owner unknowable. In other cases named legal shareholders may be nominees, where arrangements exist with other beneficial owners that have not been publicly disclosed.

It is necessary to take a broad view of what constitutes a group, going beyond straightforward ownership links to include other forms of control (financial, managerial, operational or other). This must be done to get around these ways in which unscrupulous owners obscure their ownership of plantation operations engaged in forest destruction, which they may do in order to avoid compromising the market access of their publicly acknowledged subsidiaries.



The compositions of a number of these less straightforward groups, and the rationale behind Greenpeace's interpretation of them (in general terms and individually) is set out by the Accountability Framework Initiative (AFi). This defines a corporate group as:⁵⁴⁴

The totality of legal entities to which the company is affiliated in a relationship in which either party controls the actions or performance of the other. Factors that are used to determine whether a company is part of a broader corporate group include:

Formality of relationship: *Is there formal ownership, such as through an investment holding structure?*

Declared as a group: *Has the group publicly declared the companies are linked?*

Family control: *Are the companies owned or run by members of the same family?*

Financial control: *Are there contractual or other financial arrangements that indicate one party controls the performance of another?*

Management control: *Is there extensive overlap in officials between companies?*

Operational control: *Are landholdings under a group's operational control?*

Beneficial ownership: *Is ultimate ownership hidden in offshore companies or by the use of nominees?*

Shared resources: *Do companies share a registered address, land or other physical assets, or provision of company functions or services?*

A concession company is considered declared as a member of a group if this declaration originates from the company itself, such as a company's annual reports or statements to a stock exchange, its official website or its annual communication of progress to the RSPO. For all companies mentioned in this report where no such declaration exists, official Indonesian (and where relevant Malaysian and Singapore) company registry profiles have been obtained and analysed.

Indonesian company registry profiles include current and historical names and addresses for shareholders and company officers (directors and commissioners), and company address details. There is a slim possibility that very recent changes in ownership or officers may not have been detected, if they took place since Greenpeace last acquired the profile. References to an individual's role as director, commissioner and/or shareholder of these companies is based on information contained in these profiles, as is information about the official addresses of companies and their officers.

⁵⁴⁴ <https://accountability-framework.org/wp-content/uploads/2019/07/Definitions.pdf> p25

Where concession companies are not declared as part of a group, and registry profiles do not show it to be a formal subsidiary by shares of a known group company, discovered evidence is considered to evaluate whether the other AFI indicators are met. Examples of such discovered evidence are where a company:

- Is associated with a group in statements by individuals who work for or closely with the company, eg employment details on LinkedIn profiles and Facebook and Instagram posts of company employees/owners
- Shares an official or local office address with companies belonging to a group
- Has significant overlap of directors/commissioners or other personnel in management positions with other companies belonging to a group
- Exhibits signs of apparent family connection with the group, for example through shared addresses and/or family names of individuals listed as shareholders or company officials
- Appears in media reports as linked to a group (greater weight is given to articles where an identified company spokesperson is quoted or which contain a press release, as opposed to articles where names/owners are merely mentioned by the reporter)
- Apparently conducts recruitment jointly with companies belonging to a group
- Appears to be part of a group based on field documentation (eg signs in or adjacent to plantations bearing company logos, testimonies from workers)
- Shows evidence of sufficiently significant financial investment by a member of a group to indicate a degree of control by that group

The task of establishing the structure and extent of an informal group is a complex one, as evidenced by the wide range of potential sources listed above, and the results obtained must inevitably be considered as potentially incomplete. In particular, many of the informal producer groups discussed frequently restructure the ownership or management of their plantation companies – perhaps in part to obscure their true control. The work of mapping their structures is therefore ongoing.

Where group attributions in this report are based on discovered evidence, it is because several independent items of evidence have been discovered that show a strong case for association based on the AFI definition above. There may of course be some uncertainty around the exact nature of this association in such cases – the aim is to establish the basis for control between companies and therefore we refer to group association rather than narrow concepts of legal ownership through shareholdings.

Prior to publication Greenpeace contacted a number of companies and individuals discussed in this report to offer them the opportunity to comment on our findings, including our conclusions on group association where relevant. Responses received can be viewed in full [at this location](#).

Freedom of Information Requests

Greenpeace Indonesia has for several years been making requests for information on licences, permits, forest and peatland surveys and other requests for information from Indonesian government institutions. Unfortunately, despite the mandate embodied in Indonesia's Freedom of Information law, many such requests have been refused or ignored. For this report, during 2020 Greenpeace Indonesia sent a new round of formal letters to the government agencies at the regency, provincial and national level responsible for issuing permits. Several responses were received, and that data has been relied upon in this report. However, it is not possible to be sure to have obtained full information about all permits and related documentation, and this report aims to reflect such uncertainty in the text where possible. Copies of permits shared by other NGOs which they had received from the government in the course of their own research or advocacy have also been used to complement data obtained by Greenpeace Indonesia.

Mapping and forest clearing

Observations of forest clearing in this report are based on comparing the Global Forest Change dataset, government land cover and peat maps (see sources below) and the best available concession maps, usually obtained by requesting documents from the licensing agencies, and digitising maps from individual concessions' permit documents.

Data sources and maps:

This report uses **Global Forest Change** data published by the University of Maryland, which provides an estimation of forest loss over the period 2000–2019. It primarily uses a collection of cloud-free Landsat imagery to derive changes to tree cover canopy. In this dataset, trees are defined as all vegetation higher than 5 metres while forest loss is defined as change of forest to non-forest state indicated by the complete removal of tree canopy cover at the Landsat pixel scale. Each pixel represents an area that is approximately 30 x 30 metres, or a little less than one-tenth of a hectare. Due to this technical limitation, land clearing in patches smaller than that particular area is not included in the annual estimation of forest loss.

Indonesian land cover maps, now produced annually by the Ministry of Environment and Forestry (MoEF), are considered to be reliable representations of forest and other land uses. The 2019 dataset is the main reference used (if historical maps are referred to, this is made explicit), and all references to forest type (primary forest, swamp forest, etc) are based on the classification in these maps unless otherwise attributed.

Peat maps used are also Indonesian government maps. For general analysis, Greenpeace uses the peat dataset published in 2011 by the Ministry of Agriculture. Further research over the last decade has improved the data, but this remains the latest national dataset which the government has made freely available. For some areas of interest in southern Papua Province (Mappi, Merauke and Boven Digoel Regencies) Greenpeace Indonesia has purchased copies of more recent peat maps published in 2019. All findings relating to peat in those areas have been verified to be valid against that dataset. Other spatial data relating to peat is referred to at points in the report, including maps of **Peatland Hydrological Units** and priority areas for peat restoration by the Peat Restoration Agency.

Indicative maps of areas included in the **Forest Moratorium** are published by MoEF each time there is a revision to the map.

Calculations of above-ground carbon stored in forests (see box, Part 1, and Case Study 9) are based on the estimated figures for carbon stored per hectare in each of six forest classes in **Indonesia's Forest Reference Emission Level** documents supplied to the UNFCCC. Note that this is an estimate of carbon stored rather than carbon which would be released into the atmosphere if the forest were to be converted to a plantation – for this a more complex methodology would need to be employed, taking into account a wider range of variables.

Greenpeace attempts to maintain a comprehensive map of plantation concessions across Indonesia, based on a range of different datasets. Since a single concession might have a location permit, IUP, forest release and HGU with different boundaries, analysis is not always straightforward. In this report, we have decided to focus predominantly on companies whose concessions were released from the forest estate, and accordingly have conducted spatial analysis based on forest release boundaries. This was felt to be the most pertinent since much of the analysis concerns decisions taken by the MoEF (or its predecessor the Ministry of Forestry).

Recent Legal Changes.

As this report was in preparation in February 2021, a number of new regulations were issued to implement changes contained in the 2020 Omnibus Law.⁵⁴⁵ Many of these concern procedures for issuing permits and other issues addressed in this report. However, due to the amount of new legislation and limited time, we have not been able to incorporate a full analysis of these new regulations into this report.

545 Law 11/2020 on Job Creation / Undang-Undang no. 11 tahun 2020 tentang Cipta Kerja, full text available at https://www.setneg.go.id/view/index/undang-undang-republik-indonesia-nomor_11_tahun_2020_tentang_cipta_kerja

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