

SHADOW REPORT

WHERE IS THE IMPLEMENTATION OF PRESIDENTIAL INSTRUCTION NO. 8 OF 2018, GOING?



SAWIT WATCH

Madani



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PREFACE

SHADOW REPORT

**WHERE IS THE IMPLEMENTATION OF
PRESIDENTIAL INSTRUCTION NO. 8 OF 2018 GOING?**

EXECUTIVE SUMMARY

In September 2018, President Joko Widodo issued Presidential Instruction No. 8 of 2018 on the Suspension and Evaluation of Palm Oil Plantation Licenses and Improvement of Palm Oil Plantations Productivity. For some, this policy is a good momentum to improve palm oil governance in Indonesia.

Presidential Instruction No. 8 of 2018 gives a mandate to the Coordinating Minister of Economic Affairs to report the achievements and progress of the policy to the President every six months or whenever required. Civil Society Coalition consisting of Sawit Watch, Madani, ICCEL, ELSAM, Kaoem Telapak, JPIK, Greenpeace Indonesia, FWI, Kemitraan, SPKS, Pusaka and KPSHK developed a “**Shadow Report: Where is the Implementation of Presidential Instruction No. 8 of 2018 Going?**” to capture, document, and provide a brief analysis regarding progress and achievements of the policy in its first semester of implementation.

Some findings of the reports are as follows: progress of implementation of the policy in its first semester is preparatory and coordinative in nature without any significant result. No cases of overlap that have become public attention were resolved through this policy. Out of 25 Provinces and 247 Districts/Cities that have palm oil plantations, the majority is still silent and has not responded to the Presidential Instruction (19 Provinces and 239 Districts/Cities). Forest zone release for palm oil plantation belonging to PT HIP (Hardaya Inti Plantations) in Buol, Central Sulawesi, issued in November 2018 through Decision of Minister of Environment and Forestry was a disregard to the Instruction. On the other hand, there are a few Provincial and District/City Governments that are committed to implement the Instruction, among others are Aceh Province, Buol District (Central Sulawesi) and Sanggau (West Kalimantan), shown by translation of the Instruction into local policies (regional regulation or governor/district head instruction).

Recommendations for the implementation of Presidential Instruction No. 8 of 2018 are as follows: 1) Central government must allocate a designated budget for the implementation of the Instruction for the committed regions; 2) The national level Work Team must immediately issue a technical guidance to implement the Presidential Instruction implementation as a reference for regional governments; 3) Provinces and Districts that do not yet have palm oil plantations and have intact forests should also be included in priority areas of implementation; 4) A mechanism to promote transparency regarding data, information and updates regarding implementation of the Instruction that enables public monitoring and access of information by the public or civil society organizations must be built and 5) There must be a communication platform between the national level Work Team and local governments to facilitate coordination.

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INTRODUCTION

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**WHERE IS THE IMPLEMENTATION OF
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A. INTRODUCTION

The size of palm oil plantations in Indonesia has reached 22.2 million hectares (Sawit Watch, 2018), 30 percent of which is owned by smallholders.¹ Palm oil industry currently makes a major contribution to the national economy, with crude palm oil (CPO) export constituting 12 percent of the total national export with the total production of 31 million tones in 2016. Palm oil export contribution reached USD 17.8 billion or 231.4 trillion rupiah.² Domestically, the use of palm oil biodiesel has been mandated by the government of Indonesia. The government's target is to produce up to 40 million tones CPO per year in 2020.

Despite the contributions, palm oil plantations in Indonesia are surrounded by numerous problems, from environment degradation, agrarian conflict, neglected workers' conditions, threat to food security, and many others. Sawit Watch (2016) records 782 communities in conflict with palm oil plantations.

In 14 April 2016, President Joko Widodo announced that he would temporarily suspend issuance of palm oil and coal mining licenses. The commitment was finally realized in a Presidential Instruction (Inpres) No. 8 of 2018 regarding Suspension and Evaluation of Palm Oil Plantation Licenses and Improvement of Palm Oil Plantations Productivity (palm oil moratorium).

Through this policy, the government attempts to improve palm oil governance to reach sustainability, provides legal certainty, preserve and protect the environment, including to reduce Greenhouse Gases (GHG) emissions, and to improve assistance to smallholders and productivity of palm oil plantations.

The moratorium and evaluation of palm oil plantation licenses is a good momentum to improve palm oil governance in Indonesia. This report provides information regarding challenges in the implementation of Presidential Instruction No. 8 of 2018 and elaborates on how to connect this policy with other policies to make it work on the ground inside the short period of its validity, namely only 3 years.

¹ Sawit Watch. 2016. Menerka Luasan Kebun Sawit Rakyat. Bogor. There are many versions of palm oil plantations size. According to KPK (2018), the total of issued palm oil plantation permits has exceeded 20 million hectares, while according to the satellite imagery, the total of palm oil plantations cover is 16.83 million hectares. Besides KPK, statistics published by the Ministry of Agriculture (2018) state that the total of palm oil plantations cover is 14.31 million hectares, consisting of 5.81 million hectares of community plantations, 7.79 million hectares of corporations' plantations, and 0.713 million hectares of state plantations (<https://www.infosawit.com/news/8642/data-kpk--luas-areal-izin-sawit-20-juta-ha>)

² <http://www.netralitas.com/bisnis/read/17817/menkeu-sri-mulyani-harapkan-sumbangan-industri-sawit> accessed on April 29, 2017 at 20.00 WIB

SCOPE

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B. SCOPE

Palm oil trees are not forest plants. Therefore, palm oil plantations in forest zone are not legally allowed. However, based on data of Ministry of Environment and Forestry, there are 2.3 million hectares of palm oil plantations inside or overlapping with forest zone.³ These overlaps will become objects of intervention in the Presidential Instruction No. 8 of 2018. This suggests that the policy will only be effective in addressing overlaps between forest zone and palm oil plantations. The efficacy of this policy in addressing overlaps between palm oil plantations and other concessions such as mining concessions, timber plantation concession (IUPHHK-HT, previously HTI or Industrial Timber Plantation), logging or IUPHHH-HA (previously HPH or Forest Utilization Right), and others, is questionable.



Figure 1. Scope of Presidential Instruction No. 8 of 2018 on the Suspension and Evaluation of Palm Oil Plantation Licenses and Improvement of Palm Oil Plantations Productivity

There are five results of evaluation of palm oil plantation licenses that will be decided in an inter-ministerial coordination meeting, namely:

1. Re-enactment of forest zone that had been released or exchanged for palm oil plantations back as forest zone. This can be read as the process of forest zone gazette⁴ Based on the Forestry Law, forest zone gazette⁴ is a series of uninterrupted processes starting from (a) Designation of forest zone, (b) Boundary demarcation/delineation of forest zone,

³ Regarding the size of palm oil plantation areas inside forest area, the data vary. Minister of Environment and Forestry stated that the total size is 2.3 million hectares (<http://www.mongabay.co.id/2018/10/20/menteri-lingkungan-bakal-evaluasi-23-juta-hektare-kebun-sawit-di-kawasan-hutan/>). A study conducted by UGM shows that there are 2.8 million hectares of palm oil plantations in forest area and 35% of them is managed by the community while the rest is under the control of palm oil companies, see <http://www.mongabay.co.id/2018/11/04/kajian-ugm-28-juta-hektare-kebun-sawit-di-kawasan-hutan-65-milik-pengusaha-solusinya/> while FWI (2017) shows that 8.9 million hectares of forest area are overlapping with HPH, HTI, and palm oil plantations in 8 provinces, see <http://www.mongabay.co.id/2017/12/13/kajian-fwi-89-juta-hektare-lahan-tumpang-tindih-di-8-provinsi/>

⁴ See the Decision of Constitutional Court No 45/PUU IX/2011

- (c) Mapping of forest zone, and (d) Determination/enactment of forest zone (see Article 15 of the Forestry Law).
2. Enactment of areas originating from forest zone release as state land. This can be read as one of the steps in the process of determining one of types of land rights in the form of HGU (land use right) given on state land.
 3. Enactment of norms, standard, procedures, and criteria (NSPK) for plantation business license (IUP) or plantation business registration letter (STDUP)). On this, the framework we can see is integration with the online licensing system (the OSS system).⁵
 4. Enactment of areas as abandoned land and suspension of the process to issue HGU (land use right) or HGU revocation, and/or
 5. Law enforcement measures and/or compensation seeking for the use of forest zone for palm oil plantations based on data verification and evaluation of forest zone release or exchange for palm oil plantations.

Another mandate in the Presidential Instruction No. 8 of 2018 is development of progress report of palm oil moratorium implementation, which has to be given every 6 months from the Coordinating Minister of Economic Affairs to the President or immediately upon the President's request. This shadow report is prepared to give a picture of and document the implementation of the policy and provide a brief analysis regarding developments and achievements of Presidential Instruction No. 8 of 2018 in the first semester of its implementation.

⁵ See the Government Regulation No 24 of 2018 on Integrated Electronic One Stop Licensing Service

DEVELOPMENT AND PROGRESS

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C. DEVELOPMENT AND PROGRESS

There are some developments and progress in the implementation of Presidential Instruction No. 8 of 2018, among others are as follows:

1. National Level

The Instruction mandates the establishment of a Work Team to implement the policy with the following tasks: 1. Conduct verification of data regarding forest zone release or exchange for palm oil plantations, Plantation Business License maps or IUP or Plantation Business Registration Letter (STDUP), Location Permit, and Land Use Right (HGU); 2. Determine the minimum standard for data compilation; 3. Conduct synchronization with the implementation of One Map Policy in relation to the appropriateness of licenses issued by ministries/state agencies at the central level and regional level, between IUP and HGU, and between decision letter regarding forest zone designation/enactment with HGU; 4. Issue recommendations to Minister/Governor/Head of District/Mayors regarding: a. Re-enactment of forest zones that had been released or exchanged back as forest zone, b. Enactment of areas originating from forest zone that had been released or exchanged as state land, c. Norms, Standards, Procedures, and Criteria (NSPK) for IUP and STDUP; d. Enactment of abandoned land and suspension of the process of HGU issuance or HGU revocation, e. Law enforcement measures/compensation seeking for the use of forest zone for palm oil plantations based on data verification and evaluation of forest zone released or exchanged for palm oil plantations.

In general, the Work Team must report to the President regarding the abovementioned four subject matters. The Team must at least provide information regarding developments in the four areas for 25 provinces and 247 cities/districts that have palm oil plantations with the size of 16.8 million hectares (GN PSDA KPK, 2018). Until today, there has not been any update regarding developments and or progress in the four subject matters as the result of the Work Team of Presidential Instruction No. 8 of 2018's work.

❖ Coordinating Ministry of Economic Affairs

The Coordinating Ministry of Economic Affairs is currently preparing a Standard Operating Procedure (SOP) for palm oil moratorium implementation, specifically with regards to mapping and data validation. The SOP will include typologies of problems related to palm oil plantations inside forest zone, which will be recommended to technical ministries. In addition, the Ministry has instructed to other ministries to prepare a database of maps and licenses because its own database only has forest cover data from the Ministry of Environment and Forestry.

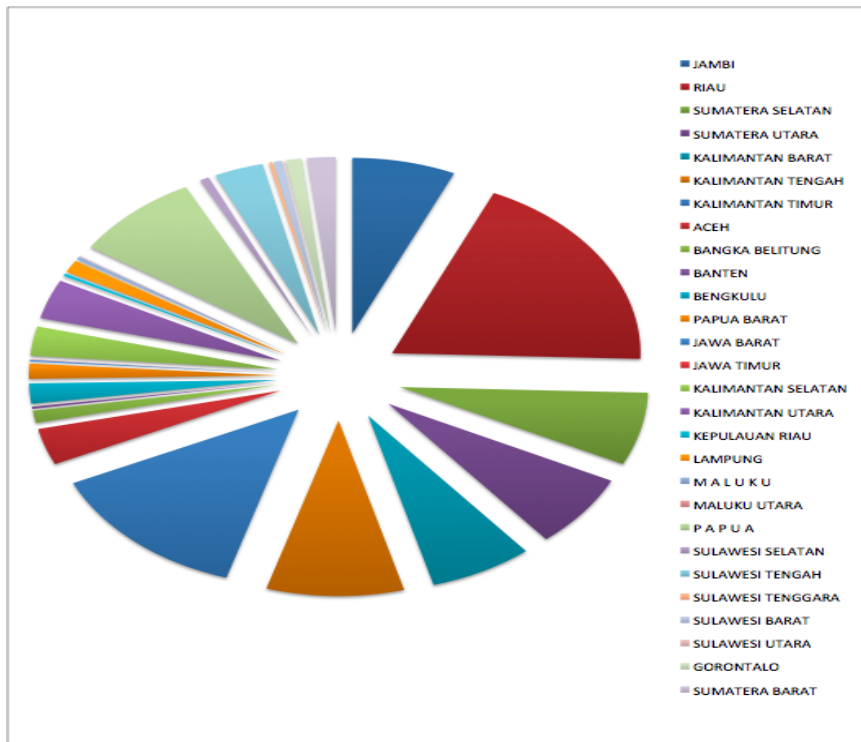


Figure 2. The size of palm oil plantations in each province in Indonesia (Sawit Watch, 2018)

There are seven provinces that will be prioritized in the implementation of Presidential Instruction No. 8 of 2018, namely Jambi, Riau, North Sumatra, South Sumatra, West Kalimantan, Central Kalimantan, and East Kalimantan. In addition, in the next six months, the Ministry will conduct coordination to align data to synchronize with One Map Policy and coordination at the regional level.⁶ The seven provinces are handpicked by the Ministry based on the size of palm oil plantations in each province, which constitutes at least 68 percent of the total size of palm oil plantations in Indonesia.

Table 1. The size of palm oil plantations per province in Indonesia (Sawit watch, 2018)

PROVINCE	SIZE (HA)
JAMBI	1,500,000
RIAU	4,200,000
SOUTH SUMATRA	1,500,000
NORTH SUMATRA	1,520,000
WEST KALIMANTAN	1,500,000
CENTRAL KALIMANTAN	2,000,000

⁶ Some information about palm oil moratorium implementation, especially the works of the Coordinating Ministry of Economic Affairs is sourced from communication and dialogue with Mr. Prabianto Mukti Wibowo, deputy for coordination of natural resources and environmental energy management on April 1, 2019 at the Office of the Coordinating Ministry of Economic Affairs.

EAST KALIMANTAN	3,000,000
ACEH	752,766
BANGKA BELITUNG	252,902
BANTEN	45,260
BENGKULU	417,000
WEST PAPUA	310,163
WEST JAVA	31,432
EAST JAVA	7,000
SOUTH KALIMANTAN	600,000
NORTH KALIMANTAN	808,000
RIAU ISLANDS	54,700
LAMPUNG	256,000
MALUKU	61,590
NORTH MALUKU	11,000
PAPUA	1,847,982
SOUTH SULAWESI	133,493
CENTRAL SULAWESI	713,217
SOUTHEAST SULAWESI	50,819
WEST SULAWESI	117,261
NORTH SULAWESI	9,157
GORONTALO	229,620
WEST SUMATERA	413,453
TOTAL	22,342,815

❖ Commission for Corruption Eradication (KPK)

The KPK has stated that the implementation of Presidential Instruction No. 8 of 2018 must be monitored, both at national and regional levels. KPK has produced studies regarding palm oil plantations. However, there has been a lack of follow-up actions for the results. According to KPK, there must be a collaborative approach involving various parties to formulate concrete actions in the future. In addition, KPK through GN PSDA (National Movement to Save Natural Resources), especially the Coordination and Supervision Section (*Korsup*) of Plantation and Forestry is moving in the same direction with the palm oil moratorium policy to improve palm oil governance. Therefore, KPK recommends a synergy between the two.⁷

2. Local Level

Some provinces and districts/cities display interesting developments and progress with regards to palm oil moratorium policy implementation. For those regions, the Instruction is used as an entry point to boost the implementation of 'Nawacita' programs, for example agrarian reform (Agrarian Reform Objects or TORA) and Social Forestry (PS). Several provincial and district/city governments have also issued internal policies derived from Presidential Instruction No. 8 of

⁷ Results of focus group discussion (FGD) between several civil society organizations with Research and Development Division of KPK.

2018 to enable its implementation. Based on our monitoring results, there are four levels of response by regional governments to Presidential Instruction No. 8 of 2018, namely: 1. Public statement, 2. Policies or regulations to implement the palm oil moratorium agenda, 3. Policies or regulations to implement the palm oil moratorium agenda, establishment of local work team and its infrastructure, and 4. No response .

Until today, the majority of the 25 provinces and 247 districts/cities that have palm oil cover with the size of 16.8 million hectares (GN PSDA, KPK, 2018) has not issued any response to Presidential Instruction No. 8 of 2018. See table below for the regional governments that have responded to the Instruction.

Table 2. Provinces and Districts' Responses to Presidential Instruction No. 8 of 2018

No.	Response Level	Province	District	Note
1	Public commitment of state officials	East Kalimantan, West Kalimantan, Islands of Riau, Riau, and West Papua	Sintang, Barito Timur, Gorontalo, Banyuasin and Lingga	5 Provinces and 5 Districts/Cities
2	Policies/regulations regarding palm oil moratorium agenda	Aceh	Sanggau, Buol, Aceh Utara	1 Province and 3 Districts/Cities
3	Policies/regulations regarding palm oil moratorium agenda, establishment of local work team and its infrastructure	-	-	-
4	No response			19 Provinces and 239 Districts/Cities

**Updates up to March 2019*

Table 3. Developments of Provincial and District/City Government's Response to Presidential Instruction No. 8 of 2018

No	Regions		Item	Source
	Province	District		
1	East Kalimantan		Public statement (Governor)	https://www.liputan6.com/regional/read/3116469/demi-hutan-primer-kaltim-rem-pemberian-izin-kebun-sawit
2	West Kalimantan		Public statement (Governor)	http://pontianak.tribunnews.com/2018/12/25/link-ar-borneo-sambut-baik-inpres-moratorium-penundaan-perizinan-perkebunan-kelapa-sawit
3	West Kalimantan	Sanggau	Circular letter (Head of District)	http://ksp.go.id/geliat-moratorium-sawit-di-sanggau/
4	West Kalimantan	Sintang	Public statement (Regional Parliament Member)	https://kalbar.antaranews.com/berita/341017/dewan-sintang-dukung-wacana-moratorium-sawit-dan-tambang
5	Central Kalimantan	Barito Timur	Public statement (Regional Parliament Member)	https://tewenews.com/dprd-kabupaten-barito-timur-kebijakan-moratorium-izin-perkebunan-kelapa-sawit-tidak-sekadar-kebijakan/
6	Riau Islands		Public statement (Vice Governor)	https://www.batamnews.co.id/berita-41593-wagub-tak-setuju-di-lingga-ada-perkebunan-sawit.html
7	Riau Islands	Lingga	Public statement (Vice Governor)	https://sumatra.bisnis.com/read/20181204/534/866200/pemprov-kepri-tolak-investasi-sawit-di-lingga
8	Riau		Public statement (Regional Secretary)	http://www.riauonline.co.id/riau/kota-pekanbaru/read/2018/09/27/riau-dukung-inpres-moratorium-pelepasan-kawasan-hutan-jadi-kebun-sawit
9	Central Sulawesi	Buol	Policy for palm oil moratorium agenda	http://ksp.go.id/gorontalo-dan-buol-siap-moratorium-sawit/index.html
10	Gorontalo	Gorontalo	Public statement (Head of District)	http://ksp.go.id/gorontalo-dan-buol-siap-moratorium-sawit/index.html
11	South Sumatera	Banyuasin	Public statement (Head of District)	http://ksp.go.id/bupati-banyuasin-siap-percepat-tata-kelola-perkebunan-sawit-berkelanjutan-dan-berkeadilan/index.html
12	West Papua		Public statement (Governor)	https://www.antaranews.com/berita/756417/papua-barat-dukung-moratorium-sawit-dan-tambang



13	Aceh	Aceh Utara	Policy at provincial and district level	https://walhiaceh.or.id/jokowi-cekmad-moratorium-sawit/
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In general, there are some responses and follow-ups from several Provinces and Districts regarding Presidential Instruction No. 8 of 2018, which are summed up in the following paragraphs.

a) Papua Province

Presidential Instruction No. 8 of 2018 has not been understood in comprehensive manner by the government of Papua Province and a number of civil society organizations (CSO) in Papua. The context of the policy understood by the regional government is merely that there will be no issuance of new palm oil plantation licenses in Indonesia in general and in Papua specifically. In addition, the Governor has not issued any instruction regarding implementation of this policy, which results in no activities by regional government officials in Papua.

This is concerning because since the policy was issued in September 2018 up to November 2018 when a focus group discussion regarding palm oil moratorium was held in Papua, the regional government had not considered this policy important. This was reflected by lack of understanding from regional government representatives (Agriculture Service and Investment and Licensing One Stop Agency). Should there be no changes, it is possible that the policy cannot be implemented well in Papua. The first precondition to implement palm oil moratorium in Papua is to make the regional government officials understand the policy better.

However, one positive thing observed in the FGD held in Papua is that the Province has implemented a process of monitoring and evaluation of palm oil plantations in its jurisdiction although the Presidential Instruction No. 8 of 2018 has just been issued. As a result, Papua Licensing Service has revoked three palm oil plantation licenses in Boven Digoel District. This suggests that evaluation of licenses to some degree has been done and the important thing is scaling it up to evaluate all existing licenses in Papua Province, including community estates, if any. Many civil society organizations (CSO) present in the discussion raised concerns regarding the failure to implement Special Regional Regulation (Perdasus) No. 21 of 2008 regarding Sustainable Forest Management in Papua Province. According to civil society organizations in the discussion, the regulation can serve as the basis to implement Presidential Instruction No. 8 of 2018 in Papua. All CSOs present were willing to work together to create synergy to implement Presidential Instruction No. 8 of 2018 in Papua, including sharing data, joint studies, et cetera, especially pertaining to synchronization between data of licenses and the current size of palm oil plantations in Papua.

b) West Papua Province

West Papua Province has made a commitment in the form of Manokwari Declaration. The province is committed to increase protection areas up to 70 percent in the provincial spatial plan. This is a manifestation of the Conservation Province commitment declared in 2015. In general, the implementation of Presidential Instruction No. 8 of 2018 in West Papua is not yet optimal. Currently, the province is collecting secondary data regarding palm oil plantations where the size of palm oil plantations in West Papua is indicated to be around 300,000 hectares. This can be synergized with palm oil moratorium implementation. The



public is waiting for the operationalization of Manokwari Declaration and the palm oil moratorium in the form of a public policy such as regional regulation or others. At the moment, several civil society organizations in Manokwari are working together in a spatial plan working group, which one of the tasks is to conduct review of all licenses in West Papua. This working group is one of the concrete forms of support in the implementation of palm oil moratorium policy whereby data from CSOs are used as comparisons in the process of license review conducted by the Provincial government.

c) South Sulawesi Province



Figure 3. Post-FGD situation with the government of South Sulawesi province

The government of South Sulawesi is highly invested in implementing Presidential Instruction No. 8 of 2018 on the Suspension and Evaluation of Palm Oil Plantations Licenses and Improvement of Palm Oil Plantations Productivity. The provincial government sees that the Instruction can provide a good opportunity to improve the palm oil industry and all the problems associated with it. As an initial step, the provincial government will hold a meeting with related Regional Government Organizations (OPD) in South Sulawesi to discuss opportunities brought by the implementation of Presidential Instruction No. 8 of 2018 in their province. After the discussion, there is a plan to establish a work team involving many parties, starting from regional government, academicians, and CSOs.

d) District of Banyuasin, South Sumatra Province



Figure 4. Post-FGD situation with District Government of Banyuasin, South Sumatra Province

The District Government of Banyuasin is ready to improve palm oil governance to become more sustainable and just in their jurisdiction. This is in line with the President's direction in Presidential Instruction No.8 of 2018. Banyuasin Head of District, H. Askolani Jasi, S.H., M.H., reaffirmed that he and the regional apparatus of Banyuasin will soon form a local policy to respond to the Presidential Instruction. The planned policy product is a Circular Letter or Regulation of Head of District, which will be considered further. In addition, the District Government is also committed to establish an Agrarian Reform Task Force or GTRA in their jurisdiction.

e) District of Gorontalo, Gorontalo Province



Figure 5. Post-FGD situation with the regional apparatus of Gorontalo District, Province of Gorontalo

The regional government of Gorontalo District welcomes the issuance of Presidential Instruction No. 8 of 2018. The Head of District has conducted coordination with all regional apparatus as a follow-up of the policy in the form of a work team at the District level. To support the implementation of palm oil moratorium, the Head of District will issue a Circular Letter addressed to related regional government organizations. The geographical conditions of Gorontalo District do not allow development of palm oil plantations. The District Government is currently focusing on development of local produces such as coconut and corn. In addition, the District Government will also establish an Agrarian Reform Task Force or GTRA in Gorontalo District.

f) **District of Buol, Central Sulawesi Province**



Figure 6. Post-FGD picture with regional government organizations of Buol District, Central Sulawesi Province

Buol District is committed to stop the issuance of palm oil plantation licenses although the District still has Non-Forest zone with the size of 146,000 hectares. The decision is in line with the result of Strategic Environment Assessment or KLHS of Buol District, which prohibits more opening of forest zone for palm oil plantations.

Buol District is one of the most progressive districts in terms of follow-up of the Presidential Instruction No. 8 of 2018. The Head of District has issued Regulation No. 8 of 2019 regarding suspension and evaluation of palm oil plantations licenses. In addition, Buol government has issued a Decision Letter to establish an Agrarian Reform Task Force or GTRA. The future challenge is to synchronize and synergize the works of GTRA team by inserting implementation points of the District Regulation.

g) District of Sanggau, West Kalimantan Province

The government of Sanggau District is committed to implement Presidential Instruction No. 8 of 2018 by issuing a Circular Letter of Head of District No: 065/3442/HK-B regarding Implementation of Presidential Instruction No. 8 of 2018 dated 29 November 2018, which has become an entry point of the regional government to process the Instruction at the district level.

The commitment is elaborated in the following subject matters: (1) Moratorium of new licenses for cultivation (Plantation Business License and Plantation Business License-Cultivation), especially from forest zone release; (2) Optimization of development of lands that have already obtained a license; (3) Increasing the role of TP5K (Team of Development Assistance, Plantation, Agriculture, Mining, and Forestry) to assist palm oil plantations and improve institutional capacity of smallholders (cooperatives/partner smallholders); (4) Implementation of replanting for plasma plantations using PIR or Community-Core Plantation scheme using the replanting fund from BPDP-KS (Palm Oil Plantation Fund Management Agency); (5) Improving smallholder/community plantations by providing quality seeds and other production inputs; (6) Provision/utilization of subsidized fertilizers for smallholder plantations; (7) Disclosure of public information about plantation business through <http://esawit.sanggau.go.id/beranda>.

CASE STUDY

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D. CASE STUDY FROM THE FIELD

Presidential Instruction No. 8 of 2018 attempts to address and resolve overlaps and conflicts between palm oil plantations and forest zone. Data and information collected until March 2019 record at least 108 cases of conflict between palm oil plantations inside forest zone (see Annex 1). These data and information are dynamic in nature and will be updated regularly. Some cases managed to seize public attention but are still not resolved until today, among others are as follows:

1. Forest Zone Release to PT Hardaya Inti Plantations (PT. HIP), which is considered as a disregard to the Presidential Instruction No. 8 of 2018 and the TORA Program.⁸

Release of productive forest zone for palm oil plantations still occurred inside no more than 3 months after the enactment of Presidential Instruction No. 8 of 2018 by President Joko Widodo. The release was for a company named PT Hardaya Inti Plantations (PT. HIP) in Buol District, Central Sulawesi, with the size of 9,964 hectares. The release was indicated of having violated the rules of forest zone release and is in violation of the spirit of Presidential Instruction No. 8 of 2018 since it included productive forest zones.

Several violations in the process of productive forest zone release were found:

1. In the area with the size of 9,964 hectares based on the Decree of the Minister of Environment and Forestry of Republic of Indonesia Number SK.517/menlhk/setjen / PLA: / 11/2018 on the Release and Boundary Demarcation of Production Forest for Conversion Zone for Palm oil Plantation (SK 517/2018) on behalf of PT Hardaya Inti Plantations (PT. HIP) in Buol District, Central Sulawesi Province, an area of 7,862 hectares of natural forest cover or 78.9% of the total released area was found. This is in violation of the regulation for forest zone release, which states that production forest that can be released must be a non-productive production forest zone for conversion.⁹

⁸ This section is taken from several sources, including Madani's Investigation Report (2019) "Forest released in Buol, turned into palm oil", analysis of corruption indication findings in the management of PT HIP palm oil plantation (Walhi of Central Sulawesi, 2018), Damaging forests in Buol District, ignoring Agrarian Reform and Presidential Instruction No. 8 of 2018, a recommendation (Walhi Central Sulawesi, 2018).

⁹ Government Regulation No. 104 of 2015 on the Procedure for Forest Area Status and Function Designation Change, Article 19 paragraph (1) excludes provinces that have no available non-productive HPK.

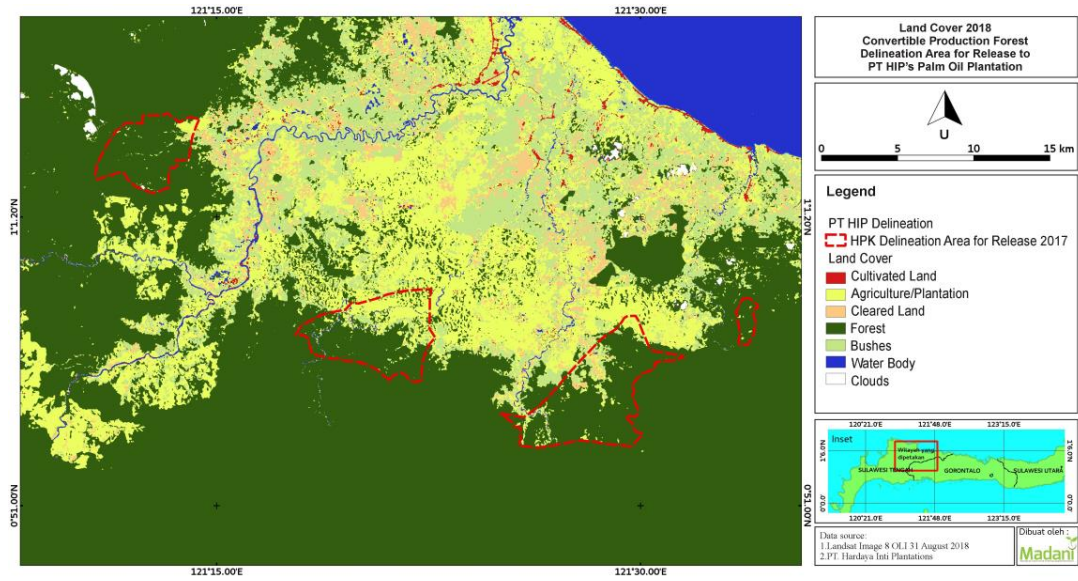


Figure 7. Natural forest cover observed in the area released for PT. HIP, parts of which have been planted with palm oil (Madani, 2019)

2. In the area with the size of 9,964 hectares released based on the Decree No. 517/2018, palm oil plantations were observed, meaning that parts of the area had been planted with palm oil. This indicates that the release was intended to whitewash legal violation committed by the company, which was equal to “killing two birds with one stone” because the company then could obtain legality for its palm oil plantations while avoiding criminal charges on “forest encroachment”.

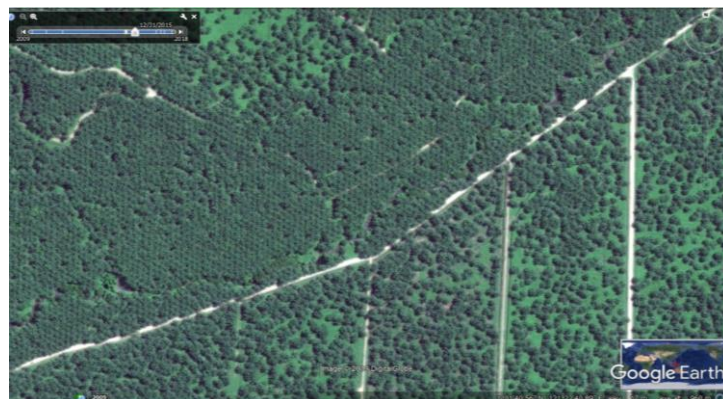
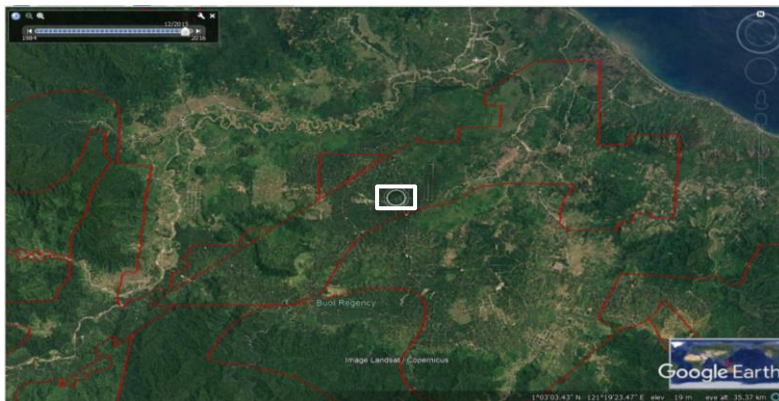




Figure 8. Images captured from Google Earth on December 31st, 2015. The location of PT. HIP concession (above) and magnification on PT. HIP concession (below) shows rows of palm oil plantations (Sawit Watch, 2019).

In the area of 9,964 hectares based on the Decree no. 517/2018, prior to the decision of forest zone release, there were indications of illegal deforestation through massive land clearing of natural forest cover. In 2009, the land cover was forest but land clearing activities were seen in 2015 followed by the appearance of palm oil plantations in 2018. Such activities were carried out prior to the issuance of the Decree No. 517/2018 in November 23, 2018 (Madani, 2019), see Figure 9.

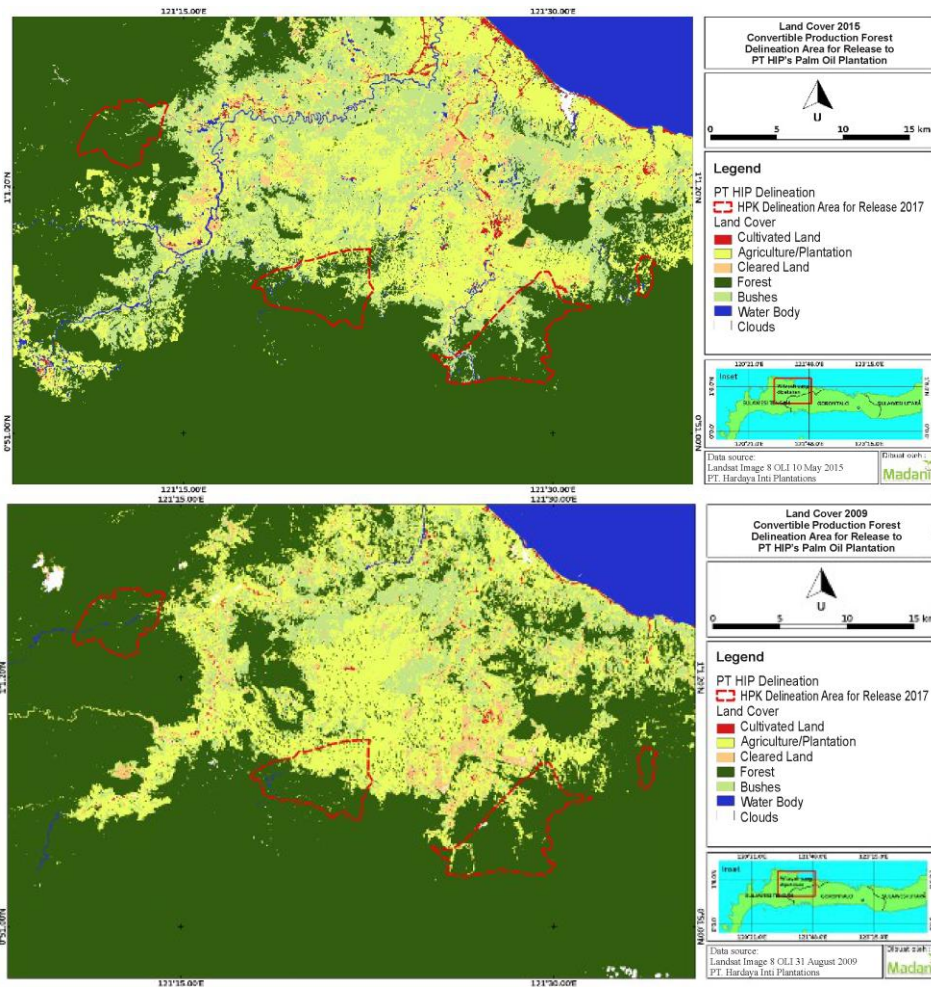


Figure 9. Forest cover in 2009 (above) and 2015 (below) shows increasing land clearing activity for PT. HIP’s palm oil plantations

- According to data from KPK, PT. HIP held a location permit for 75,090 hectares of land, which exceeds the limit of location permit.

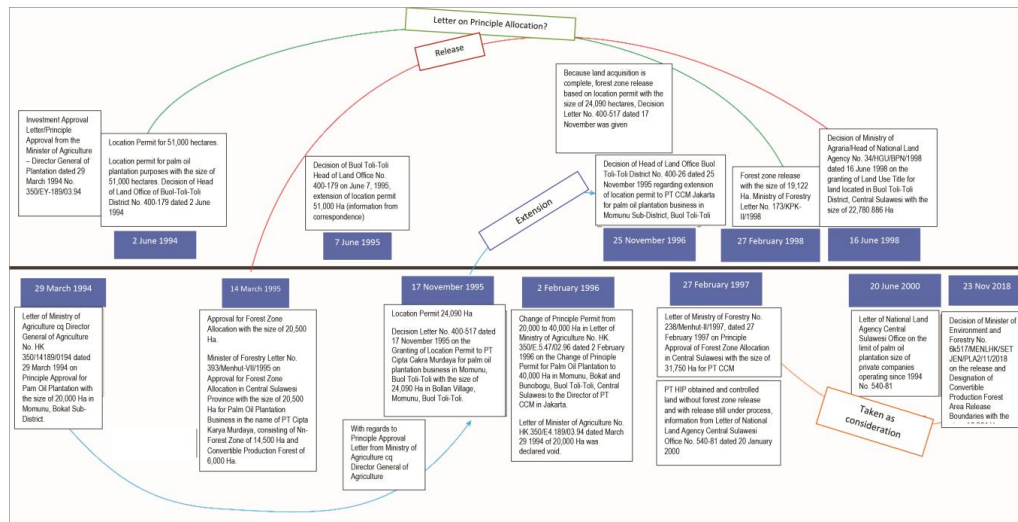


Figure 10. History of licensing process of PT. HIP from the stipulation of palm oil plantation business principle permit in 1994 to the release of 9,964 hectares of forest zone in November 23, 2018 (Walhi Central Sulawesi, processed)

Palm oil plantations owned by PT. HIP is a subsidiary of PT. Citra Cakra Murdaya (CCM) that belongs to the tycoon family of Murdaya Poo and Siti Hartati Murdaya. This palm oil plantation company was involved in a bribery case when obtaining their plantation permits.

Based on the findings of the Ombudsman Indonesia of Central Sulawesi (2017), the previous Governor of Central Sulawesi and District Head of Buol failed to conduct supervision and provided guidance and evaluate the performance of palm oil plantation companies as stipulated in Article 44 of the Regulation of Minister of Agriculture No. 29/Permentan/Kb.410/5/2016 on the Amendment to the Regulation of the Minister of Agriculture No. 98 /Permentan/Ot.140/9/2013 on Guidelines for Licensing of Plantation Businesses. The (in)action of the Regional Government, which constitutes a failure to carry out their legal obligations is a violation of administrative procedure. Will the Palm Oil Moratorium Work Team be able to contribute to resolution of this case?

2. The Ongoing Palm Oil Plantations Havoc in Tesso Nilo National Park of Riau

Tesso Nilo is one of the National Parks located in Riau Province. Tesso Nilo National Park is an important habitat for endangered protected animals such as the Sumatran tiger and Sumatran elephant. Based on the inventory of MoEF, there are 360 species of flora, 82 types of medicinal plants, 114 species of birds, 50 species of fish, 33 types of herpetofauna, and 644 species of beetles in the Park.¹⁰

¹⁰ <https://www.mongabay.co.id/2018/03/23/rumitnya-revitalisasi-tesso-nillo-ketika-sebagian-besar-wilayah-sudah-terambah/>

Encroachment practices have changed the face of Tesso Nilo National Park. With an initial area of 81,793 hectares, now the encroachment rate has reached 54% or equivalent to 44,544 hectares, a very concerning number. Land selling in the national park area began in 2000s, not only for settlement purposes but also for investors / business people, including for the development of palm oil plantations. This condition continues, creating a chaotic land ownership status.

The central government, in this case the Ministry of Environment and Forestry, has formed a Revitalization Team of the Tesso Nilo Ecosystem (RETN) in 2016. This team has a focus on resolving the chaotic governance of Tesso Nilo National Park in an integrated manner. The team involved a number of parties including CSOs, academics, and local residents. The team is divided into a working group and operational group. The Working Group team is headed directly by the Secretary General of MoEF, while the Operational Team is headed by the Head of the Natural Resource Conservation Agency of Riau. The main mechanism of revitalization consists of social forestry and agrarian reform, in addition to improving the management of palm oil plantations, as well as building markets and infrastructure.¹¹

In the past few years, the central government has focused on environmental law enforcement, especially on forestry issues in Riau. MoEF is actively targeting the Tesso Nilo forest encroachers. One of the law enforcement actions took place on December 21, 2012 where one of the excavators used to open palm oil plantations in Tesso Nilo National Park was seized when operating in Kesuma Village. It was followed by confiscation of a number of heavy equipment found in the Tesso Nilo National Park area in February 2018.¹²

One example of encroachment case in the Tesso Nilo forest was committed by Johannes Sitorus. This was a 13 year-old cold-case buried in civil servant investigators' desk at the Ministry of Environment and Forestry in Pekanbaru. Finally, the case was submitted to the Bangkinang District Prosecutor's Office in 2017 under the direction of the Minister of Environment and Forestry, Siti Nurbaya. Johannes Sitorus owns a 500-hectare palm oil plantation in Buluh Nipis Village, Siak Hulu Sub-District, Kampar, Riau. At a hearing in the Bangkinang District Court, it was decided that this legal case was considered to have expired. Likewise, the process that took place in the Pekanbaru High Court decided the same thing. The case was declared expired and the defendant was freed from all charges.¹³

A similar thing happened to Zaiful Yusri, Head of the Bangkinang National Land Agency. He was charged for legalizing land ownership in the state forest of Tesso Nilo National Park on behalf of Johannes Sitorus by signing 271 bundles of ownership rights (SHM) with an area of 511,24 hectares. The judge also declared the case expired.¹⁴

President Joko Widodo has set a national target social forestry for 12.7 million hectares. From that figure, 1.4 million hectares are located in Riau. Tesso Nilo National Park is one of the pilot projects in implementation of this pro-people policy. However, implementing social

¹¹ Ibid

¹² <https://www.mongabay.co.id/2018/01/12/fokus-liputan-silang-sengkarut-kebun-sawit-di-tesso-nilo-bagian-2/>

¹³ Ibid

¹⁴ Ibid

forestry in the national park is not an easy feat. Chronic problems and chaotic land management have been taking place for years and are difficult to run through.¹⁵

To overcome the complexity of Tesso Nilo, the government formed a community-based Tesso Nilo ecosystem restoration program (RETN). The RETN was designed to restore palm oil plantations to forests and relocate all residents who currently live in the national park area to an ex-timber company concession outside the national park area. The challenge is that some of the ex-concession land has also been planted with palm oil plantations.¹⁶ Does the Palm Oil Moratorium Work Team have the capability to conduct evaluation based on the mandate of Presidential Instruction No. 8 of 2018 and settle this dispute with RETN?

3. The Unresolved Palm Oil Plantations in Riau Forest Zone¹⁷

Until now, forest crimes are still occurring in Riau, destroying Riau forest zone hectares by hectares. The Special Committee for Monitoring Plantation Licenses in the Regional House of Representatives of Riau has previously found that there were tens of thousands of hectares of forest zone that have been illegally cultivated by 33 palm oil plantation companies. Moreover, several companies were caught red-handed opening plantations outside their Land Use Right area (HGU).¹⁸

Based on the investigation conducted by Eyes on the Forest in November 2017, 10 companies were indicated to be located in forest zones. Six of the ten companies are in the Darmex group (affiliated with PT. Duta Palma).¹⁹

Table 4. Results of EoF monitoring on palm oil plantation companies in forest zone²⁰

No	Company Names	Grup	Size based on 2015 images and ground observation	Size of HGU	Size of plantations in forest zone based on Decision Letter No. 903/Menlhk/Setjen/PLA.2/12/2016				APL
					HPK	HP	HPT	HL	
1	PT Banyu Bening Utama	DARMEX	7.653,00	6.420,00	7.582,00				71,00
2	PT Gandaerah Hendana	Gandaerah Grup	14.798,00	13.870,00	663,00				14.135,00
3	PT Kencana Amal Tani	DARMEX	9.554,00	9.217,00	5.300,00				4.254,00
4	PT Kharisma Riau Sentosa		1.519,00		1.519,00				-
5	PT Palma Satu	DARMEX	9.956,00		9.956,00				-
6	PT Panca Agro Lestari	DARMEX	3.719,00		3.350,00		367,00		369,00
7	PT Peputra Supra Jaya	Peputra Masterindo	10.670,00			4.060,00	173,00		10.670,00
8	PT Seko Indah	DARMEX	1.014,00		936,00				78,00
9	PT Eluan Mahkota	DARMEX	5.880,00	5.951,00	1.483,00				4.397,00
10	PT Hutahean	Hutahean Grup	8.284,00	4.547,00	2.648,00		132,00		5.636,00
Total			73.047,00	40.005,00	33.437,00	4.060,00	672,00	-	39.610,00

¹⁵ <https://www.mongabay.co.id/2018/01/20/fokus-liputan-upaya-benahi-karut-marut-tata-lahan-tesso-nilo-bagian-3/>

¹⁶ Ibid

¹⁷ This originates from the Investigation Report of Eyes on Forest, 2018, "Palm Oil Plantation is Operating in the Forest Area of Riau Province without License and other Violations". Cited on May 4th, 2019.

¹⁸ Ibid

¹⁹ Investigation Report of Eyes on Forest, 2018, "Palm Oil Plantation is Operating in The Forest Area of Riau Province without License and other Violations". Cited on May 4th, 2019.

²⁰ Ibid

It is estimated that the total area of the 10 identified companies are around 73,047 hectares while the HGU are only around 40,005 hectares. This indicates that there are plantations outside the given permits. Ironically, the HGU permits are partly located in the forest zone in the first place. From the 73,047 hectares of palm oil plantations identified under the Decree of the Minister of Environment and Forestry No. 903/Menlhk/ Sekretariat Jenderal /PLA.2/12/2016, 38,169 hectares were found to be located in forest zone, including 33,437 hectares in HPK, 4,060 hectares in HP and 672 hectares in HPT.²¹

For the Ministry of Environment and Forestry, such data and information are not something peculiar since the 6 out of 10 companies are part of Darmex group, which was connected to the corruption case of the previous Riau Governor and many of palm oil business persons. Will the Work Team of Palm Oil Moratorium be able to conduct an objective evaluation of Darmex Group concessions located inside the forest zone and play an active role during the settlement process?

4. Forest Zone Register 40 in Padang Lawas that has not been returned

One of the infamous cases regarding palm oil plantation inside the forest zone is the case of Register 40 in Padang Lawas. Development of palm oil plantations was initiated by the late DL. Sitorus, Main Director of PT. Torganda, the company that transformed Register 40 forest zone into palm oil plantations.²²

DL Sitorus was found to have managed forest zone in Register 40 in Padang Lawas without any permission from the Ministry of Forestry. He has served his eight-year prison sentence and a fine of Rp5 billion or subsidiary of six months in prison. DL Sitorus received parole from the Ministry of Law and Human Rights in December 31st, 2009.²³

On February 12, 2007, The Supreme Court issued a ruling which ordered that 47,000 hectares of encroached land under the control of DL Sitorus must be returned to the state, 23,000 hectares of land in Padang Lawas under the control of Bukit Harapan Palm oil Plantation Cooperative and PT Torganda, and the rest, covering an area of 24,000 hectares under the control of Parsub KPKS and PT Torus Ganda.²⁴

The High Prosecutor Office of North Sumatra claims that they have executed an area of 47 thousand hectares in Padang Lawas Regency. Apparently, the execution conducted by the High Prosecutor Office of North Sumatra in August 2009 was only an administrative execution rather than the actual land execution. The ruling also ordered the government to take over the plantation land. This ruling was reinforced by the results of the pre-trial verdict submitted by DL. Sitorus in Medan District Court and the results stated that the government could save state assets in the form of forests that have been planted with palm oil.²⁵

²¹ Ibid

²² <http://waspadamedan.com/index.php/2018/05/10/keluarga-dl-sitorus-harus-segera-serahkan-lahan-register-40-ke-pemerintah/>

²³ Ibid

²⁴ <https://www.mongabay.co.id/2018/02/22/eksekusi-lahan-sawit-dl-sitorus-kementerian-lingkungan-minta-bantuan-kpk/>

²⁵ <https://www.mongabay.co.id/2014/04/21/hutan-register-40-masih-dikuasai-torganda-kejati-sumut-belagak-bingung/>

Until now the actual take over has not been carried out by the government through the Ministry of Environment and Forestry. This was allegedly due to resistance from the local community against the execution attempt. The MoEF has requested assistance and conduct coordination measures with the Corruption Eradication Commission (KPK) for the process of land execution. The KPK is committed to identify the obstacles that hinder the execution process. The KPK will also accompany relevant agencies during the execution.²⁶ Will the Work Team of Palm Oil Moratorium be able to contribute to the settlement process push the execution in this case?

5. Menara Group in Papua that Keeps Postponing Palm Oil Planting

Despite the 280,000 hectares of concession that has been granted to the Menara Group for almost ten years, there has not been any palm oil planting activity in Boven Digoel District of Papua. Menara Group has been holding the Forest Zone Release Permit (IPKH) from 2011 to 2013. In August 2018, the Governor of Papua revoked the palm oil plantation business permit of PT. Manunggal Sukses Mandiri in Boven Digoel forest that covers 38,552 hectares of land in Tanah Merah, Papua.

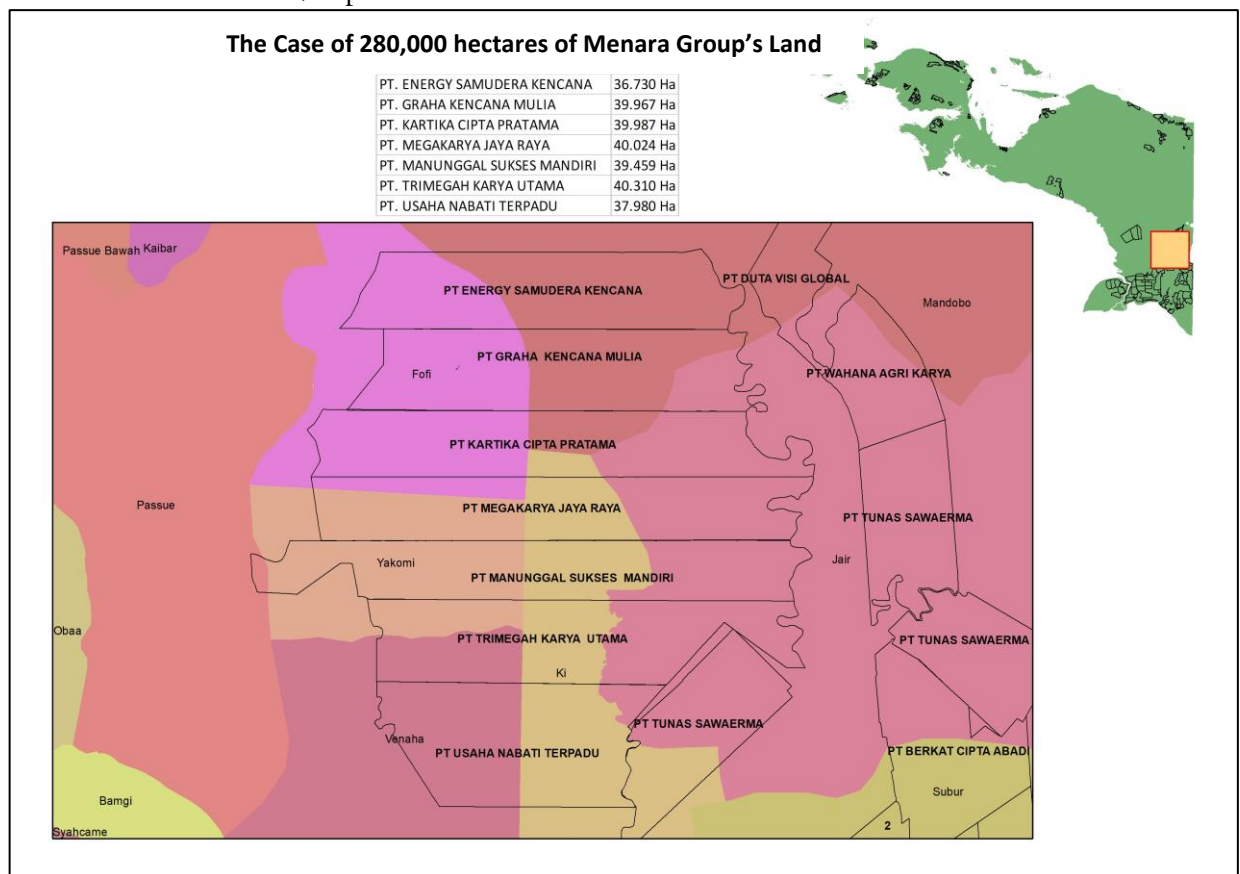


Figure 11. The 280,000 hectares of abandoned land under the control of Menara Group

This company was established in 2007 and already holds the location permit and principle permit from Yusak Yawolo, the Governor of Papua. At the same time, the Governor also issued permits to another 6 companies, namely, PT. Energi Samudera Kencana, PT. Graha Kencana Mulia, PT. Kartika Cipta Pratama, PT. Megakarya Jaya Raya, PT. Trimegah Karya

²⁶ <https://www.mongabay.co.id/2018/02/22/eksekusi-lahan-sawit-dl-sitorus-kementerian-lingkungan-minta-bantuan-kpk/>

Utama, and PT. Usaha Nabati Terpadu for 40,000 hectares respectively with the estimated total area of 280,000 hectares. The land was previously owned by Genting Group, a Malaysian company. Menara Group was interested to take over that land since it has been abandoned by the Malaysian Company for years.²⁷

Instead of conducting planting activity, Menara Group sold its subsidiaries to another company. Two subsidiaries were sold to Tadmax Resources Bhd and another four companies to the Middle East Company through Pacific Interlink, part of Hasel Saed Anam Group, that denied their involvement in this case and confirmed their statement in the report of Final Countdown by Greenpeace.²⁸

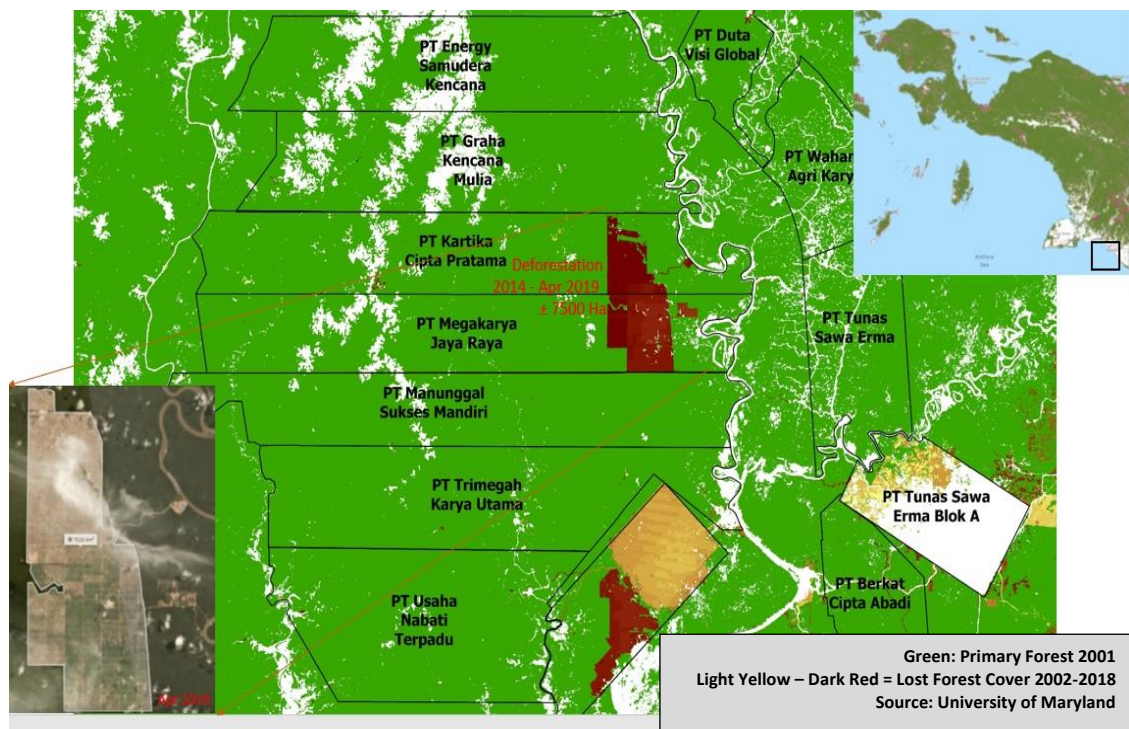


Figure 12. Deforestation conducted by Menara Group in Papua primary natural forest

PT. Megakarya Jaya Raya, part of the concession holders in the Tanah Merah Project, has cleared 4,500 hectares of forest zone, which, according to national land cover maps issued in 2015 by the MoEF, includes primary forest and peat land forest inside the government-protected peat zone from May 2015 to February 2018. Land clearing also occurred in the concession of PT. Kartika Cipta Pratama, crushing the natural forests inside its area. Will the Work Team of Palm Oil Moratorium be able to contribute in the resolution of this case?

²⁷ Tempo Magazine, 26 November – 2 December 2018 edition

²⁸ https://issuu.com/greenpeaceinternational/docs/final_countdown_pages_lr_greenpeace

6. The Future of Community Palm Oil in Gunung Leuser National Park²⁹

The Gunung Leuser National Park (TNGL) comprises two provinces, Aceh and West Sumatera. Despite its status as a national park, at least 50,000 hectares of the area has been planted with palm oil by the local community.

Alur Baning Village, sub-district of Babul Rahman, District of South East Aceh, is one of the villages which most of the area is located inside the Gunung Leuser National Park. Since the establishment of a sawmill company and the booming of cacao farming in 2000s, the local community has started to encroach the ex-logging area that has been stipulated as Gunung Leuser National Park. The planting activity intensified along with the booming of corn and palm oil. Land selling is also thriving among the local residents and investors who came all the way from North Sumatera. Some of the triggering factors of forest encroachment are investors, migrant community and land hoarders.

In 2016, some of palm oil plantations inside TNGL were cut down by the TNGL management, causing a tension between the local community and the TNGL management. Collaborative management between the TNGL management, local community, palm oil farmers and the government are urgent since the planting activity in TNGL area does not only cause ecological degradation, but also conflict among the local community and with the local wildlife.

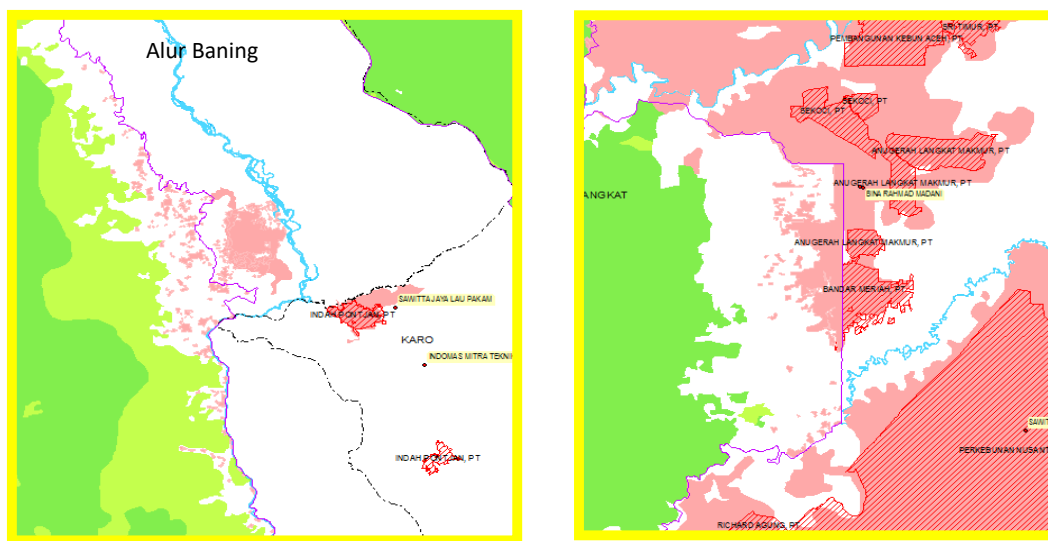


Figure 13. 3,153 hectares of palm oil cover in TGNL area located in Alur Baning and Besitang Villages (Kehati, 2018)

In general, villages in Besitang sub-district are adjacent to the TNGL area. In 1982, the Regional Government has cooperated with the Asian Development Bank (ADB) to formulate a transmigration program for local community of Langkat. 1,500 hectares of land, located in Sekoci Village, adjacent to TNGL area, has been allocated for transmigration settlement and palm oil plantation using Pola Inti Rakyat (PIR) scheme. This program attracted many investors. In 1999, the refugees of armed conflict from East Aceh were coming and exploiting the favorable selling mechanism of TNGL land. To support their

²⁹ 2018 Kehati Report, "Community Palm Oil Plantation Management in Forest area."

livelihood, the refugees were opening palm oil plantations that have been previously traded using the market mechanism.

In contrast with Alur Baning Village, Besitang Village has a more open conflict settlement. Local values that emphasize on the solidification of partnership scheme and community participation have led to the formulation of a resolution to save the economic and ecological aspects of the community and TNGL. Will the Work Team of Palm Oil Moratorium be able to contribute to the resolution of this case? Will there any evaluation conducted on palm oil plantations located inside the TNGL area? Will the evaluation results contribute to the effort to save the TNGL area, which has been encroached for so many years and malformed into palm oil plantations?

7. The Unresolved Conflict between the People of Kemawen, Central Kalimantan and PT. BAK

Central Kalimantan is among the three largest provinces with palm oil plantations. From the legal aspect, of 238 palm oil plantation companies in the province, only 82 have fulfilled their legal requirements.³⁰ Moreover, about 1.6 million hectares of land is under the control of 163 companies from three large groups such as Astra, Wilmar and Sinar Mas.³¹ This unequal land occupation triggered many land conflicts in Central Kalimantan. One of the conflicts is between local community of Kemawen and PT. Berjaya Agro Kalimantan (PT. BAK), a company that operates in several villages in Barito Utara District, Central Kalimantan Province.

Plantation business activity of PT. BAK is causing conflicts inside the community too. For example, the establishment of PT. BAK in Kemawen village on March 16, 2005 was not through a proper introduction process to the local community. They just came and occupied community-owned land and customary forest zone. PT. BAK is blatantly ignoring community rights by seizing 4,500 hectares of customary land in the form of customary forest.³²

The actions of PT. BAK were met with escalating responses from the local community that started protesting against the PT. BAK's activities to the village authority. However, since there was no clear answer from the authority, the local community took the initiative to stop the activity of PT. BAK in June 2015.³³

³⁰ Results of license review conducted by the Provincial Government of Central Kalimantan on palm oil plantation companies in 2012.

³¹ <https://tirto.id/16-juta-lahan-sawit-di-kalteng-dikuasai-sinarmas-astra-wilmar-dfql>

³² Compilation of cases report from Sawit Watch

³³ Ibid

allowances and severance pay due to layoffs.³⁷ The government has sent a letter through the provincial office to the owner of PT. BAK to resolve this issue regarding the fulfillment of employees' rights.³⁸ The third issue is regarding the partnership scheme. Since the establishment of the company in the village of Kemawen, it has never provided any benefits for the local community as mandated by the Plantation Act. Until now, none of the residents have received the partnership plasma plantation scheme from PT. BAK.³⁹ Will the Work Team of Palm Oil Moratorium be able to contribute to the settlement of this case? What kind of contribution will be made to the settlement of the case related to the stages in palm oil moratorium implementation?

³⁷ <https://kalteng.antaranews.com/berita/294376/karyawan-pt-bak-kembali-tagih-janji-perusahaan>

³⁸ <https://kalteng.antaranews.com/berita/303199/pimpinan-pt-bak-diberi-waktu-14-hari-selesaikan-hak-karyawan>

³⁹ <http://skpknews.co/?p=4200>

IMPLEMENTATION CHALLENGES, CONCLUSIONS AND RECOMMENDATIONS

SHADOW REPORT

**WHERE IS THE IMPLEMENTATION OF
PRESIDENTIAL INSTRUCTION NO. 8 OF 2018 GOING?**

E. IMPLEMENTATION CHALLENGES

In our view, there are some challenges in the implementation of the Presidential Instruction No. 8 of 2018, namely as follows:

1. Non-existent allocation of funding at the regional level (from the Regional Revenues and Expenditure Budget/APBD) to support operational activities related to the implementation of Presidential Instruction No. 8 of 2018.
2. Lack of technical guidance or step-by-step reference for the regional government (Province/District and Municipality) in implementing Presidential Instruction No. 8 of 2018.
3. Lack of access for civil society to obtain information regarding progress of Presidential Instruction No. 8 of 2018 implementation.
4. The challenge for provincial and regional government that already have local policies on palm oil moratorium is to translate such programs/policies into the real actions or activities and measure results or achievements.

F. CONCLUSIONS AND RECOMMENDATIONS

Some conclusions regarding the implementation of the Presidential Instruction No. 8 of 2018 are as follows:

1. Progress regarding the implementation of Presidential Instruction No. 8 of 2018 in the first semester since the policy's enactment by the mandated ministries and state agencies are not optimal. Works that have been done are limited to preparation and coordination. This may lead to public assumption that the Presidential Instruction No. 8 of 2018 is not yet well-implemented.
2. If the achievement indicators used in the Presidential Instruction No. 8 of 2018 are: 1. Verified data regarding forest zone release or exchange for plantation, verified map of Plantation Business Permit or Plantation Business Registration Letter (STDUP), location permit and Land Use Rights (HGU), 2. Stipulated minimum standard of data compilation; 3. Synchronized work with One Map Policy regarding the suitability of licenses issued by ministries/government institutions and regional governments, IUPs with HGU, and decrees regarding the appointment/determination of forest zones with HGU; and 4. Issued recommendations to the Minister/Governor/District Head/Mayor, then there has not been any significant progress by the Work Team of Palm Oil Moratorium regarding the abovementioned 4 points.
3. Out of the 25 provinces and 247 districts/municipalities with palm oil plantations, the majority have not responded to the Presidential Instruction No. 8 of 2018. Based on observation by CSOs, 19 provinces and 239 districts/municipalities have not issued any response.
4. Regarding implementation of Presidential Instruction No. 8 of 2018, some provinces and districts/municipalities such as East Kalimantan, West Kalimantan, Riau Islands, Riau, and West Papua, have shown more advanced commitments along with the districts that have issued their response in the form of regional policies such as Aceh Province, Buol District (Central Sulawesi) and Sanggau (West Kalimantan).

Recommendations for implementation of Presidential Instruction No. 8 of 2018 in the future are as follows:

1. Allocated funds must be provided by the central government to regional government for the implementation of the Presidential Instruction No. 8 of 2018 at the regional level.
2. Work team at the national level must formulate a technical guidance/roadmap document that can be used as a reference by regional government in implementing Presidential Instruction No. 8 of 2018 to improve accuracy of the work.
3. Provinces and districts with smaller palm oil plantations or no palm oil plantations at all should be included in the priority area. The main assumption is to start from the small scale.
4. In accordance with the information disclosure law, there should be a mechanism for public disclosure of data, information and progress regarding implementation of Presidential Instruction No. 8 of 2018 to be monitored and accessed by CSOs.
5. Lastly, there should be a communication mechanism or platform between the national work team and the regional governments. It is necessary to communicate the works among the two levels in a systematic manner.

ANNEXES

SHADOW REPORT

**WHERE IS THE IMPLEMENTATION OF
PRESIDENTIAL INSTRUCTION NO. 8 OF 2018 GOING?**

G. ANNEXES**Annex 1. Conflicts and Disputes in Palm Oil Plantations inside Forest Zone (Sawit Watch, 2018)**

No.	Province	Company	Group
1	South Kalimantan	PT. Multi Sarana Agro Mandiri	Jhonlin Group
2	Central Kalimantan	PT Selonok Ladang Mas	Triputra
3	Central Kalimantan	PT. Berjaya Agro Kalimantan.	
4	South Sumatra	PT Dinamika Graha Sarana	
5	South Kalimantan	PT Jaya Mandiri Sukses (JMS)	
6	South Kalimantan	PT Hasnur Jaya Lestari	
7	South Kalimantan	PT Pesonalitas Surasejati	Green Eagle
8	West Kalimantan	PT Ceria Prima	
9	West Kalimantan	PT Mitra Aneka Rejeki	
10	West Kalimantan	PT Wirata Daya Bangun Persada	
11	West Kalimantan	PT Pamdale Agro Asia Lestari Makmur	
12	West Kalimantan	PT Satria Multi Sukses	
13	West Kalimantan	PT Rejeki Kencana	
14	West Kalimantan	PT Keliau Mas Perkasa	
15	West Kalimantan	PT Sumatra Unggul Makmur	
16	Central Sulawesi	Citra Mulya Perkasa dan Total Energi Nusantara	
17	Jambi	PT. Asiatic Persada	Wilmar
18	West Kalimantan	PT. Bangun Nusa Mandiri (BNM)	SMART
19	West Kalimantan	PT. Kartika Prima Cipta	SMART
20	West Kalimantan	PT. Kebun Ganda Prima	Salim
21	West Kalimantan	PT. Sukajadi Sawit Mekar	Musi Mas
22	Central Kalimantan	PT. Mustika Sembuluh	Wilmar
23	Bengkulu	PT. Agro Muko	SIPEF
24	Bengkulu	PT. Agro Muko	SIPEF
25	Jambi	PT. Dasa Anugrah Sejati	RAJA GARUDA MAS
26	Jambi	PT. Agrowiyana	BAKRI GROUP
27	Jambi	PT. Sari Aditya Loka	ASTRA GROUP
28	Central Kalimantan	PT. Tasik Mas Estate (Tapien Nadingan)	SINAR MAS GROUP
29	North Sumatra	PT. Sawita Leidong Jaya (SLJ) dan PT Graha Dura Leidong Prima (GDLP)	
30	North Sumatra	PT. Wisu Indo Jaya	
31	North Sumatra	PT. CSIL	
32	North Sumatra	PT. Sipef	
33	North Sumatra	PT. Cahaya Pelita Andika (CPA)	
34	North Sumatra	PT. Wana Potensi Guna (WPG)	
35	North Sumatra	PT. Aimer agromas (Sinar Mas)	SINAR MAS GROUP
36	South Kalimantan	PT Cakradenta Agung Pertiwi	ASTRA GROUP
37	West Kalimantan	PT. Mitra Austral Sejahtera	Benua Indah

38	Jambi	PT. Dasa ANUGRAH Sejahtera (DAS)	ASIAN AGRICULTURE GROUP
39	Central Sulawesi	PT. Hardaya Inti Plantation	HARDAYA GROUP
40	South Sumatra	PT. Cipta Futura	
41	South Sumatra	PT. Surya Bumi Agro Langgeng	
42	South Sumatra	PT. Juanda Sawit	
43	South Sumatra	PT. Dendi Marker Indah Lestari	
44	South Sumatra	PT. Tata Hamparan Eka Persada	
45	South Sumatra	PT. Multrada Multi Maju	
46	South Sumatra	PT. Padang Bolak Jaya	
47	South Sumatra	PT. Perjapin Prima Lahan	
48	South Sumatra	PT. Aditarman	
49	South Sumatra	PT. Mitra Ogan	
50	South Sumatra	PT. Lestari Astra Kartika	
51	South Sumatra	PT. Kodrat Aman Jaya	
52	South Sumatra	PT. SWB	
53	South Sumatra	PT. Pinago Utama	
54	South Sumatra	PT. Panago	
55	Jambi	PT. JAW	
56	Jambi	PT. Sari Aditya Loka	ASTRA GROUP
57	Jambi	PT. Inditruha Tengah	
58	West Kalimantan	PT. Harapan Sawit Lestari	CDC
59	West Kalimantan	PT. Harapan Sawit Lestari	CDC
60	West Kalimantan	PT. Harapan Sawit Lestari	cdc
61	West Kalimantan	PT. Harapan Sawit Lestari	CDC
62	Riau	PT. Arvena Sepakat dan PT. Suatra Makmur Lestari	FAMILY RAYA
63	Riau	PT. Kencana Amal Tani	Wilmar Group
64	Riau	PT. Meredan	
65	Bengkulu	PT. Sapta Santosa Jaya Abadi (PT. SSJA)	
66	Riau	PT. Bumi Palma Lestari (BPL)	
67	Riau	PT. Arara Abadi (AA)	
68	Riau	PT. Bumi Sawit Perkasa (BSP) dan PT Subur Arum Makmur (SAM) 2	
69	Riau	PT. Panca Surya Agrindo (PSA)	PSA Group
70	Riau	PT. Citra Source Sejahtera (CSS)	
71	Central Kalimantan	PT. Mitra Mendawai Sejahtera	Tanjung Lingga Group
72	Riau	PT. Johan Sentosa Plantation	Surya Dumai Group
73	Bangka Belitung	PT. Tata Hamparan Eka Persada (THEP)	
74	Bangka Belitung	PT. Regunas	
75	Bangka Belitung	PT Batanghari Sawit Sejahtera (BSS)	
76	Bangka Belitung	PT. SAL	
77	North Sumatra	PTPN II	Kecamatan STM Hilir
78	North Sumatra	PTP VI	
79	North Sumatra	PT. Lonsum	NIPAN & RISJADSON
80	North Sumatra	PT. Cisadane Sawit Raya	
81	North Sumatra	PT. Cisadane Sawit Raya	

82	North Sumatra	PTPN-III	PTPN
83	North Sumatra	PT. Rantau Sinar Karsa	
84	North Sumatra	PTPN-III	PTPN
85	North Sumatra	PTPN-III	PTPN
86	North Sumatra	PT. ASDA DAN PT.TDP	
87	North Sumatra	PT. Serba Hutan Jaya (SHJ)	
88	North Sumatra	PT. Indo Sepadan Jaya	
89	North Sumatra	PT. Binage Mandala	
90	North Sumatra	PT. Serba Hutan Jaya (SHJ)	
91	North Sumatra	PT. Naga Mas	
92	North Sumatra	PT. Rantau Sinar Karsa	RAJA GARUDA MAS
93	North Sumatra	PTPN-III	PTPN
94	North Sumatra	PT. Blankut Jaya	
95	North Sumatra	PT. Sucofindo	
96	Central Kalimantan	PT Sawit Mandiri Lestari (SML),	
97	Jambi	PT. Bukit Bintang Sawit	
98	Jambi	PT. Indonusa Agromulia	
99	Riau	PT Banyu Bening Utama (PT BBU)	DARMEX,
100	Riau	PT. Gandaerah Hendan Sawit	
101	Riau	PT Kencana Amal Tani (PT KAT)	Darmex,
102	Riau	PT Kharisma Riau Sentosa (PT KRS)	
103	Riau	PT Palma Satu. Kebun	Darmex
104	Riau	PT Panca Agro Lestari (PT PAL)	Darmex
105	Riau	PT Peputra Supra Jaya (PT PSJ)	Peputra Masterindo
106	Riau	PT. Seko Indah	Darmex ini
107	Riau	PT Eluan Mahkota (PT EMA)	Darmex
108	Riau	PT Hutahaean	Hutahaean

Annex 2. Investigative Report of the Case of PT. HIP in Buol District, Central Sulawesi**“FOREST RELEASED IN BUOL, TURNED INTO PALM OIL”****Evaluation of Six Months of Implementation of Presidential Instruction No. 8 of 2018 regarding Suspension and Evaluation of Palm Oil Plantations Licenses and Improvement of Palm Oil Plantations Productivity**

Forest zone release for palm oil plantation on behalf of PT. Hartati Inti Plantations (PT. HIP) in Buol District of Central Sulawesi with the size of 9,964 hectares is in violation of forest zone release regulation and is in contradiction with the spirit of Presidential Instruction No. 8/2018 since the released forest zone is still a productive forest. According to findings from the ground by Yayasan Madani Berkelanjutan, illegal deforestation in Buol District due to palm oil plantation activities belonging to Murdaya Poo and Siti Hartati Murdaya is happening. There are also indications of legal violation in the form of palm oil planting activities outside HGU area and along the river bank. According to data from the Corruption Eradication Commission (KPK), PT. HIP holds 75,090 hectares of location permit and 22,780.86 hectares of HGU, exceeding the limit of land control in one province. The company has previously been indicted for bribing the previous Buol District Head to smooth out issuance of permits for their palm oil plantations, but the company's activities continued until the decree on the forest zone release was issued in November 2018. Data from Buol District Government shows that Bukal Sub-District, the first circle around the palm oil plantation, is the poorest sub-district in Buol.

Main findings

1. In an area of 9,964 hectares based on the Decree of the Minister of Environment and Forestry of Republic of Indonesia Number SK.517/menlhk/setjen / PLA: / 11/2018 on the Release and Boundary Demarcation for the Release of Convertible Production Forest Zone for Palm Oil Plantations (SK 517/2018) on behalf of PT Hardaya Inti Plantations (PT. HIP) in Buol District, Central Sulawesi Province dated November 23rd there are still 7,862 hectares of natural forest cover or 78.9% of the total released area.⁴⁰ This is in contrary to forest zone release regulation, which states that production forest zone that can be released must be a non-productive convertible production forest zone.⁴¹

⁴⁰ Spatial analysis by Yayasan Madani Berkelanjutan, 2019. There is a possibility that some palm oil plantations are classified as forest area due to its density.

⁴¹Provinces that no longer have non-productive HPK are excluded Article 19 paragraph (1) of The Government Regulation No. 104 of 2015.

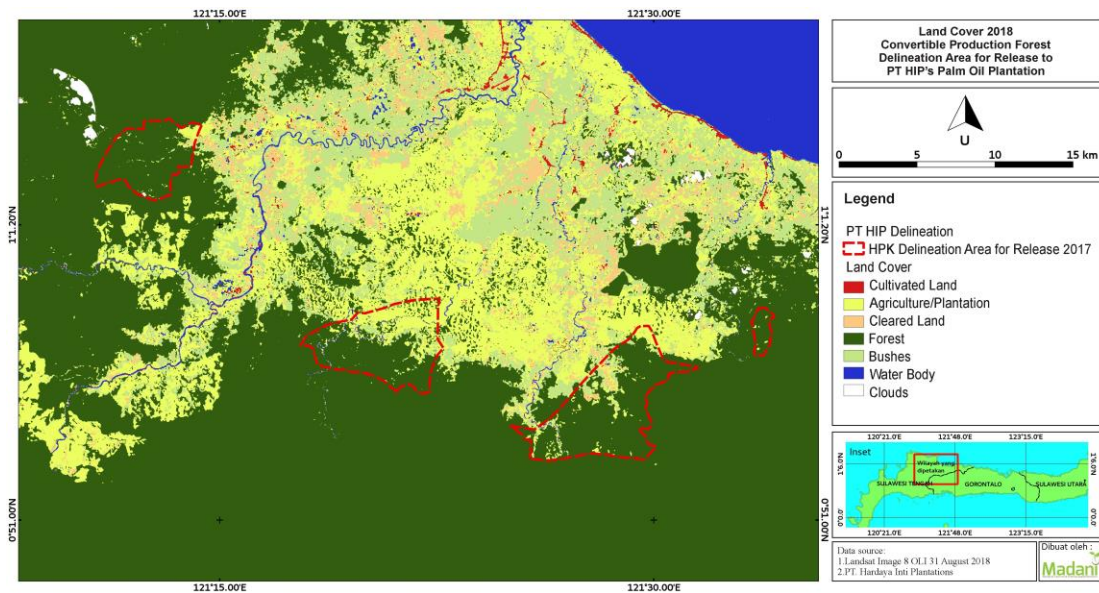


Figure 1. Natural forest cover in forest zone released for PT. HIP. Parts of it have been planted with palm oil (Madani, 2019)

Source: Madani Spatial Analysis, 2019

2. In the area of 9,964 hectares based on Decree No. 517/2018, palm oil plantations were found. This indicates that the forest zone release was intended to white-wash legal violations that had been conducted by the company prior to the release.



Figure 2. Image captured from an unmanned aircraft on April 27th, 2018 which shows rows of palm oil plantations

Source: Documentation of the Ombudsman of the Republic of Indonesia, Representative Office of Central Sulawesi, 2018

3. In the area of 9,964 hectares based on Decree No. 517/2018, prior to the forest zone release there were indications of illegal deforestation through massive land clearing on land with natural forest cover. In 2009, the land was still forested, then land clearing activities were

observed in 2015 followed by the appearance of palm oil plantations in 2018. The clearing happened prior to the issuance of The Decree No. 517/2018 in November 23rd, 2018.

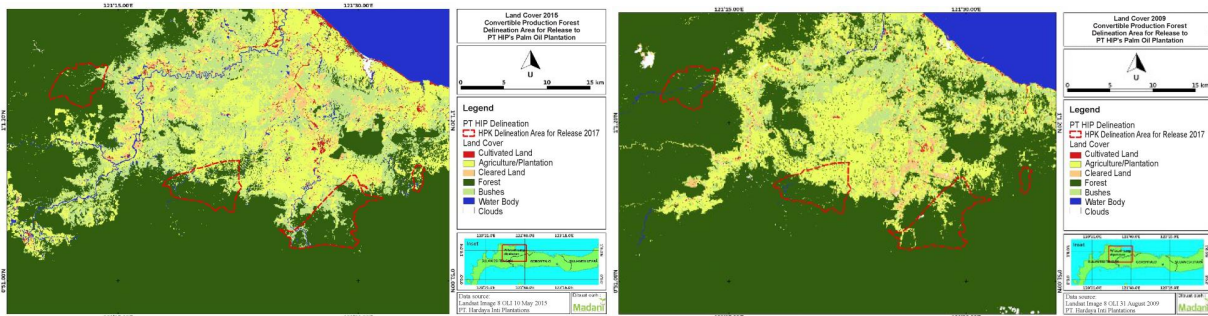


Figure 3. Forest Cover in 2009 (above) and 2015 (below) shows increasing land clearing activity by PT. HIP for palm oil plantation

Source: Madani Spatial Analysis, 2019

- The company planted palm oil along the river bank, causing river sedimentation that affects irrigation system of the peoples around the plantation. This is a violation of Government Regulation No. 38 of 2011 on River Banks.

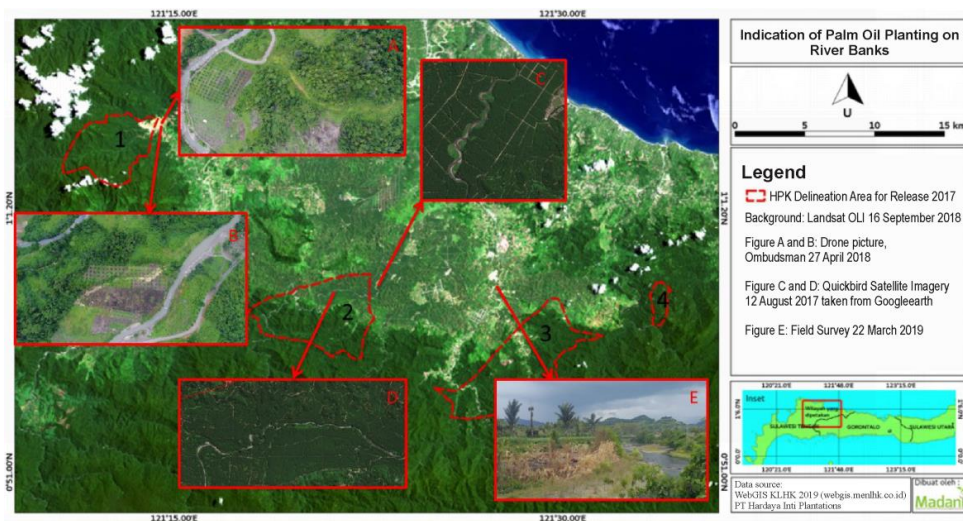


Figure 4. Indication of palm oil plantation activity by PT. HIP /PT. CCM that violates river bank regulation

Source: Madani Documentation, 2019

- Forest clearing for palm oil plantation has caused a decline in the ecosystem’s carrying and supporting capacity in Buol District. Forest clearing has caused loss of clean water sources and irrigation for agriculture. There is a natural forest cover inside the 9,964 hectares of forest zone that was released to be turned into palm oil plantation. The release of forest zone that includes natural forest cover is an indication that the company has the intention to gain profit from timber selling. There is Value Added Tax (VAT) originated from timber logging in the forest zone released for palm oil plantation that has never been calculated and paid to the State.⁴²

⁴² Madani’s interview with Komiu in March 2019.

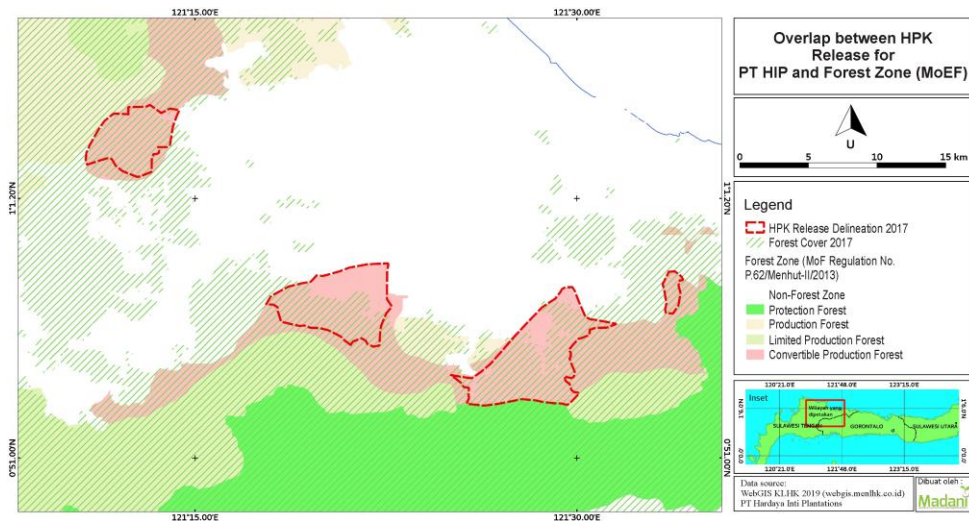


Figure 5. Natural forest cover in Convertible Production Forest released for PT. HIP that will soon disappear for palm oil plantation.

Source: Madani Spatial Analysis, 2019

6. The beneficiary of PT. HIP's palm oil plantation is a subsidiary of PT. Cipta Cakra Murdaya (CCM), a company owned by Murdaya Poo and Siti Hartati Murdaya. Both are former politicians of Indonesian Democratic Party-Struggle (PDI-P) and Democratic Party.
7. The company was involved in a bribery - corruption case in the licensing process of the palm oil plantation between Siti Hartati Murdaya, owner of PT. HIP and Amran Batalipu, former Buol Head of District. They were found guilty by the Corruption Court.
8. Based on the findings of the Indonesian Ombudsman representative of Central Sulawesi (2017), the previous Governor and District Head of Buol failed to conduct supervision and guiding and evaluation on the performance of palm oil plantation companies in their areas as stipulated in Article 44 of the Regulation of Minister of Agriculture No. 29/Permentan/Kb.410/5/2016 on the Amendment to the Regulation of the Minister of Agriculture No. 98 /Permentan/Ot.140/9/2013 on Guidelines for Plantation Businesses Licenses. The failure of the Regional Governments in carrying out their legal obligations is a violation of administrative procedure.

Background

Palm oil plantation remains a potential commodity for the economy in Central Sulawesi. Supported by extensive land, this commodity is expected to bring a positive impact on the economy of the community, especially in Central Sulawesi. The positive impacts of palm oil plantations in Central Sulawesi are among others increasing Regional Original Income (PAD), creating job opportunities, and increasing economy and development. However, the negative impacts of palm oil plantations are also extraordinary, from social and environmental perspective, land clearing of palm oil plantations is carried out by land clearing which causes damage to forest ecosystems.⁴³

⁴³ Report of Indonesian Ombudsman, Central Sulawesi Representative Office, *Maladministrasi Dalam Perkebunan Kelapa Sawit di Kabupaten Buol, Kabupaten Toli-Toli dan Kabupaten Morowali Utara*, 2018, p. 3

From the perspective of politics and culture, it cause horizontal and vertical conflicts such as conflicts over land ownership between local communities and palm oil companies, as well as between communities, government and companies. According to Ombudsman of the Republic of Indonesia, Central Sulawesi representative office, the main cause is license maladministration.

Based on the report of Indonesian Ombudsman of Central Sulawesi, there were allegations of maladministration in land disputes between the community and palm oil plantation companies, particularly regarding overlap between Plantation Business Permits (IUP) and forest zone as well as community residential areas.

In the 2016–2021 Regional Medium–Term Development Plan (RPJMD) of Central Sulawesi, one of the government's priority programs is to continue management of competitive agribusiness and maritime resources and tourism followed up with an action program to optimize agribusiness and agricultural development. The presence of palm oil plantations in several areas in Central Sulawesi brings a huge impact on communities around the palm oil plantations area. In general, disputes between communities and companies are related to creation of jobs in the palm oil companies, land disputes, and taxation for the regional treasury.

The presence of palm oil plantation does not necessarily improve the community's welfare. In North Morowali District, the presence of palm oil plantation does not reduce poverty. According to the 2010–2016 data from the National Socio–Economic Survey in 2017, there was no significant reduction in the poverty rate. In fact, the presence of palm oil company causes adverse effects to the people's welfare. Bukal Sub–district, the first circle of palm oil plantation, has been declared as the poorest area in Buol district.⁴⁴

According to data from Central Sulawesi Plantation Office, the total land area of 54 palm oil companies in Central Sulawesi has reached 713,217 hectares. Thirty–six of them have already had plantation business permits (IUP) and 18 companies hold only location permits (*Inlok*). Twelve companies have been planting and producing. However, from the many companies, there is not a single palm oil plantation that is not causing conflicts such as land grabbing, criminalization, and the lack of price protection for community's fresh fruit bunches such as in Banggai District, North Morowali, Buol, Toli–Toli, and Donggala. This is because the position of smallholders tends to be politically weak and there is no support from the local government for smallholders.⁴⁵

The issuance of Presidential Instruction No. 8 of 2018 on the Postponement and Evaluation of Palm Oil Plantation Licenses and Improvement of Productivity of Palm Oil Plantations brings a new hope. According to Masykur, Chairperson of the Central Sulawesi Regional House of Representatives from National–Democratic Faction (Nasdem), there are some urgent tasks that should be done as the real action in the Presidential Instruction No. 8/2018 implementation, including issuance of governance and legal guarantee for citizens that depend their livelihoods on the giant ring of palm oil plantation area, including the welfare of palm oil smallholders. The Presidential Instruction could be used as a support system for smallholders if the local government has the capability to translate it into a legal tool to evaluate the plantation system and the current industrial relations practices.

⁴⁴ Interview with Buol District Head, Amiruddin Rauf, on March 21, 2019 at the official housing of Buol District Head.

⁴⁵ Interview with the Chief of National Democratic Faction of Regional Representative House of Central Sulawesi, Masykur, on April 1, 2019.

Palm Oil Plantations in Buol District

Large-scale palm oil investment was eagerly introduced by the Indonesian government in the early 1980s. Using the development approach, the policy infrastructure prepared by the government has driven palm oil sector to grow rapidly over the past 20 years. Among many commercial plantation commodities, palm oil is arguably the prima donna for businesspeople, parts of the public sector, and state-owned companies. The pace of palm oil plantation expansion continued to increase especially since the 1990s.

The potentially vast land, easy licensing process, low taxes, cheap labor, and lack of transparency and accountability are a number of factors that make Indonesia a dream and lucrative place for the palm oil plantation industry. As a result of intense palm oil industry development, based on Sawit Watch documentation, since 1998, at least 500-800 thousand hectares of forests, peatlands and community-managed land were converted into palm oil plantations.⁴⁶ The values that have been promoted were economic growth, employment and poverty alleviation. However, the palm oil plantation industry, which is run solely for the benefit of the global market and without strict supervision by the state, also brought the inevitable adverse effects.

The expansion of large-scale palm oil plantations is driving social problems, corruption, environmental degradation, as well as global warming and climate change. The Indonesian palm oil business is in the spotlight with all its bad marks. In Buol District, it was found that, out of the 174 thousand hectares of palm oil plantations scattered in a number of sub-districts, there are 19,598 hectares of plantations located inside the forest zone. The potential loss of forests for palm oil plantations is around 84 thousand hectares, consisting of 68.6 thousand hectares in non-forest zone (APL) and 12.8 thousand hectares in forest zone.⁴⁷

The area of Buol District is 4,043.57 km² with a total population of 142,585 (2014), spread in 11 sub-districts with Lipunoto as the sub-district capital. According to the local Plantation Office, there is one palm oil plantation owned by PT Cipta Cakra Murdaya that has been operating since 2008. The company has an HGU permit covering 22,780.86 hectares and 13,400 hectares have been planted by palm oil, 12,000 hectares are the core plantations and the rest are plasma plantations. The company went viral in 2013 due to the bribery case involving the owner, Hartati Murdaya, and Amran Batalipu, the then Buol District Head.

In 2014, based on data from Sawit Watch, palm oil plantations in Buol District are planned to increase to 125,100 hectares involving five companies. PT Sonokeling Buana has carried out nurseries development and land clearing. PT Wiliam Planter Sejati and PT Luwuk Agro have submitted investment proposals to the Buol government. PT Hadji Kalla Group and PT Buana Makmur Lestari are currently in the planning and exploration stages of the region.

According to Buol Head of District, Amiruddin Rauf, to Madani on March 21, 2019, during his 2 years of tenure, he never gave any permit for palm oil plantations in Buol. He has rejected proposals from three palm oil companies, namely, PT. Buana Maha Sawit, PT. Sumber Sawit Bersama, and PT. Agro Artha Suryana, saving 36,000 hectares of land. The refusal was based on the results of the Strategic Environmental Assessment (KLHS) and the work program of the District Head, which prioritizes corn planting, rice fields and cattle farming.

According to the spatial plan, non-forest zones (APL) in Buol are 138 thousand hectares (35% of the total area). Meanwhile, convertible production forests (HPK) are only 36 thousand hectares (9.5%). Legally, APL and HPK are usually allocated for development of palm oil plantations. Lands available for use, covering an area of 174 thousand hectares and categorized as potential area for the development of palm oil plantations. However,

⁴⁶ Sawit Watch Team, *Menakar Sawit, Riset Kawasan, Korupsi, dan Pendapatan Daerah di Sulawesi dan Kalimantan*, 2015

⁴⁷ Sawit Watch Team, *Menakar Sawit, Riset Kawasan, Korupsi, dan Pendapatan Daerah di Sulawesi dan Kalimantan*, 2015.

these areas are not dedicated entirely for plantations. The local government is required to guarantee that the population have a proper place to live, a decent environment and socio-economic space as stated in Law No. 1 of 2011 on Housing and Settlement Area.

Buol District Government has formally issued a land cover map that originated from the interpretation of the 'spot image' in 2009 and examination of the field conditions in 2013. In the map below, it was seen that most of the forested land cover is spread in almost all sub-districts (Tiloan, Bukal and Bunobogu). From the processed data, there is around 69% of forest cover in the entire area of Buol District. In non-forest zone (APL), the remaining forest cover is approximately 391 thousand hectares or 20% of the 1.9 million hectares. It is also the case in the forest zone where forest cover is still above 60%. It means that the forest zone is still in a good condition.⁴⁸

In 2012, PT. Hardaya Inti Plantations (HIP), a palm oil plantation company in Buol, was convicted to have committed bribery to the then Buol Head of District, Amran Batalipu, related to the process of the issuance of their palm oil plantation permits. Three billion rupiah were confiscated by the Corruption Eradication Commission (KPK) as bribes. Hartati Murdaya, President Director of PT. HIP, was sentenced by 2-year and 8-month in prison by the Panel of Judges of the Jakarta Corruption Court on February 4, 2013. Meanwhile, Amran Batalipu was sentenced by 7-year in prison.

However, in November 2018, the Minister of Environment and Forestry (MoEF) issued Decree No. 517/2018 on the release and boundary demarcation of Convertible Forest Zone for palm oil plantations on behalf of PT. HIP in Buol District, Central Sulawesi, covering 9,964 hectares. The decision was controversial, even met with strong resistance from the current Buol Head of District, Amiruddin Rauf. The KPK gave special attention to this issue. It has asked MoEF to review the decision since the principle permit was issued through bribery.⁴⁹

According to Laode from KPK, the forest zone release was a sensitive issue due to the bribery case linked to the company. Amran Batalipu, the former Buol Head of District, issued to Siti Hartati Murdaya, the owner of PT Cipta Cakra Murdaya (CCM), the principle plantation permit. MoEF was asked by KPK to re-evaluate the permit since the principle permit was obtained through bribery.

Abdul Haris Lapabira, Director of Walhi Central Sulawesi stated that the issuance of Decree No. 517/2018 is in contrary with the Presidential Instruction No. 8/2018 on the palm oil moratorium dated September 19, 2018. Thus, the Minister of Environmental and Forestry has issued a decree that is contradictory with the higher rules and regulations. The Instruction was issued to stop release of forest zone for palm oil and evaluate permits that had been issued in the period of three years after its enactment.

Walhi Central Sulawesi suspected that there was a violation of the law in the process of forest zone release and urged the MoEF to revoke the decree. The decree was a sign of state officials' defiance against the Presidential Instruction.

Based on Walhi's data, Central Sulawesi has 6.1 million hectares of land area and 4.2 million hectares of forest. Therefore, Central Sulawesi is one of the largest forest holders in Indonesia. Many threats come from large-scale plantations and monoculture industries with the intention to capture community land. In fact, up until now, there are 700,000 hectares of oil palm plantations in the province.

In the same region, the local government has launched a irrigation-based agriculture development project such as rice fields managed by the community. Local governments have built agriculture areas and irrigation. If not regulated properly, the large-scale business could harm the community-based agriculture.

⁴⁸ Sawit Watch Team, *Menakar Sawit, Riset Kawasan, Korupsi, dan Pendapatan Daerah di Sulawesi dan Kalimantan*, 2015.

⁴⁹ Interview with Laode M Syarif, to Mongabay on January 25, 2019.

Based on Madani's findings, a new irrigation was built using the 2018 state budget and has been utilized to water community-owned rice fields. The majority of residents in the first ring of PT. HIP's palm oil plantation are migrants from Java and Bali. Old temples were built and have become worship center for the residents. These people live in Bukal District in Rante, Marabu, and Modo Villages. Most of them plant rice, cocoa, coffee, durian, rambutan, oranges, bananas, coconut and corn.

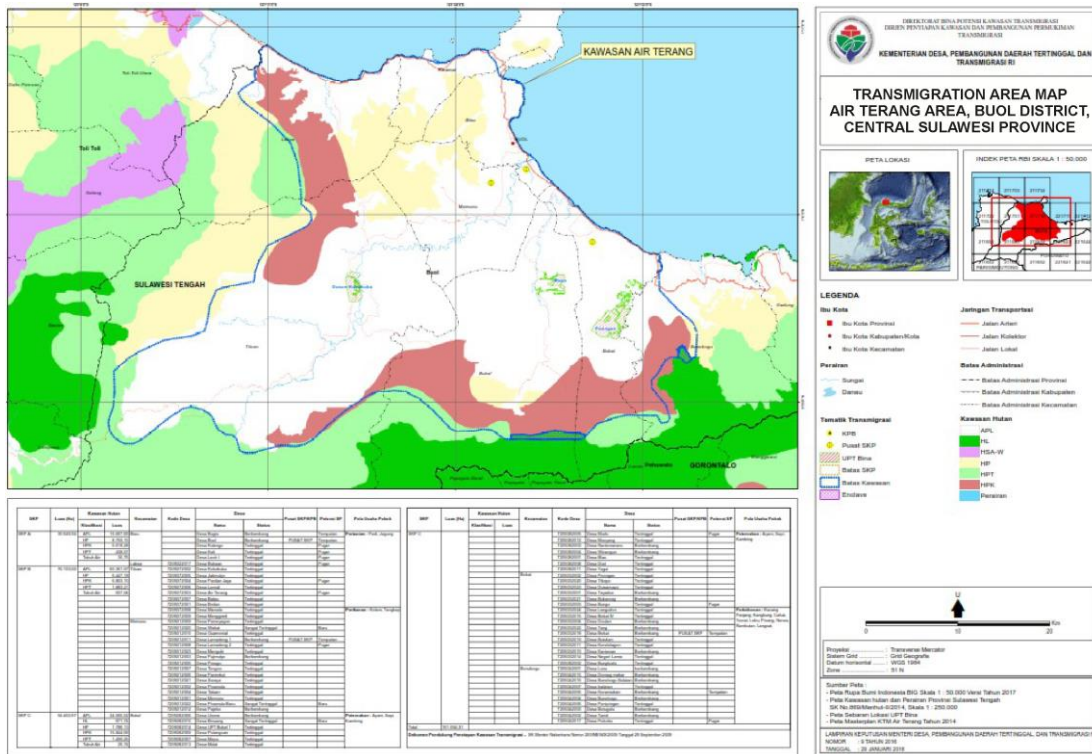


Figure 6. Map of Air Terang Transmigration Area, which later became an independent integrated city as one of the programs of Buol Government

Source: Attachment of The Decree of The Minister of Village and Development of Underdeveloped Regions and Transmigration, 2016

Madani also found that the upstream region of the settlement area of the villages is surrounded by palm oil plantations owned by PT. HIP. However, approximately five kilometers from the plantations, large intact forest cover remains. Palm oil is even planted less than 100 meters from the river bank. In fact, the river used by the community for their daily needs faces sedimentation problems and is indicated to be polluted by the waste of palm oil fertilizer. Legally speaking, it violates Government Regulation No. 38 of 2011 on River Banks that requires a buffer zone to be developed in at least 100 meters for large rivers and 50 meters for small rivers.



Figure 7. Condition in the field where palm oil is planted along the river bank, which causes sedimentation (0° 58.199' and 121° 27.362'). Located in the northern side of the 9,964 hectares area.
 Source: Madani Documentation, 2019

Based on the analysis of 2018 satellite image data by Madani, intact forest cover is still found in the area released for PT. HIP. The forest cover is estimated to be 7,862 hectares or around 78.9 percent of the total released area. Some of the land are overgrown by secondary vegetation or plantation crops with high density (shown in Figure 8).

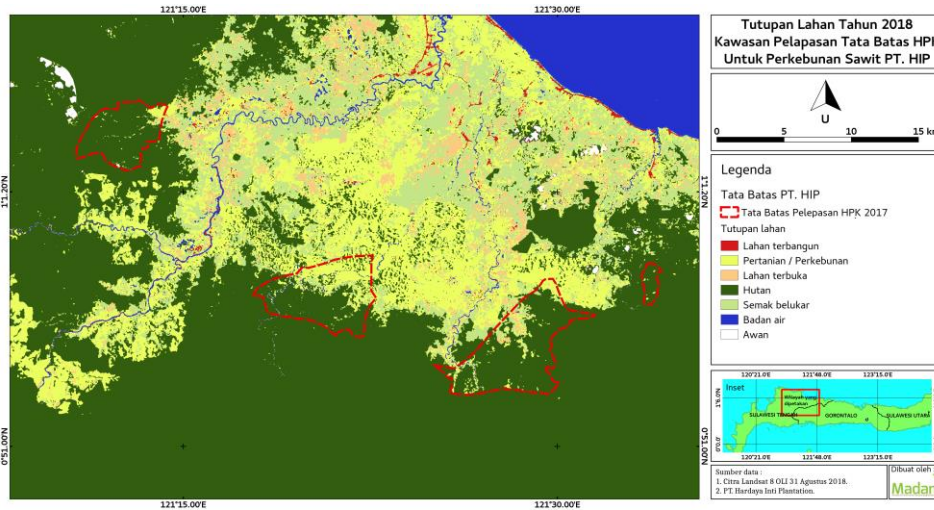


Figure 8. 2018 Land cover in the forest zone released for PT. HIP
 Source: Madani Spatial Analysis, 2019

In addition, some of the released forest zone are located on slope area, which is not suitable for land use since it includes a steep slope of approximately 29 percent and a very steep slope of 0.85 percent. Land use on steep and very steep slopes could cause erosion and landslides.

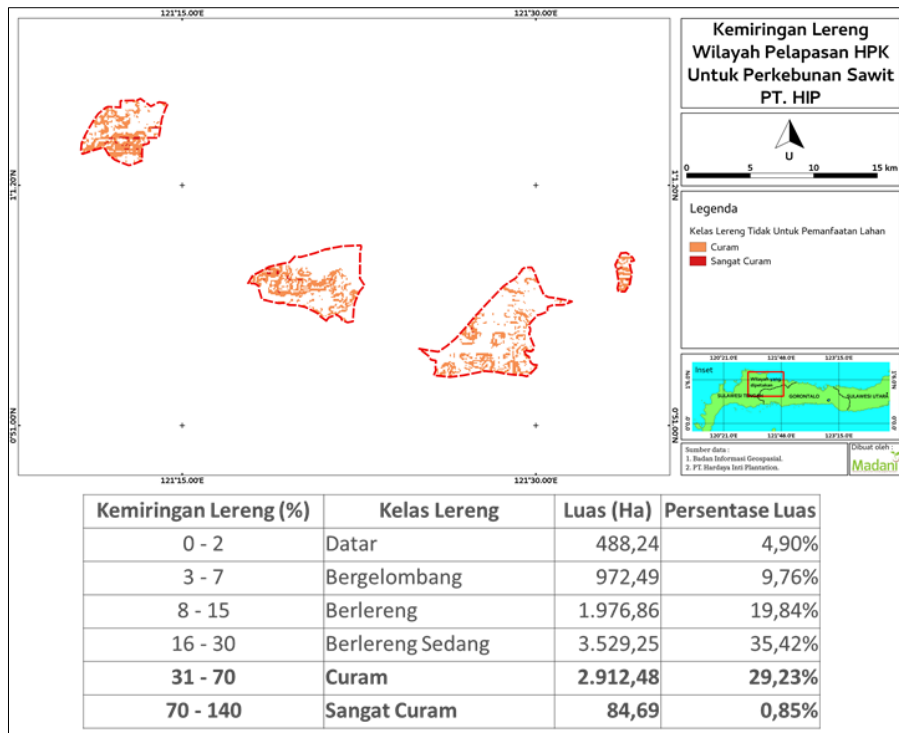


Figure 9. Slope condition in forest zone released for PT. HIP
 Source: Madani Spatial Analysis, 2019

Moreover, the company had cleared the land and planted palm oil before obtaining the forest zone decree from the MoEF. According to Madani's findings on the ground, it is strongly indicated that the Decree of the Minister of Environment and Forestry to release 9,964 hectares of forest zone was to whitewash legal violations that had been committed by PT. HIP. The following figures show indications of palm oil plantation activities that had been carried out by PT. HIP even before the Decree No. 517/2018 was issued.

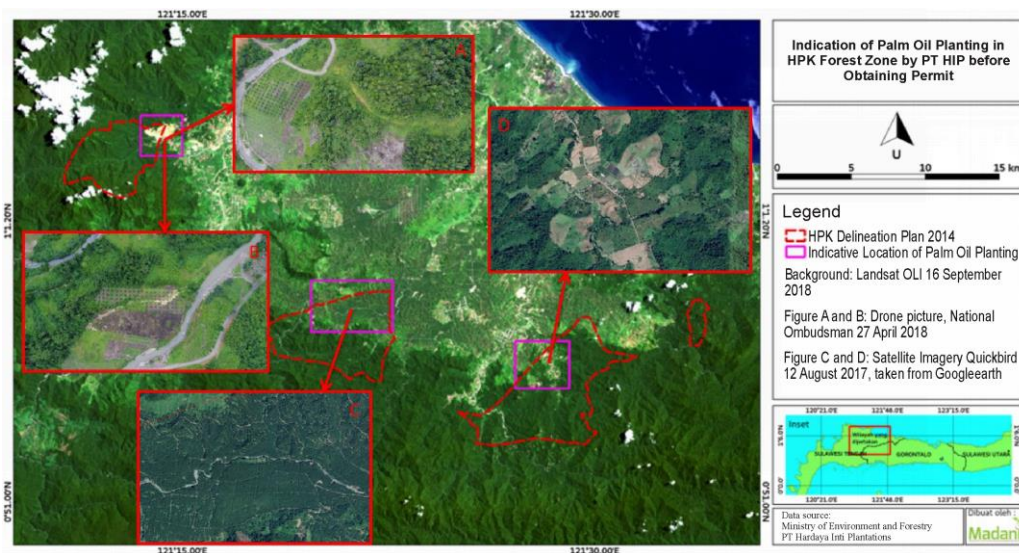


Figure 10. Spatial analysis shows indication of palm oil planting prior to forest zone release for PT. HIP
 Source: Madani Spatial Analysis, 2019

Walhi Central Sulawesi has urged the government to immediately revoke the Decree No. 517/2018 and asked the central government and the Central Sulawesi Government to implement Presidential Instruction No.

8/2018 consistently. On April 16, 2019, the Indonesian Forum for the Environment (Walhi) and Buol Head of District filed a complaint to the Ministry of Law and Human Rights related to the Decree on the basis that the permit was legally flawed, including due to the absence of location permit from the Head of Buol District in accordance with the Regulation of the Minister of Environment and Forestry No. 51 of 2016.

Based on the minutes of the team meeting of the Ombudsman Indonesia, Central Sulawesi Office, it was found that areas cleared for PT HIP's palm oil plantation was located outside HGU and in the forest zone, which was classified as HPK with the size of 1,058 hectares.

Walhi found irregularities in the forest zone release Decree issued by the Minister. One of the points in the Decree stated that PT. HIP has the right to resolve conflicts if there is a third party right in the released are. This is in contrary with Law No. 32 of 2009 on Environmental Protection and Management. According to the Law, officials that have the authority to issue permits are required to control the impact of the issued permits. It means that the MoEF fails to take responsibility for the consequences of its own authority.

Another fact of the palm oil plantations in Buol District, even in Central Sulawesi, is that the price of FFB from smallholder has never exceeded Rp2000, – since the Dutch Colonial era. This breaks the assumption that the presence of palm oil plantations brings prosperity to the community and increases regional income. The Ombudsman of Central Sulawesi indicated that the forest zone release for the 9,964 hectares of land was issued to enable the company to make profits from timber taken from the primary forest cleared for palm oil.

The Ombudsman also found that palm oil plantation companies or Non-IUPPKH have never paid taxes for their logging activities that should have been subject to Value Added Tax (PPN). The companies argued that the timbers were only stacked or piled up, even though there is a clear state loss from the value of the lost timber. In addition, the palm oil companies evaded tax are by using third parties to buy palm oil from farmers or partners at low prices. This is to avoid taxes on palm oil, because according to Government Regulation No. 31 of 2007 on agriculture, plantation and forestry, the FFB is subject to 10% Value Added Tax. This regulation is also in accordance with a letter from the Director General of Taxes Number SE-24 / PJ / 2014 which stated that Fresh Fruit Bunches are taxable goods and subject to VAT. Therefore, legally, the FFB is subject to state tax when it was bought by the company.

Another finding is that the General Manager of PT. HIP is an active Indonesian National Army members (Navy), named (Major) Ruwandi.⁵⁰ This violates Law Number 34 of 2004 on the Indonesian National Army, which in Article 47 paragraph (1) states that army members can only hold civilian positions after resigning or retiring from active military service.

Buol Regional Government's program is hampered by the release of the forest zone. The release also violated the regional spatial plan of Buol District. Based on Buol District Strategic Environmental Assessment (KLHS), massive forest release and clearing are prohibited considering its effects on the carrying capacity of the ecosystem, which would cause adverse environmental impacts and reduce water reserves. In addition, a study from the expert team of Ministry of Agrarian Affairs and Spatial Planning has classified critical lands in Buol and Parigi. Therefore, Buol District is categorized as critical area and not suitable for the forest zone release since it could cause flood. The team from the Ministry of Agrarian Affairs and Spatial Planning also mentioned that each group of palm oil plantations may only have 20 thousand hectares of land in one province.

Buol Head of District's opposition to the Decree issued by the Minister of Environment and Forestry, Siti Nurbaya, was not supported by the Governor of Central Sulawesi, Longki Djanggola, a politician from the Democratic Party. In May 2018, when the Governor held a meeting to discuss the decision, none of the

⁵⁰ Accessed from PRP Indonesia, <http://www.prp-indonesia.org/2015/kronologi-aksi-pendudukan-pekerja-pt-hip-ccm-di-buol> on April 1, 2019.

agencies in the province opposed. Only the District Head made his opposition clear. Even in the process of establishing a boundary demarcation committee by the Directorate General of Forest Planning, the four sub-district heads, Bappeda officials and the General Administration section of the Buol District were invited but without any notice to or involvement of the District Head. It indicates that the process for issuing the forest release permit was not transparent from the beginning and full of special interests of the provincial and central government.

According to Buol Head District in a statement to Madani, compared to the costs of the environmental damage, regional revenues obtained from palm oil plantations in Buol pale in comparison. Bukal District, the first ring of palm oil plantations, has become the poorest area in Buol because the fertile agricultural land has become unproductive. In Bungkudu Subdistrict, 10,000 of palm oil trees are dying due to waterlogging (flooding), river sedimentation and other environmental degradations. Despite of job creation for around 3,000 people, the wage of laborers are not promising and far below the costs of the environmental damage.

According to the record of Buol District Head, every year 10 villages are inundated during the rainy season. The villages have arable land for agriculture. Palm oil plantations in Buol also cause social and agrarian conflicts. The company never gets down themselves in any land conflict involving the community. Rather, they use law enforcement apparatus to face them. These are the reasons why the District Head refused to expand palm oil plantations. He prefers developing corn farm in his area. So far, according to his records, every hectare of maize crop can produce 5 tons of corn in 3 months. Therefore, farmers could earn at least 5 million rupiah monthly. This is far from the wage of workers in palm oil companies, which is only 1.5 to 2 million rupiah per month. The District Head said that he would not give permission for palm oil plantations, but he is open to large investments in livestock and agriculture sectors.

Timeline of PT. HIP Licensing

The following figure shows the licensing history of PT. HIP starting from the stipulation of palm oil plantation business principle license in 1994 until the release of 9,964 hectares of forest zone on November 23, 2018.

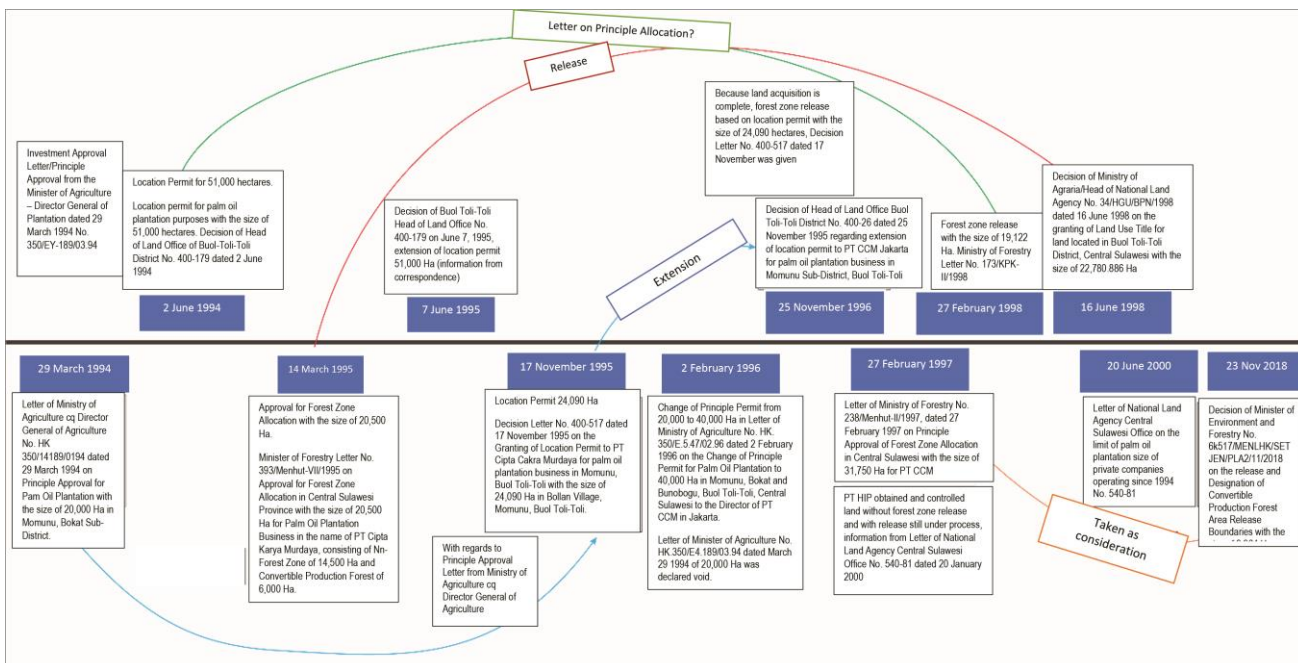


Figure 11. Licensing History of PT. HIP (timeline)

Source: Modified from Walhi Central Sulawesi

Chronology of forest zone release with the size of 9,964 hectares for PT. HIP

According to the Decree of the Minister of Environment and Forestry No. 517/2018, it is found that:⁵¹

1. Approval of 31,750 hectares of forest zone allocation was given since February 27, 1997 based on the Decree of the Minister of Forestry No. 238 / Menhut-II / 1997 for PT Cipta Cakra Murdaya (PT CCM). PT. HIP is a subsidiary of PT CCM and has taken over the location permits for palm oil plantations from PT CCM.
2. PT. HIP has submitted proposal for repeat boundary demarcation/delineation since **June 4th, 2014**.
3. The eligible area for delineation is 10,028 hectares, smaller than the submitted proposal for HPK release with the size of 16,065 hectares because there was a natural forest zone with the size of 6,037 hectares that must be excluded from delineation. This information is obtained from the Letter of Directorate General of Forestry Planning and Environment Management of MoEF No. S.794/MenLHK-PKTL/2015 dated **December 15th, 2015**.
4. Land realisation after delineation is 9,964 hectares and was approved in October 19th, 2017 by Letter No. S.1433/PKTL/KUH/PLA.2/10/2017
5. The Decree No. 517/2018 was stipulated in **November 23rd, 2018**.
6. The Presidential Instruction No. 8/2018 was stipulated in **September 19th, 2018**. Therefore, the Decree was stipulated after the enactment of the Presidential Instruction No. 8/2018
7. The Decree No. 517/2018 does not mention whether the released forest zone is categorized as productive or non-productive convertible production forest (HPK) area.

Indications of deforestation by PT. CCM/HIP

Based on monitoring and analysis of satellite images by Komiu (Youth Caring for Forest Group) in Central Sulawesi, the following results are obtained:

1. **1995** – natural forest clearing was identified with the following details
 - 1.1 Forest clearing outside the Location Permit No. 400-179 for \pm 24,74 hectares was identified. Status of the natural forest cleared by PT. CCM was non-forest zone.
 - 1.2 Forest clearing inside the Location Permit No. 400-179 for \pm 503.35 hectares was identified. Status of the natural forest cleared by PT. CCM was non-forest zone.

⁵¹ Adrianus Eryan, Legal Opinion Penerbitan SK Pelepasan Kawasan Hutan untuk PT Hardaya Inti Plantations di Kabupaten Buol, Provinsi Sulawesi Tengah, ICEL, 2019

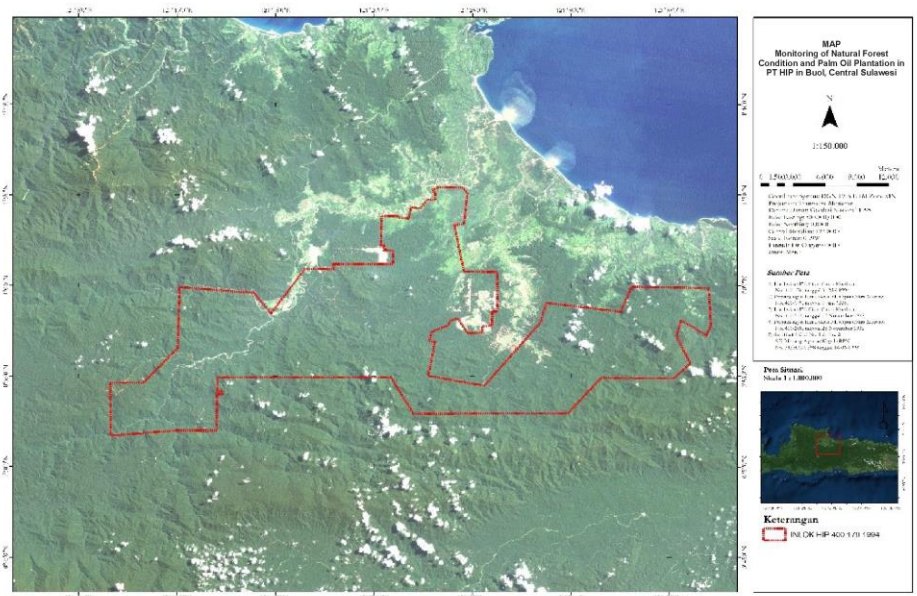


Figure 12. Spatial observation and analysis of natural forests and palm oil plantation condition of PT. CCM/HIP in 1995

Source: Komiu Spatial Analysis, 2019

2. 1996 – 8,626.97 hectares of natural forest clearing was identified with the following details:

- 2.1 Natural forest clearing outside the Location Permit No. 400-517 was 5,417,58 hectares
- 2.2 Natural forest clearing inside the Location Permit No. 400-517 was 3,209.29 hectares

The status of cleared forests was non-forest zone (7260.27 hectares) and HPK (1366.6 hectares)

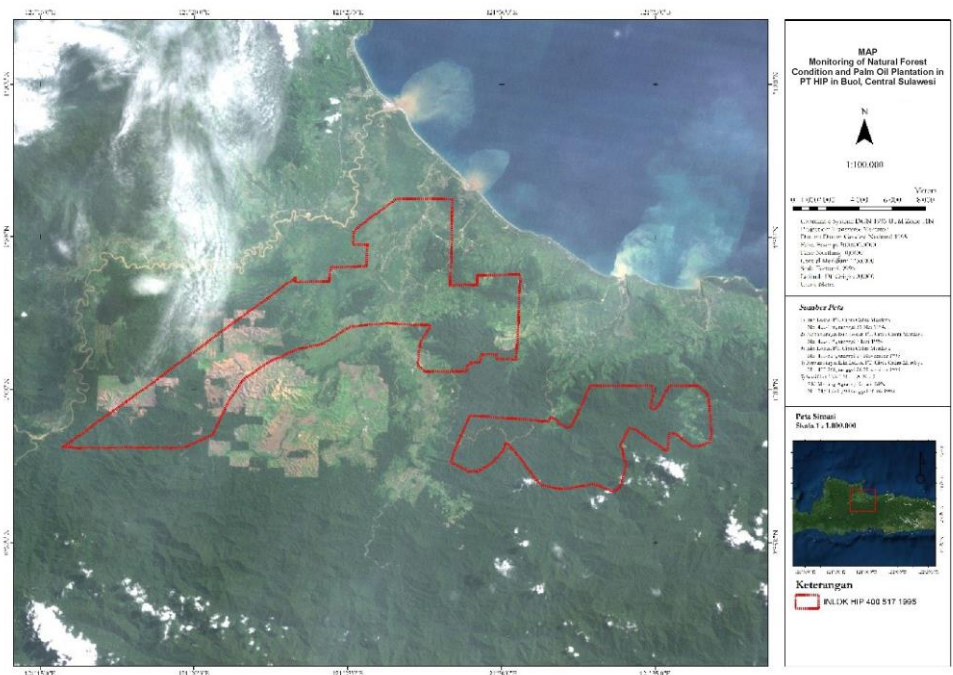




Figure13. Spatial Observation and Analysis of natural forest and palm oil plantation condition of PT. CCM/HIP in 1996

Source: Komiu Spatial Analysis, 2019

In 1996, there was a conversion of the area from HPK to APL with the size of 371.35 hectares and 32.39 hectares deforestation occurred outside Location Permit I and II. This was an illegal deforestation because the Location Permit is not a legal basis for land clearing. The company even cleared natural forests outside the Location Permit and inside the forest zone. But, in 1998, this region was included as a part of the HGU area.

3. 1997 – forest clearing was observed with the size of 1,824.3 hectares with following details:

- 3.1 Natural forest clearing outside the location permit was 1,355.05 hectares
- 3.2 Natural forest clearing inside the location permit was 469.25 hectares

The status of forests cleared was in non-forest zone (1335,7 hectares), convertible production forest (421,08 hectares), production forest (65,5 hectares) and water body (1,98 hectares)

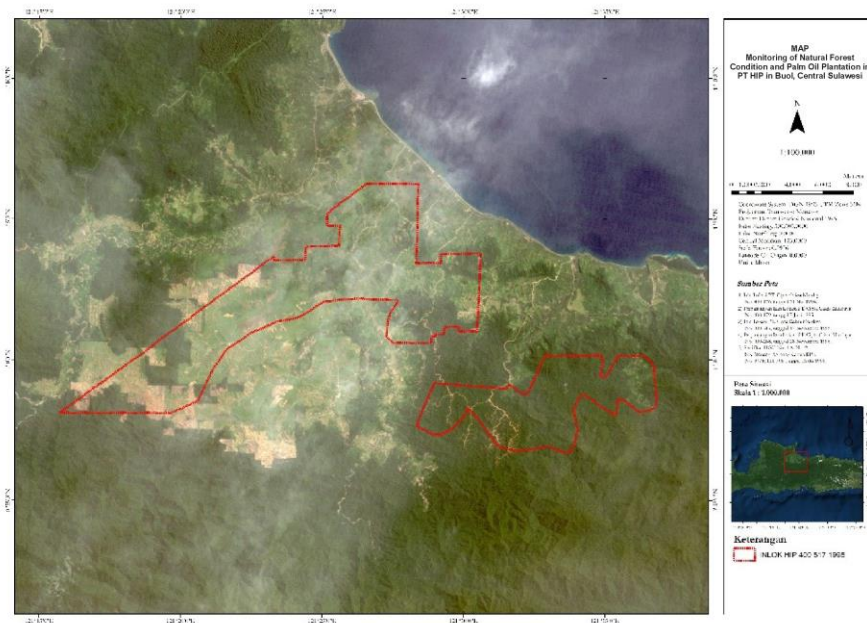


Figure 14. Spatial observation and analysis on natural forests condition and palm oil plantation of PT. CCM/HIP in 1997

Source: Komiu Spatial Analysis, 2019

4. 1999 to 2018 – there were massive forest clearing activities in 1999 due to the issuance of HGU 1 and HGU 2 of PT. CCM No. 34/HGU/BPN/1998 dated June 16th, 1998. From the HGU, it can be identified that the company conducted land clearing and palm oil planting outside the HGU area.



- 4.1 Natural forest clearing outside HGU area was 7,467.78 hectares
- 4.2 Natural forest clearing inside HGU area was 3,290.51 hectares

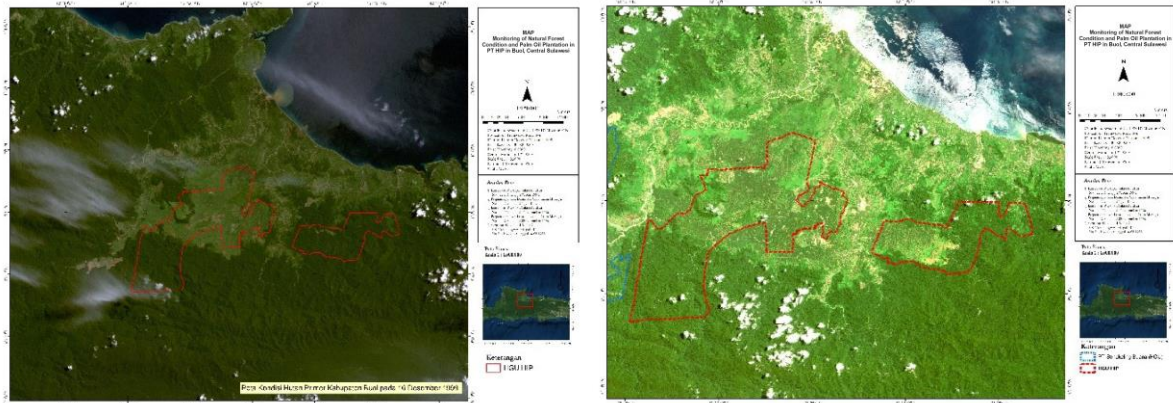


Figure 15. Spatial observation and analysis on the condition of natural forests and palm oil plantation of PT. HIP in 1999 (left) and 2018 (right)
Source: Komiu Spatial Analysis, 2019

Until 2018, the total size of HGU that has not been utilized by PT. HIP is 19,489.49 hectares from 22,780 hectares of land

Conclusion

During the operation of palm oil plantations in Buol District, deforestation, poverty, and degradation of supporting and carrying capacity of the ecosystem are widespread.

The issuance of the Minister of Environment and Forestry’s Decree releasing 9,644 hectares of forest zone for PT. HIP for palm oil plantations will result in loss of natural forests and water sources to irrigate the community’s agriculture land, especially those belonging to migrants from the five villages. Palm oil plantations are also built on river banks, which violate Government Regulation No. 38 of 2011 on River Banks. In addition, around 30 percent of the released forest zone is located on steep and very steep slope area not suitable for land use.

The issuance of the Decree also injures the sense of justice and the spirit of corruption of eradication as well as palm oil governance improvement because the beneficiary, PT. HIP, which is a subsidiary of PT. CCM, has been found guilty of bribery in the obtainment of their permits under the same company group in the same location, namely Buol District.

Recommendations

1. The Ministry of Environment and Forestry must revoke the Decree No. 517/2018 on the release and boundary determination for convertible production forest zone for palm oil plantation of PT. HIP in Buol District, Central Sulawesi, covering 9,964 hectares of land.
2. The Ministry of Environment and Forestry must improve transparency in the granting of forest zone release permit for palm oil plantations as a form of openness based on precautionary principles as well as examine conflicts with higher regulations.



3. The Ministry of Environment and Forestry, Ministry of Agriculture, and the Ministry of Agrarian and Spatial Planning must conduct a comprehensive evaluation of palm oil plantation licenses as mandated by Presidential Instruction No. 8/2018 in a transparent manner with the participation of local government.
4. The results of license evaluation in the context of Presidential Instruction No. 8/2018 implementation must be followed up immediately, including with law enforcement measures. The follow-up must be carried out transparently and announced to the public as a form of accountability.
5. The Governor of Central Sulawesi and the District Head of Buol must carry out their obligations to supervise, provide guidance, and evaluate the performance of palm oil plantation companies in their jurisdiction as stipulated in Article 44 of Regulation of Minister of Agriculture No. 29 / Permentan / Kb.410 / 5/2016 on Amendments to Regulation of Minister of Agriculture No. 98 / Permentan / Ot.140/9/2013 on Guidelines for Plantation Business Licenses.

Annex 3. Legal Opinion on Forest Zone Release for PT Hardaya Inti Plantations in Buol District, Central Sulawesi

INTRODUCTION

In September 2018, forest preservation and improvement of Indonesia's palm oil governance got a new hope when President Joko Widodo issued Presidential Instruction No. 8 Year 2018 on the Suspension and Evaluation of Palm Oil Plantations License and Improvement of Palm Oil Plantations Productivity, which is valid for three years until 19 September 2021 (subsequently referred to Instruction No. 8/2018). This Instruction among others gives a mandate to Minister of Environment and Forestry to postpone forest zone release or exchange for palm oil plantations.⁵²

However, only two months after the Instruction was issued, on November 23, 2018, the Minister of Environment and Forestry issued forest zone decision letter for palm oil plantations with the size of 9,964 hectares in Buol District, Central Sulawesi for PT Hardaya Inti Plantations (PT. HIP), which was met with a protest from Buol Head of District and Commission for Corruption Eradication as well as the civil society. Greenomics Indonesia stated that 80 percent of forest zone release for PT. HIP comprises intact forests. It also identified planted palm oil in one of the blocks in areas released for PT. HIP, which indicated legal violation.⁵³

This legal opinion aims to answer the following questions:

1. Was the issuance of SK 517/2018 for PT. HIP in contradiction with the prevailing laws and regulations?
2. Does the Minister of Environment and Forestry have the authority to revoke SK 517/2018 and with what justifications?
3. What is the relation between SK 517/2018 and the corruption case of Hartati Murdaya as the former director of PT. HIP and Amran Batalipu as the former Buol Head of District, which was in office when PT. HIP requested a Plantation Business License (IUP)?

A. FACTS AND DATA

The following are data used in this legal opinion:

1. On November 23, 2018, Ministry of Environment and Forestry issued Decision Letter No. SK.517/MENLHK/SETJEN/PLA/2/11/2018 (subsequently referred to SK 517/2018) to release forest zone for palm oil plantations with the size of 9,964 hectares in Buol District, Central Sulawesi, to PT Hardaya Inti Plantations (PT. HIP).
2. The current Buol Head of District, Amiruddin Rauf, is against the issuance of the forest zone release because based on Buol Spatial Plan, the released area is allocated as food reserve and water catchment area for irrigation.⁵⁴

⁵² Presidential Instruction No. 8 Year 2018 on the Suspension and Evaluation of Palm Oil Plantations License and Improvement of Palm Oil Plantations Productivity, Second Dictum, para (1).

⁵³ <http://greenomics.org/80-areal-pelepasan-kawasan-hutan-pt-hip-masih-berhutan-lebat>

⁵⁴ <https://regional.kompas.com/read/2019/01/22/17001771/bupati-buol-geram-klhk-izinkan-9964-hektar-hutan-produksi-jadi-kebun-sawit>

3. KPK protested against the decision to issue SK 517/2018 because according to KPK, the permit should not have been given because some permits were obtained through a corruption act, namely bribery.⁵⁵
4. Minister of Environment and Forestry stated that from the legality aspect, all requirements, documents, and legal basis are strong and so there was no issue in the issuance of the Decision Letter.⁵⁶

Data Regarding PT. HIP

5. That based on the profile of PT Hardaya Inti Plantations (PT. HIP) obtained from Directorate General of AHU, Ministry of Law and Human Rights, PT. HIP is a limited liability company with Enactment Act No. C2-895.HT.01.01.TH.1996 operating in the plantation sector, specifically plantation and palm oil industri (Crude Palm Oil/CPO).
6. That PT. HIP is also a subsidiary of PT Central Cipta Murdaya or known more as Group CCM.
7. That PT. HIP has obtained ISPO (Indonesia Sustainable Palm Oil) certificate from ISPO Commission of Directorate of Plantation, Ministry of Agriculture of Republic of Indonesia with certificate number BSI-ISPO 621530.
8. That PT. HIP also nurtures a number of community cooperatives as the company's partners bound in a partnership scheme with seven (7) cooperatives with a planted area of 4,980 hectares (around 4,000 hectares have produced FFBS, which are sold to the company), in addition to a number of cooperatives that are to be built.
9. That other than the cooperation between the company and the cooperative, the company also nurtures independent plasma plantations, which are not included in the cooperative because the areas are scattered with the size of 3,800 hectares. The company gave a lending for seedlings and assistance until the plantations resulted in harvest, involving 4,318 smallholders.
10. That the plasma plantations comprise 2,499 plasma smallholders or Households and all the costs to develop the plasma plantations came from the company.
11. That PT. HIP shows up in at least a couple of reports of some organizations and news showing indications that the company contributes to deforestation and indications of corruption in obtaining its permits, among others:
 - a. Greenpeace report titled "Deforestation Case Study" (December 2017)
 - b. Greenpeace report titled "The Final Countdown: Now or Never to Reform the Palm Oil Industry" (19 September 2018).⁵⁷
12. That PT. HIP is a supplier of Musimas Group. There is a report in the Grievance Mechanism of Musimas Group that PT. HIP does not have RSPO membership and a publicly announced NDPE policy. Therefore, there is a deforestation risk in the 82,600 hectares of concession owned by PT. HIP in Papua on the account that the status of the land is non-forest zone (APL), which does not require forest zone release.
13. The following are data showing the location of PT. HIP's permit in Buol District, Central Sulawesi.

⁵⁵ <https://nasional.kompas.com/read/2013/02/04/12134267/Hartati.Murdaya.Divonis.2.Tahun.8.Bulan.Penjara> and <https://www.viva.co.id/berita/nasional/1115240-kpk-geram-kementerian-kehutanan-masih-berikan-izin-ke-hartati-murdaya>

⁵⁶ <https://ekonomi.bisnis.com/read/20190121/99/880899/klhk-sebut-administrasi-izin-9.964-ha-kebun-sawit-di-buol-sudah-lengkap>

⁵⁷ https://issuu.com/greenpeacesea-indonesia/docs/hitung_mundur_terakhir

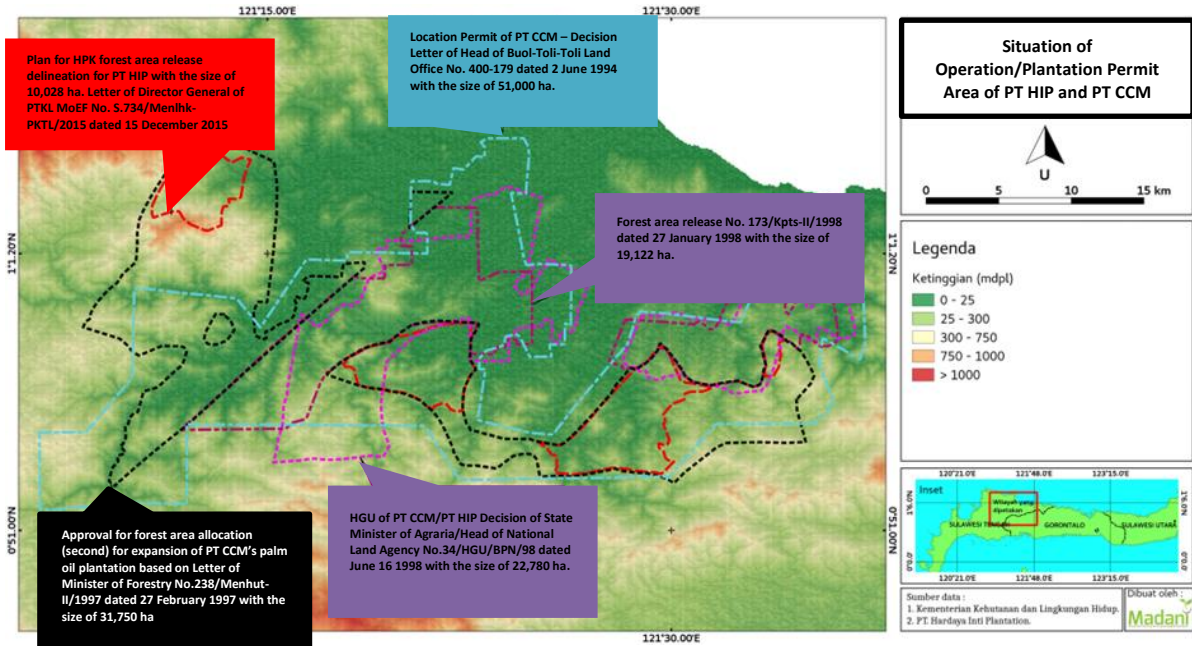


Figure 1. Location of PT. HIP's Permit in Buol, Central Sulawesi

Source: Spatial Analysis by Madani, 2019

14. The following is the map of forest land use consensus in Central Sulawesi province.

Corruption Case of PT. HIP⁵⁸

15. In 2013, the then director of PT. HIP, Hartati Murdaya, was arrested by KPK while bribing the then Head of Buol District, Amran Batalipu. The bribery was for obtainment of Plantation Business License (IUP) for PT. HIP in Buol, Central Sulawesi. Both were indicted to prison, 7 years for Amran Batalipu in addition to a fine of 300 million rupiah and 2 years and 8 months for Hartati Murdaya in addition to a fine of 150 million rupiah. The ruling was as follows:
 - a. First Level Ruling No. 64/Pid.B/TPK/2012/PN. Jkt.Pst
 - b. Appeal Ruling No. 12/PID/TPK/2013/PT.DKI (the final, legally-binding ruling because Amran Batalipu withdrew his cassation appeal through Ruling No. 1552 K/Pid.Sus/2013)
16. In 1999, PT. HIP submitted a request to obtain Land Use Right (HGU) to the State Minister of Agraria/Head of National Land Agency on land with the size of 33,083.3 hectares, which was a part of land that had not had a HGU with the size of 52,309.24 hectares. However, according to State Minister of Agraria/Head of National Land Agency Regulation No. 2 of 1999 on Location Permit, such request could not be processed because one company and or one group of companies are only allowed to have HGU in one province with the maximum size of 20,000 hectares and therefore the Location Permit for land with the size of 52,309.24 hectares became invalid although in reality a part of the land with the size of 4,500 hectares had been planted with palm oil by PT. HIP.
17. In 2011, PT. HIP submitted a request to obtain Location Permit for the land with the size of 4,500 hectares that had been planted with palm oil to Amran Batalipu using the name of PT Sebuku Inti Plantation (PT SIP), which was also a subsidiary of PT CCM. However, the Location Permit was not granted until 2012.
18. In response to that, on April 15, 2012, located in the VIP living room, Ground Floor of Centra Niaga in Jakarta Great Fair (PRJ), Kemayoran, Central Jakarta, PT. HIP represented by Siti Hartati Murdaya, Gondo Sudjono Notohadi Susilo, Totok Lestiyo, Arim dan Yani Ansori, conducted a meeting with Amran Batalipu. In the meeting, PT. HIP through Hartati Murdaya asked Amran Batalipu to issue decisions in relation to the process of Plantation Business License (IUP) and Land Use Right (HGU) obtainment for land with the size of 4,500 hectares in the name of PT CCM and to issue decisions in relation to the process of IUP and HGU obtainment for land outside the 4,500 hectares and 22,780.76 hectares.
19. In response to the meeting, on June 11, 2012, located in Grand Hyatt Hotel, Jakarta, PT. HIP represented by Siti Hartati Murdaya, Totok Lestiyo, Gondo Sudjono Notohadi dan Arim conducted another meeting with Amran Batalipu in which they reiterated their previous request in PRJ. It was agreed in the meeting that Siti Hartati Murdaya would provide cash with the sum of 3 billion rupiah to Amran Batalipu, of which 1 billion rupiah would be given through Arim and 2 billion rupiah would be given through Gondo Sudjono Notohadi Susilo.
20. In June 11, 2012, Arim drafted a Location Permit letter for land with the size of 4,500 hectares backdated to May 21, 2012 as instructed by Siti Hartati Murdaya, of which the original was given to Amran Batalipu in a Mitsubishi showroom in Cempaka Mas, Jakarta and its copy was faxed by Arim to Yani Ansori with the instruction to immediately draft recommendation letters to be signed by Amran Batalipu and to give money to the land Team. In addition, Arim told Yani Ansori that for the letters to be signed, Siti Hartati Murdaya would give 1 billion rupiah to Amran Batalipu. Arim then asked Yani Ansori to arrange a meeting with Amran Batalipu to hand the money.

⁵⁸ KPK, Jejak Kasus Amran Batalipu, <https://acch.kpk.go.id/id/jejak-kasus/54-amran-abdulah-batalipu>

21. Yani Ansori then prepared letters in relation to proposal to obtain HGU in consultation with Amir Rihan Togila as the Head of Land Team. After the letters were approved by Amir Rihan Togila in substance, Yani Ansori sent the letters as well as handed money to Amir Rihan Togila in the sum of 100 million rupiah.
22. On Monday morning of June 18, 2012, Amran Batalipu contacted Arim on the phone and asked Arim to hand money in the sum of 1 billion in Amran Batalipu's residence in Mawar Street 1, Leok, Buol District, at midnight. Upon his request, Arim and Yani Ansori carried the 1 billion to Amran Batalipu's house in a brown backpack. In Amran Batalipu's house, Yani Ansori handed the backpack to Amran Batalipu.
23. One day after the hand-over, Amran Batalipu signed the letters needed to obtain HGU for the land with the size of 4,500 hectares, the gist of which was to ask the Governor of Central Sulawesi and the State Minister of Agraria/Head of National Land Agency, to issue recommendations for IUP and HGU for PT CCM or PT. HIP for the land with the size of 4,500 hectares. The letters, which had been signed by Amran Batalipu, were given to Amir Rihan Togila, which were then handed to Arim and Yani Ansori.
24. On June 19, 2012, Amran Batalipu said to Totok Lestiyo that letters regarding IUP and HGU for the land with the size of 4,500 hectares that had been signed by him had been given to Arim and Amran Batalipu asked Totok Lestiyo to ask PT. HIP or PT CCM to give him the remaining sum of 1 billion. Totok Lestiyo in turn promised that he would relay his request to Siti Hartati Murdaya.
25. On June 20, 2012, Siti Hartati Murdaya contacted Amran Batalipu through Totok Lestiyo's handphone whereby she thanked Amran and asked him to issue letters in relation to the obtainment of IUP and HGU for land outside the 4,500 hectares with a promise to give him 2 billion. Then Siti Hartati Murdaya instructed Totok Lestiyo to arrange for the money to be handed to Amran Batalipu. For that purpose, Totok Lestiyo asked Arim to prepare 2 billion rupiah, which was taken from PT. HIP or PT CCM's account. On account that it was very risky to carry the money in cash, Arim transferred the money to several accounts, namely 500 million rupiah to Mandiri account in the name of Gondo Sudjono Notohadi Susilo, 500 million rupiah to Mandiri account in the name of Dede Kurniawan, 250 million rupiah to Seri Siriton's account and 250 million rupiah to Bernhard's account. Meanwhile, for the remaining 500 million, Arim asked Gondo Sudjono Notohadi Susilo and Sukirno to bring it in cash to Buol, 250 million each as well as instructed them to coordinate with Yani Ansori for the handing of the 2 billion to Amran Batalipu.
26. Gondo Sudjono Notohadi Susilo then told Yani Ansori that he would come to Buol to meet Amran Batalipu to hand in the 2 billion. After Yani Ansori took the 500 million from Bernhard, he gave the money to Gondo Sudjono Notohadi Susilo to put it together with the 1.5 billion cashed in from Sukirno and Dede Kurniawan's accounts.
27. On Tuesday morning of June 26, 2012, Yani Ansori contacted Amran Batalipu on Gazali's handphone to ask about when and where Amran Batalipu would take the 2 billion, to which Amran Batalipu asked Yani Ansori to hand the money at his villa in Leok, Buol District.
28. Subsequently, Yani Ansori, Gondo Sudjono Notohadi Susilo, Sukirno, and Dede Kurniawan took the 2 billion in two mineral water boxes to Amran Batalipu's villa whereby Yani Ansori and Gondo Sudjono Notohadi Susilo handed the money to Amran Batalipu by putting it on the floor of the livingroom. Shortly after taking the money, Amran Batalipu was arrested by KPK officials.

Forest Cover Data

29. That according to a press release of Greenomics Indonesia, 80 percent of area released for PT. HIP was secondary forests (75 percent) and primary forest (5 percent). The data were obtained based on high-resolution satellite data analysis.⁵⁹
30. This finding was affirmed by spatial analysis and ground-checking by Yayasan Madani Berkelanjutan, which found that there was intact natural forest cover (not unproductive area) in area released through SK 517/2018 with the size of 7,862 hectares or 78.9 percent of forest zone released for PT. HIP (See Figure 9-12 below).

B. LEGAL ISSUES

4. Was the issuance of SK 517/2018 for PT. HIP in contradiction with the prevailing laws and regulations?
5. Does the Minister of Environment and Forestry have the authority to revoke SK 517/2018 and with what justifications?
6. What is the relation between SK 517/2018 and the corruption case of Hartati Murdaya as the former director of PT. HIP and Amran Batalipu as the former Buol Head of District, which was in office when PT. HIP requested a Plantation Business License (IUP)?

C. REGULATIONS & DECISIONS

- Law No. 41 of 1999 on Forestry (Law 41/1999)
- Law No. 30 of 2014 on Government Administration (Law 30/2014)
- Government Regulation No. 104 Year 2015 on Procedure for Changing Forest zone Use and Function (PP 104/2015)
- Regulation of Minister of Environment and Forestry No. 51 of 2016 on the Procedure for Releasing Production Forest for Conversion (PermenLHK 51/2016), which was effective up to 18 December 2018. This regulation has been replaced by Regulation of Minister of Environment and Forestry No. 96 of 2018 on the Procedure for Releasing Productin Forest for Conversion.
- Presidential Instruction No. 8 Year 2018 on the Suspension and Evaluation of Palm Oil Plantations Licenses and Improvement of Palm Oil Plantations Productivity (Instruction 8/2018)

D. LEGAL ANALYSIS

Legality of Issuance of SK 517/2018 regarding Productive and Unproductive Production Forest for Conversion (HPK)

1. Based on SK 517/2018, the following information are obtained:
 - a. The approval of forest zone allocation with the size of 31,750 hectares has been obtained since 27 February 1997 based on Minister of Forestry Decision Letter No. 238/Menhut-II/1997, which was addressed to PT Cipta Cakra Murdaya (PT CCM). PT. HIP is a subsidiary of PT CCM and has obtained a hand-over of location permits for PT CCM's plantations business.
 - b. PT. HIP has requested a repeat boundary demarcation or delineation since 4 June 2014.
 - c. Areas that could be followed-up with a repeat delineation was 10,028 hectares out of the requested area of 16,065 hectares. However, there was an area of primary forests with the size of 6,037 hectares that must be exempted from delineation. This information is based on

⁵⁹ <http://www.greenomics.org/80-areal-pelepasan-kawasan-hutan-pt-hip-masih-berhutan-lebat>

Letter of Director General of Forestry Planology and Environment Governance No. S.794/MenLHK-PKTL/2015 dated 15 December 2015.

- d. That the realization of land after the delineation was 9,964 hectares and was approved in 19 October 2017 in Letter No. S.1433/PKTL/KUH/PLA.2/10/2017
- e. SK 517/2018 was issued in 23 November 2018.
- f. Presidential Instruction No. 8 of 2018 was issued in 19 September 2019. Therefore, SK 517/2018 was issued after the issuance of Presidential Instruction No. 8 Of 2018.
- g. SK 517/2018 does not include any information regarding whether forest zone that was released was productive or unproductive Production Forest for Conversion (HPK).

As a stand alone note, according to a release by Walhi Central Sulawesi based on data from Ombudsman Central Sulawesi and KPK, PT. HIP was indicated of having obtained Location Permit using illegal means and was in contradiction with the prevailing laws and regulations because in provisions regarding limited liability companies, permits cannot be handed-over without the approval of the authority that grant them. This was affirmed in Decision of Head of Land Office of Buol Toli-Toli District No. 400-517 dated 17 November 199 first section number 5 (five), which stated that *“The location permit may be used only for palm oil cultivation and for the development of facilities and infrastructure for that purpose by the party that received the location permit and is not allowed to be used for other purposes and by other parties aside from the receiver of the location permit.”*

2. Furthermore, based on the provisions in Presidential Instruction No. 8 of 2018 and Regulation of Minister of Environment and Forestry No. 96 Of 2018, there are exceptions to the suspension of Forest zone Release Decision Letter, namely:
 - a. If the proposal for forest zone release has obtained a principle approval before the issuance of Presidential Instruction No. 8 of 2018 but the area has not been delineated and is located inside Production Forest for Conversion (HPK) that is still productive, the proposal can be processed but only in unproductive HPK.⁶⁰
 - b. If the forest zone release proposal has obtained a principle approval and has been delineated before the issuance of Presidential Instruction No. 8 Of 2018, the proposal can be processed as long as the requested HPK is not productive.⁶¹
 - c. Suspension of permit based on Presidential Instruction No. 8 of 2018 is only for palm oil plantations that submit: (1) a new proposal, (2) proposals that have not fulfilled the requirements or have fulfilled the requirements but are located in forest zone that is still productive, or (3) proposals that have obtained a principle approval, but have not been delineated and are located in productive forest zone.⁶²
 - d. That the suspension based on Presidential Instruction No. 8 of 2018 is exempted for forest zone release or exchange proposals for palm oil plantations that have been planted with and processed based on the provisions of Article 51 Government Regulation No. 104 Of 2015.⁶³
3. That the dates of issuance of documents that are required to issue SK 517/2018 based on Presidential Instruction No. 8 of 2018 are in accordance with requirements and administratively, there are no mistakes in terms of period of documents issuance as well as other administrative requirements, as have been stated by the Minister of Environment and Forestry.

⁶⁰ Article 41 para (5) Minister of Environment and Forestry Regulation No. P/96/MENLHK/SETJEN/KUM.1/11/2018

⁶¹ Article 41 para (6) Minister of Environment and Forestry Regulation No. P/96/MENLHK/SETJEN/KUM.1/11/2018

⁶² Second Dictum, Number 1, Presidential Instruction No.8 of 2018.

⁶³ Second Dictum, Number 2, Presidential Instruction No.8 of 2018.

4. However, we need to take into account further provisions regarding the procedure for changing use and function of forest zone, which is also regulated in Government Regulation No. 104/2015, which is elaborated further in its derivative regulation, Regulation of Minister of Environment and Forestry No. 51 Of2016, which has been revoked and replaced by Regulation of Minister of Environment and Forestry No. 96 Of 2018. The relevant provisions are among others:
 - a. Production Forest zone that can be released is Production Forest for Conversion that is not productive, except in provinces that no longer have unproductive Production Forest for Conversion.⁶⁴
 - b. What is meant by “Production Forest for Conversion that is not productive” is Production Forest, which land cover is dominated by non-forested land, bushes, land with no vegetation, and agroforest.⁶⁵
 - c. Forest zone Release for non-forestry development purposes can only be done in Production Forest for Conversion (HPK) area that fulfills the following criteria:⁶⁶
 - (1) The HPK function is in line with the prevailing laws and regulations
 - (2) Is not burdened with Forest zone use permit, Forest Utilization Permit, and/or other permits from the Minister, and is not located inside Forest zone that has been enacted as Forest zone for Special Purposes or KHDTK
 - (3) Is not productive, except in provinces that no longer have unproductive HPK
 - (4) Is located in provinces that have forest zone of more than 30 percent.
5. Based on the points above, in SK 517/2018, there is no information that forest zone that was released was Production Forest for Conversion that was no longer productive as mandated in the regulation.
6. That forest zone released for PT. HIP, according to analyses by Greenomics, which is strengthened by Yayasan Madani Bekelanjutan, comprises intact forests of around 80 percent, which consists of primary forest (5%) and secondary forest (75%).
 - a. Primary or old-growth forests, according to White and Lyoyd (1994) are forests that have reached old age without any significant disturbances and hence shows unique ecological conditions and nature. In general, primary forests comprise trees that can reach old age, intact canopy or forest cover, diverse species as well as ecosystem function.⁶⁷
 - b. Secondary forests, according to Breugel (2007) are forests formed with human intervention or natural causes. Secondary forests usually grow from land cleared of their natural vegetation and grow back or are planted by humans.⁶⁸
 - c. That primary and secondary forests are by definition are not in line with conditions of unproductive forests that can be released. Therefore, they are not fit as objects in obtaining Forest zone Release Permit because they are not unproductive forests.

⁶⁴ Article 19 para (1) Government Regulation No. 104 of 2015.

⁶⁵ Explanation of Article 19 para (1) Government Regulation No. 104 of 2015. The definition is reiterated in Article 1 number 5 Minister of Environment and Forestry Regulation No. P.51/MENLHK/SETJEN/KUM.1/6/2016

⁶⁶ Article 2 para (1) and (2) Minister of Environment and Forestry Regulation No. P.51/MENLHK/SETJEN/KUM.1/6/2016

⁶⁷ David L. White and F. Thomas Lloyd, “Defining Old Growth: Implications for Management”, *USDA Forest Service*, accessed through https://www.srs.fs.usda.gov/pubs/ja/ja_white002.pdf

⁶⁸ Michiel van Breugel, “Dynamics of Secondary Forest”, *Disertasi Wageningen University*, 2007, p. 2.

7. Therefore, it is strongly indicated that the issuance of SK 517/2018 failed to take into account the real situation of forest zone on the ground as explained in the abovementioned data. Because based on explanations in point 6 and 7, there is no strong evidence that forest zone that was released in the Decision Letter was unproductive.
8. Based on the abovementioned explanation, the issuance of SK 517/2018 is in contradiction with provision of Government Regulation No. 104/2015, Regulation of Minister of Forestry No. 96/2018, and Presidential Instruction No. 8/2018, putting it in the category of substantive flaws in the issuance of decision.

Minister of Environment and Forestry has the authority to revoke Decision Letter No. 157/2018

9. In theory of law, there is a principle called *presumptio justae causae*, which means that decisions that have been issued are deemed valid until they are revoked. In the context of SK 517/2018, there are two ways for it to be revoked. First, the decision maker revokes the decision themselves. Second, a lawsuit is made against it and is granted so that it is revoked or cancelled by the court through a permanent legal ruling.
10. That in Law No. 30 Of 2014, a Decision is deemed as legal if it fulfils the following criteria:
 - a. Issued by an authorized person;
 - b. Made in accordance with procedure; and
 - c. The substance is appropriate with the Decision's object.
 The legality of the Decision is based on laws and regulations and AUPB.⁶⁹
11. That decisions can be revoked should there be flaws in the following matters:
 - a. Authority
 - b. Procedures, and/or:
 - c. Substance
 In addition, in the event of revocation of decisions, a new Decision must be issued by mentioning the legal basis of the revocation taking into consideration AUPB.⁷⁰
12. Based on the abovementioned explanations regarding the legality of the issuance of SK 517/2018 (point 1-9), it is strongly indicated that the issuance of SK 517/2018 is in contradiction with a number of laws and regulations and is therefore classified as having substantive flaws. It therefore becomes relevant and is inside the law for the relevant authority, namely the Minister of Environment and Forestry, to revoke the Decision.
13. Such revocation, in addition to being based on findings of substantive flaws, is also justified based on self-correction principle acknowledged in Law No. 30 Of 2014.
14. Furthermore, self-correction principle is a form of positive approach whereby a State Official conducts and auto-correction or amendment of a state administration decision.⁷¹ One of the forms of correction is by revoking such decision inside the period of five (5) days after the reasons

⁶⁹ Article 52 para (1) and (2) Law No. 30 of 2014 on Government Administration.

⁷⁰ Article 66 para (1) and (2) Law No. 30 of 2014 on Government Administration.

⁷¹ Junaedi, "Formele Wederrechtelijkheid dan Self-Correction dalam Penyelenggaraan Administrasi Pemerintahan", no year, p. 7.

for revocation are discovered,⁷² or at the latest twenty-one (21) days after court ruling to revoke such decision.⁷³ Revocation of decisions that pertain to public interest must be announced in mass media as mandated by Law No. 30 Of2014.⁷⁴

15. Therefore, if the alleged substantive flaws in the form of releasing productive forest zone are proven, the Minister of Environment and Forestry is justified by laws and regulations to revoke and amend SK 517/2018 without having to wait for a ruling from the state administration court. The revocation would be in line with the exercise of self-correction principle and AUPB as mandated in Law No. 30 Of2014.

Indications of Legal Violations by PT. HIP by Planting outside Its HGU

16. In addition to revoke SK 517/2018, the Minister of Environment and Forestry must also consider other indications of legal violations committed by PT. HIP, namely planting palm oil outside its HGU.
17. That based on the collected materials and testimonies and field orientation conducted by Forestry Investigation Team together with Team of Buol Regional Government in the location of PT. HIP's palm oil plantations in Buol District, Central Sulawesi Province dated 8 May 2014, it was found that there were palm oil plantations inside Production Forest, namely in the following coordinates: 121°23'04" East Longitude, 0°56'23" North Latitude, inside Production Forest for Conversion in the following coordinates: 121°21'55" East Longitude, 0°57'50" North Latitude, and company facilities in the form of a workers' camp in the following coordinates: 121°22'51" East Longitude, 0°57'50" North Latitude.
18. Below are maps of palm oil planting outside HGU by PT. HIP:

⁷² Article 66 para (4) Law No. 30 of 2014 on Government Administration.

⁷³ Article 66 para (5) Law No. 30 of 2014 on Government Administration.

⁷⁴ Article 66 para (6) Law No. 30 of 2014 on Government Administration.

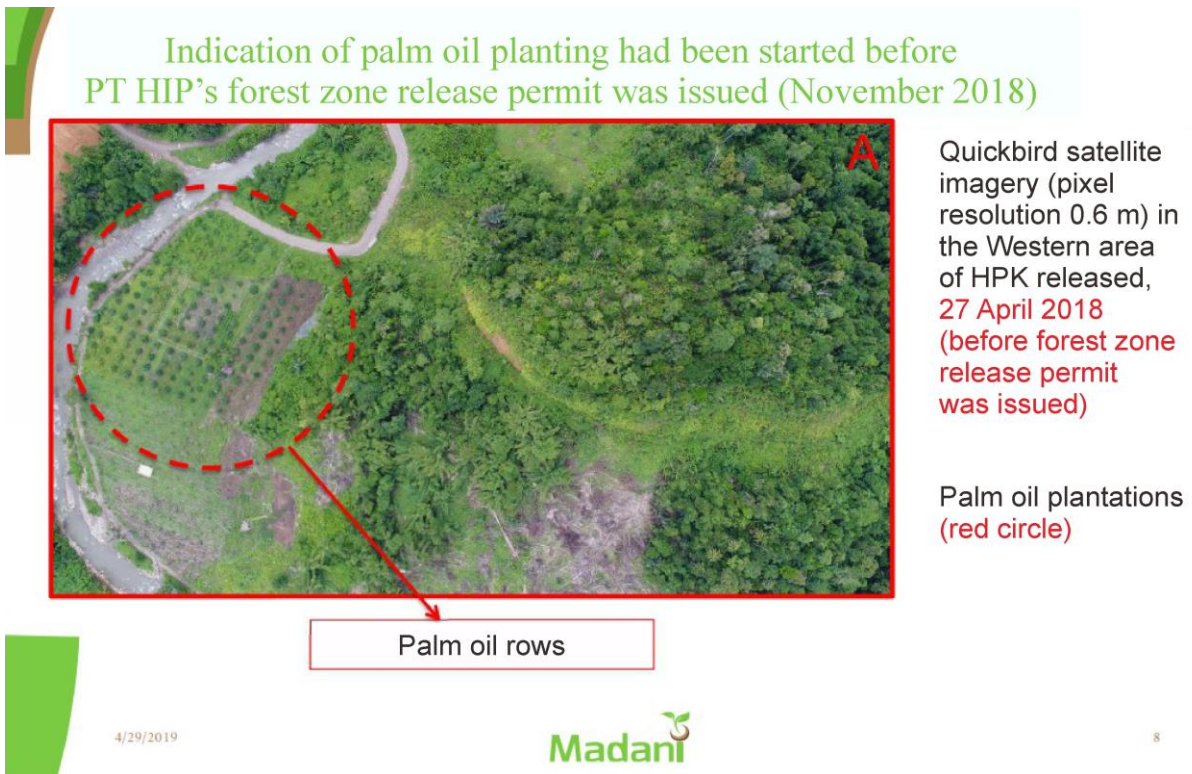


Figure 6. Indication of palm oil cultivation activities before obtaining forest zone release
Source: Spatial Analysis by Madani, 2019

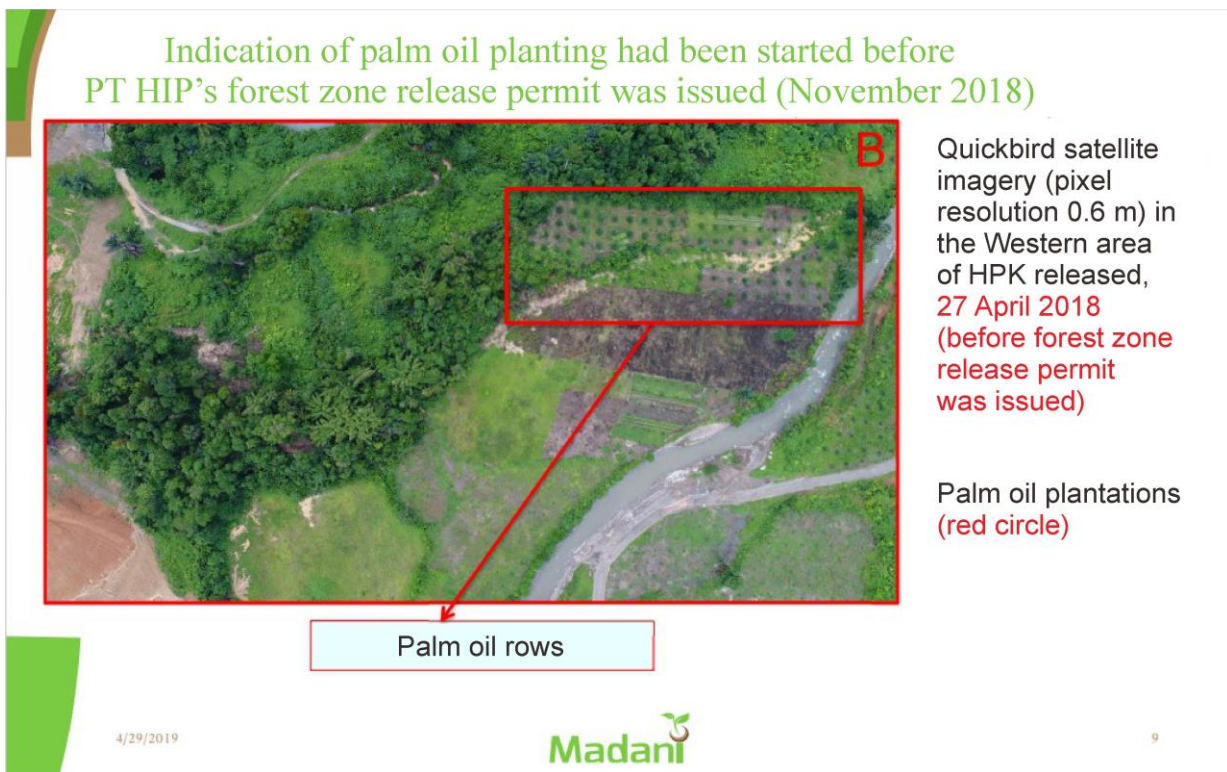


Figure 7. Indication of palm oil cultivation activities before obtaining forest zone release
Source: Spatial Analysis by Madani, 2019

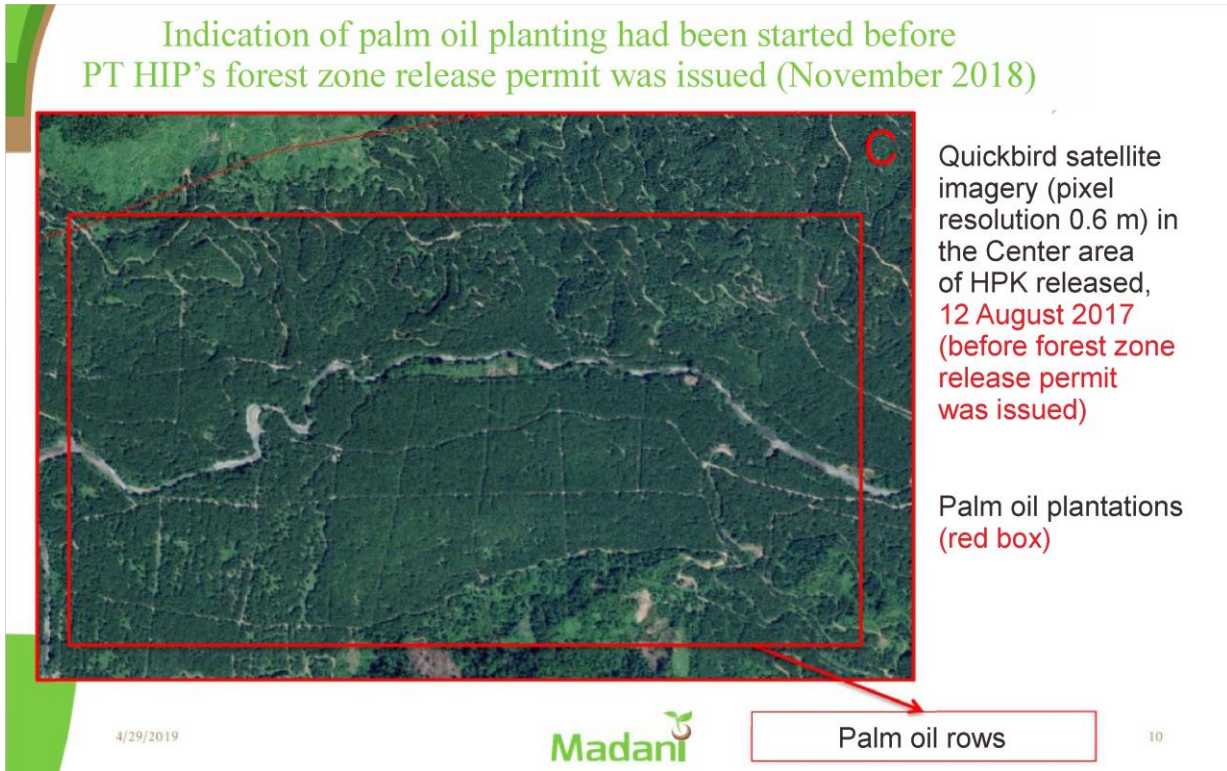


Figure 8. Indication of palm oil cultivation activities before obtaining forest zone release
Source: Spatial Analysis by Madani, 2019

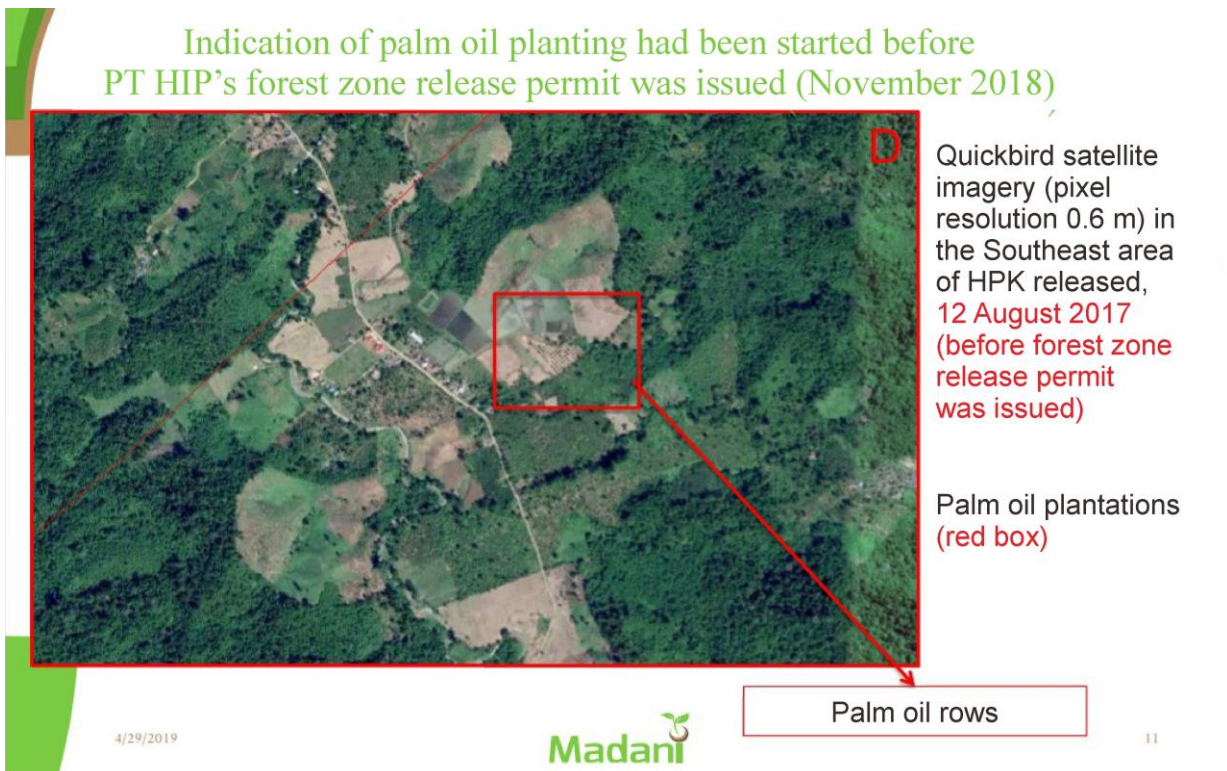


Figure 9. Indication of palm oil cultivation activities before obtaining forest zone release
Source: Spatial Analysis by Madani, 2019

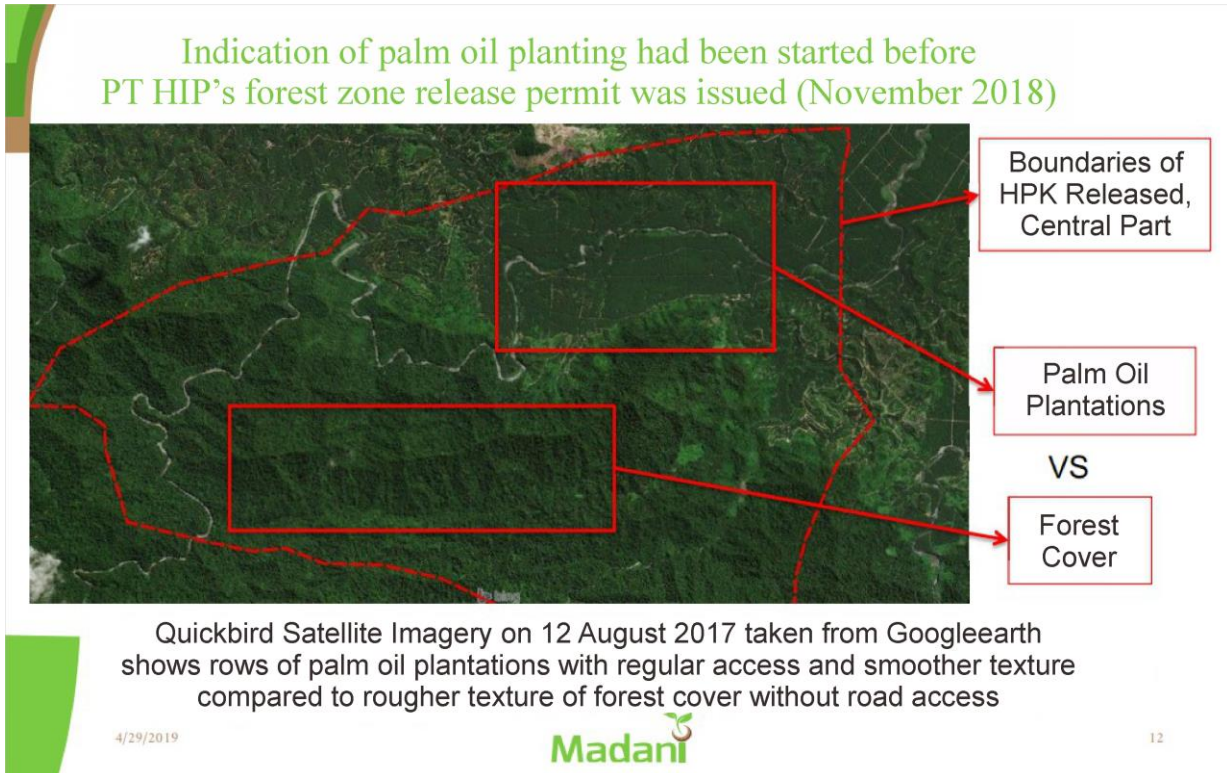


Figure 10. Indication of palm oil cultivation activities before obtaining forest zone release
Source: Spatial Analysis by Madani, 2019

Indication of Illegal Deforestation in Forest zone Released for PT. HIP

21. In addition, there are also indications of illegal deforestation in the areas released for PT. HIP in SK 517/2018, which was conducted before the Decision Letter was issued as shown in the series of spatial analyses in Figure 11-14 below:

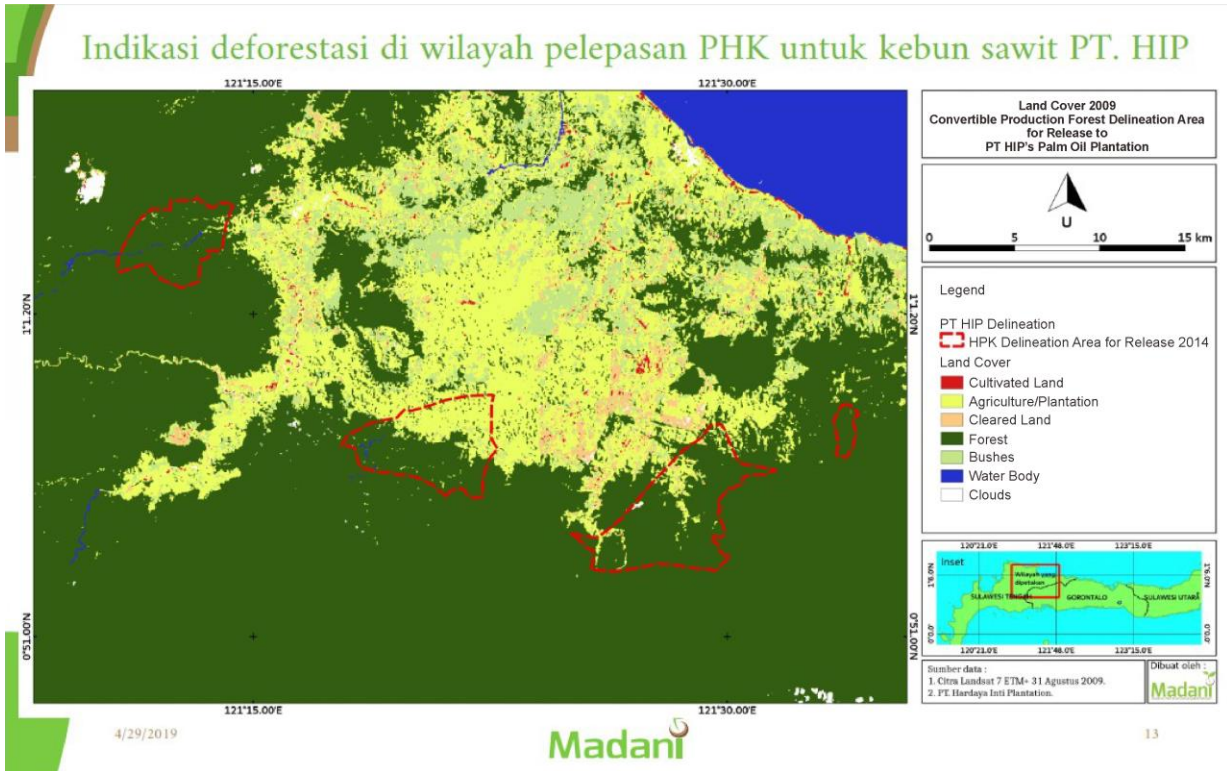


Figure 11. Indication of illegal deforestation in forest zone released for PT. HIP – Land Cover 2009

Source: Spatial Analysis by Madani, 2019

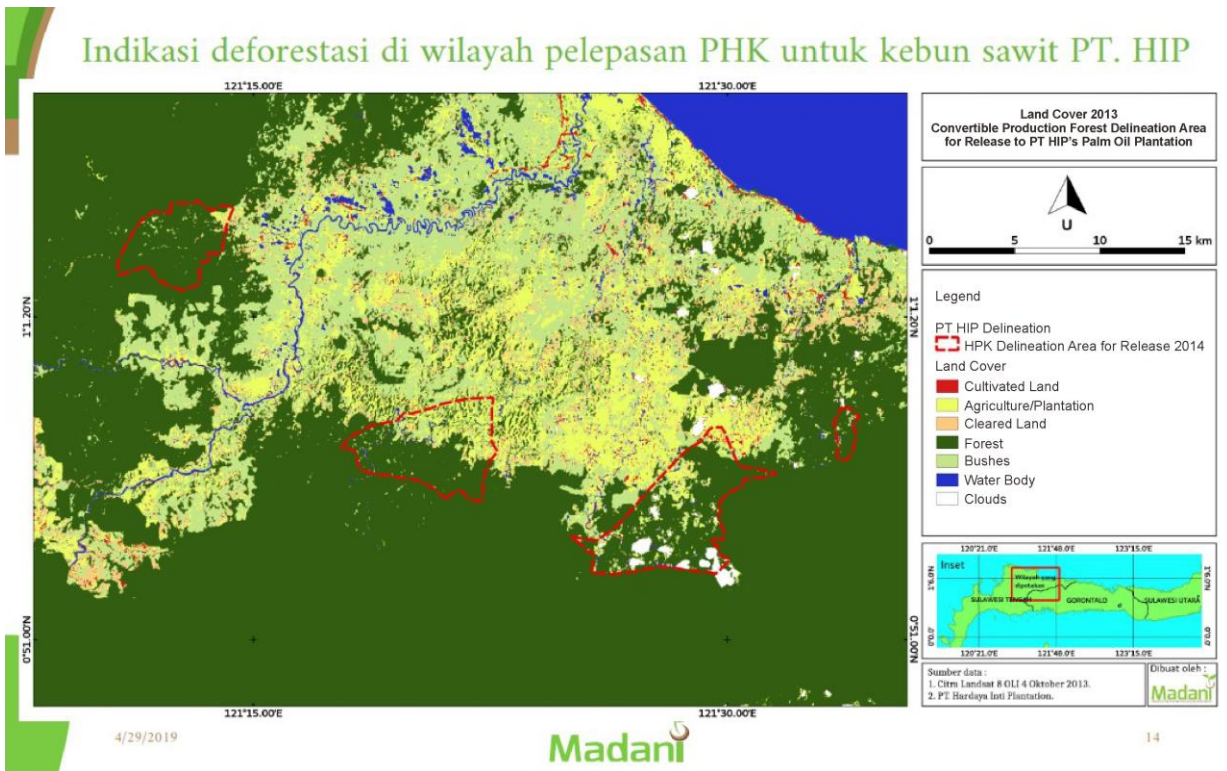


Figure 12. Indication of illegal deforestation in forest zone released for PT. HIP – Land Cover 2013

Source: Spatial Analysis by Madani, 2019

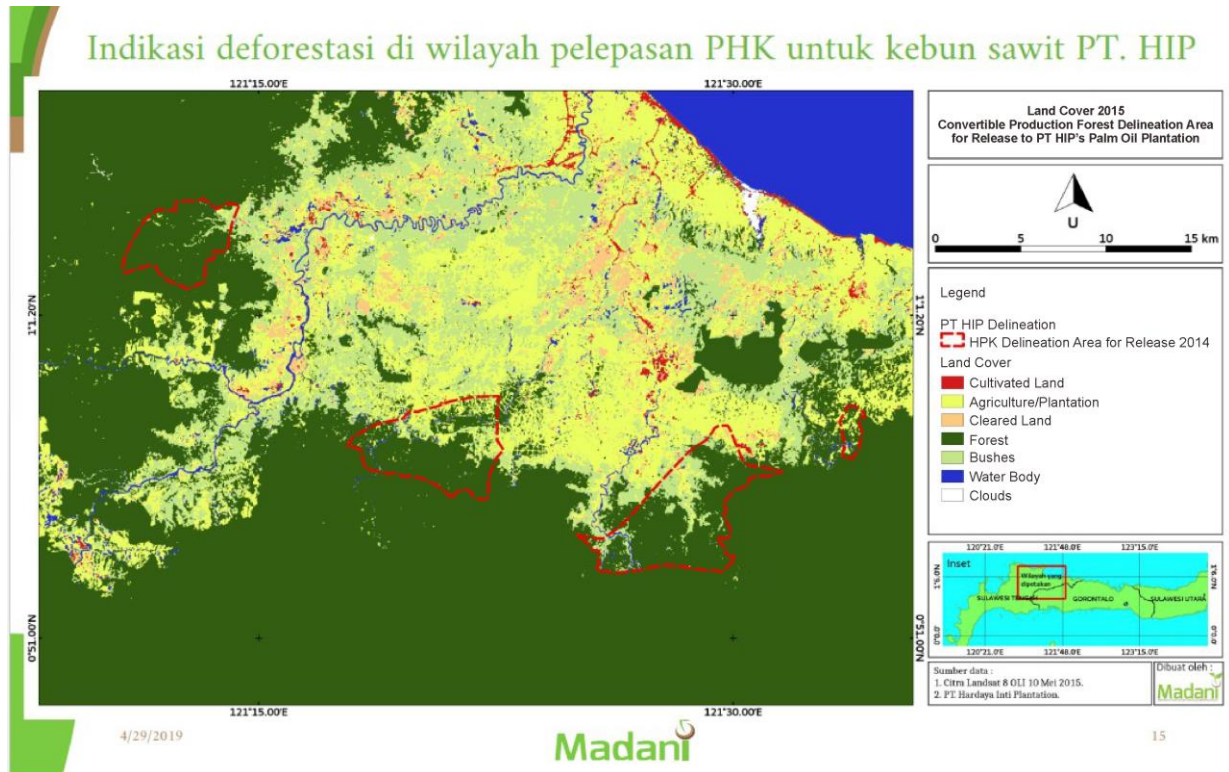


Figure 13. Indication of illegal deforestation in forest zone released for PT. HIP – Land Cover 2015

Source: Spatial Analysis by Madani, 2019

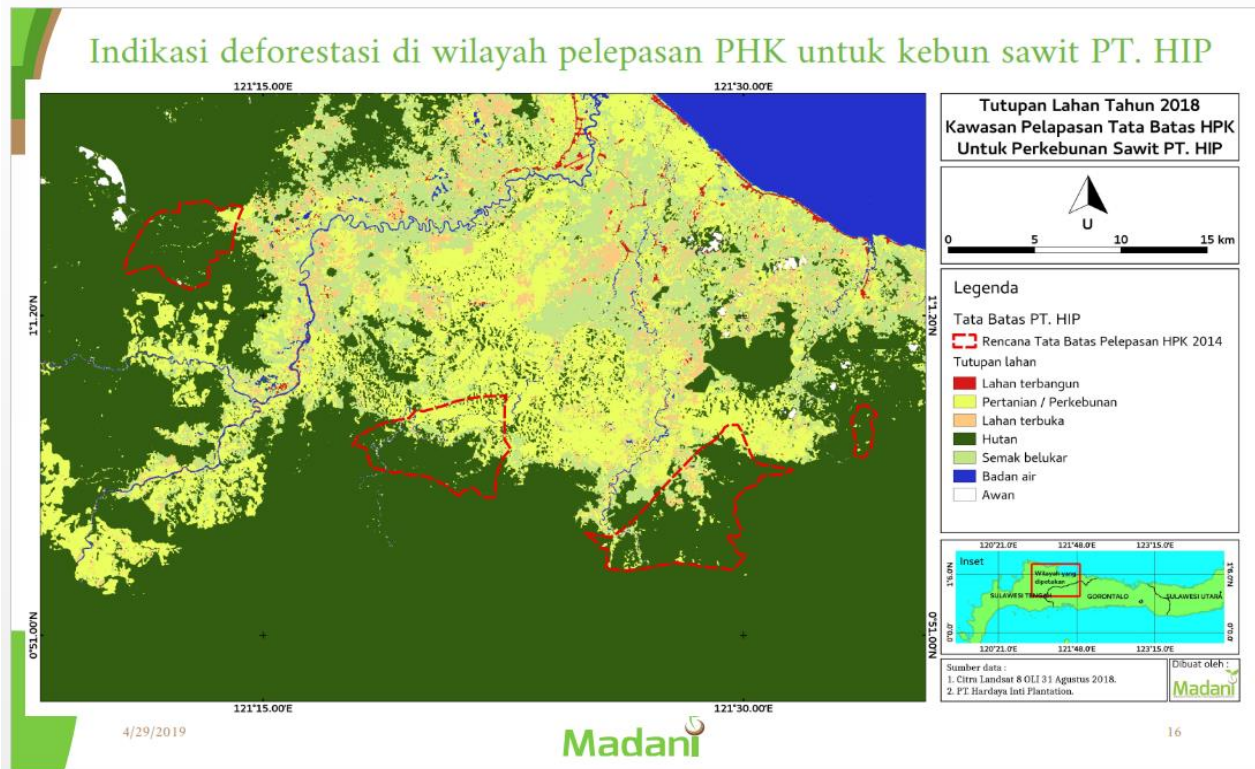


Figure 14. Indication of illegal deforestation in forest zone released for PT. HIP – Land Cover 2018

Source: Spatial Analysis by Madani, 2019

Indication of Legal Violations by PT. HIP by Planting Palm Oil in Riverbanks

22. In addition, there are indications of other legal violations, namely planting palm oil in riverbank areas, which is in violation of Government Regulation No. 38 Of 2011 on Riverbanks, which mandates the establishment of buffer zone inside 100 meters of riverbanks for big rivers and inside 50 meters from small rivers. This finding is gathered both from spatial analysis and ground checking (see figure 15-18 below).

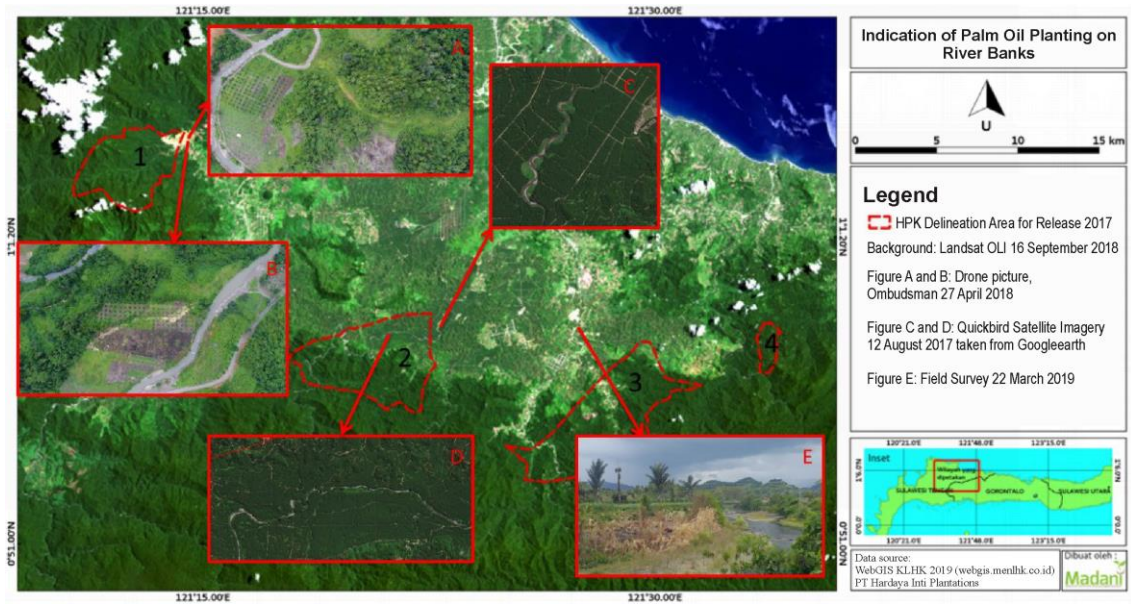


Figure 15. Indications of palm oil activities in riverbank areas
 Source: Spatial Analysis by Madani, 2019

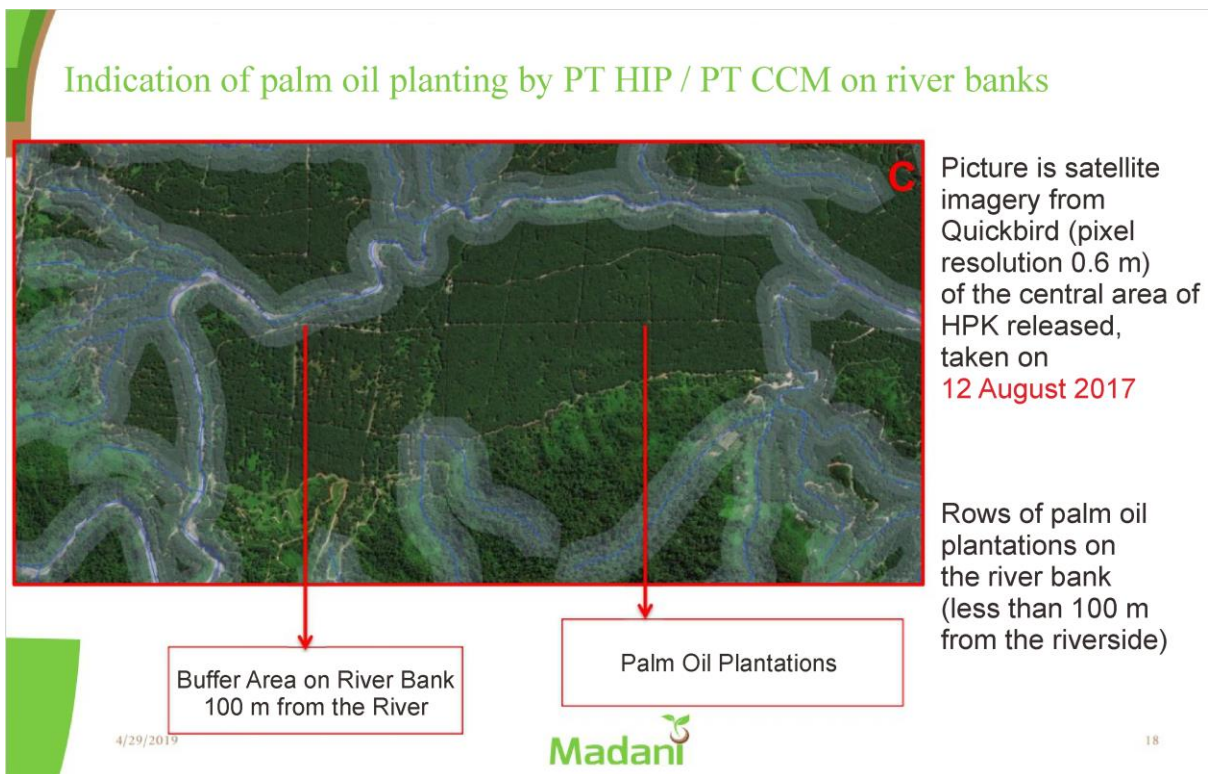


Figure 16. Indications of palm oil activities in riverbank areas
 Source: Spatial Analysis by Madani, 2019



Indication of palm oil planting by PT HIP / PT CCM on river banks

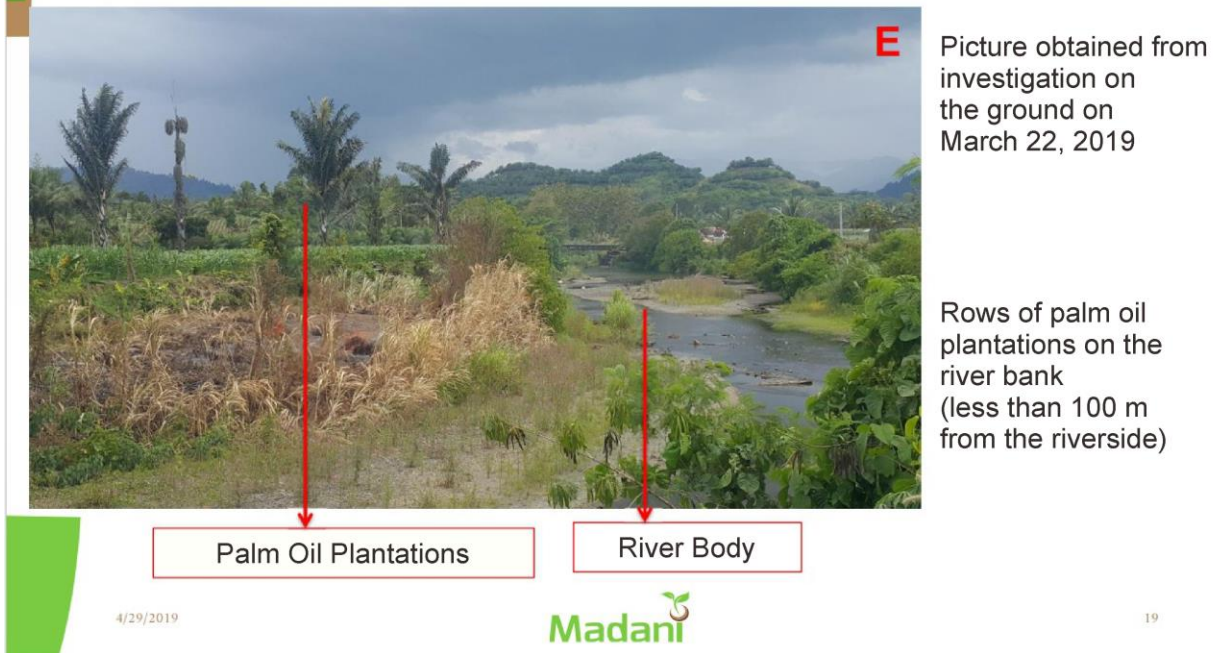


Figure 17. On the ground sightings shows palm oil cultivation activities in riverbank areas
Source: Spatial Analysis by Madani, 2019

Indication of palm oil planting by PT HIP / PT CCM on river banks

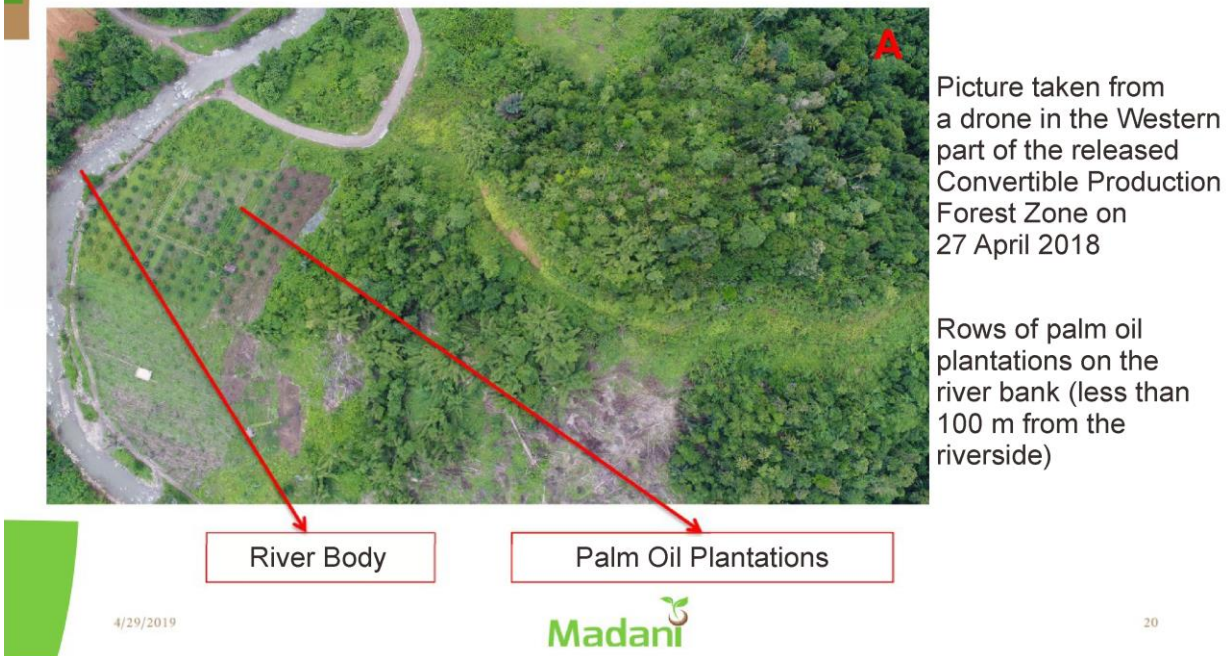


Figure 18. Documentation of unmanned vehicle shows palm oil cultivation activities in riverbank areas
Source: Spatial Analysis by Madani, 2019

Relation between Forest zone Release Decision No. 517/2018 with the Bribery Case of Hartati-Amran

23. Based on information collected from KPK site regarding the traces of Amran Batalipu case, it is known that the bribes given by Hartati Murdaya was for obtaining Plantation Business License (IUP), Land Use Right (HGU), and supporting documents of PT. HIP's licenses.⁷⁵

24. Legally speaking, the corruption committed by Hartati and Amran was in the process of obtaining Plantation Business License (IUP), Land Use Right (HGU), and their supporting documents. Before the documents were issued, Amran and Hartati had been arrested by KPK and the licensing dossiers were eventually not issued. Therefore, there is no strong legal relation between SK 517/2018 and the corruption committed by Amran and Hartati.

25. The existence of a corruption case that has been ruled and is legally-binding, plus indications of penal violations in terms of licensing administration and also indications of legal violations by planting palm oil outside HGU, clearing land before obtaining forest zone release, and planting palm oil in riverbanks have undermined the reputation and integrity of PT. HIP and also PT CCM. Therefore, the reason for issuing SK 517/2018 to PT. HIP, which has clearly conducted legal violations and thus undermined the good corporate government value of the company is highly questionable.

26. Based on the abovementioned reasons, we view that the issuance of SK 517/2018 has injured the spirit of anti-corruption and law enforcement, is not in line with the principle of environment protection, and violates the principles of good corporate governance. In addition, there does not seem any urgency or strong reason to issue and keep SK 517/2018.

E. CONCLUSIONS

Based on the abovementioned explanations, there are three conclusions in this legal opinion:

1. That the Decision Letter of Minister of Environment and Forestry No. 517/2018 (SK 517/2018) is strongly indicated of having violated the regulation regarding the release of Production Forest for Conversion or HPK that is still productive because such Decision Letter fails to disclose the status of HPK that was released and because facts from the ground and spatial analysis suggest that the released area still fulfills the criteria of productive forest.
2. That the Minister of Environment and Forestry is inside their authority guaranteed by laws and regulations to revoke SK 517/2018 due to substantive flaws in its issuance.
3. That the issuance of SK 517/2018 to a company that had been indicted in a corruption case has injured the spirit of anti-corruption and law enforcement, is not in line with the principle of environment protection, and violates the principles of good corporate governance.

⁷⁵ <https://acch.kpk.go.id/id/jejak-kasus/54-amran-abdulah-batalipu>

