



Indonesia's Evolving Governance Framework for Palm Oil

Implications for a No Deforestation,
No Peat Palm Oil Sector

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Foreword

The continued destruction of the world's remaining tropical rainforests concerns us all. A major driver behind the loss of biodiversity and an important contributor to man-made climate change, the destruction of rainforest also has a devastating effect on the wellbeing millions of people who depend on the forest for their livelihoods. Halting the degradation of these irreplaceable ecosystems will require a comprehensive approach to addressing the drivers of deforestation, including the palm oil sector. Indonesia in particular experiences considerable forest loss due to oil palm expansion.

Rainforest Foundation Norway (RFN) espouses a rights-based approach to rainforest protection. Along with our partner organizations in Indonesia and other rainforest countries we work on several levels to protect the rainforest and support initiatives to reduce emissions from deforestation and forest degradation (REDD+). For national REDD+ initiatives to succeed, efforts must be made across sectors and by all stakeholders. To engage the private sector, RFN provides advice to consumers, companies and investors alike. In particular, RFN is engaged in ensuring that the Norwegian Government Pension Fund Global, the world's largest sovereign wealth fund, reduces exposure to tropical forest destruction in its investment portfolio.

In the recent years, we have witnessed a positive change in the palm oil industry towards "No deforestation, No peat, and No exploitation" commitments. At the same time, the existing palm oil governance framework in Indonesia, with its numerous regulations and governmental agencies, is complex and often contradictory. In some cases, this creates obstacles to the ongoing private sector reform movement towards greater sustainability. Acknowledging this challenge, RFN has commissioned the present analysis of recent changes in the legal and policy frameworks to understand their effects on deforestation and offer recommendations for strengthening and improving this framework. The report is written by Daemeter Consulting and has been made possible through the generous support of the Ford Foundation.

The report is intended as a contribution to a more sustainable palm oil industry in Indonesia. Protecting the rainforest requires a collaborative effort from many stakeholders, including government, private sector, civil society and local communities. Through dialogue, policy reform, challenging destructive practices and addressing the rights of local communities we can achieve sustainability. To do so, we believe an essential part of the solution is a stronger governance of the palm oil sector in Indonesia.

Lars Løvold
Director
Rainforest Foundation Norway



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The authors wish to thank Rainforest Foundation Norway (RFN) for their interest in the subject of this report, and commitment to raising awareness about Indonesia's rapidly evolving governance framework for palm oil. Recent developments present important opportunities and challenges to promote sustainability, at a time when unprecedented attention and resources are being directed at supporting industry transformation.

The authors wish to acknowledge colleagues at Daemeter, with whom debate on select topics enriched the report, as well as at RFN, especially Anja Lillegraven and Ramadani Torheim, who helped guide content and improved aspects of presentation.



Executive Summary

Palm oil is an important component of Indonesia's economy and a driver of economic development in many of its rural landscapes. Despite strong political support at the national and local levels, the industry has attracted growing domestic and international criticism for its environmental and social practices and impacts, especially deforestation and peat land conversion. An estimated 80% of the nation's greenhouse gas emissions are generated by land use and land cover change, much of it driven by oil palm expansion. Consumers in some markets have pressured supply chain actors to trade only in products that contain palm oil from plantations with no links to deforestation, peat land conversion, or social conflict. Some industry leading palm oil producers and traders have pledged to meet this goal by deforestation-free supply chains, supply sheds feeding a refinery, or entire jurisdictions.

Indonesia's laws and policies governing palm oil are comprehensive, but often confusing and contradictory with respect to environmental management and sometimes undermine progressive business lead efforts at self-regulation. There is growing recognition among political leaders that deforestation from palm oil expansion and other drivers must be slowed to re-brand Indonesian palm oil, to reduce deforestation, and to build a more inclusive rural development model. Yet achieving this goal will be challenging. Palm oil governance is legally and institutionally complex, involving multiple bodies of law and government agencies related to land, forests, plantations, spatial planning, environmental management, and regional government. Provisions of various laws are not harmonized, their effect on palm oil development is variable, officials in relevant sectors and levels of government do not coordinate actions, and perhaps most importantly, there is no overarching national policy that guides palm oil development and deforestation reduction. REDD+ strategies and greenhouse gas reduction plans have been developed, but on the whole are not yet systematically implemented or mainstreamed into other regulations or policies.

In 2013, Daemeter published a comprehensive review of palm oil governance in Indonesia, describing how environmental and social outcomes are shaped by the legal and regulatory framework governing how key actors make decisions. In the past two years, numerous legal, regulatory and political changes have taken place, with potential to affect palm oil governance and deforestation linked to palm oil expansion. A cascade of private sector commitments by Indonesia's largest palm oil traders and processors to eliminate deforestation and work proactively with government to create policy supporting this goal creates an unprecedented opportunity for change. This report analyzes recent legal and policy changes (up to mid-July 2015) to understand their potential impact on deforestation trends in palm oil and the landscapes and jurisdictions in which it is grown.

President Joko Widodo was elected in mid-2014 on a reform platform, raising expectations that he would act aggressively to improve environmental management and

land governance. In the months since he took office, the President's commitment to deforestation reduction is unclear and it remains to be seen how his policies, initiatives, public statements, and institutional restructuring will ultimately affect deforestation linked to palm oil or other land use sectors. His land reform, food security, and biofuels targets seem difficult to reconcile with a Zero Deforestation agenda. Much depends on how policies and initiatives are implemented, which in turn depends on how implementing regulations are written, the orientation and capacity of officials assigned to implement them, and the extent of monitoring by government and civil society. The aggregate effect of so many changes is difficult to predict, especially given the complex governance environment and wide variations in implementation time frames and political support for reform.

Recent policy, legal, and institutional changes will affect palm oil-related deforestation by altering the following aspects of governance:

Forest and land management

There are clear signals of a **growing trend toward involving a wider range of actors in forest management, especially at local levels**, and including communities. This holds the potential to reduce the pace and scale of palm oil-driven deforestation by increasing transparency and broadening participation. There are clear opportunities emerging to rationalize land allocation by **reinforcing steps toward greater transparency of licensing, strengthening tenure, and readjusting Forest Zone boundaries**. This will be aided by renewed government commitment to maintaining the One Map initiative and planned efforts to pilot its use at sub-national levels.

Customary land rights

The increasing number and variety of tools and instruments for recognizing customary community land rights on a communal or individual basis will reinforce the above trend. Large areas of land are likely to be transferred from state control to communities, placing these actors in a stronger position to negotiate with companies about whether and where to plant oil palm, and whether and where to retain forests.

Distribution of government powers

Major adjustments to the distribution of power among levels of government have **re-centralized authority for many types of licensing from districts to provinces**, while at the same time empowering villages. Provinces have also been assigned powers to oversee and monitor performance of district level officials, including the management of palm oil sector. This creates the possibility for improved governance in land use that could reduce deforestation and peatland conversion.

Plantations management

A new Plantations Law reaffirms that plantation companies must respect the land rights of communities and requires environmental protection in plantation development and management. To the disappointment of many, **one provision of the law further reduces legal scope for companies to protect forests voluntarily** inside their plantations, and revisions to the Indonesian Sustainable Palm Oil (ISPO) standard eliminate requirements for companies to avoid High Conservation Value (HCV) areas.

Biofuels

Ambitious government targets for biodiesel use in the coming years will increase domestic demand for palm oil, and risks driving expansion of oil palm plantations for the domestic market. This could potentially offset progress made by cleaning up palm oil supply chains linked to more discriminating international markets. Producers selling into Indonesia's **biodiesel supply chain are exempt from meeting the ISPO certification standard**, deepening concerns about emergence of a two-tiered market with differential sustainability norms.

Indonesia's evolving framework of land, forest, and oil palm governance creates new opportunities for government, industry, and civil society to reduce palm oil-related deforestation. Capitalizing on these opportunities will require concerted effort on multiple fronts, combining further research, advocacy, on-the-ground pilots, expanded cooperation with and pressure on private sector, renewed policy reform efforts, and scaled-up experimentation with sub-national jurisdictional programs.

We end the report with recommendations for consideration by parties developing program activities to reduce palm oil-related deforestation, grouped under four headings:

- Advocacy and technical support aimed at national government
- Collaborations with provincial and district governments to promote sustainable palm oil
- Support for companies to implement sustainability commitments
- Support for civil society and local communities

Recommendations highlight actions to help align palm oil governance more closely with emerging sustainability norms, emphasizing the need for appropriate incentives to industry and local government, while at the same time strengthening enforcement tools. We strongly encourage partnerships between local government and Industry, supported by civil society, to reduce deforestation through strategic actions at the jurisdictional (sub-national) level. Capacity building and support is an important theme throughout the recommendations, especially with reference to local communities and their ability to assert land rights and manage customary forests sustainably.



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List of Acronyms and Terms

Adat	: Customary/traditional
AMAN	: Aliansi Masyarakat Adat Nusantara, or the Alliance of Indigenous People
AMDAL	: Analisis Mengenai Dampak Lingkungan, or Environmental Impact Analysis (EIA)
BIG	: Badan Informasi Geospasial, or the Geospatial Information Agency
BKPM	: Badan Koordinasi Penanaman Modal, or the Investment Coordinating Board
BP REDD+	: Badan Pengelola REDD+, or REDD+ Agency
BPN	: Badan Pertanahan Nasional, or the National Land Agency
CPO	: Crude palm oil
DG	: Directorate General
DNPI	: Dewan Nasional Perubahan Iklim, or the National Council on Climate Change
FFB	: Fresh fruit bunch
FMU	: Forest Management Units, or Kesatuan Pengelolaan Hutan (KPH)
FPIC	: Free, Prior, and Informed Consent
FREDDI	: Financing REDD+ in Indonesia
GAPKI	: Gabungan Pengusaha Kelapa Sawit Indonesia, or Indonesian Palm Oil Producers Association
GAR	: Golden Agri-Resources Ltd.
GDP	: Gross domestic product
GHG	: Greenhouse gas
GoI	: Government of Indonesia
HCS	: High Carbon Stock
HCV	: High Conservation Value
HGU	: Hak Guna Usaha, or Business Use Permit
HPK	: Hutan Produksi Konversi, or Convertible Production Forest
IFC	: International Finance Corporation
IP4T	: Inventarisasi Penguasaan, Pemilikan, Penggunaan, dan Pemanfaatan Tanah, or the Inventory of Control, Ownership, Use and Utilization of Land
IPOP	: Indonesia Palm Oil Pledge
ISPO	: Indonesian Sustainable Palm Oil
JKPP	: Jaringan Kerja Pemetaan Partisipatif, or the Participative Mapping Working Network
Jokowi	: Nickname for Indonesian President Joko Widodo
JP	: Jurisdictional programs
Kadin Indonesia	: Kamar Dagang dan Industri Indonesia, or the Indonesian Chamber of Commerce and Industry
Kawasan Hutan	: Forest Zone

KLHS	: Kajian Lingkungan Strategis, or Strategic Environmental Assessment
Korsup Minerba	: Koordinasi dan Supervisi atas Pengelolaan Pertambangan Mineral dan Batubara, or Coordination and Supervision of Mining Licenses
KPH	: Kesatuan Pengelolaan Hutan, or Forest Management Unit
KPK	: Komisi Pemberantasan Korupsi, or Corruption Eradication Commission
MASP	: Morphological Spatial Pattern Analysis
MIFEE	: Merauke Integrated Food and Energy Estate
MK	: Mahkamah Konstitusi or Constitutional Court
MK35	: Constitutional Court Decision no. 35/2012 on the exclusion of customary forests from state forests
MoE	: Ministry of Environment
MoEF	: Ministry of Environment and Forestry
MoF	: Ministry of Forestry
MoU	: Memorandum of Understanding
MSF	: Multi-Stakeholders Forum
NGO	: Non-Governmental Organizations
OP	: Oil palm
P&C	: Principles and Criteria
Pemda	: Local government, can be at provincial or district/city level
Perda	: Peraturan Daerah or local regulations
PME	: Palm methyl ester
PP	: Peraturan Pemerintah or government regulation
PTSP	: Pelayanan Terpadu Satu Pintu or One-Stop Integrated Services
R&D	: Research and development
REDD+	: Reducing Emission from Deforestation and forest Degradation
RPJMN	: Rencana Pembangunan Jangka Menengah Nasional, or the national medium-term development plan
RPPLH	: Rencana Perlindungan dan Pengelolaan Lingkungan Hidup or Environmental Protection and Management Plans
RSPO	: Roundtable on Sustainable Palm Oil
RTRW	: Rencana Tata Ruang Wilayah or spatial plans
SSC	: Sustainable supply chain
TAP MPR	: Ketetapan Majelis Permusyawaratan Rakyat, or the People's Assembly Decree
TP2KLHK	: Tim Penanganan Pengaduan Kasus-kasus Lingkungan Hidup dan Kehutanan, or team to address environmental and forestry cases and complaints
UKP4	: Unit Kerja Presiden Bidang Pengawasan dan Pengendalian Pembangunan or Presidential Working Unit for Supervision Management of Development
UNDP	: United Nations Development Program
WRI	: World Resources Institute
ZD	: Zero Deforestation

1

Background and Purpose



In early 2013, Daemeter published a comprehensive review¹ of how environmental and social outcomes from Indonesia's palm oil sector are shaped by the legal and regulatory framework governing how key actors make decisions within a real world environment of complex financial and political incentives, partial transparency and limited capacity and oversight. Since that publication, legal and regulatory changes have taken place at a rapid pace, and the political landscape changed markedly when President Joko Widodo, known as Jokowi, took office in October 2014. In addition, over the past two years, mounting international pressure directed at upstream and downstream actors in the palm oil supply chain to reform practices triggered unprecedented commitments from major companies to decouple palm oil production from deforestation, peatland development, and all forms of human exploitation.

The purpose of this report is to update our 2013 analysis, and highlight potential implications of Indonesia's rapidly evolving governance and policy framework (up to mid-July 2015) affecting the feasibility of progressive industry commitments to achieve Zero Deforestation palm oil. We also discuss priorities for industry organizations and civil society to engage with government and trial innovative approaches, and include consideration of dynamics related to sub-national authorities in Indonesia's multi-level, decentralized system of palm oil governance. Section 2 provides background for this discussion, profiling Indonesia's palm oil industry, the environmental and social issues associated with it, and responses to these issues by government and industry.

Section 3 provides an overview of the legal framework in which key actors make decisions affecting deforestation outcomes, analyzes how new laws, government regulations, and ongoing institutional re-organizations led by the Jokowi administration are likely to influence palm oil decision making, and discusses how changing perceptions of stakeholder groups could influence outcomes. Section 4 examines challenges and opportunities presented by evolving governance to making progress on key issues that affect palm oil-related deforestation, first by addressing how specific actors and initiatives have the potential to contribute to deforestation reduction in the palm oil sector, and then by discussing how specific aspects of Indonesia's changing policy, legal, and institutional framework might influence where new plantations are developed and how much additional land must be converted to plantations. Section 5 provides recommendations for follow-up action and further study to take advantage of Indonesia's evolving governance framework to advance sustainability, including Zero Deforestation commitments by companies, industry-wide action, and sub-national jurisdictional approaches to reduce sector-wide deforestation by taking advantage of local governments' authority to define new standards of practice via changes in policy, local laws, and enforcement.

Readers new to the subject matter are encouraged to begin at Section 2 and read the report in its entirety. Those familiar with palm oil in general, Indonesia's approach to governance, and the roles and key actors might prefer to begin reading at Section 3.

1) Paoli G.D., P. Gillespie, P.L. Wells, L. Hovani, A.E. Sileuw, N. Franklin and J. Schweithelm (2013) Oil Palm in Indonesia: Governance, Decision Making and Implications for Sustainable Development. The Nature Conservancy, Jakarta, Indonesia.

2

Indonesia's Palm Oil Industry



 2.1

Size, growth, structure, and economic impact

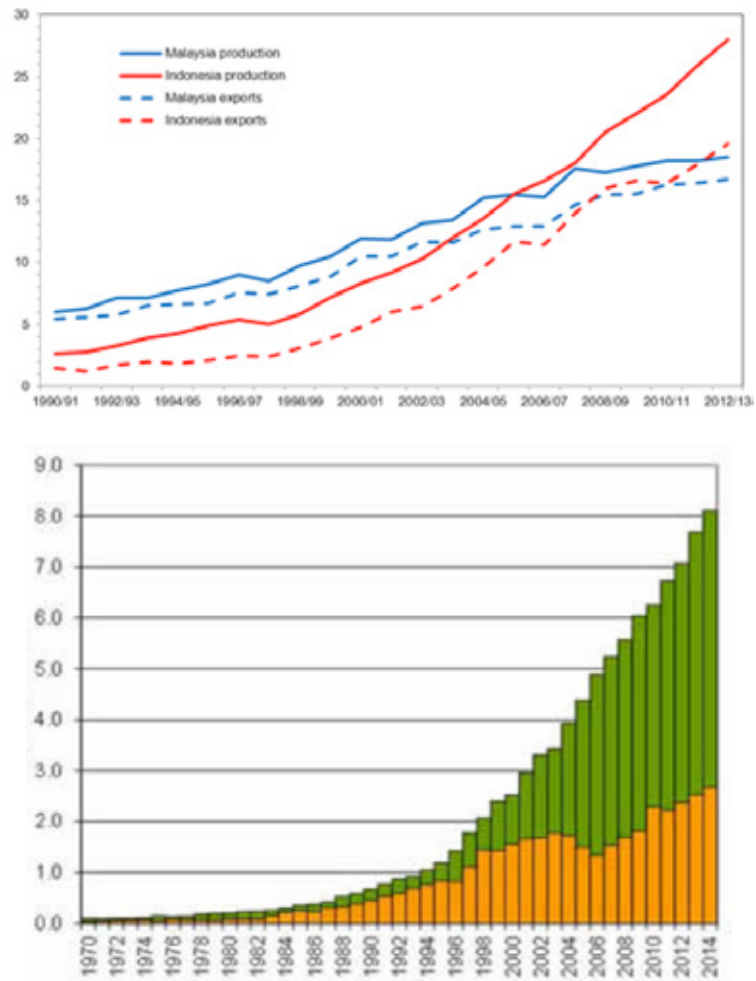
Indonesia is the world's largest producer of crude palm oil (CPO), which is refined into edible oil and used to make a wide variety of food and other products, including biodiesel. Indonesia's oil palm production has tripled over the past 25 years, and planted area has doubled over the past decade, now covering a land area the size of South Korea (Figure 1). Estimated CPO production in 2014 reached 30.5 million tons, or 48% of global production, and is projected to continue rising in coming years as recently established plantations mature.

Indonesia's palm oil industry contributes approximately 3% to national GDP, is an important source of foreign exchange earnings², and in some regions a significant source of tax revenues. The sector creates much needed jobs in rural areas, accelerates local economic and infrastructure development, provides an important component of national food security, and has the potential to contribute to energy independence through the development of a biodiesel sub-sector of renewable energies. At least three million people in Indonesia (more than 1% of the population) are directly employed by the sector, and double that number benefit from economic activities linked to it, according to industry estimates. Palm oil exports have grown rapidly in recent years in response to accelerating global demand (Figure 1), but slowed in 2014 due to record supplies of competing edible oil crops such as soy, weak petroleum prices making palm oil-based biodiesel less competitive, and actual use of biodiesel in Indonesia falling below legally-mandated levels (see section 3.2.5). Domestic palm oil consumption in Indonesia continues to grow, especially for non-food industrial uses, and is expected to become an increasingly important market for Indonesian producers in the years ahead (Figure 2).

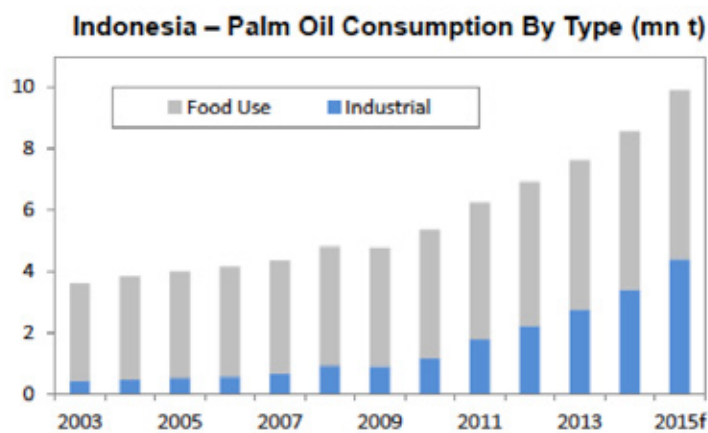
Indonesia's oil palm industry is dominated by several large domestic and multi-national agribusinesses, often with fully-integrated operations that encompass growing fruit, extracting and refining oil, shipping, processing, manufacturing, and marketing of consumer products. Smallholder producers are said to account for approximately 40% of planted area, working independently or in partnership with nearby commercial plantations. Smaller plantation companies work at a variety of scales, many restricted to specific geographic regions, where they are becoming a growing part of the local palm oil supply chain. The bulk of mature plantations are located on the islands of Sumatra and Borneo, with nascent expansion into frontier areas on the islands of Sulawesi and Papua. In response to prolonged, low CPO prices, some large companies are beginning to invest more heavily in boosting yields by improving management practices, while smallholders are reducing fertilizer and pesticide application, further decreasing their already low yields. Smaller companies are challenged to become more efficient or risk going out of business.

² Projected CPO exports from Indonesia in 2014 were 21 million tons, with a value of USD17.3 billion.

● ● **Figure 1** Palm oil production by Indonesia and Malaysia from 1990 to 2012 (upper panel). Planted area of oil palm in Indonesia from 1970 to 2014 (lower panel). Orange indicates smallholder oil palm, green is large scale plantations. Source: USDA, Economic Research Service (www.ers.usda.gov)



● ● **Figure 2** Palm oil consumption in Indonesia from 2003 to 2015 (predicted). Source: BMI Research, Palm Oil Outlook: Severe Challenges and New Trends. 1 April 2015 (www.bmiresearch.com).





2.2

Environmental and social issues

Rapid expansion of oil palm plantations is causing growing social and environmental impacts that have become a focus of significant national and international attention. Environmentally-sensitive areas such as peat swamps have been converted to plantations, ecosystem services such as water supply and carbon sequestration have been adversely affected, and in some cases, communities have suffered severe livelihood and welfare losses with few offsetting benefits. Large areas of Indonesia's remaining forests have been zoned for conversion to agriculture, including biodiversity rich tropical forests and carbon-dense peat swamps, with an estimated 12-15 million ha licensed for oil palm development. It is estimated that 80% of the nation's GHG emissions are generated by land use and land cover change. Over the past 10 years, oil palm has been a major driver of this forest loss (Carlson et al., 2013).



2.3

Government response

Governments at every level strongly support the expansion of palm oil industry and the economic development it brings, but there is increasing recognition, especially at the national level, that its negative environmental and social impacts must be reduced or mitigated. Former President Susilo Bambang Yudhoyono made a dual target pledge of reducing national GHG emissions by 26% by 2020 while maintaining annual GDP growth of 7% (Vision 7-26). This goal required the rate of conversion of forests and peatlands to plantations and other uses to be dramatically reduced, and the former President made policy commitments to pursue this. Efforts begun under the last administration have led to improvements in some areas of law relevant to palm oil (see sections 3.2.1 to 3.2.7), and new initiatives launched by newly elected President Joko Widodo to restructure key government institutions and pursue a pro-poor, more sustainable development pathway set the stage for broadening this trend (see sections 3.2.8 to 3.2.11).

However, these reform measures to date have been undertaken in a piecemeal manner, without a comprehensive road map for the sector built upon a firm understanding of the inter-relationships among relevant bodies of law and regulatory tools for reducing palm oil-driven deforestation. There is considerable scope to improve regulatory efficiency and effectiveness by consolidating related legal requirements into a set of closely coordinated activities, especially with respect to palm oil plantation licensing, environmental impact assessment and enforcement of environmental management requirements.



2.4

Civil society pressure on Indonesian palm oil

Over the past five years, a widening and increasingly well-coordinated alliance of local, national and international NGOs and civil society partners mounted a sustained campaign against unsustainable palm oil production in Indonesia. The campaigns combined a conventional mix of research reports, campaign ads, publicity events, and petition-based consumer action with innovative use of social media, YouTube, and shareholder initiatives to build support for a new model of palm oil production without links to deforestation, peatland conversion, or conflict. Whereas traditional campaigns targeted upstream segments of the palm oil supply chain (producers), recent campaigns sought to redefine palm oil driven deforestation as a problem caused not only by producers, but also traders, processors, manufacturers, and retailers who profit from trade in unsustainable palm oil, as well as investment funds that support the industry.³

Successful campaigns targeting Indonesia's largest producer Golden Agri-Resources Ltd (GAR), who in 2011 committed to stop forest conversion to plantation in its own operations, were soon expanded to include downstream actors as well, especially consumer good manufacturers and retailers, demanding they commit to stop sourcing unsustainable palm oil. Traders and processors such as Wilmar, Cargill and Bunge then came under attack, and in December 2013, Wilmar announced its landmark No Deforestation, No Peat, No Exploitation policy. The policy covers Wilmar's entire supply chain, obliging suppliers to meet the requirement, and triggered a cascade of similar commitments from major supply chain actors, including Unilever, Cargill, Musim Mas, IOI and GAR, among others.

It is estimated that more than 90% of the global palm oil trade is covered by Zero Deforestation commitments today. It remains to be seen how well these commitments will be implemented, and there are clear signs of tension emerging on this point. Still, international campaigns have been remarkably successful at stimulating a new level of corporate engagement to transform practices, defining a new norm for sustainability, and broadening support from a growing alliance of private sector, government, and civil society actors to end palm oil-driven deforestation.

It is estimated that more than 90% of the global palm oil trade is covered by Zero Deforestation commitments today. It remains to be seen how well these commitments will be implemented, and there are clear signs of tension emerging on this point.

³ As an example, the world's largest sovereign wealth fund, Norway's Government Pension Fund Global, divested 27 palm oil companies due to sustainability concerns after a campaign by Rainforest Foundation Norway and other NGOs.



2.5

Industry response: Sustainability initiatives and challenges

Some large companies have made significant progress in addressing environmental and social impacts of palm oil⁴, and in the process have helped bring new standards of industry best practice into the mainstream (several of these efforts are described in a recent Daemeter report⁵). Yet, this must be viewed as early steps on a very long journey, with comprehensive action needed to accelerate adoption of these practices and to launch new initiatives designed explicitly to reduce palm oil-driven deforestation (as reviewed in section 2.6.2). Impediments to industry-wide uptake of reduced impact practices include:

- (i) Absence of mechanisms and incentives for progressive firms to communicate new approaches within industry;
- (ii) Insufficient financial, human and technical resources for smaller firms and especially smallholders to adopt new practices; and
- (iii) Perhaps most importantly, confusing and sometimes contradictory government messages and legal incentives/disincentives for firms to adopt good practice (e.g. see discussions under the Plantations Law in section 3.2.1).



2.6

What is Zero Deforestation and what is industry doing to achieve it?

2.6.1 Deforestation definitions

The difficulty of achieving Zero Deforestation (ZD) supply chains depends on how the target is defined, including which actors are involved, the spatial extent covered, and of course what defines a forest and peatland. Critical variables in formulating ZD goals include:

- **Spatial extent.** ZD could be restricted to boundaries of the plantation area licensed to a specific company, a supply shed of a mill or a set of mills delivering CPO to a facility, or all plantations that feed into one or more supply chains (see section 2.6.2). An ambitious, more inclusive approach would be to address all oil palm-related forest impacts in a region, including: (i) activities of smallholders and small firms; (ii) off-plantation impacts of oil palm-related roads and population growth; and (iii) leakage of avoided deforestation from palm oil into other land use sectors, such as forestry or mining. Achieving such inclusive ZD would necessarily require a 'jurisdictional approach' based on a comprehensive understanding of deforestation drivers and strong government commitment to improved spatial planning, licensing, and enforcement (see below and sections 2.6.2 and 5.2.3).

4) These include: smallholder support, zero waste practices, yield improvement, GHG footprint, and biodiversity conservation.

5) Paoli, Gary (Editor). Best Management Practices in the Indonesian Palm Oil Industry: Case Studies, Daemeter Consulting: Bogor, Indonesia. 2014.

- **What forests are included.** What is the cut off in forest quality between forests that must be avoided and degraded areas that may be converted? The emerging High Carbon Stock (HCS) approach⁶ is being widely adopted by corporations that have made ZD commitments, especially among downstream supply chain actors.
- **What peatlands are included.** What is the cut-off in terms of peat depth, minimum patch size and level of disturbance?

2.6.2 Industry efforts to achieve Zero Deforestation

In response to market demand from segments of the international palm oil supply chain, a number of prominent global agri-business brands and large regional palm oil traders⁷ have made sustainable supply chain (SSC) commitments to ensure their supply chains are free of products linked to deforestation, conversion of HCV areas, destruction of peatlands, and social conflicts. Plantations at the upstream portion of a supply chain typically form a part of the supply shed delivering CPO to a refinery or shipping port. Some companies are beginning to work toward achieving ZD supply sheds, while others are in the early stages of cooperative efforts at even larger jurisdiction scales to reduce palm oil-driven deforestation across larger areas where they source CPO.

Supply chain approaches

Achieving deforestation-free supply chain is challenging given that multiple types of producers⁸ typically supply fresh fruit bunches (FFB) to mills that produce CPO. Deforestation free supply chains are difficult to assemble and costly to maintain, because procedures must be in place at every link in the chain to distinguish between, and either segregate or exclude, non-compliant products. Procedures must be developed and vigorously followed to trace: (i) FFBs from point of harvest in farms/ plantations to the mill; (ii) CPO to the refinery; and (iii) refined oil to the shipping point.

Supply chain monitoring costs can be reduced significantly if all FFB producers selling into a supply chain are certified to be compliant with sustainability criteria acceptable to markets. Plantation certification under voluntary schemes such as the Roundtable on Sustainable Palm Oil (RSPO) is an important first step to ensure sustainable supply chains, but does not: (i) guarantee that deforestation and peat conversion criteria meet market demands⁹; (ii) prevent mixing of certified CPO with non-compliant oil after it leaves the mill; (iii) necessarily lead to landscape-level forest results¹⁰; and (iv) change the planning and regulatory incentives related to deforestation and peat conversion.

Some firms are well-advanced in developing and testing procedures to meet their sourcing commitments, including methods to: (i) identify forests worthy of protection; (ii) monitor status of these forests in and around plantations in the supply chain; and

6) www.highcarbonstock.org

7) Among prominent global brands committing to ZD supply chains are Nestlé, Kellogg, Hershey, and Unilever. Two prominent trading and refining companies who made ZD pledges are Wilmar and Golden Agri-Resources.

8) Mills that sell CPO to refineries buy FFB from producers of various types including certified plantations owned by the refinery operator, certified and uncertified plantations owned by third parties, smallholders working in partnership with a commercial plantation, and independent smallholders.

9) Certification schemes currently available for palm oil vary significantly in their forest protection criteria and typically do not require protection of partially degraded forests that retain important biodiversity and carbon values. See "Reports" section in www.daemeter.org for a comparison of leading palm oil certification standards.

10) Large landscapes in palm oil producing regions are typically a mosaic of plantations owned by various types of producers with differing levels of incentive to comply with ZD requirements.

(iii) develop methods to trace palm oil from fruit harvest, through initial processing in mills, refinement, and shipping. Growing numbers of companies are reporting progress towards ZD via online 'dashboards' that allow the public to track progress on a quarterly basis. Satellite images are being used by civil society organizations to monitor forest status, providing a tool for independent verification of forest protection. Achieving tight, differentiated supply chains will be a lengthy process requiring a transition period during which inflows of non-compliant oil are identified and procedures are developed for excluding or segregating them from compliant oil.

Supply shed approach

The supply shed approach to eliminating deforestation requires that all plantation and mill operators supplying a major supply node in a region, such as a bulking station, refinery, or shipping port, work collaboratively with the facility operator to ensure that all palm oil entering the facility is ZD compliant or at least moving toward that goal. This requires working simultaneously on multiple local supply chains to put in place credible traceability and monitoring systems. A coordinated supply shed approach allows collaborating firms to lower compliance costs through economies of scale derived from joint policy commitments, shared forest assessment and monitoring, and combined supply chain audits. In principle, a refinery or port sourcing CPO from an upstream supply shed has the buying power to refuse oil from mills known to be problematic until such plantations can prove they're compliant, creating market-based pressures for improvement throughout the supply shed. Because such pressures are spatially concentrated, they are likely to be more effective on the ground than broader supply chain approaches, where buyer-seller relationships are more fluid and more widely dispersed across disparate geographies.

In theory, the supply shed approach creates benefits for all major actors. Global food brands will find it more efficient to buy from a refinery that produces large quantities of ZD compliant oil rather than having to investigate further up the supply chain to verify the sources of the oil. This could lower marketing expenses for plantation companies selling into the supply shed and could result in financial incentives or a price premium for their palm oil. Once in place, the supply shed would make it easier for the participating suppliers to prove compliance with other market environmental or social demands. The larger spatial scale of the supply shed approach, combined with ability of buyers to apply spatially concentrated pressure, better supports change required for landscape level conservation objectives and provides an organizational mechanism for industry actors to participate in collaborative efforts at the landscape level.

Jurisdictional approach/program.

Jurisdictional Programs (JP) are typically partnerships among government, industry, and other stakeholders, designed to achieve outcomes related to forests or other natural resources within the spatial scope of a sub-national political jurisdiction, such as a province, a district, or a province and one or more of its districts in nested fashion. JP provides an opportunity to catalyze sector-wide deforestation reduction across an entire jurisdiction, taking advantage of local government's authority to support actions with policy, local laws, and enforcement. The approach can be particularly powerful if combined with industry supply chain actions and supporting actions by donors or NGOs.

JPs are usually guided by multi-stakeholder bodies convened by local government or another party with government collaboration. The few JPs that are being pursued in Indonesia have been initiated by non-governmental proponents to support REDD+ programs or deforestation reduction in the palm oil sector. A palm oil-focused JP would be most effective if coordinated with one or more supply chain/shed programs, and eventually coordinated with similar efforts in other sectors, such as forestry and mining. Within a JP, government-initiated programs with deforestation reduction objectives, such as REDD+ strategies, emissions reduction plans, and green growth development plans, should be integrated with private sector efforts to achieve the greatest possible and most inclusive reduction in deforestation rates.

Developing an effective, robust jurisdictional program is a lengthy process that includes convincing core actors and other stakeholders to participate, formation of the multi-stakeholder forum, identifying deforestation drivers, action strategy development, and attracting sufficient financial and technical resources to take effective action.

Developing an effective, robust JP is a lengthy process that includes convincing core actors and other stakeholders to participate, formation of the multi-stakeholder forum, identifying deforestation drivers, action strategy development, and attracting sufficient financial and technical resources to take effective action. This process is typically accomplished in at least three phases, requiring several years to complete. The transition from discussing solutions to implementing solutions can be especially difficult given the commitment of financial and political capital required, especially by elected leaders. These leaders must have a strong incentive to commit to taking real action, because the interests of powerful groups will be threatened by changing the status quo in land management. Maintaining momentum of the program may prove challenging given that concrete results are likely to take time to become evident and changes in political leadership may cause swings in support. Greater recognition of customary community land rights potentially creates a new, and possibly powerful ally in forest conservation effort, but it remains unclear how this will affect forest and land management and how it might impact the operation of a jurisdictional program.



Palm Oil Governance



 3.1

Overview of Decision Making in Indonesian Oil Palm

3.1.1 Key actors: their roles and performance

Oil palm is Indonesia's largest commodity crop, and numerous actors pursue diverse interests affecting the scale and impacts of its development. These stakeholders can be grouped into government, private sector, local stakeholders, and other influencers including civil society, donors, and the general public. The national government sets the general direction of Indonesia's development, with the Ministry of Agriculture defining regulations directed specifically at palm oil, and other ministries, such as the Ministry of Environment and Forestry and Ministry of Agrarian and Spatial Planning, influence the governance of land use and the environment. For the past 15 years, district and city governments have controlled processes for granting licenses for oil palm development and enforcing regulations on the ground. However, their capacity and resources to execute these tasks responsibly are generally still lacking, and motivations for doing so are highly influenced by local political economic considerations.

Decisions by actors outside government also influence deforestation outcomes in the oil palm sector. Companies have wide discretion to decide where to apply for concession licenses within land zoned for agriculture and how to develop plantations and manage them. In more remote areas, oil palm companies are largely self-regulating due to local governments' insufficient capacity to enforce regulations, although this is changing with central government's introduction of the Indonesian Sustainable Palm Oil (ISPO) standard in 2011 to verify legal compliance. Local communities directly and indirectly influence where companies apply for licenses, as companies sometimes avoid or down prioritize areas where customary land claims are likely to require lengthy negotiations and costly agreements. Communities also influence company decisions regarding the plantation footprint during negotiations to release land once concession licenses have been granted and late during plantation planning when, for example, communities instruct companies to avoid planting areas of cultural, livelihood or other significance.

Intense pressure in recent years applied mainly by national and international NGOs from western consumer countries have led several major companies to announce commitments beyond Indonesia's legal requirements for sustainability. Though welcomed by civil society and other stakeholder groups, it is increasingly recognized that implementing these commitments on the ground will be extremely difficult, with conflicting government regulations that, for example, compel companies to avoid impacts on protected species on the one hand but on the other prevent them from retaining conservation set aside within their plantations. Continued lack of buy-in for Zero Deforestation commitments from most domestic producers in Indonesia, especially medium and small producers and smallholders operating at the deforestation frontier, present further challenges.

This has led to a growing recognition of the need to build a domestic constituency for sustainable palm oil in Indonesia to provide market incentives to all actors in the

supply chain, as well as political pressure to make regulatory changes. The Indonesian Chamber of Commerce and Industry (Kadin Indonesia), for example, is developing a strategy to create and strengthen such a constituency. This initiative, as well as others by NGOs, other members of civil society, and industry groups such as the RSPO, could help build momentum to expand commitments among a wider range of producers.

The following table describes the roles of key oil palm decision makers and groups with ability to influence decisions that impact palm oil outcomes. Factors influencing their performance, as well as challenges and opportunities to improve deforestation outcomes within the current legal and political environment are also briefly described. More details are provided for a selection of key actors in section 3.2 and 4.1.



Table 1 Key oil palm actors: Roles, performance, and opportunities for improvement

Actor	Role in oil palm and deforestation impact	Actor performance	Challenges and opportunities to improve outcomes
President	Sets the tone and focus of the administration, most notably on agriculture, forestry, climate change and agrarian issues.	Current president Joko Widodo’s focus is on food security. He has made statements supporting the protection of forests, peatlands, and community-based forest management (see section 3.2.9).	<ul style="list-style-type: none"> • The President’s ability to influence legislation may be constrained with his party being in the minority in the Parliament, although the coalition is fluid. He also has limited ability to influence local governments. • The President could issue policies to improve governance in land-use sectors and open access to data/information as part of his agrarian reform and transparency drive. • The President could issue overarching deforestation reduction policies supported by an institution to coordinate laws, plans, and regulatory actions. He could also work with the Parliament to develop a legal mechanism to link climate change initiatives, e.g. REDD+ and green growth, with each other and with oil palm development planning and regulation.
National Parliament	Formulates and/or deliberates laws; approves national development plans, annual budget, including revenue sharing with local governments, and national, provincial, and district spatial plans.	Environmental protection is not consistently integrated into sectoral laws and spatial/development plans. Deforestation reduction rarely appears in plans as an explicit goal.	<ul style="list-style-type: none"> • Political parties as yet have not shown sustained interest in environmental protection or deforestation reduction. Political positioning often plays a major role in the deliberation and passing of laws while civil society groups have limited ability to influence the shaping of bills. • Greater transparency and participation in the legislative process, including independent expert input, would improve outcomes.

Actor	Role in oil palm and deforestation impact	Actor performance	Challenges and opportunities to improve outcomes
Ministry of Agriculture	Develops sectoral regulations and development plans for the agriculture sectors.	The focus of the ministry is on food security, with targets specifically set for rice, soy bean, corn, sugar, and beef.	Officials pursue sectoral interests with little coordination, resulting in overlapping and sometimes contradictory legal requirements.
Ministry of Environment and Forestry	Develop sectoral regulations and development plans for their sectors.	The focus of the ministry is on social forestry and governance through effective forest management units (see section 3.2.10).	<ul style="list-style-type: none"> • The comprehensive restructuring that formed this combined ministry, which also absorbs the responsibilities of the REDD+ Agency and DNPI, is still ongoing. This encumbers action in the near term and dilutes the previous administration's focus on reducing deforestation. • The combined ministry provides an opportunity for improved governance and better enforcement, provided that all capacity is used effectively with minimal political intervention.
Ministry of Agraria and Spatial Planning	Oversees land reform, supports conflict resolution and revision of and approval of spatial plans.	The focus of the ministry is on agrarian reform and the resolution of tenurial conflicts (see section 3.2.11).	<ul style="list-style-type: none"> • The new ministry may lack capacity on effective land conflict resolution and has to work closely with local governments on the issue. • The ministry has set targets for agrarian reform, which creates budget allocation for programs to pursue this long overdue objective. Carried out effectively, resolution of overlapping land claims will go a long way to increase investment certainty. Agrarian reform may include the release of some forest estate for management by local communities and for new agricultural development (see section 3.2.11).
Indonesian Sustainable Palm Oil (ISPO) Commission	Provides certification for major plantations and smallholders for compliance with prevailing regulations in Indonesia.	ISPO is building the capacity to assess and certify hundreds of oil palm companies. It has certified 63 companies by end of 2014. Principles and criteria for plasma and smallholders were recently released.	<ul style="list-style-type: none"> • ISPO largely follows Indonesia's legal framework, which currently does not support Zero Deforestation initiatives. Provisions of the recently revised ISPO standard reinforces legal trends, making it more difficult for companies to conserve forest within their plantation boundaries. • Certification provides opportunities for capacity building in yield enhancement, which may reduce pressure to open new areas for plantations.

Actor	Role in oil palm and deforestation impact	Actor performance	Challenges and opportunities to improve outcomes
Provincial Governors	Have broad authority on economic development and spatial planning and recently have taken over the authority for forestry and mining licenses from districts.	Governors can provide some guidelines on the development in districts under their jurisdiction but have limited power related to oil palm compared to districts. They have been assigned a role to oversee the performance of district officials under the revised regional government law.	<ul style="list-style-type: none"> • High political costs and conflict of interests between economic growth and environmental protection make it likely that governors would continue to favor development, even when it is demonstrably unsustainable. Lack of understanding on the principles of green growth and capacity to implement them are still a challenge. • Increased supervision by and support from ministries in licensing and regulatory processes, as well as greater transparency and stakeholder involvement in licensing and industry monitoring, would have a positive impact on outcomes
District Heads	Have broad authority on economic development and spatial planning; approve oil palm plantation licenses and oversee local officials who monitor and enforce legal compliance.	Local leaders have strong political, economic, and fiscal incentives to promote land use development as well as the regulatory authority over oil palm and other agro-industries. This often creates a conflict of interest, particularly related to environmental protection, legal compliance, and recognition of community rights.	<ul style="list-style-type: none"> • High political costs and conflict of interests between economic growth and environmental protection will continue to push decision making along an unsustainable development path. Lack of understanding on green growth and capacity to implement them are a challenge likely to persist into the future. • Increased supervision by and support from ministries in licensing and regulatory processes, as well as greater transparency and stakeholder involvement in licensing and industry monitoring would have a positive impact on outcomes.
Agriculture and forestry officials at district/city level	Identify land suitable for plantations during spatial planning; evaluate plantation applications and issue recommendation for licenses; support evaluation of environmental impact assessments; enforce environmental management provisions; evaluate plantation performance as a precursor to ISPO audit; and take punitive action for legal infractions.	Local decision-making capacity and performance related to oil palm is highly variable across jurisdictions, depending in large measure on how long they have been in existence and how remote they are, which relates to resources available.	<ul style="list-style-type: none"> • Insufficient financial, human, and information resources in relation to regulatory responsibility limit the quality of local decision making. This problem is compounded by local political economic considerations. Local agencies often feel obliged to temper their regulatory stance to maintain a business-friendly environment. • Strengthening oversight and technical support from national ministries, greater transparency, and stakeholder participation in monitoring and regulatory processes could have a significant impact.

Actor	Role in oil palm and deforestation impact	Actor performance	Challenges and opportunities to improve outcomes
Provincial and District Parliaments	Formulate local regulations to supplement national laws and regulations to suit local conditions.	Some local parliaments have passed regulations (Perda) that set oil palm environmental and social impact standards above national requirements.	<ul style="list-style-type: none"> • Typically have minimal technical support and usually have an overriding interest in promoting economic development. • Efforts could be made by civil society organizations to assist other jurisdictions to draft legislations that support environmental and social impact standards that are more strict than the national requirements, possibly aligning with Zero Deforestation goals.
Major oil palm companies	Influence the location, scale, and terms of oil palm investments, often through an iterative process of negotiations with local government and affected communities.	Companies typically prefer forested land over deforested or degraded areas to reduce land conflicts and take advantage of the perceived fertility of newly-cleared land. In recent years, market pressures have led many large companies to establish internal environmental standards that exceed legal requirements, with some making Zero Deforestation pledges.	<ul style="list-style-type: none"> • Companies must balance multiple business, legal, and internal policy requirements when they select and design plantations across large heterogeneous areas (typically 3,000-20,000 ha), often with insufficient data or time to make well-informed decisions. • Policy barriers to conserving set asides within plantation areas make it difficult for companies to implement Zero Deforestation pledges. • Support from industry associations, civil society, and major donors can support constructive dialogue with the Indonesian government on how to reconcile these differences.
Medium and small oil palm companies	Influence the location and terms of oil palm investments; are less susceptible to global pressure and often with links to local politicians, and as such sometimes get away with less strict requirements to manage environmental and social impacts.	Over the past decade, after oil palm licensing authority was transferred to districts, companies have aggressively pursued new concessions, often with plans to develop plantations then sell them on to larger palm oil companies.	<ul style="list-style-type: none"> • Smaller firms typically lack the financial and technical resources, and indeed market incentives, to reduce their deforestation footprint. They also operate under less intensive monitoring from the government or other third parties. • Certification from ISPO could prove effective in ensuring some level of sustainability in these oil palm plantations. • Business and industry associations could also develop learning networks to share successful business models that implement best management practices.
Business and industry associations (e.g. Kadin Indonesia and GAPKI)	Represent the interests of businesses in general and oil palm in particular and can potentially lobby	Kadin Indonesia and five major palm oil companies recently signed the Indonesia Palm Oil Pledge (IPOP), which	<ul style="list-style-type: none"> • Lack of studies and evidence that show the benefits of sustainable practices in oil palm make it difficult for proponents to encourage others, particularly wholly Indonesian-owned medium and small companies, to follow suit.

Actor	Role in oil palm and deforestation impact	Actor performance	Challenges and opportunities to improve outcomes
	<p>the government in developing policies that may affect the industry; could function as platforms for companies to learn from each other.</p>	<p>includes commitment for deforestation-free palm oil development.</p>	<ul style="list-style-type: none"> Indonesia's legal framework creates barriers to some of the key IPOP pledges, e.g. Zero Deforestation. Kadin Indonesia and the other IPOP signatories, with support from donors, are forming a secretariat that will lead the development of strategy and subsequent programs to support the transformation of the palm oil industry toward a deforestation-free pathway. These programs will assist companies as well as associations in lobbying the government for policy reform.
Local communities	<p>Have legal power to accept or reject oil palm development on land they claim and to negotiate terms of partnership agreements with companies, which could include conserving specific tracts of forest within a plantation.</p>	<p>Communities vary widely in terms of their knowledge of oil palm development, social cohesion, negotiating skill, perceived security of tenure, and desire to conserve forest. Companies are legally required both to inform communities of oil palm impacts as well as conduct transparent negotiations with them, creating a conflict of interest.</p>	<ul style="list-style-type: none"> Many communities do not fully understand their land rights and legal right to negotiate with companies and lack the capacity to exercise these rights effectively. They also lack a full understanding of the social and environmental impacts of oil palm development. Closer local government supervision of negotiations and civil society assistance to communities before and during negotiations could improve environmental and social outcomes. A recent Constitutional Court decision provides a legal basis for recognizing customary forest rights, which should strengthen tenure and lead to an expanded community role in zoning and licensing decisions (see section 3.2.8).
Smallholder farmers	<p>Account for 40% of the oil palm planted area nationally, operating independently or in partnership with a nearby commercial plantation that provides varying amounts of financial, technical, and marketing assistance.</p>	<p>Unaffiliated, independent smallholders fall outside the regulatory framework, establishing plantations on community or personally-claimed land and in some regions frequently encroach into state-managed forest land, including protected areas.</p>	<ul style="list-style-type: none"> Regulating the land use practices of millions of individual farmers would be challenging and is rarely attempted by local governments due to resource limitations and political considerations. Encouraging commercial plantations to expand partnerships to more independent farmers could relieve the government of some regulatory burden, although better enforcement is needed to reduce forest encroachment.

Actor	Role in oil palm and deforestation impact	Actor performance	Challenges and opportunities to improve outcomes
Civil society	Seek to influence primary actors by providing information and analysis, public opinion or specific decisions/legislation, support decision making processes, enhance transparency via third-party monitoring, and encourage industry to improve practices.	Some of these influencing actors have already joined with industry to affect change through the RSPO. International NGOs such as Greenpeace, Rainforest Foundation Norway, and Friends of the Earth have also successfully put pressure on major companies and investors to make stronger sustainability commitments.	<ul style="list-style-type: none"> • Interests of the diverse array of influencing actors do not necessarily coincide and their actions are not typically coordinated. Therefore, impacts are often diffused, creating gradual change in actor attitudes and behavior. • Practical, multi-stakeholder action by these actors, especially targeted at the jurisdictional level and in cooperation with industry, could achieve significant impact.
Investors	Provide financing that enables palm oil development, potentially including for oil palm companies that do not comply with local laws or cause deforestation.	International financial institutions are increasingly adopting responsible investment policies, e.g. the Equator Principles and IFC Sustainability Framework, with regard to forests, but they vary in content and, importantly, in standards of due diligence.	<ul style="list-style-type: none"> • Due diligence procedures need to be strengthened to ensure regular and thorough audits, with auditors also requiring monitoring. • Indonesian banks have not yet demonstrated serious interest in adopting responsible investment policies. • Lack of transparency about the sources of finance for oil palm companies inhibits the pursuit of grievances when deforestation occurs.

3.1.2 Legal framework for oil palm governance

Governance in the oil palm sector is institutionally complex, with several government ministries and independent agencies, as well as provincial and district governments empowered to make planning and administrative decisions that ultimately determine where and how oil palm plantations are developed. Government actors make decisions in accordance with bodies of law specific to their sector, often with limited if any inter-sectoral coordination. There is no overarching policy or legal mechanism to coordinate decisions by these diverse government actors. As such, outcomes on the ground are idiosyncratic and reflect the cumulative impact of many individual decisions. A decentralized, uncoordinated system of development planning reflecting diverse visions and targets for sectoral and jurisdictional economic growth further complicates efforts to guide development. Rent-seeking behavior in spatial planning, licensing, and enforcement further undermine the quality of decision making in many jurisdictions.

The study recognizes four main decision points that determine the cumulative magnitude of palm oil-related deforestation and peatland conversion. These are:

- 1) Where oil palm is planted as the result of decisions made during spatial planning, licensing, and plantation planning and development;
- 2) How much oil palm is planted, which is driven by domestic and international demand and prices, yield per hectare, taxes and tariffs, government planting targets, and government biofuels policy;
- 3) How off-site activities related to oil palm development are managed, e.g. road building and plantation-related population growth; and
- 4) How leakage of deforestation by other competing land uses is addressed.

Among these four factors, the cascade of decisions determining where oil palm is planted is the most complex to address and has the greatest impact on deforestation outcomes. Much of our discussion in the section below centers on this question. In addition to the legal framework, other factors affecting deforestation drivers are also considered in our analysis, including:

- Local government regulatory capacity and enforcement diligence;
- The willingness of progressive companies to self-regulate proactively and take voluntary actions that go beyond legal requirements;
- The value proposition for industry and government to work aggressively towards Zero Deforestation;
- The degree to which actions are coordinated among key actors; and
- The extent to which affected communities and smallholders are included in decision-making processes and their ability to overcome power differentials among actors.

Table 2 highlights key bodies of law that together influence the drivers and extent of deforestation linked to palm oil. Each body includes one or more law, regulations and in some cases ministerial decrees to establish or modify procedures and restrictions for various regulatory activities. Recent changes to these regulations are discussed in section 3.2 and the winners and losers created by changes are highlighted in Text Box 1. Noteworthy changes are in some cases created by the revision of one law (e.g. the Regional Governance Law), an institutional change (e.g. the dissolution of the REDD+ Agency¹¹), or by the aggregate effect of several changes in law or policy (e.g. recognition of community land rights).

11) In addition to dissolving the REDD+ Agency, President Jokowi has not signaled a policy commitment to REDD+ as had his predecessor.

Winners and losers from recent governance changes

Box 1

Winners

- Communities, especially customary communities
- Villages
- Smallholders who are awarded land and/or receive land titles
- Governors, who have regained authority to supervise districts and represent the central government
- Advocates for holistic approaches to peatland management

Losers

- District heads, who have lost power over important natural resources
- Unscrupulous local leaders and officials who have used lack of licensing transparency and uncertainty over land status to extract rents
- Companies who seek voluntarily to retain and manage forests as conserved areas within their plantations
- Smaller palm oil firms and some smallholders who were able to acquire land illegally with few if any legal ramifications in some jurisdictions
- Supporters of REDD+ as an incentive to manage forests sustainably

Unclear

- Large companies could benefit from more transparent and predictable forest and land governance, as well as biofuels mandate and subsidies. However, they will have to address more, and potentially stronger, community land claims and may have more difficulty finding new land for expansion.



Table 2 Key bodies of national law related to oil palm that influence where, how much, and in what way oil palm is planted.

Body of law	Key oil palm-related provisions	Deforestation impact and constraints on positive outcomes	Effect of recent legal revisions and policy development
Land	A constitutional provision gives the state control over land and natural resources. Land laws establish conditions under which land ownership or use rights may be granted and sector-specific laws further define licensing criteria and procedures. Recent Constitutional Court decision and regulations deriving from this provide legal recognition of customary forest, which shall come under community control, not the state.	Land law and land licensing regulations have been interpreted and applied inconsistently and with little coordination among sectors and levels of government, resulting in overlapping licenses and conflicts between government agencies, licensees, and communities, whose land rights are somewhat uncertain but are strengthening.	The Gol's One Map Initiative (see Section 3.2.5) seeks to bring all maps and licenses into one geospatial database, providing a means to identify overlapping claims. Constitutional Court decision no. 35/2012 excludes customary forests from state forests (see section 3.2.8), paving the way for the recognition of customary rights over forests. This could affect existing and future oil palm licenses, depending on how communities deploy this authority.
Decentralization	Assigns authority for many planning, service delivery, licensing, and regulatory functions to province and district levels of government, with districts having the widest range of authority in oil palm.	Districts typically have insufficient capacity and resources to wield much of their authority effectively and have conflicting mandates to accelerate economic development while also reducing environmental impacts.	A recently enacted Law on Regional Government (see Section 3.2.6) withdraws licensing authority in forestry and mining from districts and reallocates them to provincial governments. Districts retain authority to license oil palm plantations and mills, but provincial government is assigned an oversight role to track overall performance.
Forestry	Provides authority and guidelines for delineating the national Forest Zone, assigning forest use categories and management authority within it, and procedures for release of Forest Zone land for non-forestry uses.	A key legal issue is the complexity of procedures to move already deforested land out of the Zone and forested land into it. The Ministry of Forestry – now reconfigured as the Ministry of Environment and Forestry – in previous years focused on timber extraction and industrial fiber plantations with few resources invested in the management of conservation areas and maintenance of environmental services.	Recognition of customary forests by the Constitutional Court could result in these forests being enclaved or excised from the Forest Zone. The recent merger that produced the Ministry of Environment and Forestry (see Section 3.2.10) could increase the importance of environmental considerations in forest management. Recent changes do not directly affect spatial planning revisions that require ministerial approval of Forest Zone boundary changes, which will be necessary to make deforested land inside the Zone available for plantation developments.

Body of law	Key oil palm-related provisions	Deforestation impact and constraints on positive outcomes	Effect of recent legal revisions and policy development
Spatial planning	<p>Establishes procedures for allocating land to various uses. Nation-wide macro scale spatial planning delineates land zoned as permanent forest versus land available for agricultural or other uses. At meso scale, companies may apply for plantation licenses within agriculture zones that are free of environmental and social restrictions, and district heads decide to accept or reject these applications. After plantation license is awarded, companies plan at the micro scale, delineating areas that may not be developed due to restrictions related to ecological conditions, local community wishes, or voluntary certification standards.</p>	<p>Avoidance of deforestation is not legally mandated in spatial planning. Spatial planners often lack capacity, information, and planning tools to evaluate natural ecosystems and their suitability for specific uses. There are often significant inconsistencies among spatial plans at different levels of government, particularly with respect to boundaries of the Forest Zone, which are decreed by MoEF. Jurisdictional development plans are not coordinated with spatial plans, often resulting in oil palm planting targets larger than the unlicensed area zoned for agriculture. Plantation companies conduct spatial planning within their plantations with very little government oversight, relying on their capacity, diligence, and honesty to delineate ecologically sensitive areas.</p>	<p>The newly created Ministry of Agrarian and Spatial Planning (see Section 3.2.11) has been tasked to expedite the gazettal of 189,000 km of forest boundaries at a cadastral level, accelerate the socialisation and establishment of customary areas boundaries, and make available large areas of new land for cultivation. The administration is also targeting to have all provincial and district spatial plans (RTRW) established in the form of local regulation (Perda). Currently only about 80% have been completed.</p>
Plantations	<p>Specifies requirements for oil palm and other agricultural plantation licensing, management, and performance, including environmental management and mitigation of social impacts.</p>	<p>Companies have no legal basis for setting aside and conserving HCV or HCS areas. In fact, they risk forfeiting unplanted areas if they do so. The environmental protection requirements in the law do not require a holistic approach to environmental management at the plantation level and do not fully accord with requirements under the Environment Law. Plantation performance is monitored and evaluated by local government staff, who typically lack the knowledge and resources to assess compliance with environmental requirements.</p>	<p>Regulations on peat protection were recently revised, with significant implications for future oil palm development (see Section 3.2.4). A 2011 regulation, which was updated in 2015, requires that oil palm plantations submit to compulsory performance monitoring under ISPO standard, which could influence company decisions about whether to seek licenses in areas where compliance would be difficult. ISPO does not currently require companies to make progress towards improving yields, which if required, in theory could reduce demand for new plantation land.</p>

Body of law	Key oil palm-related provisions	Deforestation impact and constraints on positive outcomes	Effect of recent legal revisions and policy development
Environment	Requires environmental impact assessments of proposed plantations and mills, including mitigation measures, management activities, and monitoring and reporting procedures.	Impact assessments typically do not achieve their intended screening function due to conflicts of interest at the local level and limited capacity of both consultants and local government officials assigned to review and approve methods and recommendations. Local governments have a strong incentive to approve assessments to maintain a business friendly reputation. Legal issues here include the absence of industry-specific thresholds for impacts that are too serious to be mitigated and a process for expert review of environmental impact assessments approved at district level.	Setting more explicit thresholds for screening projects that carry unacceptably high impacts, consistent with Indonesia’s goals for green growth and emissions reduction, would markedly strengthen environmental impact assessments. No such revisions have been enacted, but there have been reports that discussion is underway.

3.2 Recent governance changes and relevance to Zero Deforestation

This section provides an overview of changes to Indonesia’s legal and regulatory framework over the past two years, as well as new institutions and policy initiatives under President Joko Widodo’s administration that potentially create new challenges and opportunities for promoting Zero Deforestation. The items reviewed are summarized in Table 3.

Table 3 Overview of key legal and regulatory changes relevant to Zero Deforestation palm oil

No	Recent changes	Key policies affecting oil palm related deforestation
Legal framework		
1	Law No. 39/2014 on Plantations	This law replaces the 2004 Law on Plantations, reaffirming principles of sustainability, the key role of local authorities in governing the sector and requirement for companies to negotiate partnership agreements with communities. Under the law, companies are effectively prohibited from retaining forest within their plantations and local authorities are prohibited from issuing permits where <i>adat</i> communities have customary rights.

No	Recent changes	Key policies affecting oil palm related deforestation
2	Government Regulation No. 11/2015 on ISPO standard	This regulation defines the revised ISPO standard. It no longer references HCV, prohibits forest conservation within plantations where such land is suitable for oil palm, and defines land to be allocated for conservation as those required for protection by law. CPO producers selling into biofuel supply chains are exempted from ISPO certification, but no guidelines are provided for how producers qualifies for the exemption.
3	Law No. 23/2014 on Regional Governments	Under this law, district governments retain the licensing rights for oil palm plantations, but, those for mining and forestry are reallocated to the provincial governments, ostensibly to promote better governance and monitoring. Provincial governments are empowered to oversee district officials performance and take action to remediate poor performance.
4	Government Regulation No. 71/2014 on Management and Protection of Peatlands	The regulation outlines a process for mapping, land use zonation and management of peatland hydrological units throughout Indonesia. A minimum of 30% of each unit must be protected, with potentially larger areas based on presence of defined criteria. Provisions of the regulation create opportunities for regional, progressive leadership to propose larger areas for conservation, balancing production and protection goals for peatland based on local aspirations.
5	Law No. 6/2014 on Villages and Ministry of Home Affairs Regulation No. 52/2014 on the guidelines for the recognition and protection of adat communities	This law opens the way for the formation of customary (<i>adat</i>) villages, centered on <i>adat</i> law communities, and the regulation offers guidelines on how to recognize their rights. While clear implementation procedures for recognizing rights are still lacking, these instruments provide a broad framework for doing so. The law also creates a stronger governance function for villages, and mandates creation of a village fund fiscal transfer mechanism to support millage development, estimated to be valued at USD70,000 to USD100,000 per village each year.
6	Constitutional Court decision no. 35/2012 (MK35) on customary forests and associated regulations and decrees	This court ruled that forest burdened with claims by communities that assert rights over customary forest shall not form part of the State forest estate, and shall come under control of communities.

Institutional developments

1	Institutional developments	The Presidential vision for development, land management and reform, natural resource management and forest protection.
2	New Ministry of Environment and Forestry (MoEF)	The merging of two ministries (Ministry of Forestry and Ministry of Environment) into a single "mega ministry" governing forest management and implementation of environmental laws and regulations. The ministry's priorities include promoting community based forest management, recognition of customary forests, resolving land conflicts and eliminating fires.
3	Closure of REDD+ Agency and DNPI	The independent REDD+ Agency has been dissolved and part of its past responsibilities rolled into a new Directorate General on Climate Change in the new MoEF.

No	Recent changes	Key policies affecting oil palm related deforestation
4	New Ministry of Agrarian and Spatial Planning	New ministry charged with implementing President Jokowi's vision for land reform, which includes recognition of more than 12 million ha of community forests and making available more than 2 million ha of land for agriculture.
Initiatives/policies		
1	Promoting domestic consumption of palm oil based biofuels	Indonesia is accelerating mandated biodiesel content in diesel fuels from 10% to 15% by April 2015 and to 20% by 2016. A subsidy program to offset biofuel production costs is also enacted, paid for via imposition of an export tax on CPO and derivatives estimated to raise upwards of USD1 billion per annum. The policy will raise domestic demand for palm oil, and may reinforce creation of a two-tiered market for CPO.
2	Moratorium of new licenses and One Map Initiative	The moratorium on new licenses in primary forests and peatlands was extended for another two years on 13 May 2015, extending opportunities to review and resolve overlapping claims and licenses. Several ministries have agreed to adopt and use a database of consolidated maps that should assist in resolving land conflicts.
3	"One Door" facility for investment	In line with a presidential instruction to simplify licensing procedures and attract more investment, the MoEF has reassigned the authority for issuing 35 forestry license types to the Investment Coordination Board. It is yet to be clear how technical review inputs from MoEF will be considered in approval procedures.
4	Accelerating the formation of Forest Management Units (FMU)	The MoEF aims to accelerate the establishment of landscape level FMUs, placing them under the management of provincial or district authorities with the aim of managing forest landscapes for multiple purposes and rooted in landscape principles.
5	Social forestry, including customary forests	In the national medium-term development plan for 2015-2019, MoEF is assigned the responsibility to increase community participation and authority to manage forests through a mix of social forestry governance arrangements, including community forests (<i>hutan kemasyarakatan</i>), village forests (<i>hutan desa</i>), and customary forests (<i>hutan adat</i>). The ministry aims for 12.7 million ha of forests to be formally managed by communities by 2019, with at least 2.54 million ha allocated to communities in 2015.
6	Developments in oversight, enforcement and accountability	Recent developments in accountability and law enforcement concerning land use decisions give some reason for optimism that improvements will be made in land use licensing. In 2015, the KPK launched a palm oil license legality audit initiative under the National Movement to Rescue Indonesia's Natural Resources, covering 19 provinces.
7	Legal reform roadmap	The Ministry of Law and Human Rights launched a <i>Roadmap for Legal Reform on Natural Resources and Environment</i> , highlighting key problems in forestry, land use permits and citizen rights, and producing a list of key problems and recommendations for legal reform to address them.

3.2.1 New Plantations Law (UU No. 39/2014)

One of the most widely anticipated recent developments in palm oil governance is revision of UU no. 18/2004 on plantations. The new law, enacted in October 2014 under Susilo Bambang Yudhoyono's administration, is shorter and more succinct than the 2004 Law. It avoids overly prescriptive text, instead referencing existing legal provisions where applicable, and where lacking then defining numerous implementing regulations (Peraturan Pemerintah) to be drafted by designated ministries within a two-year time frame, or by October 2016.

At a high level, the law reaffirms that plantation development must be rooted in principles of sustainability and maintenance of environmental functions, that in governing the sector authorities must offer protection both to business and to local communities, and that companies granted licenses by government must respect and accommodate the rights of customary communities. It reaffirms the key role of local authorities in governing the sector, including licensing (with modest changes), monitoring and enforcement, and oversight of company-community agreements. It also reaffirms the role of companies in negotiating with and obtaining consent from local communities with rights in areas they operate.

The law revises several provisions of the 2004 law and puts forward new ones relevant to Zero Deforestation. One leading provision is Article 16, which states that within six years of being issued a Business Use Permit (HGU in Indonesian), companies must operate/manage (*mengusahakan*) 100% of areas that from a technical viewpoint can be planted by oil palm. Failing this, permits granting control over unplanted areas can be revoked by the state. This provision further erodes the legal basis for companies to protect forest voluntarily within their concessions, e.g. for the protection of High Conservation Value (HCV) or High Carbon Stock (HCS) areas.

For communities with claims to customary forest areas they wish to protect, the law offers new safeguards to protect these areas from conversion. Article 17 states that local authorities are prohibited from issuing permits on land where adat communities have customary rights, except in cases where companies have obtained consent from such communities and reached agreement on compensation. Wording of this provision is noteworthy, as it allows for issuing of permits in adat areas only after agreement has been reached, not before. The terminology of Free, Prior and Informed Consent (FPIC) is not used explicitly in the provision, but in practice it would seem to be requiring an FPIC type process. The article could support zero deforestation palm oil in cases where adat communities seek to protect customary forest at risk of conversion due to spatial planning or oil palm licensing.

One leading provision is Article 16, which states that within six years of being issued a Business Use Permit (HGU in Indonesian), companies must operate/manage (*mengusahakan*) 100% of areas that from a technical viewpoint can be planted by oil palm

Another provision potentially affecting the balance of authority between central and local authorities in defining development plans for palm oil is outlined in Article 14. The article states that central government has the authority to define minimum and maximum areas that can be developed for plantations, taking into account factors such as geographic conditions, population densities, development models, and spatial planning among others. Neither intent nor the object (i.e. government or companies) is clear in the provision¹², but it could open a window for central authorities to set limits on how much plantation development could happen in the regions, through means other than spatial planning. If so, it could create opportunities for central government to promote development in less forested regions, and restrict palm oil in more forested ones.

3.2.2 Revised ISPO regulations

Minister of Agriculture Regulation No.11/2015 (*Permentan No.11/2015*) is the newest regulation concerning the Indonesian Sustainable Palm Oil (ISPO) certification system. The regulation came into affect 18 March 2015 after many months of development, and replaces the previous Minister of Agriculture regulation enacting ISPO in 2011 (*Permentan No.19/2011*).

As in the 2011 regulation, ISPO certification is rooted in existing laws and regulations related to the development and management of palm oil plantations and the processing of CPO. To obtain ISPO certification, companies must first undergo pre-certification performance evaluation, and those classified as Class I, II or III performance levels are allowed to proceed to full audit for ISPO certification. Audits are carried out by independent third party certifiers accredited by the ISPO Commission.

In contrast to the 2011 ISPO regulation, the new one distinguishes five different categories of palm oil producer and provides separate Principles and Criteria (P&C) for these categories (Appendices II-VI). Previously, these categories were merged together into one set of P&Cs. The new regulation states that the three types of producers must go through the ISPO process, namely integrated plantation (company with plantation + mill), plantation company (plantation only), and palm oil processor (mill only). Two other types of producers are not required to pursue ISPO certification, but may choose to do so voluntarily. These are plasma farms or plantations (smallholders associated with a state or private company), and independent smallholder oil palm farms (independent farmers). Notably, under the new regulation producers selling into renewable energy supply chains (biodiesel) are no longer obliged to obtain ISPO certification (Article 2). However, the regulation does not define criteria for producers to qualify for this exemption, nor does it mention whether CPO sold for biofuels would need to be consumed domestically or could be exported.

A highlight of main differences between ISPO provisions of the 2011 and 2015 regulation (using the “integrated plantation” P&C as the 2015 reference) include the following:

- Many of the indicators and guidelines of the 2015 P&C provide less detail than the 2011 regulation, and use less explicit terminology. Some points within some criteria

¹² The article outlines an implementing regulation that must be enacted to guide implementation of this regulation, which should clarify intent and object of the provision.

have been completely omitted from the revision, whilst in other places new points being added.

- The 2015 regulation still includes 7 Principles, but now there are different numbers of Criteria and sub-criteria. Some points previously organized under one criterion in the 2011 regulation have been dispersed into the various appendices of the new version without much cross-referencing among Appendices, making it difficult to see clearly if stipulations have been omitted, no longer apply to certain categories of producers, or are still in effect. For example, the P&C for Integrated Plantation do not mention anything about compensation for local communities impacted by plantation development. Instead requirements concerning compensation are presented in Appendix V (applicable to smallholders) regarding establishment of plasma plantations (Criterion 1.2). This might impact consistency among companies and auditors in assuring compliance.
- Criterion 3.5 of the 2011 regulation required identification and protection of HCV areas. This has been removed from the new regulation.
- Three noteworthy additions to the standard were made, namely:
 - Principle 3 regarding protection and use of primary forest and peatlands has been added. This reinforces the Gol's moratorium on new licenses on primary forests and peatlands that was issued in 2011 and renewed for the second time in May 2015 via Presidential Instruction No. 8/2015 (see Section 3.2.5).
 - Criterion 1.7 regarding "neglected lands" or tanah terlantar has been added. Neglected lands are defined as land not being cultivated or used according to the purpose and legal land titles assigned to them by government. In cases where 'neglected' land comprises 25% or less of the total concession area, companies can request a revision of the concession boundary to encompass cultivated land only. Barring this, if local authorities declare the unplanted land as "neglected", the company forfeits any claim to the land, and must return it to the State. This provision further complicates voluntary efforts by companies to conserve forest within plantations for HCV, HCS or other purposes.
 - Criterion 4.8 states that protection areas within plantations must be identified, mapped and managed according to existing laws and regulations. It appears this is designed to reinforce provisions of various decrees and regulations offering local protection status to riparian zones, floodplains, lakes, surface springs, steep slopes, and peatlands that meet specified criteria. Implications of these changes for eliminating deforestation are discussed in section 4.1.

3.2.3 Biofuels mandate, taxation, and subsidies

A recent policy development attracting significant media attention and widely anticipated to boost domestic palm oil demand is government promotion of domestic biofuels consumption (especially biodiesel) to reduce petroleum imports and promote energy self sufficiency. Energy diversification is increasingly viewed as a development imperative by government, following a decision in late 2014 to cut and cap the subsidy for diesel fuel to IDR 1,000 per liter, and to remove subsidies for gasoline altogether, amid low global crude prices. Anticipating that oil prices will rise, Gol is putting in

place measures to dampen the effect of future high prices on consumers that have grown accustomed to heavily subsidized fuel. Promoting consumption of domestically produced biofuels via mandated biodiesel blending is viewed as a relatively low cost means of diversifying energy production in the near term, buffering against future increases in oil prices and reducing pressure on the Rupiah.

To advance this policy, in early 2015 the Indonesian parliament approved an increase of biodiesel subsidy to IDR4,000 per liter and bioethanol subsidy to IDR3,000 per liter for 2015, paid for by savings created by the elimination of gasoline subsidies implemented in early 2015 by the Jokowi administration. This original biodiesel subsidy plan now seems likely to be replaced by a different policy initiative, still oriented toward biofuel subsidies, but funded by a new export tax of USD50 per ton for CPO and USD30 per ton for refined products. These revenues will be used to underwrite a Crude Palm Oil Support Fund (CPO Fund) that, according to latest comments, will provide subsidies to biofuel producers/blenders, research and development, credit facilities for replanting smallholder oil palm farms, and smallholder extension services. The details of how this fund will be structured and governed, and especially how funds will be allocated to different priorities are still taking shape. Three legal products have been enacted recently that outline contours of how revenues will be collected and the Fund will operate:

- *Peraturan Presiden No.61/2015 tentang Penghimpunan dan Penggunaan Dana Kelapa Sawit* (on the collection and use of palm oil funds), issued on 18 May 2015;
- *Peraturan Pemerintah No.25/2015 tentang Penghimpunan Dana Kelapa Sawit* (on the collection of palm oil funds), issued on 25 May 2015; and
- *Peraturan Kementerian Keuangan No.113/2015 tentang Organisasi dan Tata Kerja Badan Pengelola Dana Perkebunan Kelapa Sawit* (on the organisation and work procedures of the management body for the palm oil fund) issued on 10 June 2015.

Indonesian biodiesel is produced almost exclusively from palm oil feedstock to create palm methyl ester (PME). There are discussions about producing biodiesel from marine algae, but currently this is not a focus of government policy. The recent Ministry of Energy and Mining Regulation No. 20/2014 set targets for diesel used in transport, industries and power generation to contain 30% biodiesel blend by 2020. If achieved, this would equate to an estimated 21 million kiloliters of biodiesel consumption in 2035, a thirty-fold increase from the 0.7 million kl consumed in 2012, according to Indonesia Energy Outlook 2014.¹³ Promoting a phased approach to meeting these targets, the Energy Ministry's 2014 regulation originally mandated biodiesel content of 10% for 2015, increasing to 20% in 2016. However, as the US dollar strengthens against most global currencies and the Indonesian rupiah falls to levels not seen since 1998, Gol has opted to accelerate the biodiesel blending mandate from 10% to 15% starting April 2015.

In the past, implementing the biofuel mandate faced challenges, with e.g. domestic biofuels consumption last year (c. 1.5 million kl) reaching less than half the official target. These shortfalls reflect shortages of industry storage capacity, insufficient blending facilities, low offer prices for biofuel procured by Pertamina, and poor transportation networks, especially in eastern Indonesia. State oil company Pertamina,

¹³ For bioethanol, produced mainly from molasses and cassava, government targets are set at 5-10% content for transport and industrial uses over the same period.

the leading distributor of fuel, is reported to be constructing several terminals to ease transport to these outer areas.

Current challenges aside, domestic CPO prices in 2015 are expected to rise in response to increased domestic CPO demand created by the mandate. There is also much speculation that increased domestic demand for palm oil based biofuels will drive further expansion of new plantations to meet growing demand. Analysts disagree on this point, however, and more study is needed. In volume terms, Wilmar and Musim Mas are Indonesia's two largest biofuel producers, and both are covered by No Deforestation supply chain commitments. However, the industry has many supply chain actors, use of sustainable palm oil is not mandatory, and indeed the revised ISPO standard exempts CPO producers selling into biofuels supply chains from mandatory compliance (see Section 3.2.2). This creates a clear risk for emergence of a two-tiered palm oil market – clean versus dirty – one for discriminating export destinations, and the other for domestic consumption. In this way, if increased biofuels consumption grows the domestic market for CPO, this could place at risk the forest conservation gains of responsible supply chain actors seeking to detect and eliminate deforestation from their supply chains. This scenario would present new challenges for supply chain approaches to eliminating palm oil driven deforestation.

3.2.4 New peatlands regulation (PP No. 71/2014)

Arguably the most controversial government regulation affecting palm oil in the past two years is Government Regulation No. 71/2014 on Protection and Management of Peatland Ecosystems (PP No.71/2014), enacted in September 2014. In the weeks following its release, debate and media coverage over its implications for business and the environment were highly politicized. GAPKI heavily criticized several key provisions, especially those related to water management, as decidedly anti-business and placing hundreds of millions of dollars in past and future investment at risk. Environmentalists dismissed the regulation as weak, offering few additional protections for peat, especially peatlands less than 3m deep, and largely failing to accommodate civil society inputs and aspirations for improved peatland protection. Facing criticism on both sides, government succumbed to pressure and in early 2015 agreed to revisit water management and other provisions of the regulation, a possible signal of readiness to accommodate business demands.

Despite the controversy, the regulation offers the basis for a new, holistic approach to peatland management, and creates significant opportunities to strengthen peatland management, especially through progressive local leadership.

The regulation defines a three-step process for managing peatlands, namely:

- Inventory, which includes remote and ground based surveys to map peatland hydrological units;
- Assignment of functions, i.e. zoning areas for production and protection; and
- Management planning and implementation.

Supported by other Ministries, then Ministry of Environment – now subsumed in the new Ministry of Environment and Forestry (see Section 3.2.10 below) – is assigned lead

implementation responsibility, beginning with ground surveys to refine and improve upon a recently completed “indicative map” of peatlands through ground surveys. Surveys are intended to deepen understanding of physical, biological, social and cultural attributes of the area to produce a revised “Peatland Hydrological Unit” map. Such maps are envisaged to be produced at national, provincial and district levels, with increasing levels of spatial resolution based on higher quality data.

This base map is then used for delineating areas for production vs protection, where protection must represent at least 30% of the total area, centered first on protection of the dome, and then building outward based on the following considerations: (i) peat depth (more than 3m must be protected), (ii) presence of endemic or protected species, and (iii) other areas already designated for protection (e.g. hutan lindung). Based on these (or other) factors, governors or district heads can request to expand areas designated for protection by re-designating production areas for protection,¹⁴ but the reverse, ie the reassignment of protection areas for production, is not allowed.

At the end of this process, all areas not designated for protection are potentially available for production, and a management plan for both production and protection areas must be drafted by local authorities, and approved by MoEF. Where local plans differ from zonation and/or management plans already enacted at higher levels, such changes must be approved by MoEF. The regulation specifies minimum management requirements for areas allocated for production, including water management, responsibilities to control fires, sanctions for transgressions and penalties for failure to restore areas damaged by fire or other causes (including revoking license). The regulation also states that all of the mapping and management planning described above must be completed for all of Indonesia within four years, comprising two years for mapping and the other two for planning.

While the peat regulation will not, in itself, deliver a No Peat palm oil sector, it is a positive step forward in viewing peatlands more holistically as integrated hydrological units, and in creating a rule-based process for more rational land use zonation. Provincial or district governments are afforded a leadership role in designating boundaries of protection areas more broadly than national officials, opening a window for local leadership in striking a more rational balance between production and protection at local levels. Criteria for evoking protection needs are broad and well defined, including consideration of drainage, degradation, presence of important species, community aspirations, and climate change.

While the peat regulation will not, in itself, deliver a No Peat palm oil sector, it is a positive step forward in viewing peatlands more holistically as integrated hydrological units, and in creating a rule-based process for more rational land use zonation

¹⁴ The regulation specifies that further implementing regulations will be enacted to define the process for local authorities to propose reclassification of Production areas for Protection.

3.2.5 Extension of moratorium and One Map Initiative

In May 2011, then President Susilo Bambang Yudhoyono issued a two-year moratorium on new licenses in primary forests and peatlands to create space to review licenses and move towards resolution of mounting tenurial conflicts. The moratorium was part of Indonesia's program to reduce emissions from deforestation and forest degradation (REDD+) through improved governance, and a key element of the landmark agreement for bilateral cooperation with Norway in 2010, who committed as much as USD1 billion for Indonesia under the emerging REDD+ scheme.

Stakeholders generally welcomed the moratorium as a step in the right direction, although many remarked it was not sufficient, particularly due to its narrow focus on protection of primary forests and peatlands (omitting secondary/logged forests) as well as exemptions for all pre-existing industrial licenses (even those for which no development had yet taken place) and extensions of pre-existing licenses. In addition, a study by the World Resources Institute (WRI) based on the latest update of the Indicative Moratorium Map showed that only 26% of the area covered by the moratorium, provided additional protection beyond that already required by Indonesian law. Further, it has been noted that the Indicative Moratorium Map shrinks during every revision, as additional areas are exempted from protection. Stakeholders have also remarked that implementation and monitoring of the moratorium must be strengthened, with reports of non-compliance by local government issuing licenses and palm oil companies clearing forest in areas covered by the moratorium.

Still, many stakeholders view the moratorium as an important step in the right direction, noting that any progress toward improved forest governance should be recognized. The moratorium was extended by President Jokowi for the second time in May 2015, for a further two years, but the extension failed to mandate a thorough review of existing licenses and a resolution of overlapping claims. Activists argued that the moratorium should be achievement-based and not time-based, since the review of permits and resolution of claims remains far from being completed. At the provincial level, in 2012 BP REDD+ signed agreements with Central Kalimantan, East Kalimantan,

and Jambi governments to assist them in conducting license legality audits and creating online systems to manage data relating to license application, evaluation, verification, issuance, and supervision. It is unclear how implementation of these agreements will continue following closure of the BP REDD+ (see section 3.2.10.2).

Another recent initiative critical to improving forest governance, and closely related to the Moratorium, is the One Map Initiative, spearheaded by the Presidential Working Unit for the Supervision and Management of Development (UKP4). Under the program, five ministries and agencies work

together to: compile spatial data into a single repository; reconcile conflicting spatial planning, land use and licensing maps; and create a common reference database to be used by governments at all levels and across sectoral ministries.

Support for One Map Initiative remains very strong in the current administration.

Support for One Map Initiative remains very strong in the current administration. Four ministries, namely Ministry of Agrarian and Spatial Planning, Ministry of Environment and Forestry, Ministry of Agriculture, and Ministry of Maritime Affairs and Fisheries, have signed a memorandum of understanding to use the resulting maps, which are managed by the Geospatial Information Agency (BIG). Ministry of Energy and Mineral Resources is expected to use the database as well, according to comments by the Agrarian Minister Ferry Mursyidan Baldan. This will ensure licensing and environmental monitoring and enforcement activities led by the five ministries overseeing Indonesia's major industrial land uses – forestry, mining and agriculture – will be using a shared common geospatial database. This is a major step forward in land governance for Indonesia.

3.2.6 New Regional Governments Law (UU No. 23/2014)

In the final days of the 2009-2014 national parliament and of the presidency of Susilo Bambang Yudhoyono, the national parliament passed two new laws in late September 2014: the Regional Elections Law (Law on Governor, District Head and Mayoral Elections, Law 22/2014, *UU No.22/2014 tentang Pilkada*) and the Regional Governments Law (Law 23/2014, *UU No.23/2014 tentang Pemda*). Political tensions were high with the victory of Presidential candidate Joko Widodo over Prabowo Subianto, and public attention became focused on the Regional Elections Law, which cancelled direct elections of local leaders, returning the authority to appointed leaders to the regional parliaments, a selection processes applied until 2005 and widely known to involve large scale corruption. The Regional Government Law thus did not receive much public discussion, but for those concerned with natural resources governance it is significant, as it alters the division of responsibilities between various levels of government for particular sectors.

The law is very long,¹⁵ with key sections addressing government affairs and division of responsibilities between levels of government, regional organization (provinces and districts/municipalities), regional governance, regional government offices, regional government regulations, development processes, and finance. The appendix lays out the authorities possessed by each level of government for 32 government affairs including land, environment, agriculture (including plantations), forestry, and energy and mineral resources. Numerous Government Regulations and Ministerial Regulations are mandated to provide implementation guidance, and to date none of these has been produced.

The most significant implication of the law for natural resources governance is the recentralization of certain authorities possessed by the districts in particular sectors. Article 14-1 states that “*Management of government affairs in forestry, marine affairs, energy and mineral resources is divided between central and provincial governments*”, removing the role of districts/municipalities for these sectors. The most notable change is the transfer of authorities for issuing mining permits from the district to the provincial level. The shift seems intended to improve governance, i.e. it reflects recognition that districts/municipalities have not properly utilized their regulatory

15) Law 32 comprises 27 chapters, 411 clauses, and 143 pages, with 94 pages of explanatory notes and an appendix of 147 pages. The appendix is in fact the most important part for natural resources governance, as it lays out the authorities possessed by each level of government for 32 ‘concurrent’ government affairs (i.e. authorities are divided amongst central, provincial and district governments).

powers over natural resource industries.¹⁶ Though in general district governments have performed poorly in governing palm oil as well, under the Law they retain authority for plantation permits within their districts. It is expected that District heads will fight to regain authority over mining permits, and that irregularity in the transfer of documentation from district to provincial levels will take place, since this could reveal signs of impropriety or corruption and possible criminal charges.

Importantly, the Law provides for much stronger oversight of district governments by provincial governors, empowered as the local representative of central government. Governors now have authority to review specified by-laws before they are passed (on district medium and long term development plans, budgets, budget revisions, budget implementation reports, spatial plans, and taxes and retributions); retract responsibilities from underperforming district governments; cancel district by-laws inconsistent with guidance from central government; and enact sanctions on district heads. Whether these provisions will translate to stronger accountability depends fundamentally on their implementing regulations (still pending), the process of implementation itself, and the handling of resistance by powerful elites whose interests are threatened by improved accountability.

Recognition of customary land rights is mentioned in several places, reinforcing the move towards increasing recognition of community land rights, following Constitutional Court Decision 35 and the Village Law. The law reaffirms district governments' authority to recognize adat (customary) law communities and their rights, as well as establishment of customary areas (*tanah ulayat*) and customary villages. Also stressed are transparency requirements in connection with public services, regional government budgets, and by-laws, with a major emphasis on public participation. Fiscal incentives for district performance are also mentioned in the Law, but not elaborated.

3.2.7 New Village Law (UU No. 6/2014)

Passage of the Village Law (UU6/2014) in January 2014, seven years after its initial draft by the Interior Ministry, was an important development in Indonesia's governance, and has rightly garnered substantial attention. The law fundamentally alters the role of the village in the state, previously regulated through the Regional Government Law (UU32/2004) and Government Regulation 72/2005 on Villages, by recognizing the rights and authorities of villages as political entities. In the Law's own language, the village should combine the function of a '*self-governing community*' (i.e. inherent rights) with '*local self government*' (tasks devolved from other government authorities). The law states that villages have '*customary and traditional rights in regulating and managing the interests of local communities*' and need to be recognized, protected and empowered to play a strong role in creating a just, wealthy and prosperous society. More broadly, the law states (in the explanatory notes) that village administration needs to be updated, in line not only with the recognition of customary rights (which is in clause 18B-2 of a Constitutional Amendment), but also with democratization, pluralism, community participation, and equitable development.

16) For example, data from the Ministry of Energy and Mineral Resources show that as of 2011, 9,662 permits were issued for small-scale coal mining by district governments, of which only about a third were supported with necessary documents and free of outstanding legal issues.

The Village Law also provides for the establishment of customary villages (*desa adat*) through district/municipality regulation (*Perda*), which can be run according to local customs, while still carrying out general village administration. Customary villages will have rights to manage customary territory, in line with the Constitutional Court decision on recognition of customary forest rights (MK No. 35/2012). The government has issued Government Regulation no. 43/2014 to provide guidance on implementing the Village Law, including on the establishment of customary villages. However additional specifics are to be provided in a Ministerial Regulation which has not yet been issued, and then regional by-laws are needed to actually establish customary villages.

The Village Law introduces very significant new rights and responsibilities for villages, which could result in more empowered, bottom-up development through democratic and accountable decision-making. The largest obstacle to these improvements, however, seems likely to be severe lack of capacity in terms of budget planning, strategic planning, and project management and monitoring. Villages will be managing significant annual budgets,¹⁷ which presents opportunities as well as risks. The Village Law also presents opportunities to increase local and customary control over land and forests, and the village spatial planning process will offer new opportunities for local input into land use decision-making. However, the process of establishing customary villages (and thus potentially recognizing customary forests) is complex and requires several new implementing regulations. Progress in passing the necessary regulations at national, provincial and district level has been slow and likely to remain so without sustained advocacy efforts. It must also be noted that implementation of the Village Law mandates shifts in power, authority, and access to resources that seem likely to raise the possibility for various types of conflict.

3.2.8 Recognition of customary lands

In 2013 Indonesia's Constitutional Court rendered a decision challenging the Forestry Law over its failure to properly recognize customary rights over forest land. The decision, Constitutional Court Decision 35/2012 (MK No.35/2012, hereafter MK35), declared that 'customary forest' is not part of the state-controlled Forest Zone, and shall not be controlled by the State. The decision is a watershed moment in recognition of indigenous rights in Indonesia. Estimates suggest that between 10-40 million ha of land should fall under control of customary communities. AMAN, the country's leading indigenous peoples' rights organisation, and Jaringan Kerja Pemetaan Partisipatif (JKPP), have conducted participatory mapping of customary areas, covering 4.8 million ha claimed by 517 adat communities. Yet, much work is needed to implement MK35, including specifying which customary groups have authority over which forests, how groups will make decisions, what their forest management rights and responsibilities will be, and how this will affect existing, valid land use licenses overlapping these areas. An update on recent developments relevant to the first of these questions is provided here. While the legal framework for recognizing customary rights is rapidly developing, the pace of formal recognition is lacking far behind.

¹⁷ The Village Law mandates that 10% of central government transfers to the regions be allocated to villages. In addition, villages are to receive 10% of the revenue sharing (*dana bagi hasil*) and general allocation grants (*dana alokasi umum*) received by districts, and 10% of local taxes and levies. This has been estimated at up to roughly USD100,000 per village (Rp.1.3-1.4M), with wide variation in actual receipts.

Since MK35, several recent laws and regulations have been passed that mandate processes and detail procedures for recognizing customary rights to land and forests. These include:

1. **Ministry of Forestry Circular Letter SE1/MenhutII/2013**, issued to regional heads and forestry officials, describing MK35 and stating that customary forest must be established by the (then) Ministry of Forestry, based on regional bylaws (*Perda*) recognizing customary groups and territories.
2. **Ministry of Forestry Regulation No. 62/2013 revising Ministry of Forestry Regulation No. 44/2012 on the establishment (*pengukuhan*) of the Forest Zone**, states that customary forests recognized through regional by-laws will be removed from the Forest Zone. Many argue this regulation reflects a misunderstanding of the Forestry Law itself, which clearly allows for state forests and non-state forests within the Forest Zone. That is, MK 35 mandates that customary forests be removed from the state Forest Zone, but not from the Forest Zone entirely, where they would be without protection or regulation. Policy statements such as this one have drawn criticism that the Ministry of Forestry¹⁸ may seek to relinquish all responsibilities for management over the areas, rather than continue to regulate and protect them after rights are transferred to customary communities.
3. **Village Law (UU No. 6/2014)**, described above, mandates a process for recognition of 'customary villages' along with their communal lands and forests. Once recognized as 'customary villages', customary communities would be responsible for forming village governments and handling village administration as well as customary affairs. A Government Regulation governing this process has already been released, but a Ministerial Regulation is also needed, as well as a provincial by-law (*Perda Propinsi*) on local customary structures, before a district by-law (*Perda Kabupaten*) can delineate customary territories and establish customary villages. Consequently, district governments in general are waiting before they act. It has also been argued that the Village Law only recognizes customary communities that have both clear genealogy and territoriality, and thus excludes some.
4. **Regional Governments Law (UU No. 23/2014)**, described above, assigns responsibility to districts and provinces for establishing communal land rights within their territories, and for establishing the recognition of customary communities and rights in connection with environmental protection and management (the central government is to do it if the customary territory spans provinces).
5. **Ministry of Home Affairs Regulation No. 52/2014 on Guidelines for the Recognition and Protection of Customary Law Communities (*masyarakat hukum adat*)**. This brief regulation (12 articles) lays out a process for district heads (and mayors) to recognize customary communities. First, the district head forms a committee, lead by the regional secretary and including relevant heads of district offices and sub-district heads. This committee conducts identification and 'verification/validation' of customary communities. Their recommendations are shared with the customary communities, who can lodge a grievance and request a re-examination. Then the district head issues a Decision to recognize and protect the customary community groups. Parties that disagree with the decision can challenge it in administrative

18) The Ministry of Forestry has since been combined with the Ministry of the Environment and renamed, but we use the term 'Ministry of Forestry' since the regulation came out before the ministries were combined.

court. If customary communities span District boundaries, they are to be recognized through a joint District Head Decision. This regulation caused a stir when it was issued, because it states that a District Head Decision (Keputusan Bupati) is sufficient to recognize customary communities, whereas other laws state (and some were insisting) that a District by-law is required.

6. **Joint Ministerial Regulation by the Home Affairs Minister, Minister of Forestry, Public Works Minister, and the Head of the National Land Agency (No. 79/ 2014)¹⁹ on Procedures for Settling Control of Land Within the Forest Zone.** This joint regulation is about revising Forest Zone boundaries when land with existing tenure rights has been included within the state Forest Zone. It is thus related to the implementation of Constitutional Court Decision 45/2011, to ensure that individual rights to land are respected, but it also cites MK35 and describes how to settle communal land claims within the Forest Zone. The district head (or Governor, for claims that cross District boundaries) forms an 'IP4T team' which will conduct an 'inventory of control, ownership, use and utilization of Land (IP4T)'. The IP4T team comprises district officials and sub-district/village heads. Claims are put forward, the IP4T team investigates and produces a 1:10,000 scale map, and if they decide the claim is valid, the Land Agency can issue certificates, and the (then) Minister of Forestry will amend the Forest Zone boundaries accordingly to remove the land in question. The joint regulation (a) seems to reverse the earlier position by the (then) Ministry of Forestry that a regional by-law is needed before customary land will be removed from the state Forest Zone, now stating that a decision by IP4T is enough, but (b) reaffirms the Ministry's position that customary land will be removed entirely from the Forest Zone rather than being retained within it as 'forest with rights' (*hutan hak*) as is possible under the Forestry Law (see point 2 above).
7. **Ministerial Regulation No.9/2015 of the Minister of Agrarian Affairs and Spatial Planning and Head of the National Land Agency on Procedures for the Determination of Communal Rights on Customary Land and the Land of Communities in Special Regions.** This joint regulation was signed in May 2015, updating and replacing Ministerial Regulation No.5/1999 of the Ministry of Agrarian Affairs and Head of the National Land Agency on the same issue. The regulation provides for customary land claims, and land claims of communities in forest and plantation areas, to be processed by the team for inventorying control, ownership, use and utilization of land (IP4T). Claimed areas inside the Forest Zone are to be removed from it, and communal land certificates are to be issued. This regulation strengthens the options for establishing communal customary land rights using direct claims rather than needing a comprehensive local regulation (*perda*).
8. **Draft law on Recognition and Protection of Customary Communities (RUU-PPMA).** Supported by AMAN, the Indigenous Peoples of the Archipelago Alliance, a draft law was under discussion between the parliament and the executive under the last administration. With the new parliament, it seems to have fallen off the priority list for 2015.
9. **National Medium Term Development Plan for 2015-2019** (passed near the beginning of President Joko Widodo taking office) states a goal of designating 12.7 million ha of community managed forest by 2019, covering government schemes such as Village Forests (*hutan desa*) as well as the recognition of customary forests (*hutan adat*).

19) Plus three other registration numbers, omitted for convenience

Several future developments are also expected. The Ministry of Home Affairs Regulation No. 52/2014 (*Permendagri* No. 52/2014) pushes district heads to commence with recognition of customary rights by issuing district head decisions (*Keputusan Bupati*) on customary communities. While the Village Law mandates a process for establishing customary villages and territories, not all of the implementing regulations have been produced. Regional by-laws recognizing customary communities may take significant time and not many districts are embarking on this process enthusiastically. In the meantime, District Heads can undertake the process mandated in this regulation and issue a decision as a concrete first step in recognizing customary rights. AMAN is supporting districts to do this.

According to several laws (e.g. the Forestry Law and the Village Law), a regional by-law is needed before recognizing customary forest can be completed. Yet, according to the joint ministerial regulation described above, the territory could be excised from the Forest Zone on the basis of a District Head Decision. The validity of this option could be tested in practice by District Heads issuing a Decision then submitting a request to the Ministry of Environment and Forestry to remove the land in question from the state Forest Zone. Such a test should be carried out. The more recent Ministerial Regulation No.9/2015 of the Minister of Agrarian Affairs and Spatial Planning and Head of the National Land Agency supports this process of removing areas from the Forest Zone based on a District Head Decision (which is itself based on recommendations from the IP4T team), and mandates the issuance of communal land certificates for the land in question.

While the Village Law mandates a process for establishing customary villages and territories, not all of the implementing regulations have been produced.

Work is underway in a number of districts to develop district by-laws, with the support of AMAN and other NGOs²⁰. District governments and legislatures are in general not moving rapidly to produce by-laws, perhaps because they are unsure of the way to do so, or because they are eager not to threaten business interests in the district, or because they see little to benefit to their own power and authority over land resources. AMAN is working in selected districts where there is political will and fewer competing interests to create examples of success.

As described above, there has been uncertainty about whether customary forests will be removed from the Forest Zone entirely, or just removed from the State Forest Zone and re-classified as 'forests with rights', in which case forests would still have designated functions of production, protection or conservation in order to maintain the forests. The risk of the former is that customary forests would be rendered vulnerable to unsustainable exploitation without the regulatory and protective function of the Ministry. In early July 2015 as this report was going to press, the Ministry of Environment and Forestry issued Ministerial Regulation 32/2015 on 'Rights Forests',

20) Epistema has produced policy summaries and example by-laws to assist in this process, see: <http://epistema.or.id/adat-di-tangan-pemerintah-daerah/>

specifying that customary forests will be redesignated as 'forests with rights' and stay within the Forest Zone. This is a positive development for forest conservation. There are also stipulations on incentives and compensation for customary communities, depending on the function assigned to their forest. Another stipulation is that if there are conflicts with forestry permit holders or with other claimants, the Minister will direct relevant officials to solve the conflict within 90 working days. This regulation appears to be a strong positive step, although of course many challenges remain in the implementation phases.

AMAN is advocating to create a President's Working Unit for the Recognition and Protection of Customary Law Communities. The Unit would be tasked with harmonization of existing laws and regulations on issues of customary rights; preparation for a National Commission on Customary Rights; of organizing pardons for indigenous people in jail for offences against the Forestry Law, now invalidated by MK35; and acceleration of the passing of the Law on Recognition and Protection of Customary Communities.

3.2.9 President Joko Widodo's administration

3.2.9.1 Development focus and institutional restructuring

President Joko Widodo and Vice President Jusuf Kalla came into power in October 2014 after a close, contested election, noteworthy for the unprecedented public support mobilized by citizen volunteers, not political elite, to secure victory. Jokowi, as the President is known, campaigned on a pro people, pro environment, pro development platform that projected Indonesia as the world's largest archipelago, poised to become a "global maritime axis". He vowed to improve connectivity between the islands to increase flow of economic activities and boost maritime security. To achieve this, he created a new Cabinet level position – Coordinating Minister for Maritime Affairs.

Four other priority development areas for Jokowi's administration are energy, food security, tourism, and infrastructure. His medium term development plan (RPJMN) 2015-2019 is shaped to reflect this.

One feature of Jokowi's Cabinet that garnered significant media attention is the merging of the Ministries of Forestry and Environment into the new Ministry of Environment and Forestry (MoEF). Shortly afterward Jokowi also announced dissolution of the REDD+ Agency and the National Committee on Climate Change (DNPI), whose tasks will be absorbed by the new ministry (see below, section 3.2.10). Jokowi appointed Siti Nurbaya Bakar, a long-term bureaucrat with educational background in forestry, to lead MoEF and oversee creation of this new mega ministry. Six months into the process, restructuring of MoEF is still ongoing, leaving many programs, particularly those related to REDD+, in temporary paralysis.

Jokowi also created a new Ministry of Agrarian and Spatial Planning (see section 3.2.11), which incorporates the former National Land Agency. The ministry is tasked to deliver Jokowi's campaign promise for Agrarian reform in the country, including reallocation of 9 million ha of land for small farmers. This target was reaffirmed in the RPJMN for 2015-2019.

The RPJMN, which guides Indonesia's development in the next five years, targets an annual economic growth of 8% in 2019, up from an estimated 5.1% in 2014. It aims to lower poverty levels to between 7-8% by 2019, from nearly 11% in September 2014. Below we highlight elements of the Jokowi administration's vision and priority programs related to forestry and agriculture.

3.2.9.2 Jokowi's vision and initiatives on agriculture and forestry

Jokowi's election renewed hope over the future of Indonesia's forests. His educational background in forestry, combined with statements during and after the campaign reaffirming his support for community-based forest management, gave reason for optimism that forests would be viewed as more than economic assets and managed accordingly. In one of his first field visits as President, Jokowi went to Sungai Tohor in Riau province, after an internet campaign led by Change.org collected nearly 28,000 signatures asking Jokowi to witness the source of haze caused by forest fires in Sumatra. There, he issued strong statements reaffirming his view that communities, not conglomerates, should manage Indonesia's forests. This is consistent with targets in his medium-term development plan, aiming for 12.7 million ha of forest to be managed by communities.

Notwithstanding these positive signs, priorities of his administration concerning other facets of the forestry and agricultural sectors are not clear. Unlike his predecessor Susilo Bambang Yudhoyono, Jokowi appears to show relatively little interest in the role of forests in fighting climate change. The medium-term development plan for 2015-2019 lacks a target to reduce deforestation, a major contributor to Indonesia's emissions. The plan also softens the emissions reduction target to "close to 26% in 2019" and makes no mention of the original commitment to reduce emissions by 41% by 2020 if international assistance is forthcoming. The administration sets a target for rehabilitation of 5.5 million ha of degraded areas, particularly in forest management units and critical watershed areas, but it makes no specific targets for protection or rehabilitation of peatlands.

In agriculture, Jokowi's priority programs focus on food security, not sustainability. To achieve this, his administration plans to open 1 million ha of new agriculture lands outside Java and Bali, build 49 dams for irrigation, and repair and upgrade degraded irrigation systems. Jokowi has set a three-year goal for Indonesia's rice crop to be self-sufficient, increasing domestic output from 70.6 million tons in 2014 to 82 million tons in 2019. Other priority agriculture commodities include corn, soybean, and sugar. The government has also committed to agrarian reform, as noted, promising 9 million ha of land for small farmers. On a trip to Papua province in May 2015, Jokowi committed to renewing development of the Merauke Integrated Food and Energy Estate (MIFEE), a mega-development begun under the previous President, which met strong resistance from customary groups and stalled after strident criticism for its anticipated environmental and social impacts. Jokowi committed to making 1.2 million ha of the estate operational within three years, and also committed to extensive road development projects in Papua, which will bring benefits for local development but also accelerate deforestation and possibly peatland development.

Although palm oil is the largest export commodity in Indonesia's agriculture sector, the Ministry of Agriculture under Jokowi has yet to reveal specific targets for the crop. The medium-term development plan also lacks details on plans for palm oil.

3.2.9.3 “One Door” facility for investment licensing

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

As follow up to establishment of PTSP, BKPM is in the process simplifying permit procedures, aiming to cut processing time by two-thirds by April 2015. A senior BKPM official has been quoted as saying the average time to process land permit applications will be cut from the current 260 days down to 90 days. Forest-lease licenses (*pinjam pakai*) often required for mining and infrastructure projects will be processed within 30 days at most, less than one-third of current practice of 110 days, while environmental permits processing time will be slashed from 150 days to 30 days. This latter commitment has raised concern of some parties concerned over the impact of expedited review on the environment.

Simplification and accelerated processing of licensing procedures are key strategies adopted by BKPM for facilitating business and attracting investment. However, it is unclear how the agency plans to maintain rigor and apply best practices in processing permits to ensure legal compliance (e.g. with spatial plans) and safeguard against severe impacts, e.g. by ensuring necessary impact assessments have been completed and approved, and that consent from affected communities has been secured.

3.2.10 New Ministry of Environment and Forestry

3.2.10.1 New structure and changes ahead

By far the most controversial of Jokowi’s insitutional restructuring is his decision to merge the former Ministry of Forestry and Ministry of Environment into one mega-ministry, the new Ministry of Environment and Forestry (MoEF). As noted, two key institutions, namely the REDD+ Management Agency (BP REDD+) and the National Committee on Climate Change (DNPI) were absorbed into the Ministry, with the justification of streamlining government and reducing functional redundancy between agencies (see Section 3.2.10.2 that follows).

The new ministry have nine Directorate Generals (DG), one of which is for climate change mitigation, whose tasks include emissions reduction, adaptation, monitoring, reporting, and verification, and forest fire control – in effect, most of the functions previously assigned to the BP REDD+. The new DG for pollution and environmental damage control will deal with the rehabilitation of peatlands and prevention of their further degradation. The other DGs include (i) environmental and forestry spatial planning, (ii) ecosystem and natural resources conservation, (iii) watershed and protected forests, (iv) sustainable production forest management, (v) waste and toxic materials management, (vi) social forestry and environmental partnerships, and (vii)

environmental and forestry law enforcement. The ministry has yet to complete its restructuring, but new leadership of the DGs were announced in late May 2015.

Stakeholders and observers have responded to the formation of this new mega ministry with caution. If the combined capacity within the former MoF or the MoE can be utilised properly, the MoEF may prove more effective in law enforcement than either was individually. However, some have voiced concerns that the increased size and power will exacerbate bureaucratic challenges, rendering MoEF less efficient and effective in its work. If the ministry focuses more on utilisation of forests as economic (production) asset, this new structure may undermine MoEF functions to monitor and protect the environment. If, however, the new ministry begins to show greater interest in maintaining environmental service and climate change adaptation values of forest, alongside convention wood production values, the merging could have positive net impacts on forests.

3.2.10.2 Absorption of BP REDD+ and DNPI into MoEF

The Indonesian Council on Climate Change (DNPI) and REDD+ Agency (BP REDD+) were two key climate change institutions formed during the administration of former President Susilo Bambang Yudhoyono, who made a groundbreaking pledge to cut Indonesia's GHG emissions by 26% from business-as-usual levels by 2020, or by 41% with international assistance. DNPI was tasked to create the strategy to cut emissions across all sectors, while BP REDD+ dealt specifically with emissions from deforestation and forest degradation, the largest contributor of Indonesia's emissions by far. The latter was also established as part of an agreement with Norway, who in 2010 made a commitment to pay Indonesia up to USD1 billion to cut emissions from deforestation and land use change, under a global climate scheme called REDD+. BP REDD+ was established in 2014, a continuation of three terms of the ad-hoc REDD+ Taskforce, and reported directly to the President with a status equivalent to Ministers. The taskforce-turned-agency has been credited with spearheading, among others, Indonesia's REDD+ Action Plan, the One Map Initiative (see section 3.2.5), monitoring of forest fires and implementation of the moratorium on new licenses, the development of a REDD+ financing mechanism called FREDDI, REDD+ safeguards, and efforts to promote the recognition of indigenous peoples' rights in the context of strengthening forest governance.

Many view the dissolution of BP REDD+, only a year after it was formed, as a set back to progress on REDD+ and weakening efforts to improve forest governance in Indonesia. After internal restructuring of MoEF is completed, responsibilities of the former BP REDD+ will be shared among several Directorate Generals and with other ministries/agencies, no longer under one roof with the mandate to coordinate ministries and government agencies. A transition REDD+ team is still working and the final shape of the restructuring is yet to be seen. This brings a temporary paralysis to various activities related to REDD+ that had been started at the local, provincial, and national levels.

Some scenarios suggest that FREDDI, a mechanism designed to allow transfer of funds to reward regions and local governments for REDD+ activities, may be relocated into the Ministry of Finance. FREDDI 1.0, as the first phase is called, is almost ready to be launched, potentially with UNDP as its trustee, and is expected to run until 2017. No announcement on its future has been forthcoming.

3.2.10.3 Delegation of forestry licensing authority to BKPM

Ministry of Environment and Forestry Regulation No. P.97/Menhut-II/2014 on the delegation of forestry licensing authority to the Indonesia Investment Coordinating Board (BKPM) expanded on a similar regulation signed in 2010. The recent regulation transfers to BKPM the rights to award 35 types of licenses, including those for forest product utilisation in natural forests, industrial forests, and ecosystem restoration, forest land use permits, and the release of forest estate lands. This arrangement applies for both domestic and international investments.

The regulation stipulates further that the MoEF will appoint one of its officials to be seconded and placed within BKPM, to act as a representative of the ministry on the investment board. This official will coordinate with the relevant directorate general in MoEF to review and make approval recommendations. This suggests that while formally BKPM will hold authority to issue licenses, significant power to approve or reject them may still be retained by the MoEF, with placement within BKPM to ease coordination. MoEF involvement could ease concerns that securing investment, a key indicator of BKPM performance, would be BKPM's highest priority in reviewing license applications, but this depends on how effectively MoEF functions as a safeguard.

3.2.10.4 KPH and decentralised forest management

Forest Management Units (FMU, or KPH in Indonesian) is mandated by the 1999 Forestry Law for implementing a decentralized landscape approach to improving forest governance and achieving sustainable forest management at scale. The FMU concept advocates for increased local control, reflecting the value of regional participative planning to balance production and protection, and the critical role of field presence for ensuring proper monitoring and enforcement. At its foundation the FMU approach views forested land as a cohesive natural landscape that can be sub-divided into coherent natural units with boundaries based on functional ecological (as well as human) processes rather than administrative ones.

According to Indonesia's medium-term development plans, nearly 630 FMUs will be established by 2019, managing over 120 million ha of forest.²¹ This is a massive undertaking. In the FMU model district and provincial level Forestry service officials assume direct management authority over the FMU, shifting the role of forestry officials from administrative tasks toward active day-to-day management of the landscape. FMU officials are responsible for forest use planning and preparation of forest management plans; monitoring and control of forest utilization and forest use permit holders; forest

If limitations can be overcome, the FMU approach holds significant potential to transform Indonesia's approach to management of the Forest Zone toward a more inclusive, participative, multi stakeholder approach tailored to local conditions and aspirations for development.

21) At present, FMUs are classified by their dominant forest function, ie production, protection or conservation, FMUs, even though a given FMU will most likely be a composite of areas contributing more than one function. The ~630 envisaged for Indonesia are divided into 347 for production, 182 for protection, and 100 for conservation.

utilization in certain areas not covered by third party interests; forest rehabilitation and reclamation; and forest protection and nature conservation. Some 120 units had been established as of 2014, and according to the MoEF, half of these are functioning well, with main challenges linked to under capacity of local forestry officials and integrating sustainability principles into landscape management practices. There may be shifts in FMU implementation moving forward, since Law 23 on Regional Governments withdraws authority on forestry issues from the district to the province (see section 3.2.6 above). It will take time to understand implications of this change more fully.

If limitations can be overcome, the FMU approach holds significant potential to transform Indonesia's approach to management of the Forest Zone toward a more inclusive, participative, multi stakeholder approach tailored to local conditions and aspirations for development.

3.2.10.5 Targets for village forests and customary forests

Minister Siti Nurbaya has stated that MoEF will focus on three priority issues in 2015, one of which is the resolution of conflicts surrounding customary community claims to forest areas. She has reaffirmed this commitment on several occasions, declaring her strong support for the establishment of customary forests and participatory mapping processes led by AMAN and JKPP to achieve this.

The Jokowi administration's aim to promote social forestry as part of a broader land reform agenda is also reflected in the national medium-term development plan for 2015-2019. In the plan, MoEF is assigned responsibility to increase community access to forests through a mix of social forestry governance arrangements, including community forests (*hutan kemasyarakatan*), village forests (*hutan desa*), and customary forests (*hutan adat*). The ministry aims for 12.7 million ha of forests to be formally managed by communities by 2019, with at least 2.54 million ha allocated to communities in 2015. The MoEF is also assigned responsibility to increase capacity of local communities to manage forests sustainably, and to mediate and resolve tenurial conflicts within forest areas.

Jokowi's target for 12.7 million ha to be placed under community management by 2019 is lower than he promised during the campaign period. Nevertheless, many observers maintain a positive orientation, noting that with clear targets and a new Directorate General in MoEF formed specifically to promote social forestry, there is a chance that real programs with real budget allocations will materialize to ensure devolution of power onto communities will take place.

3.2.11 New Ministry of Agrarian and Spatial Planning

The new Ministry of Agrarian and Spatial Planning, which incorporates the formerly independent National Land Agency (BPN), is a key new institution for Jokowi to operationalize his commitments for Agrarian reform and to resolve overlapping land claims, especially those with customary communities. Minister Ferry Mursyidan Baldan has made frequent media statements to reaffirm these commitments, with reference to the One Map Policy (see section 3.2.5) as a key support tool for achieving this. He's also been quoted as stating the ministry is preparing a regulation to create procedures for issuing formal land certificates to adat communities with demonstrable communal land

rights. It's too early to assess how effectively the ministry will implement these policy commitments.

The Ministry is also tasked with allocating a further 9 million ha to small farmers as part of Jokowi's Agrarian reform. A prerequisite to attain this is the identification of at least 4.1 million ha of forest area (*Kawasan Hutan*) to reclassify as non forest land, according to the medium-term development plan. The Ministry will also play a role in land use zonation for peatland hydrological units under the Peatland regulation (*PP No. 71/2014*) described above.

The medium-term development plan for 2015-2019 prioritizes development of a centralized land registration system, with government charged to verify validity of information in a registered certificate. Among other goals, the system is intended to improve the investment climate by creating government obligations to compensate parties for damages incurred when licenses issued to third parties are found to overlap with pre-existing licenses or other claims (including customary claims). To develop this system, the government aims to expand the spatial extent of the national base map (which feeds into One Map) to cover 70% of Indonesia's non-forest land area (ie outside *Kawasan Hutan*) and for 80% of this area to be certified by 2019. It also targets to expedite the gazettement of 189,000 km of forest boundaries of the *Kawasan Hutan*, and accelerate socialization and establishment of customary land area boundaries, though a specific target for the latter is lacking.

3.2.12 Developments in oversight, enforcement, and accountability

The Indonesian palm oil sector has long been plagued by allegations of widespread illegality. Typical violations include: clearing outside concession boundaries; not obtaining a forest release permit or wood utilization permit prior to clearing; clearing in regions not zoned for agriculture, including in protected areas; failure to obtain approved environmental impact assessments prior to development; operating in deep peat; conducting clearance by burning; under-payment of taxes; failing to settle local land rights prior to development; and failing to develop the required 20% of plantation area for local communities. Progress is being made to disclose, combat and reduce illegal practices – e.g. via the Indonesian Sustainable Palm Oil (ISPO) scheme – but illegal practices do persist and continue encumbering progress toward sustainability for the sector as a whole. Past and present rates of illegality demonstrate a failure of land use governance, often linked to corruption and collusion between local authorities and business elite. Recent developments in accountability and law enforcement over land use decisions give some reason for optimism that improvements will continue, especially in relation to land use licensing.

The most noteworthy past attempt to improve legal compliance for industrial licensing was undertaken by the Corruption Eradication Commission (KPK) through their 'coordination and supervision of mining licenses' (*korsup minerba*) initiative. Based on the 2013 inter-ministerial MoU to address forestry issues, *korsup minerba* involved a systematic attempt to review the compliance of all mining licenses, involving provincial and district governments and utilizing the 'clean and clear' standard (CnC), which checked the possession of licenses including environmental license, payment of government revenues, and overlaps with protected forest areas or other mining licenses. This led to 810 mining permits being revoked, and an estimated IDR9 trillion

(USD700 million) increase in government revenues. The threat of investigation by the KPK served as a powerful motivation for regional leaders to clean up their permits.

In 2015 the KPK has extended this work. Under the rubric of the National Movement to Rescue Indonesia's Natural Resources, the KPK has extended the mining permit review to 19 more provinces, and initiate a forestry and plantations review covering 24 provinces. Given that this process will involve a review of all oil palm permits in those provinces, it has the potential to make a significant impact on current and future compliance. It can also be expected to generate more resistance towards KPK from political elites.

In addition, several other relevant initiatives are underway and may have a positive impact on legality of palm oil licensing and development.

- a. The newly merged Ministry of Environment and Forestry (MoEF) has a Directorate General on Environment and Forestry Law Enforcement. This could help to reduce illegal palm oil development within the Forest Estate, but it's too early to speculate on its future impact.
- b. The MoEF announced on 12 March 2015 the establishment of the Environment and Forestry Case Handling Team (TP2KLHK). This team comprises the law enforcement section and inspectorate within the Ministry, plus a selection of highly regarded civil society figures with demonstrated commitment to issues of Agrarian reform and forest conflict management. The team is to handle cases of land conflicts and environmental destruction that victimize citizens or incur state losses. This initiative grew out of a National Commission on Human Rights inquiry into land conflicts related to customary communities in 2014. Cases can be submitted by SMS or email.
- c. President Jokowi made a trip to Riau focused on the issue of haze from burning of peatlands. The MoEF is now focusing on reducing fires by 50% by the end of 2015. Jokowi has stated that permits of companies unable to control fires on their concessions will be revoked.
- d. The Indonesian Sustainable Palm Oil certificate is mandatory for oil palm concessions and has been in place for several years. ISPO standards generally parallel already-existing Indonesian regulations on concessions, rather than impose higher standards for sustainability. As implementation of the standard improves over time, it should help to improve legal compliance.
- e. Indonesia's moratorium on permits in primary forests and peatlands has been extended again for a further two years in May 2015.

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- f. An unprecedented ‘citizen law suit’ against the Samarinda municipality government alleging mismanagement of mining permits was victorious in the lower court.²² This provides an interesting model for demanding accountability for government officials in land use licensing, although the case is being appealed and final outcome is not yet clear.

3.2.13 Legal reform roadmap

On 25 February 2015 the Ministry of Law and Human Rights launched a *Roadmap for Legal Reform on Natural Resources and Environment*, signed by relevant Ministers. The Roadmap evaluates existing regulations with special attention on the process of establishing the Forest Zone (*Kawasan Hutan*) under State control, issuing agricultural business licenses (HGU), and the rights and responsibilities of communities, with the aim of developing recommendations for legal reform to improve the effectiveness and equity of natural resource management. The analysis is rooted in principles derived from the People’s Consultative Assembly Decree (TAP MPR) 9/2001 on Agrarian Reform and Natural Resource Management, with emphasis on principles of the nation (coordination between sectors, levels of government), sustainability, justice, democracy, and legal certainty. The analysis highlight key problems in forestry, land use permits and citizen rights, producing a list of key problems and recommendations for legal reform to address them. Because the roadmap originates from within Gol itself, it is a potentially important statement of priorities and intent for government lead reform.

Forestry problems highlighted in the roadmap include: division of responsibilities between central and regional governments; limitations of internal capacity; funding for establishment of Forest Zone; inventory of communities in the Forest Zone; public access to information and participation; sanctions for government authorities that do not carry out their duties on time; grievance handling procedures; and compensation for relocation.

A selection of problems with business licenses (HGU) identified include: procedures governing forest conversion for HGU areas; public access to information and participation including in spatial planning, strategic environmental assessments (KLHS), and environmental protection and management plans (RPPLH); utilization of land for public good; sanctions for improper issuing of HGU and related permits; social responsibilities of businesses; need for a permit database; monitoring of HGU; operational rules for compensation for environmental impacts; grievance handling procedures; and compensation for relocation.

A selection of problems related to the rights and responsibilities of communities include: the need for implementing regulations on strategic environmental assessments (KLHS) and environmental protection and management plans (RPPLH); involvement of customary communities in boundary mapping; government budget allocations for empowerment of customary communities; recognition of communal land ownership; relocation compensation related to establishment of Forest Zone and issuing of HGU; responsibility for maps of customary areas; public access to information on HGU and Forest Zone boundary establishment process; public participation in forestry; corporate social responsibility with regard to customary

²² See <http://asiafoundation.org/in-asia/2014/10/15/indonesian-lawsuit-pushes-local-government-to-regulate-massive-coal-mining-industry/>

communities; monitoring and oversight, including sanctions for officials who do not carry out responsibilities with regards to law enforcement on licenses and environmental protection; and grievance handling procedures.

The full list of recommendations for reform outlined in the Roadmap is provided in Appendix 1.

The legal reform roadmap is clearly a positive development. Yet, the level of commitment of the current Minister of Law and Human Rights, Yasonna H. Laoly, to pursuing the reform agenda is not clear. Even with his strong support, a broad constituency of high level leadership will be needed to move the agenda forward, since it involves actions by the national parliament (for new laws or revisions to existing ones), the President's office (for Government Regulations), and by a number of Ministries which are not under direct coordination of the Ministry of Law and Human Rights (e.g. to produce or revise Ministerial Regulations or Decrees). For this reason, implementation would seem likely to require proactive support by figures such as Vice President Jusuf Kalla and Luhut Panjaitan, who became Coordinating Minister for Politics, Law, and Security in August 2015.

4

Emerging Opportunities to Reduce Deforestation from Palm Oil



Recent changes in the legal framework and government institutions described in Section 3 create opportunities for government, business, and civil society actors to reduce palm oil's deforestation and peat conversion footprint. Table 4 offers a selection of suggested activities that could be pursued or supported by NGOs designing future programs aimed at reducing palm oil linked deforestation. It should be emphasized that the majority of recent legal and regulatory changes were made to support a variety of policies not directly related to palm oil or deforestation per se, but rather for broader economic development, land reform, re-distribution of government powers, and revisions in land and forest governance (see Text Box 2 for a list of key implications of changes).

Main implications of recent governance changes

Box 2

- Involve a wider range of actors in forest management, especially at the community and ground levels
- Recognize customary community land rights
- Transfer large areas of land from State control to customary communities or individuals.
- Adjust powers among levels of government, partially re-centralizing authority while also empowering villages
- Rationalize land allocation by improving transparency, tenure and Forest Zone boundaries
- Transition to FMUs under regional control as the primary mechanism for managing State forest
- Make palm oil and other licensing more transparent
- Create common and publicly accessible tools for land management in the forms of One Map and the National Land Registry

As discussed in section 3.1.2, the framework for decision making in the palm oil sector is legally and institutionally complex, with no overarching policy on sector development. Perhaps more importantly, while Indonesia has committed to reduce emissions from deforestation, there is no legally binding government mandate to reduce deforestation in palm oil or other sectors. This absence of strong policy guidance, coupled with governance complexity, makes it difficult to predict how individual changes in the governance framework will affect palm oil deforestation outcomes on the ground. It is unclear if these recent changes signal the beginning of a paradigm shift in land and forest governance or simply an ad hoc effort to align laws with emerging trends and growing demands for land reform.

The governance framework changes described in this report should be viewed in the broader context of forest and land use in Indonesia. There is an ever-declining amount of forest and peatland available for either development or conservation purposes, as these areas are converted to other uses, especially in Sumatra and Kalimantan. Much of the land suitable for agriculture, forestry, and mining has already been licensed, often multiple times on the same piece of land. Typical rural landscapes of western Indonesia are a mosaic of forest and peat of varying types and quality, interspersed with logging concessions, palm oil and fiber plantations, mining operations, smallholder oil palm, and small scale farming and agroforestry. These land cover mosaics are overlaid by numerous legal maps depicting Forest Zone boundaries, land use classifications, commercial use licenses, and actual and potential land claims by local communities, which may or may not correlate with each other or with actual land uses on the ground. The legal and regulatory developments described in Section 3 have the potential to improve forest and palm oil governance, but the aggregate effect of so many uncoordinated changes is very difficult to predict, given governance complexities, and wide variation in implementation time frames, priorities and political support at different levels.

As demonstrated repeatedly in Indonesia's forest sector over recent decades, the way in which laws and initiatives are implemented is equally if not more important than rigor of the provisions themselves. The level of effort put into implementation depends on the value proposition for key government and private sector actors, especially how they perceive the rewards and risks of aggressive implementation (see Text Box 1 on page 32 for a list of winners and losers from recent changes). A litmus test for success could be whether land and forests are allocated more rationally at the province and district levels, satisfying existing and new demands for production while at the same time strengthening protection of forest and peat. Achieving this goal will require making acceptable trade-offs among policy objectives. A complicating factor adding to the unpredictability of outcomes is that one of the core institutional actors, MoEF, is still in the midst of a major reorganization. To draw an analogy, this is not unlike a patient being treated for numerous illnesses in a newly reorganized hospital by specialists from different departments who have never worked together before and don't yet have an overall plan for the patient's recovery. As with Indonesia's forests, it is hard to predict what the overall outcome of the treatment will be.

Below, in Section 4.1 we address how specific actors, institutions, and initiatives could provide a basis for deforestation reduction in the palm oil sector. Sections 4.2 and 4.3 focus on two decision points that most influence palm oil related deforestation – namely, where new plantations are developed and how much new land is converted to plantations – and how these parameters would seem likely to be influenced by specific aspects of Indonesia's changing policy, legal, and institutional framework. Table 4 summarizes some of this information, and highlights roles that NGOs could play in pursuit of better outcomes for peat and forests.

Table 4 Overview of recent initiatives and policies, their potential impact in oil palm and deforestation, and possible NGO support roles for each.

Initiative	Implementation timeframe	Effect on where OP is planted	Effect on how much OP is planted	Impact on forests, peatlands	Potential NGO role
Customary community land rights	Underway but will require years to implement fully	Potentially large when fully implemented – depends on community capacity and aspirations for forest vs farm based local economies.	Depends on community forest and agricultural development objectives	Potentially positive.	Advocate for accelerated implementation, support community land claims and build forest management capacity. Facilitate interactions between companies and communities where needed.
Village Empowerment	Rapid transfer of power but slow capacity growth.	Difficult to predict, depends on changing role in spatial and development planning.	Likely to be limited	Difficult to predict	Explore models of how new regulations can be used to protect village forests or to negotiate more equitable and sustainable forest management. Support capacity development and especially transparency and accountability tools
Forest Management Units	Will take years to reach functional management capacity	Probably none?	Probably none?	Potentially very positive, but impact slow	Provide technical support in stakeholder participation and planning, building sustainability into business model planning, monitor performance of FMUs.
Social Forestry	Could move relatively quickly with funding and presidential support.	Could have marginal impact depending on where community forests are designated.	Probably none?	Potentially positive, depending on support and oversight by government	Support application processes by village, forest management and governance support.
KPK Review of Oil Palm Licenses	Rapid once begun	Potentially large in terms of undeveloped licenses and future licensing.	Probably none?	Potentially very positive over the long term.	Make public results of independent monitoring on licenses and infractions
One Stop Integrated Services of BKPM	Immediate	No direct effect.	Probably none?	Depends on how implemented – at best neutral.	Monitor licensing evaluation process.

Initiative	Implementation timeframe	Effect on where OP is planted	Effect on how much OP is planted	Impact on forests, peatlands	Potential NGO role
One Map	Relatively quickly if developed and used as intended.	Potentially large as licenses and land allocation are harmonized	Could be significant by reducing illegal licensing and conflict.	Potentially significant	Monitor use of One Map by government agencies. Pilot One Map application at sub-national scales.
Legal Reform Roadmap	Possibly some easy reforms but generally a long, complex process depending on cooperation of many actors.	If fully implemented could eliminate legal ambiguity over OP licensing and regulation.	Probably very little	Could be very positive	Provide input into reform process, continue advocacy for key changes needed.
ISPO	Years to implement fully	Avoidance of primary forest, peat, and sensitive areas.	Probably very little	Could have some site specific impact in the future.	Monitor implementation, advocate for improvements to standards and greater transparency in decision making. Eliminate clause that made ISPO voluntary for CPO producers selling into biofuel supply chains
Biofuels Mandate	Immediate	No direct impact, but could be indirect if demand is driven up significantly.	Very significant impact if mandate puts upward pressure on prices.	Likely to be negative unless strong safeguards are put in place	Monitor supply chains supplying the biofuels market; lobby for progressively stronger safeguards.
Palm Oil Support Fund	Rapid, as this is a presidential priority	No direct impact	Producer subsidies could increase planting but yield improvement support could reduce pressure for expansion.	Possibly negative, at best neutral	Support yield improvement among small holders; advocate for progressively stronger safeguards for biofuel producers to access subsidy; advocate for majority use of Fund to support smallholders and yield enhancement.
Land Reform	Likely to be long process	Forested land given to small holders and indigenous communities could be converted to OP.	Could increase the area planted to OP under community management.	Depends on how implemented	Monitor land identification and distribution process, ensure voice of less powerful stakeholders is heard.

4.1

Effects of actors, institutions, and regulatory changes on deforestation in palm oil

Recent governance changes described in this section are separated into three categories, distinguishing those with (i) direct effects on oil palm driven deforestation; (ii) forest and peatland use; and (iii) alterations to the context in which land allocation and land use decisions are made. In addition, it's useful to keep in mind important enabling conditions for reducing palm oil driven deforestation and how recent changes might affect these. Such enabling conditions include:

- A rational, transparent, and predictable process of land allocation including provisions for conserving higher value forests and peatlands²³
- The provisions of relevant laws and regulations are consistent with respect to forest and peat;
- Ability to monitor licensing processes for legal compliance and corrupt practices;
- Ability to detect and prevent illegal land grabs through monitoring and enforcement;
- Key government actors have the capacity, resources and will to act;
- Key government and private sector work in coordination and collaborate with other stakeholders.

4.1.1 President

As leader of a very large and diverse developing country, with a natural resource and agriculture-based economy, President Jokowi has articulated a range of policies that will affect forests and peatlands in various ways, largely as a by-product of trying to achieve other development and land reform goals. The nature of the President's commitment to deforestation reduction is unclear judging by his policies, public statements, and institutional restructuring. Deforestation reduction per se does not appear among his top priorities. He has stated his intent to conserve peatlands and forests, but has shown less support than his predecessor for reducing forest-related GHG emissions, reflected in his dissolution of BP REDD+, provisions of the medium term development plan, and stated support for large scale, mechanized agriculture in pursuit of his food security initiatives (including in heavily forested Papua). Jokowi has not set a deforestation reduction target nor articulated a specific target for protection or rehabilitation of peatlands, but has set a target to rehabilitate 5.5 million ha of degraded forest. The President's administration plans to designate 12.7 million ha of community managed forest by 2019 and the Ministry of Agrarian and Spatial Planning is tasked with allocating 9 million ha for smallholder farmers, almost half of which is expected to come from the Forest Zone (which may or may not be forested).

In support of his food security goal, the President has vowed to make one million ha of new agricultural lands available for rice and other food crop production, and the controversial MIFFE project in Papua is potentially a centerpiece of this plan, despite

23) Rational in the sense that (a) land is allocated based on its physical and ecological attributes as well as presence of communities and their land use norms, and (b) allocations are consistent in all levels of spatial plans and with the Forest Zone map.

its deforestation and peatland conversion footprint. Meeting this target would entail deforestation, possibly at a very large scale, unless it were met by re-purposing already deforested land for this function. The Ministry of Agriculture has not issued targets for palm oil expansion, although reaching biofuels targets in coming years would seem almost certain to require new plantations, even if yields of existing ones are improved. On a more optimistic front, the President has vowed to revoke permits of companies operating illegally or unable to control fires in their concessions, and in response to Presidential demands MoEF is leading an ambitious campaign to reduce the incidence of fires, with a special focus on fire afflicted regions such as Riau. It is difficult to predict how these various policies will ultimately affect the deforestation and peat conversion footprint of palm oil or deforestation in general. This will depend on how these programs are implemented, which depends on how implementing regulations are written, the attitudes of implementing officials, and especially the extent of monitoring by government and civil society.

4.1.2 Governors

Under the Regional Governance Law, provincial governors regain significant authority over natural resources, sharing responsibilities for forestry, marine affairs, energy and mineral resources with the central government, after these authorities were withdrawn from district leaders. The law provides for much stronger oversight of district governments by governors, giving them authority to review by-laws related to spatial and development planning, budgeting, and fiscal management; retract responsibilities from underperforming district governments; cancel district by-laws inconsistent with guidance from central government; and enact sanctions on district heads. These changes offer new possibilities for improving accountability in palm oil licensing and regulation at district levels, rectifying a situation in which district heads had virtually no supervision in exercising their powers. It's impossible to predict how effectively this oversight power will be used, and what the net impact will be on district level governance of palm oil. The fact that many governors share with district heads a strong motivation to increase palm oil investment could limit the practical impact of this new provision.

4.1.3 District heads

Despite the loss of some powers over natural resource management, district heads retain their central role in palm oil governance under the new Plantations Law, including licensing, monitoring, enforcement, and oversight of company-community agreements and land negotiations. These powers, together with authority over spatial and development planning, mean district heads remain the most important decision maker determining where and how much oil palm is planted. The Regional Governance Law reaffirms regulatory trends assigning authority to district governments to recognize customary communities and their rights, as well as to recognize and establish customary areas and villages. The law requires greater transparency in public services provision, government budgets, and by-laws, with a major emphasis on public participation. Fiscal incentives for district performance are also mentioned in the Law, but not elaborated. Under the Village Law, districts will be required to share

some budget resources and powers with villages, but it's not clear how the new balance of power will be struck. The regional governance provisions, together with plans for launching a review and monitoring program of palm oil licenses by the KPK, and more active civil society monitoring, should result in greater transparency in palm oil licensing and regulation, with less deforestation resulting.

4.1.4 Villages

The village law recognizes villages as political entities with very significant new governance rights and responsibilities, including those related to development and spatial planning. Utilizing these new powers will be constrained by severe lack of capacity in governance, planning, and implementation, a situation that will be worse in some places due to lack of transparency and local power dynamics. The law presents opportunities to increase local and customary control over land and forests, and the village spatial planning process will offer greater scope for local input into land use decision-making, as well as defining a government sanctioned process for village based mapping and development planning that could strengthen the position of communities in their negotiations with companies over land release for oil palm. These changes reinforce a general trend placing communities in a stronger position to influence natural resource decisions, and to enjoy a greater share of the benefits derived from this. It's impossible at this stage, however, to understand fully what the net impact of these changes will be for deforestation caused by oil palm or other purposes.

4.1.5 Customary communities

Customary communities will benefit from recent legal provisions and administrative actions designed to facilitate implementation of the 2012 Constitutional Court Decision No. 35, which declared that 'customary forest' shall no longer be considered State forest with management authority vested in government, but rather shall be managed by customary communities who can demonstrate customary ownership rights. Some districts are developing by-laws to recognize customary land rights but progress is slow. This may reflect that district leaders and legislators are unsure of the process, want to avoid threatening business interests, or perceive this as a threat to their own authority over land resources, a key political and financial asset. Or put differently, they do not yet perceive a value proposition that rewards action or punishes inaction in recognizing customary land rights. The process of documenting community rights and mapping community boundaries can take significant time and resources, especially if negotiations are required with surrounding communities or existing license holders overlapping community lands. NGOs have facilitated community land mapping in Indonesia for over two decades, but distribution of mapping across the country is highly uneven. Undertaking this process in a large district with many indigenous communities is likely to be very time and resource intensive. Further compounding the challenge is the real possibility that locally influential third parties will aim to manipulate the process for their own benefit, or simply prevent communities from asserting their land rights. Moving forward, structured, multi-stakeholder outside support will be needed to manage this risk, and effective, low tech, transparent mapping tools will be needed to avoid mapping becoming an impediment to recognition of customary rights at scale.

4.1.6 Ministry of Environment and Forestry

The MoEF will remain a key actor affecting the magnitude and pace of palm oil deforestation via its central role in defining boundaries of the Forest Zone and this making available for agriculture deforested land within it. In addition, MoEF also retains control over: (i) the release of Forest for Conversion Purposes (HPK) from the Forest Zone, making it available for conversion; (ii) direct oversight over implementation of the Moratorium; and (iii) direct oversight of environmental assessment and management. MoEF also has a Directorate General (DG) for Climate Change Mitigation, whose core tasks include many of the emissions monitoring and reduction functions previously assigned to the BP REDD+. The functions of this DG will play a critical role in determining the net impacts on REDD+ of President Jokowi's decision to dissolve the agency.

As noted earlier, MoEF also plays a critical role convening and overseeing implementation of processes for the mapping, zonation, management and protection of peatlands under the new peatland regulation. The DG for Pollution and Environmental Damage Control has responsibility for protection and rehabilitation of peatlands, and would seem a likely home for implementation of MoEF's obligations under the peatlands regulation. Other DGs potentially affecting palm oil related deforestation include: (i) the DG on Social Forestry and Environmental Partnerships, which could reduce deforestation by local forest stewardship; and (ii) the DG on Environmental and Forestry Law Enforcement, which could eliminate illegal palm oil development in the Forest Zone, including by smallholders. Given the scope and complexity of MoEF's tasks, ongoing dynamics of reorganization, and the often obstructionist stance of MoF Ministers under previous administrations, it's very difficult to predict whether and how these broad powers will be directed at reducing palm oil deforestation.

4.1.7 Forest Management Units

Forest Management Units (FMU) are intended to provide a vehicle for managing forests sustainably at a landscape scale under local leadership. Approximately 630 FMUs are planned for establishment across Indonesia by 2019, managing over 120 million ha of forest²⁴. Among the 120 FMUs already established, MoEF identifies capacity limitations of local forestry officials as a key challenge for the program, especially to integrate sustainability principles into landscape (forest) management practices. If these limitations can be overcome, the FMU approach holds potential to move management of State forests towards a more inclusive, participative, multi stakeholder approach tailored to local conditions and development aspirations. FMUs could provide a multi-use landscape management framework within which degraded land suitable for palm oil development could be identified and possibly re zoned for palm oil while forests within (and possibly outside but adjacent to it) would be sustainably managed as forests. Theoretically, given their local knowledge FMU managers are better positioned to reshape Forest Zone boundaries and allocate land to appropriate uses than officials in Jakarta, especially where such revisions are aligned with local priorities for development. The KPH vehicle could be a powerful tool for communicating between regional and central authorities on Forest Zone boundary revision.

²⁴) It seems unlikely that this target for FMU establishment can be reached given the planned reduction in the forest estate and limitations on management resources.

4.1.8 Social forestry

Increasing community control over forests as part of the administration's land reform agenda potentially provides an incentive for these communities to manage and conserve their forests. This, in turn, could reduce palm oil driven deforestation. Experience in countries with a longer history implementing community forestry programs indicates that a lengthy period of community capacity and institution building is required to achieve sustainable forest management, and even then, periodic government supervision is required. Such needs should therefore be anticipated for Indonesia as well, requiring plans for how to build capacity. A new MoEF DG is tasked with increasing community forest management capacity, but is likely to require time to get itself up to speed technically and administratively to carry out this job. Assuming communities are awarded rights to manage relatively intact, good quality forest, and assuming they succeed in managing these forests assets sustainably as forests, they will have a strong incentive to protect against forest loss, degradation, or fragmentation by outsiders, including by palm oil companies and small holders. Looking farther ahead, communities will need a compelling value proposition to retain forest as forest, possibly including some type of financial reward for sustainable forest management and/or penalties for failing to fulfill forest protection commitments.

4.1.9 Ministry of Agrarian and Spatial Planning

The Ministry is at the forefront of important presidential initiatives including: (i) issuing land certificates to adat communities; (ii) allocating 9 million ha to small farmers; (iii) identifying at least 4.1 million ha of the Forest Zone to reclassify as non-forest land; (iv) creating a centralized land registration system; (v) expanding the national base map; (vi) expediting gazettal of Forest Zone boundaries; and (vii) accelerating delineation of customary land boundaries. These tasks are critical for introducing greater transparency and predictability into land allocation and licensing, critical requirements for avoiding poor and/or illegal palm oil licensing decisions that result in deforestation. In addition, the Ministry also plays a support role to MoEF for implementation of peatland mapping and use planning, under the new peatlands regulation.

4.1.10 One Map Initiative

Five ministries that oversee major industrial land uses are collaborating with MASP to reconcile conflicting spatial plans and land classification and licensing maps to create a shared, public-facing reference database to be used in licensing and environmental monitoring. As with MASP, the One Map Initiative provides a powerful tool to increase transparency, predictability, and participation in land allocation and licensing decisions.

4.1.11 Corruption Eradication Commission (KPK)

The KPK's highly visible efforts to improve legal compliance in industrial land licensing to ensure compliance with environmental requirements and detect overlaps with protected areas and other industrial land use licenses is an important tool to achieve transparency of existing licenses. The threat of investigation by the KPK is a powerful

motivation for regional leaders to clean up their permitting process. If the KPK can weather ongoing challenges to its authority, regroup and strengthen in the coming months, future KPK action directed at the palm oil sector could have significant positive impacts in reducing corruption and improving governance, which could reduce palm oil driven deforestation.

4.1.12 One Stop Integrated Services

The One Stop Integrated Service (PTSP) to be operated by the Investment Coordinating Board (BKPM) is expected to sharply reduce the time required to obtain forest-lease licenses and environmental permits. MoEF has transferred to BKPM the rights to award 35 types of licenses, including those for forest product utilisation in natural forests and industrial forests, ecosystem restoration licenses, forest land use permits, and the “borrow and use” permits on forest estate land, among others. Given Jokowi’s intention for the PTSP to expedite licensing, it seems highly unlikely that BKPM could maintain a rigorous review process given legal complexity and the wide range of site-specific conditions that would have to be taken into account. It seems likely that MoEF personnel would be seconded to BKPM for operationalizing license review, which could help to address capacity issues. Even so, given the pro investment motivation behind this initiative, it would seem BKPM’s performance indicators (and thus value proposition) is strongly aligned with issuing as many permits as possible, with application processing completed as fast as possible, making it difficult to imagine positive outcomes for forest arising from this investment initiative.

4.1.13 Legal reform roadmap

The Ministry of Law and Human Rights’ Roadmap for Legal Reform on Natural Resources and Environment makes recommendations for legal reform to improve the effectiveness and equity of natural resource management, focused on: (i) the legal framework related to the process of establishing the Forest Zone (Kawasan Hutan); (ii) issuing agricultural business licenses (HGU); and (iii) the rights and responsibilities of communities. Harmonizing elements of the legal framework affecting natural resources and environment is a priority of the Roadmap, given that inconsistencies across related provisions of different laws results creates uncertainty about how to apply them on the ground. A broad constituency of high level leadership will be needed to move the agenda forward, however, since it requires action by the national parliament, the President’s office, and by a number of Ministries not under the direct coordination of the Ministry of Law and Human Rights. If these legal reforms can be successfully implemented, the effect on forest management could potentially be very positive but the process is likely to take a number of years for drafting, negotiating and enacting revised laws.

4.1.14 ISPO

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

As implementation of the ISPO standard improves over time, it should help to improve legal compliance and transparency, but its forest protection implications seem likely to be limited, because it does not address HCV and HCS areas, does not support company-initiated forest conservation efforts, and provides no protection for secondary forests (beyond the AMDAL) that could harbor significant ecological and carbon values. The exemption from ISPO for smallholders and especially CPO producers selling into biofuel supply chains is a troubling development, as it would seem to promote development of a two-tiered market for palm oil, one that is legally compliant (ISPO certified) and one that is not. The wisdom of these exemptions would seem to merit further debate.

4.1.15 Biofuels mandate

Ambitious government targets for biodiesel use over coming years and decades will increase domestic demand for CPO significantly, and seems likely to drive future plantation expansion. If such expansion is carried out by producers willing to deforest, this could potentially offset the “avoided deforestation” impact of cleaning up palm oil supply chains controlled by leading traders and processors. The CPO Fund, paid for by the planned export tax on CPO and derivatives, will provide subsidies to producers, credit to smallholders for replanting, extension services and R&D. Such subsidies could further incentivize expansion beyond what the mandate could have achieved independently. Credits to plant higher yielding varieties and agronomic research could reduce expansion pressures to some extent, but this could also produce the opposite outcome. There is indication at Ministerial levels of government that biofuel production should not lead to accelerated deforestation, but what (if any) actions might be taken by government to advance this objective is not clear. On balance, it appears inevitable the biofuels mandate and planned subsidies will increase deforestation footprint of the sector, but the likely magnitude of this impact is open to debate.



4.2

Where oil palm is planted

The cascade of decisions that determine where oil palm is planted has the greatest impact on deforestation outcomes and is affected by a wide range of governance and business factors. Land made available by government for commercial plantations is a result of sequential decisions made during spatial planning, licensing and environmental impact assessment (see Text Box 3). Larger companies are increasingly self-regulating in their selection of candidate licenses to meet international market demands for no or low deforestation (see section 4.4), and are exercising greater care

Cascading decisions affect where oil palm is planted

Box 3

The determination of where oil palm is planted in Indonesia reflects a three-step, tiered process of decision making about spatial planning, licensing and plantation site development

Spatial planning decisions

- This formal government lead process delineates land where agriculture is allowed and where forest must be maintained (the Forest Zone, or Kawasan Hutan)
- Revisions to the Forest Zone boundary require central government approval

Licensing decisions

- Within land zoned for agriculture, district heads (Bupati) have authority to issue licenses for oil palm development. Oil palm within the Kawasan Hutan is illegal.
- An approved environmental impact assessment must be completed before development can begin.

Plantation development decisions

- Within areas licensed for oil palm, companies then decide where they aim to plant versus retain for communities or conservation, sometimes informed by HCV or HCS concerns
- Communities also participate in these decisions

in plantation planning/development to manage environmental impacts. Plantation companies selling into supply chains exclusively serving Indonesia's domestic market or non-discriminating international markets (e.g. China, India, Pakistan) have no incentive to avoid forest and peat unless forced to do so by government, or increasingly their main customers (e.g. Wilmar, GAR, Cargill). There is currently no regulatory process for permitting smallholder plantations less than 25ha in size, yet these actors, typically with backing of local political and business elite, are emerging as major drivers of deforestation in some palm oil growing regions. Recent changes in the legal framework have the potential to affect some of these factors influencing where oil palm is planted.

4.2.1 Rationalizing the Forest Zone boundaries

Rationalizing the Forest Zone boundary to remove deforested, degraded areas – making them available for agriculture – is a necessary step to allow future plantation expansion without impacts on forest. There is new impetus to accelerate this process to comply with the MK 35 mandate to recognize customary land claims within the Forest Zone and the President's land reform target to make available 9 million ha of land for smallholder farmers. Other important policy and legal developments include:

- **Joint regulation No. 79/2014** of the Ministers of Home Affairs, Forestry, Public Works, and the National Land Agency designed to facilitate revision of Forest Zone boundaries where land with indigenous or other tenure rights will be removed. The MoEF will amend the Forest Zone boundaries to remove land with valid claims as mandated in MoF Regulation No.62/2013. As noted in section 4.1.5, land claim recognition is likely to be a slow process that could delay the boundary realignment. It's possible the focus on community land rights will overshadow the goal of removing deforested land from the Forest Zone for agriculture, and bringing forested areas into it for protection, but this remains to be seen.
- **Ministry of Agrarian and Spatial Planning** leads the task of expediting revisions to the Forest Zone boundary while at the same time identifying land for re-allocation to small holder farmers.
- **Ministerial Regulation 32/2015** of the Environment and Forestry Ministry on 'Rights Forests'. Importantly, this reverses the position of the previous Ministry, now stating that customary forests will be removed from the State Forest Zone but retained within the Forest Zone as 'forests with rights', still subject to regulation as production forests, protection forests, or conservation forests. The Regulation specifies a process for designating such forests, either by claimant application or through the Ministry working with local governments.

4.2.2 Legal basis for companies to protect forests within their plantations

Protecting HCV and HCS areas within oil palm plantations is recognized by scientists, civil society, and progressive firms as an important means to reduce the industry's deforestation, biodiversity, and carbon footprint. These approaches have been adopted by most voluntary certification schemes, and are a key feature of emerging No Deforestation supply chain commitments, but they are not well accommodated within Indonesia's legal and regulatory system. Two recent developments make it even harder for companies to conserve these forests:

- **Plantations Law No. 39/2014** states that companies must plant nearly all technically feasible areas within six years of being issued a Business Use Permit, or risk revocation of the permit by local government. Progressive firms therefore run a serious risk in protecting HCV and HCS areas unless they forge and maintain agreements with district officials not to enforce the provision, on the grounds it generates positive social and environmental outcomes.
- **Minister of Agriculture Regulation No. 11/2015** on ISPO eliminates the HCV provision of the original 2011 standard, and introduces a criterion reaffirming government authority to revoke licenses for land within a plantation that has not been converted to oil palm.

4.2.3 Protection of primary forests and peatlands

A moratorium on new licenses in primary forests and peatlands, first issued in 2011, has now been extended a second time to May 2017. Its narrow focus on primary forests and peatlands, omission of secondary/logged forests, and exemption of all pre-existing industrial licenses in 2011 limits its impact on palm oil related deforestation. Yet it's a powerful symbol of GOI's commitment to protect forests and peatlands, and is said to have strengthened protection of some areas.

In addition, Government Regulation No. 71/2014 on peatlands establishes a structured process for mapping and surveying peatland hydrological units, zoning protection and production areas within them, and developing management, protection and monitoring plans for the unit. The regulation also defines procedures for re-allocating zones from production to protection, wherein areas later found to qualify for protection status can be protected. Palm oil cultivation would not be allowed in areas zoned for protection, even if zoned for agriculture according to spatial plans. Local authorities are granted a major role in defining areas that shall be allocated for protection. These provisions hold the potential for reducing palm oil driven peatland conversion, as they expand the notional definition of peatlands that merit protection, and create requirements for local authorities and industrial land users to maintain them. The regulation also imposes liability standards for excess drainage or failure to control fires, and requires ground water be maintained at <40 cm below the peat surface (though water management provisions of the regulation are currently being reconsidered).

4.2.4 Managing forests at landscape scale

The Jokowi administrations renewed emphasis on establishing FMUs to manage state forests as independent business units, promoting an integrated, mixed use landscape approach provides an opportunity to better inform and coordinate land use decisions with the participation of local stakeholders most directly affected by forest management. The FMU could potentially support longer term jurisdictional approaches to forest management, by providing a vehicle for convening collaborative efforts of government, local communities, and companies around sustainable forest management within the FMU. If successful, such a forum could later be expanded in scope to convene discussion around forest management outside but nearby the FMU.

4.2.5 Improved licensing decisions

Poor and/or illegal decisions in oil palm plantation licensing have been a major driver of deforestation and peat conversion. Poor licensing decisions result from legitimate confusion over land classifications and status, indiscriminate licensing approvals, and insufficient monitoring of the licensing process, which has frequently involved willfully illegal behavior by government officials. Several developments might help to improve licensing in the days ahead, and reduce the extent of forest placed at risk:

- **One Map Initiative**, described above, should facilitate the process of identifying ecologically suitable, appropriately classified, and uncontested (or weakly contested) land for oil palm licensing and make monitoring of legal compliance easier and more transparent.
- **Rationalizing the Forest Zone boundaries**, described above, should make it easier for local governments to prioritize deforested land for plantation licensing.
- **The Regional Governance Law**, described above, requires greater participation and transparency in government decision making, which should increase civil society involvement in palm oil licensing. The law also provides governors with a legal basis to supervise and discipline district government, possibly including licensing practices.
- **The Corruption Eradication Commission (KPK)'s review of palm oil licenses** for legal compliance will exert strong pressure on District heads to exercise more diligence in licensing.

4.2.6 Community and village-managed forest and peatlands

The various legal provisions intended to implement MK 35, the President's social forestry policy, and the Village Law will create a new type of forest and peatland manager who will have greater direct influence over (a) where commercial oil palm plantations are established on their lands and (b) if they will develop their own plantations. These actors will present both opportunities and threats for reducing deforestation in the sector, as outcomes will depend on how they are supported and rewarded to protect their forests. In the long term, customary communities could eventually play a positive role in reducing palm oil related deforestation, or deforestation in general, but this will require that: (i) a significant number succeed in obtaining recognition of their rights; (ii) they develop capacity to exercise their rights effectively; and (iii) they decide to conserve at least some forest on their land. These are areas where civil society groups could play an important positive role in accelerating recognition of community rights, building capacity, and facilitating delivery of concrete rewards for conservation.



4.3

How much oil palm is planted

Plantation expansion is driven by domestic and international demand and prices, yield per hectare, taxes and tariffs, government planting targets, and government biofuels policy. Recent policy and legal developments potentially affect how much oil palm will be planted in the future, placing upward and downward pressure on this point.

4.3.1 Expansion targets and restrictions

Indonesia's system of development planning requires setting industrial sector growth targets at each level of government. In the past, palm oil plantation expansion targets have been wildly ambitious, in many cases exceeding the amount of land that has been designated for agricultural development in the spatial plan.

- A provision in **Plantations Law** (Article 14) appears to give central government authority to define minimum and maximum areas that can be developed for palm oil plantations in provinces and districts, taking into account factors such as geographic conditions (which could include forest and peatland), population densities, development models, and spatial plans. This provision could create an opportunity for central government to promote development in regions with less forest than others, but in theory could also be used to force jurisdictions to increase their planting targets. Wording of this provision is not clear, and there's no indication to date concerning whether and how it will be implemented.
- **One Map Initiative** will provide all decision makers with a realistic sense of how much land is actually available for oil palm and other development based on the spatial plan and existing licenses. More realistic expectations might lead to a more sober, thoughtful approach to development planning and licensing than has been the case in many forest frontier districts.

4.3.2 Yield improvement

Average palm oil yields in Indonesian plantations are very low by international standards, even though some companies have clearly demonstrated that significant gains are possible through improved, low-cost agronomic practices. Raising yields across the industry would allow significantly increased production without expanding planted area.

- **The CPO Fund** will provide credit to producers (especially smallholders) to replace low yielding oil palm varieties with higher yielding varieties. The production benefits would take several years to emerge, however, as newly planted trees require four years to bear fruit.
- **The new ISPO regulation** does not require companies to demonstrate that they are making efforts to improve yields (nor is this addressed in the Plantations Law). The regulation also exempts companies supplying biofuel supply chains from meeting other ISPO certification standards.

4.3.3 Biofuels mandate

The mandate's ambitious targets for biofuels production and producer subsidies will incentivize increased CPO production for domestic markets, especially if international demand remains soft while supplies continue to grow. The subsidies are to be paid by tariffs on exported CPO and other palm oil products, which should theoretically reduce international demand for Indonesian palm oil, especially in very price-sensitive markets such as India and China. Additional demand generated by the mandate is expected to drive up CPO prices domestically and potentially trigger plantation expansion, though the magnitude of these impacts is unclear. This large source of demand from a non-discriminating market challenges companies working to exclude deforestation-linked palm oil products from their supply chains (see Section 2.6.2 for a discussion of supply chains and sheds). Presumably, this will lead to a growing supply of non-compliant oil (e.g. linked to deforestation or peat) to be segregated from compliant oil for a different market.

5

Recommendations



Indonesia's evolving framework of land, forest, and oil palm governance creates new opportunities for government, industry, and civil society to reduce palm oil related deforestation. Leading examples include the following:

- There are clear signals of a growing trend toward involving a wider range of actors in forest management, especially at local levels, and including communities. This holds potential to reduce the pace and scale of palm oil driven deforestation by increasing transparency and broadening participation.
- The increasing number and variety of tools and instruments for recognizing customary community land rights on a communal or individual basis will reinforce the above trend. Large areas of land are likely to be transferred from State control to communities, placing these actors in a stronger position to negotiate with companies about whether and where to plant oil palm, and whether and where to retain forest.
- Major adjustments to the distribution of power among levels of government have re-centralized authority for many types of licensing from districts to provinces, while at the same time empowering villages. Provinces have also been assigned powers to oversee and monitor performance of district level officials, including management of the palm oil sector. This creates the possibility for improved governance in land use that could reduce deforestation and peatland conversion.
- There are clear opportunities emerging to rationalize land allocation by reinforcing steps toward greater transparency of licensing, strengthening tenure and readjusting Forest Zone boundaries. This will be aided by renewed government commitment to maintaining the One Map initiative, and planned efforts to pilot its use at sub-national levels.
- The transition of authority for State managed forests from central government to regional authorities under the FMU program also creates greater opportunity for tailoring State forest management objectives to local aspirations, and should further support efforts to broaden stakeholder participation in land management.

Capitalizing on these trends to reform palm oil will require concerted effort on multiple fronts, combining research, advocacy, on-the-ground pilots, expanded cooperation with private sector (alongside continued pressure), national level policy reform, informed partly through scaled up experimentation with sub-national jurisdictional programs. To help guide such efforts, we offer the following recommendations to inform development of programs, project activities or advocacy campaigns aimed at reducing palm oil-related deforestation and peatland conversion. Recommendations are grouped under four headings:

- Advocacy and technical support aimed at national government
- Collaboration with provincial and district governments to promote sustainable palm oil
- Support for companies to implement sustainability commitments
- Support for civil society and local communities

(i) NGOs, practitioners, researchers, community groups, donors and/or business should support advocacy efforts and provide technical support for national government to:

- Remove legal and regulatory barriers for plantation companies to meet voluntary commitments to conserve forest areas within their concessions
- Support creation of fiscal or other rewards for companies to protect and manage high value forests or other ecosystems
- Create performance-based incentives for provincial and district governments to encourage private sector conservation and reform licensing programs to reduce deforestation
- Re-examine the biofuel exemption in the revised ISPO regulation, and put in place safeguards for reducing adverse impacts of expanded biofuel production, to ensure it does not drive growth of domestic markets for illegal or unsustainable palm oil
- Closely follow and take action to influence planned revisions to the recently enacted government regulation on peatland management and protection, planned for this year.
- Strengthen ISPO standards to align more closely with shifting sustainability norms and surging corporate commitments to eliminate deforestation and peatland conversion
- Support a thorough and transparent review of oil palm concession permits to identify and eliminate illegalities
- Through engagement with central and local authorities and NGOs, improve law enforcement to eliminate palm oil linked forest crimes causing deforestation
- Accelerate implementation of Joint Ministerial Regulation No. 79 related to excision of community managed land from the Forest Zone, by creating incentives for districts to form IP4T teams to handle land claims, and adjust Forest Zone boundaries accordingly
- Resolve Forest Zone boundary demarcation issues through spatial planning, implementation of MK 35, land swaps or other means, with a priority for deforested land within the Forest Zone being re-zoned for conversion, and forested land outside it re-zoned as permanent forest
- Accelerate implementation of decentralized FMU programs, and put in place clear performance standards and oversight processes
- Empower provincial governors to implement provisions of the new Regional Governance Law to carry out oversight of district government performance on issues related to forest management and protection, especially plantation licensing and management enforcement
- Support recognition of community control over forests, through various social forestry schemes, implementation of MK 35, and through implementation of the Village Law, and accelerated designation of village forests
- Create incentives for provincial/district governments to accelerate the process of mapping and recognizing customary forests (hutan adat)
- Allocate funds for support and capacity building for villages and customary communities to improve livelihood and conservation outcomes of community based forest management

(ii) NGOs, business, central government and donors should support collaborations with provincial and district governments to:

- Implement Joint Ministerial Regulation No.79, by forming IP4T teams to register claims, map land parcels, process land claims and issue decisions
- Implement mapping, zoning, management, monitoring and protection of peatland hydrological units under Government Regulation No. 71/2014 on peatlands
- Accelerate recognition of community control over forests, through existing social forestry schemes and accelerate implementation of the Village Law, with emphasis on the designation of village forests (hutan desa) and customary forest (hutan adat)
- Improve law enforcement to punish and prevent forest crimes causing deforestation, including ongoing violations to spatial planning in some regions
- Conduct a thorough and transparent review of oil palm concession permits to eliminate illegalities
- Accelerate implementation of decentralized landscape forest management models under the FMU system, along with promotion of performance standards and provincial or national systems of oversight
- Rapidly expand experimentation with Jurisdictional Approaches to sustainable palm oil, a potentially powerful mechanism for convening stakeholders, bridging interest groups and building participative approaches to land management; over time, progressively bring in other forest-impacting sectors, such as forestry and mining, to prevent 'deforestation leakage' to other sectors
- Create a public facing, online district or provincial level sustainability performance monitoring system, centered on performance outcomes as well as enabling policies
- Create a transparent, public facing, online license registry and monitoring system
- Integrate oil palm-related deforestation reduction efforts with REDD+ strategies and green growth planning

(iii) NGOs, practitioners, researchers, downstream supply chain actors and regional governments should support companies to implement their sustainability commitments by:

- Providing assistance with innovative, reliable, affordable techniques for supply chain mapping, especially smallholders and small or medium third party suppliers
- Working with smallholders to work toward No Deforestation, No Peat commitments and thereby reduce risks of exclusion from future responsible supply chains
- Removing legal obstacles to the implementation of voluntary commitments to protect forest, such as the HCV, HCS or other sensitive high value areas
- Create a stronger legal standing of HCV and HCS within Indonesia's governance framework, including environmental impacts assessment
- Support coalition building between private sector with local governments amenable to experiment with jurisdiction wide approaches to sustainable palm oil
- Supporting development of platforms for independent monitoring of deforestation
- Supporting independent monitoring of the implementation of private sector sustainability commitments

- Building a domestic constituency among consumers and consumer advocacy groups for sustainable palm oil
- Providing technical support / facilitation on best practices in engaging with communities to develop oil palm collaborations

(iv) Diverse stakeholder groups should support civil society and local communities by:

- Contributing to the process of mapping customary forest rights, village forests, and land claims within the Forest Zone
- Supporting communities to access IP4T teams where they have been formed, to gain recognition of their land rights
- Offering support to smallholders to retain access to Zero Deforestation supply chains, and to increase productivity
- Building long term capacity on forest management for local communities and customary communities
- Providing capacity support to strengthen governance structures for local communities and customary communities (village leadership, customary leaders), to ensure inclusive decision making and more effective, coordinated action in negotiation with companies, and in planning their own priorities for balancing production and protection
- Providing mediators and facilitators, and strengthening mediation and facilitation capacity, for negotiations between villages and oil palm companies to resolve conflicts.



Appendix

Appendix 1

Recommended legal reform actions outlined in the Roadmap for Legal Reform on Natural Resources and Environment, published by the Ministry of Law and Human Rights in February 2015, and signed by relevant Ministers.

The following 27 recommendations are put forward in the Roadmap.

- 1) Revise the Forestry Law (Law 41/1999), no permits if the forest zone has not been established, no forest zone establishment without settling land rights, and some other things.
- 2) A new Land Law for better governance of business licenses.
- 3) A new Law on Customary Communities, which defines their rights to own land within the forest zone, and other things.
- 4) A new Law on Natural Resources Management, to harmonize management across the natural resources sectors.
- 5) Revise Government Regulation 44/2004 on Forestry Planning.
- 6) A new Government Regulation on Management of Environmental Damage/ Pollution, Rehabilitation and Compensation, deriving from the Environment Law.
- 7) Revise the Joint Ministerial Regulation of 2014 on Procedures for Settling Control of Land Within the Forest Zone, so that recognized land claims are retained in the forest zone as non-state forest rather than removed from it entirely.
- 8) A new Government Regulation on Inventory of Environment, Eco-region, and Environmental Protection and Management Plans (RPPLH), deriving from the Environment Law.
- 9) A new Government Regulation on Strategic Environmental Assessments (KLHS), deriving from the Environment Law.
- 10) Revise Government Regulation 24/1997 on Land Registration.
- 11) Revise Government Regulation 40/1996 on Business Licenses, Building Licenses and Land Usage Rights.
- 12) Revise Government Regulation 47/2012 on Corporate Social and Environmental Responsibility.
- 13) Revise Government Regulation 42/2013 on Conditions and Procedures for Legal Aid and Funding for Legal Aid.
- 14) Revise Ministry of Forestry Regulation 62/2013 re 44/2012 on Establishment of the Forest Zone.
- 15) A new Government Regulation on Environmental Monitoring as per the Environment Law and the Forestry Law.

- 16) A new Government Regulation as an implementing regulation for the Regional Governments Law (Law 32/2014), to regulate monitoring of management of regional assets and natural resources.
- 17) A new Presidential Regulation on Guidelines for Formulating Regional By-laws on Recognition and Protection of Customary Communities. This should cancel Ministry of Home Affairs Regulation 52/2014 and Ministry of Agrarian Affairs Regulation 5/1999, and establish guidelines until such time as a Law on Recognition and Protection of Customary Communities is passed.
- 18) Revise Ministry of Forestry Regulation 25/2014 on Forest Zone Boundary Committee.
- 19) Revise Ministry of Forestry Regulation 67/2006 on Criteria and Standards for Forest Inventory.
- 20) Revise Ministry of Environment Regulation 6/2011 on Public Information Services, and Ministry of Forestry Regulation 7/2011 on Public Information Services in the Ministry of Forestry.
- 21) A new Ministry of Forestry and Environment Regulation on Public Participation in Forestry.
- 22) Revise Ministry of Agrarian Affairs Regulation 2/1999 on Location Permits.
- 23) Revise Ministry of Forestry Regulation 33/2010 (and its revisions) on Procedures for Releasing Production Forest Zone for Conversion, to ensure only degraded forest is released.
- 24) Revise Ministry of Agriculture Regulation 98/2013 on Guidelines for Plantation Licenses (IUP), so that IUP are issued after HGU, not before, so that land rights are settled before operation begins.
- 25) Revise Head of National Land Agency Regulation 6/2013 on Public Information Services.
- 26) A new Ministry of Agrarian Affairs and Spatial Planning Regulation on Geospatial Information on Customary Communities.
- 27) A new Joint Regulation of the Ministry of Forestry and Environment and the Ministry of Agrarian Affairs and Spatial Planning on the mechanism for relocation and compensation for communities, including customary communities, in forestry and land affairs.

Appendix 2

Web links to laws and other legal products discussed in the report.

Type	Issue	URL
Law (<i>Undang-Undang</i>)		
Law no. 6/2014	Villages	http://www.indolaw.org/UU/Law%20No.%206%20of%202014%20on%20Villages.pdf
Law no. 22/2014	Elections for governor, district head and mayor	http://www.rumahpemilu.com/public/doc/2014_10_20_03_50_36_UU%20Nomor%2022%20Tahun%202014.pdf
Law no. 23/2014	Regional government	http://www.indolaw.org/UU/Law%20No.%2023%20of%202014%20on%20Local%20Government.pdf
Law no. 39/2014	Plantations	http://www.indolaw.org/UU/Law%20No.%2039%20of%202014%20on%20Plantations.pdf
Law no. 18/2004	Plantations (updated in 2014)	http://indonesiabch.or.id/docs/uu18-2004.pdf
Law no. 32/2004	Regional government (updated in 2014)	http://www.setneg.go.id/components/com_perundangan/docviewer.php?id=365&filename=UU_no_32_th_2004.pdf
Government Regulation (<i>Peraturan Pemerintah</i>)		
Government Regulation No. 24/2015	Collection of plantation funds	http://jdih.esdm.go.id/peraturan/PP%20No.%2024%20Th%202015.pdf
Government Regulation No. 43/2014	Clarification of Village Law	http://www.kemenkopmk.go.id/sites/default/files/produkhukum/PP%20Nomor%2043%20Tahun%202014.pdf
Government Regulation No. 71/2014	Management and protection of peatlands	http://www.rimbawan.com/images/stories/aturan-pdf/2014/PP%20No.%2071%20Th.%202014%20-%20Perlindungan%20&%20Pengelolaan%20Ekosistem%20Gambut.pdf
Government Regulation No. 72/2005	Villages	http://www.slideshare.net/perencanakota/peraturan-pemerintah-no-72-tahun-2005-tentang-desa
Presidential Regulation and Instruction (<i>Peraturan dan Instruksi Presiden</i>)		
Presidential Regulation No. 61/2015	Collection and use of palm oil fund	https://docs.google.com/viewerng/viewer?url=http://www.bphn.go.id//data/documents/15pr061.pdf
Presidential Instruction No. 8/2015	Moratorium on new licenses in primary forests and peatlands	http://jdih.esdm.go.id/peraturan/Inpres%20No.%208%20Thn%202015.pdf

Type	Issue	URL
Ministerial Regulation (<i>Peraturan Menteri</i>)		
Minister of Agriculture Regulation No. 11/2015	Indonesian Sustainable Palm Oil (revised standard)	http://perundangan.pertanian.go.id/admin/p_mentan/Permentan%2011-2015%20ISPO.pdf
Minister of Finance Regulation No. 113/2015	Management body for palm oil funds	http://www.jdih.kemenkeu.go.id/fullText/2015/113~PMK.01~2015Per.pdf
Minister of Agrarian and Spatial Planning Regulation No. 9/2015	Procedures to determine communal rights of customary land	http://www.bpn.go.id/Publikasi/Peraturan-Perundangan/Peraturan-Kepala-BPN-RI/peraturan-menteri-agraria-dan-tata-ruangbadan-pertanahan-nasional-nomor-9-tahun-2015-58704
Minister of Energy and Mining Regulation No. 20/2014	Use and supply of biofuels	http://jdih.esdm.go.id/peraturan/Permen%20ESDM%2020%20Tahun%202014.pdf
Joint Ministerial Decree No. 79/2014	Procedures for the resolution and control of land within the Forest Zone	http://pasindonesia.org/wp-content/uploads/2015/02/Peraturan-Bersama-No.-79-2014-No.-PB.3-Menhut-11-2014-No.-17-PRT-M-2014-No.-8-SKB-X-2014.pdf
Minister of Environment and Forestry Regulation No. 97/2014	Delegation of forestry licensing authority to the Investment Coordination Board	http://ekowisata.org/wp-content/uploads/2015/05/permen-lhk-no-97-tahun-2014-pendelegasian-wewenang-ippkh-izin-lingkungan-ke-bkpm.pdf
Minister of Home Affairs Regulation No. 52/2014	Recognition and protection of adat communities	http://www.jarungu.com/peraturan_detail.php?Peraturan-Menteri-Dalam-Negeri-No--52-tahun-2014-tentang-Pedoman-Pengakuan-Dan-Perlindungan-Masyarakat-Hukum-Adat&idPeraturan=17972
Minister of Forestry Regulation No. 62/2013	Gazettal of the Forest Zone	https://drive.google.com/file/d/0BwVg2-8RSCD9dnpwd0dESHo30UU/edit
Minister of Forestry Regulation No. 44/2012	Gazettal of the Forest Zone (revised in 2013)	http://www.dephut.go.id/uploads/apl/P.44_3012_PengukuhanKawasanHutan_.pdf
Minister of Agriculture Regulation No. 19/2011	Indonesian Sustainable Palm Oil (original standard, revised in 2015)	http://www.gcomul?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CCYQFjAB&url=http%3A%2F%2Fditjenbun.pertanian.go.id%2Fpascapanen%2Fdownlot.php%3Ffile%3Dpermenispo.pdf&ei=2qyS-Vd2xD4mJuwSWjojYBw&usq=AFQjCNGRQTww8H4Ri8-3hKploNloQ-3YT-Q&sig2

Type	Issue	URL
Constitutional Court Decisions (<i>Putusan Mahkamah Konstitusi</i>)		
MK No. 35/2012	Customary forests excluded from state forests	http://www.mahkamahkonstitusi.go.id/putusan/putusan_sidang_35%20PUU%202012-Kehutanan-telah%20ucap%2016%20Mei%202013.pdf
MK No. 45/2011	The establishment of Forest Zone (Eng. Version)	https://zainalonline.files.wordpress.com/2012/03/putusan_sidang_eng_putusan_sidang_45-puu-2011-telah-baca-eng.pdf
MK No. 45/2011	The establishment of Forest Zone (Ind. Version)	http://www.mahkamahkonstitusi.go.id/putusan/putusan_sidang_45%20PUU%202011-TELAH%20BACA.pdf



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