

# Ministry of Agrarian/National Land Agency's Defiance against the Mandate of Public Information Disclosure Law

PROSES PERMOHONAN DOKUMEN HGU PERKEBUNAN KELAPA SAWIT FWI v ATR/BPN		
TAHAPAN PERMOHONAN INFORMASI	PROSES PERMOHONAN INFORMASI	WAKTU IDEAL UU KETERBUKAAN INFORMASI PUBLIK
PERMOHONAN INFORMASI DI BADAN PUBLIK	3 BULAN	2 BULAN
PENYELESAIAN SENGKETA INFORMASI DI KIP	6 BULAN	5 BULAN
PENYELESAIAN SENGKETA INFORMASI DI PTUN	5 BULAN	3 BULAN
PENYELESAIAN SENGKETA INFORMASI DI MA	?	1.5 BULAN

CATATAN: 1 BULAN = 20 HOK

#BUKAINFORMASI



**Jakarta, 23 February 2017.** Seventeen months have passed since the application for information disclosure on the granting of concession of Cultivation Right (HGU) for Palm Oil Plantation by Forest Watch Indonesia (FWI) to the Ministry of Agrarian and Spatial Planning/National Land Agency (ATR/BPN). However, the HGU document remains inaccessible until now. After going through a long proceeding process in the Central Information Commission (KIP) and State Administrative Court (PTUN), now FWI faces another effort by the Ministry to cover the information by the latter's plea for cassation in the Supreme Court.

From 2010-2015, most information dispute occurred in the public sector associated with natural resources (29%), followed by education sector (10%), and public service sector (9%) (KIP, 2015). With regard to natural resources-related public agency, the one with most dispute was the ATR/BPN, both at ministerial level, sub-national office, or land office, which marked 30% of the total cases. This number shows that public agencies in natural resources sector, particularly ATR/BPN, are the most undisclosed as compared to other sectors.

According to Ombudsman, BPN is categorized as an agency (public body) which is most reported concerning public service. In the period of 2011-2015, the agency consecutively ranked as the five top-most agency which was most reported by the public pertaining to its public service. According to an FWI Campaigner, Linda Rosalina, "The lack of data transparency as well as the poor effort in improving public information service

system in the ATR/BPN body indicates its lack of commitment in undertaking efforts to improve governance and responsibility as a state agency to serve the public and state's interest."

This is demonstrated clearly in the demand for disclosure of HGU document of palm oil plantation that is still not given by ATR/BPN. After KIP and the Administrative Court (PTUN) ruled FWI as the winning party and hence mandated ATR/BPN to disclose the demanded HGU document, the latter still remains uncompliant by pleading for cassation in the Supreme Court.

Similar case is not only experienced by FWI. There are at least 5 Central Information Commission's rulings which are supported by Supreme Court's rulings that are not yet executed until today. "Each case involving ATR/BPN shows the agency's incomppliance toward the mandate of Public Information Disclosure Law No.14/2008 (KIP Law). All the information that are made as exception by the ATR/BPN are in fact those associated with the essential policies that have been the source of controversies. As already known, the granting of concession for cultivation right (HGU) land to corporate often leads to deforestation, agrarian conflict, forest and land fire, as well as gap in land control", Linda added.

The root of the entire information dispute that involves ATR/BPN is the disharmony in the substance of the Head of National Land Agency's Regulation (Perkaban) No.6/2013 on Public Information Service versus the KIP Law. The Perkaban in fact reiterates exception for several information such as policy (HGU) and budgetary documents, which are determined in the KIP Law as a public information. Yhannu Setyawan, a KIP Commissioner, explained, "ATR/BPN must immediately revise the Perkaban No.6/2013 which contradicts the mandate of KIP Law concerning the implementation of good governance by a public body."

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## Editor Notes:

- Forest Watch Indonesia (FWI) is an independent forest monitoring network which consists of individuals who are committed to create an open management process in Indonesian forest data and information which can ensure just and sustainable forest resources management.
- Law No.14/2008 on Public Information Disclosure is one of Indonesian legal products issued in 2008 and passed as a law on 30 April 2008 and started to take into effect two years after its passing. The law essentially mandates every public body to disclose access to every applicant of public information to obtain public information.
- Cultivation right (*hak guna usaha*/HGU) is a concession to exploit a land that is directly controlled by the state to another entity, such as a government or private entity, within the period as specified in article 29, for agricultural, fishery or livestock business (Article 28 paragraph (1) Law No.5/1960 on Basic Regulations on Agrarian Principles).

### Ruling on HGU of palm oil plantation disclosure

1. Central Information Commission (KIP)'s Ruling in Case Number 218/VII/KIP-PS-MA-A/2012 dated 30 October 2013 between Indra Reswanto with PT Perkebunan Nusantara III (Persero) Sarang Giting Sedang Bergadai Plantation, North Sumatera.
2. Information Commission of East Kalimantan Province's Ruling No.0008/REG-PSI/V/2014 between Jatam of East Kalimantan with the Plantation Office of Bulungan.
3. Information Commission of Aceh's Ruling in Case No.008/II/KIA-PS-A/2015 dated 22 February 2016 between Rumoh Transparansi with the Regional Office of National Land Agency of Aceh Province.
4. Information Commission of Bengkulu's Ruling No.31/III/KIP-BKL.PSI/A/2015 dated 29 July 2015 between WALHI Bengkulu with the Regional Office of National Land Agency of Bengkulu

Province, which is supplemented with State Administrative Court's Ruling No.04/G/2015/PTUN-BKL and Supreme Court's Ruling No.04/G/2015/PTUN.BKL dated 8 June 2016.

5. Information Commission of East Kalimantan Province's Ruling No.0008/REG-PSIIXII2015 between Jatam of East Kalimantan with Regional Office of National Land Agency of East Kalimantan province dated 24 March 2016, which is supplemented with State Administrative Court of Samarinda's Ruling No.11/G/KI/2016/PTUN-SMD.
6. Central Information Commission's Ruling No.057/XII/KIP-PS-M-A/2015 between FWI with ATR/BPN dated 22 July 2016, which is supplemented with State Administrative Court of Jakarta's Ruling No.2/G/KI/2016/PTUN-JKT dated 14 December 2016.

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