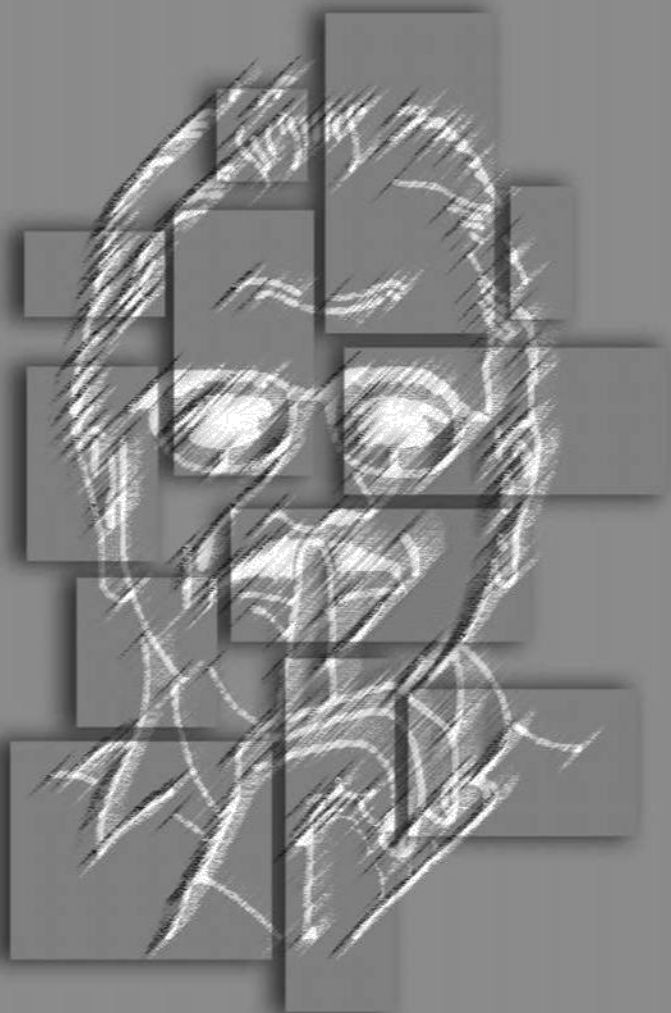


**Tematik Spasial Hak Guna Usaha (HGU)**



**ALTERNATIF INFORMASI SPASIAL**  
**"Sebuah Dorongan Untuk Lebih Terbuka"**

**Forest Watch Indonesia**



Cultivation Rights Title Spatial Thematic (HGU)  
**SPATIAL INFORMATION ALTERNATIVES**  
**"an urge to be more disclosed"**

Forest Watch Indonesia

**Cultivation Rights Title Spatial Thematic (HGU)  
Spatial Information Alternatives  
"an urge to be more disclosed"**

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# FOREWORD

All praise be to God the Lord, who with His power and His leave, has enabled this glimpse about Cultivation Rights Title as one of land right granted by the State to be written. Although the author realized that this book is shallow and not deep, hopefully it could still provide additional information, especially for those among people who involved in encouraging HGU information disclosure.

Cultivation Rights Title is one among legal protections granted by the state for a piece of land given to parties, either individually or collectively, and / or a legal entity. State authority in distributing HGU was part of constitutional mandate in regards of regulating and governing land affairs, which in turn will bring welfare to the people. Inevitably, HGU is a product of a Government policy which manifested the State Sovereignty. Off course, the implementation then must be open and accountable to the public.

Various attempts have been made by some people in demanding their right to know everything about HGU. Starting from the information access test, information disputes from the Information Commission, both Regional and Central to the Supreme Court as the highest legal body, direct reporting to Ministries or State Institutions that have the authority and / or direct relations with the President as the leader of the country, until reporting of legal violations of the closure. HGU information, and countless public campaigns carried out by civil society groups. However, it seems that HGU has some kind of invincibility to overcome all of the protests again and again.



Blocked access to HGU information due to various reasons around the absence of information distribution mechanism, while legally it has been declared as open information to the public, is a portrait of a not-so-good government. And it is the public's right to continue in demanding improvements in every aspects of state administration.

Finally, with all the limited data and information regarding HGU, this book was compiled on the hard work of the team in analyzing HGU spatial data compiled from various sources. With this, the authors would like to express sincerest gratitude to the Database and Information Services Division, Forest Watch Indonesia, who has provided a lot of HGU spatial information, the Asia Foundation, which has supported the printing of this book, also Kang Aris and Pak Entis who were always give their support through great coffee times, and many other people which cannot be mentioned one by one. Hopefully this book will become a part of public learning efforts as well as an educating medium.

*"Providing information is part of an effort to realize the ideals of the nation, namely to educate the nation's life"*

Bogor, Agustus 2019

Soelthon Gussetya Nanggara

transparansi informasi,  
dimana seluruh dokumen penguasaan lahan terbuka  
dan dapat diakses dengan mudah,  
sehingga dapat menjadi terobosan baru  
untuk perbaikan pengelolaan SDA.





## BACKGROUND

*"Everyone has the right to communicate and obtain information to develop their personal and social environment, as well as the right to seek, obtain, possess, store, process, and convey information using all types of channels available" (Article 28F, Second Amendment to the 1945 Constitution of the Republic of Indonesia)*

Law Number 14 of 2008 concerning Openness of Public Information, Purpose Chapter, article 3 which states that this Law has the following objectives:

- a. Guarantee the rights of citizens to know about plans for making public policies, public policy programs, and public decision-making processes, as well as the reasons behind public decisions;
- b. Encouraging public participation in the public policy making process;
- c. Increase the active role of the community in making public policies and in good management of Public Bodies;
- d. Realizing good state administration, namely one that is transparent, effective, efficient, and accountable;
- e. Knowing the reasons behind public policies affecting the lives of many people;
- f. Developing science and educating the nation's life; and / or
- g. Improve information management and services within Public Bodies to produce quality information services.

*"Everyone has the right to get environmental education, access to information, access to participation, and access to justice in fulfilling the right to have a good and healthy environment" (Article 65 point 2, Law 32 of 2008 concerning Environmental Protection and Management)*

The three quotes from the constitutional mandate above are sufficient to provide a background that everyone was guaranteed to obtain their right from the state, process and convey information related to natural resource management and contribute to realizing good state governance.

In 1960, the Government issued Law no. 5 of 1960 concerning Agrarian principal law (UUPA) as a legal basis for utilizing all of natural resources in Indonesia to maximize welfare of the people. Through this law, the state has the authority to regulate legal relations between persons or entities with earth, water and space. This includes giving land rights to people, both individually and collectively and / or as a legal entity and using it. The land rights are divided into 7 types of rights, including: ownership rights, freehold titles, building rights title, right to use, lease rights, land clearing rights, and forest use rights. One of the types of land rights under the UUPA is the Freehold Rights Title (HGU). Cultivation rights area Right to cultivate land for agriculture, fishery or livestock with an area of at least 5 hectares and if the area is 25 or more must use proper capital investment and good corporate techniques, in accordance with the times.

palm oil has become an important commodity for Indonesia and the world market today. In 2008 the total export volume reached 15.65 million tons with a value of US \$ 13.80 billion,

while in 2014 it had increased to 24.37 million tons with a value of US \$ 19.01 billion<sup>1</sup>. Throughout 2018, Indonesia's palm oil production reached 47.61 million tons, an increase from the previous year which amounted to 42.04 million tons. As for the production results, as much as 70% were allocated fulfill export needs and the remaining 30% for domestic consumption<sup>2</sup>.

The increasing palm oil production has also contributed to rapid palm oil plantation areas land conversion. In 2009 the palm oil plantation area had reached 7.95 million hectares, and in 2013 it increased to 10.46 million hectares, then the following year it increased to 10.96 million hectares<sup>3</sup>. Meanwhile, in 2018, the area of Indonesian palm oil land according to the Directorate of General Plantation from the Ministry of Agriculture had reached an area of 14.03 million hectares<sup>4</sup>.

Based on article 42, Plantation Law No. 39/2014, "Plantation crop cultivation business activities and / or Plantation Product Processing businesses as referred to in Article 41 paragraph (1) 5 can only be carried out by a plantation company if it has obtained rights to the land and / or Plantation Business License", land rights are a prerequisite in every stage of the development of a palm oil plantation. This is confirmed in the decision of the Constitutional Court Number 138 / PUU-VIII / 2015<sup>6</sup>.

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1. FWI, palm oil Expansion in Kalimantan Island, 2016

2. *Katadata.co.id*, 2018. Gapki: Volume Ekspor Sawit 32,02 Juta Ton Sepanjang 2018. <https://katadata.co.id/berita/2019/01/24/gapki-volume-ekspor-sawit-3202-juta-ton-sepanjang-2018>

3. FWI, palm oil Expansion in Kalimantan Island, 2016

4. *Kompas.com*, 2018. Ministry of Agriculture: Lahan Sawit Indonesia Capai 14,03 Juta Hektare. <https://ekonomi.kompas.com/read/2018/02/26/203000426/kementerian-pertanian--lahan-sawit-indonesia-capai-14-03-juta-hektare>.

5. Article 41 point 1 reads: "The type of plantation business consists of plantation crop cultivation business, plantation product processing business, and plantation service business."

6 In the ruling number 1.7 which reads "Article 42 of Law Number 39 of 2014 concerning Plantations (State Gazette of the Republic of Indonesia Number 308, Supplement to the State Gazette of the Republic of Indonesia Number 5613) is conditionally contradicting the 1945 Constitution of the Republic of Indonesia as long as The phrase "land rights and / or plantation business permits" in the said provision does not mean land rights and plantation business permits. And, ruling number 1.8 which reads: "Article 42 of Law Number 39 of 2014 concerning Plantation (State Gazette of the Republic of Indonesia Number 308, Supplement to State Gazette of the Republic of Indonesia Number 5613) does not have legally binding conditions as long as the phrase" rights to land and / or plantation business license in the said provision does not mean land rights and plantation business permits.

So then, the acquisition of the Right to Business as the right to exploit the land for agriculture, fisheries or livestock, becomes an obligation for every plantation business license.

The state's authority to grant land rights in the form of HGU to palm oil plantation business licenses is part of natural resource management, so in this context, information disclosure is important. Until now, information disclosure, especially in the palm oil plantation sector, is still not executed well. Based on Forest Watch Indonesia's experience in testing access to this information, not all information regarding plantation business licenses and also HGUs can be obtained. Especially information related to spatial data or maps.

Spatial data or maps of palm oil plantation business licenses and HGU concessions were very important as a basis for spatial analysis so that the community can participate in monitoring how the suitability or compliance of plantation business licenses with: land rights for plantation businesses, spatial policies, legality of forest areas, overlapped land use, and also potential conflicts with indigenous peoples' territories. Therefore, Forest Watch Indonesia then conducted a spatial study aimed not only to determine the relationship between palm oil plantations HGU distribution in Indonesia with various policies on space, but also the territories of their indigenous peoples, accelerating access to public information, as well as exert the right to seek, obtain, own, store, process, and convey information about HGU.

## Purpose and Structure of the Book

The purpose of writing this book is to provide brief information regarding land use rights, public information disclosure on HGU and spatial studies regarding the distribution of HGUs in palm oil IUPs. Although the review of the information referred to is not carried out in depth, the authors see it subjective enough to describe the initial indication of HGU in palm oil IUP and its relation to space utilization and land use. This book also aims to accelerate the disclosure of HGU information, so that hopefully the Government will immediately open HGU information access to the public (in particular: accurate and up-to-date spatial data) and provide room for participation in the control and supervision of the granting HGU in palm oil plantation businesses or others.

The structure of this book consists of:

1. Background
2. Overview of Cultivation Rights Title
3. Public information disclosure on HGU and FWI's experience in disputing HGU information and its results
4. Results of spatial analysis of palm oil HGU and its relation to: Obligation of palm oil plantation business licenses in obtaining HGU, the suitability of HGU commodities with palm oil plantation businesses, their relation to forest areas, overlaps with other land-based licensing sectors, overlaps with customary (*adat*) areas, as well as examples of cases of HGU suitability with provincial spatial plan (Papua, West Papua and East Kalimantan).

Sebenarnya  
Keterbukaan Dokumen HGU itu  
agar masyarakat dapat berpartisipasi  
mengawasi praktik perkebunan kelapa sawit

kalo aku sih, YESS!!!







## **OVERVIEW OF CULTIVATION RIGHTS TITLE**

Recognizing what is meant by HGU and matters relating to HGU, there are three references to the Prevailing Laws used in this book, namely: Law No. 5 of 1960 concerning Agrarian principal law (UUPA), Government Regulation Number. 40 of 1996 concerning Land Use Rights, Building Use Rights and Land Use Rights and Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 7 of 2017 concerning Regulations and Procedures for Determining Cultivation Rights Title.

### **Some Things About Cultivation Rights Title**

Cultivation Rights Title (HGU) are a product of Government policy in carrying out the mandate of the LGA. The following are some important things regarding HGU that must be known, namely:

- HGU is defined as a right to exploit land that is directly controlled by the state, within a certain period of time for agricultural, fishery or livestock business.
- HGU can only be granted to Indonesian citizens or legal entities established under Indonesian law and domiciled in Indonesia.
- The maximum term of the HGU is 35 years, and can be extended for a maximum period of 25 years. After the term of land use rights and their extension ends, renewal of land use rights over the same land same can be given for a maximum period of 35 years.

- Land origin for HGU comes from: state land, private land, customary (*adat*) land, state forest area, and transmigration management rights.
- For a HGU application for land located in a forest area, the HGU can be granted after the land is removed from its status as a forest area.
- Acquisition of HGU for land that already has land control over it must obtain approval from the owner of the land. The land use rights applicant is also obliged to respect and give access to the land owner if there is a plot of land that cannot be acquired or the land owner is not willing to give up his land.
- Control and use of water sources and other natural resources over land granted with a Cultivation Rights Title, can only be done as long as it supports business activities in accordance with the decision to grant the right.
- Granting HGU and its use in accordance with the regional spatial plan
- Changes in the use (commodity) of land use rights for business can only be done after obtaining permission from the authorized official.
- After the HGU is granted, other parties who feel entitled to the land can no longer demand the exercise of their rights if up to a certain period of time they do not submit written objections to the competent authority.

## **Rights and Obligations of HGU Holders**

After the applicant obtains the HGU, the HGU holder has the rights and obligations on the basis of the rights that have been given simultaneously in its use. In this case:

Holders of land use rights have the following rights:

- Receive legal protection and guaranteed certainty for the given Cultivation Rights Title
- Use the land granted with a Business Utilization Right to carry out business in the fields of agriculture, fishery or livestock
- Utilizing water sources and other natural resources on the land granted with Cultivation Rights Title as long as to support their business and pay attention to the interests of the surrounding community,
- Conducting legal actions that intend to release, transfer and change their use, in accordance with the provisions of laws and regulations after obtaining permission from the authorized official.

Holders of land use rights have the following obligations:

- Carrying out agricultural, fishery or livestock business according to the designation and requirements as stipulated in the decision to grant rights
- Cultivate land use rights properly according to business feasibility based on the criteria set by the technical agency
- Build and maintain environmental infrastructure and land facilities in the area of land use rights
- Maintain soil fertility, prevent damage to natural resources and protect the environment

- Fulfill the provisions of the prohibition to open and / or cultivate land by burning
- Providing facilities and infrastructure for controlling land fires including providing water sources, performing proper and correct water management to keep the land wet and not flammable, taking preventive measures including implementing an early fire suppression crisis center, carrying out extinguishing and post-fire handling in the land area granted with a Cultivation Rights Title, including the prevention and handling of fires on the land of the surrounding community
- Submit a written report on the use and utilization of Cultivation Rights Title to the Head of the local Land Office at the end of each year
- Provide information or other things needed in the context of monitoring and evaluating the use and utilization of land use rights for business
- Apply for a license beforehand if it will transfer and / or change the designation of land use, either in whole or in part
- Carry out the agreement made by the old land use rights holder with a third party, if the land use rights are obtained from the transfer of rights
- Facilitating the development of local community plantations for at least 20% (twenty %) of the land area that is applied for Cultivation Rights Title for the surrounding community in the form of partnerships (plasma) in accordance with the business activity license from the competent technical agency, for legal entity rights holders
- Carry out social and environmental responsibility for legal entity rights holders.
- Paying income to the state<sup>7</sup>

<sup>7</sup> Government Regulation Number 40 year 1996, about Cultivation Rights Title, Building Rights Title, and Land Use Title.

## Abolition of Cultivation Rights Title

As one of the granted rights by the state, the holder of the HGU titles can no longer exercise their rights if at least one of these terms fulfilled:

- The term is over
- Terminated before the term expires because some of the terms has not yet been fulfilled. The terms specifically related to HGU holder obligations.
- Released by the right holder before the expiry date
- Revoked for greater people's good
- neglected; or
- The land is vanished.

## The relationship between HGU and palm oil plantation Business Licenses

In the Regulation of the Minister of Agriculture Number 98 of 2013 concerning Guidelines for Plantation Business Licensing, palm oil plantation is a business that produces plantation goods and / or services<sup>8</sup> which includes Plantation Crop Cultivation Business and Plantation Product Processing Industry Business<sup>9</sup>. Concerning such land usage as well as all of its related activity , the regulation issued by Minister of Agriculture in regulation Number 98 of 2013 reads as follows:

---

<sup>8</sup>. Plantation Cultivation Business is defined as a series of plantation crop exploitation activities which include pre-planting, planting, plant maintenance, harvesting and sorting including changes in plant types and crop diversification.

<sup>9</sup>. Plantation Product Processing Industry is defined as a series of handling and processing activities carried out on plantation crops aimed at achieving higher added value and prolonged preservation.

1. If the proposed land for plantation business derives from the customary (*adat*) land rights owned by customary (*adat*) law community, then, the applicant of plantation business license must first hold a consultation with the community who hold customary (*adat*) rights and residents who hold the rights, to make an agreement in which handing over the land and its compensation are stipulated. The agreement should be known by the local governor or regent / mayor in accordance with the authority.
2. If the proposed land comes from state forest area. Technical considerations from the forestry department, for land availability should be presented.
3. Plantation business license holders are required to complete the process of acquiring land rights in accordance with the statutory regulations in the land sector.

As stated that the holder of a plantation business license has an obligation to complete the process of obtaining land rights, and the type of land rights granted by the state for agricultural, fishery or livestock businesses is the Cultivation Rights Title (HGU). So every palm oil plantation business license holder is obliged to have a HGU as a legal basis for their activities.





## HGU INFORMATION DISCLOSURE

### HGU is Public Information

Information disclosure is basically a window for the check & balance process, a concrete form of public participation in monitoring government performance. Transparency is an aspect that must be presented to the public in order to implement their duties in preserving the pillars of democracy. Likewise, in the management of natural and spatial resources, weak public oversight opens up opportunities for corruption and loss of state revenue. The increasing closed community access to forestry management also has implications to serious social conflicts.

Public information is information that is generated, stored, managed, sent, and / or received by related public body to state administrators and / or administrators and the administration of other public bodies, in accordance with the Law and other information related to public interest. Meanwhile, what is meant by Public Bodies are executive, legislative, judicial, and other bodies whose main functions and tasks are related to state administration, the part of which or all of the funds come from the state revenue and expenditure budget and / or regional revenue and expenditure budget, or organization non-government, as long as part or all of the funds come from the state revenue and expenditure budget and / or regional income and expenditure budget, public donations, and / or abroad.

10. in article 1 number 2 and number 3, Law No. 14 of 2008 on Freedom of Information (KIP)

HGU information for palm oil plantations needs to be disclosed to the public because of the following reasons:

**HGU is part of state administration and is related to the public interest**

The realization of state affairs in the land sector is a form of state control over the land, water and space, including the natural resources contained therein (Article 33 paragraph (3) of the 1945 Constitution), in which state control is not constructed as the owner of the land. The state as a people's power organization, acts as a ruling body, which is then given the authority as stated in Article 2 paragraph 2 of Law Number 5 of 1960 concerning Agrarian Principles reads as follows:

1. Manage and administer the designation, use, supply and maintenance;
2. To determine and regulate the rights that can be owned (part of) the land, water and space;
3. Determine and regulate legal relationships between people and legal actions regarding lands, water and space. "

In exercising this authority, one of the state's regulations on land affairs is through regulating land rights in the form of HGU. The granting of HGU by the state aims to exploit the land for agriculture, fishery or livestock businesses.

The granting of HGU by the Government, in general, can only be achieved, in two ways, whether the land has not been encumbered with any rights title, or it has been completely released from any other rights title prior. In article 30, Regulation of the Minister of Agrarian and Spatial Planning number 7 of 2017 concerning the regulation and procedure for determining HGU, it is stated that "If the Cultivation Rights Title certificate has been issued in accordance with the provisions of the laws and regulations and is clearly controlled by the right holder, then other parties who feel they have the right to the land can no longer demand the exercise of said right if within 10 (ten) years from the issuance of the certificate, there is no written objection to the certificate holder and the Head of the Land Office concerned or does not file a lawsuit to the Court regarding land control or the issuance of the certificate.



Although the procedure of granting HGU on a piece of land will not forcibly remove any other rights title of the land, state claims through the HGU also contain potential conflicts due to the loss of community rights and access to the same land. Some of the potential risks have even been manifested in the form of agrarian conflicts.

When the government grants land rights through HGU, it also imposes special obligations on HGU recipients, which are specifically related to the public interest. for example: the holder need to pay a portion of their income from the business to the state, they obliged to keep the natural resources and the environment undamaged, do business according to the designation of the land, and bear the social and environmental responsibilities.

Thus, granting rights to land through HGU is part of state administration and has a link with the public interest. So that HGU is information that is open to the public. It is further stated in article 7 of the KIP Law, that Public Bodies are obliged to provide and / or publish Public Information under their authority, in addition to information that is exempted in accordance with the provisions. Public Bodies also required to provide accurate, correct, if not misleading, Public Information

### **The high number of agrarian conflicts in the plantation sector**

Within a year of Joko Widodo - Jusuf Kalla's leadership, the plantation sector took first place among other sectors, namely 127 conflicts with an area of 302,526 hectares<sup>11</sup>. The increasing tendency of agrarian conflicts in the plantation sector, shows that the land and large scale plantation operations in Indonesia is expanding. The conflicts that occurred were mainly caused by the chaotic licensing system. During 2014-2018, the land conflict area itself reached 807,177 hectares, dominated by the palm oil plantation sector, which reached 591,640 hectares. Meanwhile, other sectors are forestry with an area of 65 thousand hectares, coastal areas with an area of 54 thousand hectares, and mining with an area of 49 thousand hectares<sup>12</sup>.

11. Kompas.com, 2016. The largest area of Agrarian Conflict is in the Plantation and Forestry sectors. <http://Properti.kompas.com/read/2016/01/06/061504721/Area.Konflik.Agraria.Expert.In.Secto> r. Plantation and forestry

Ecosoc Institute for Rights research in 2015 found that palm oil development, through a case study in Central Kalimantan, is prone to human rights violations, range from the palm oil plantation workers rights to health and work safety issues; rights to assembly and trade union rights; freedom of movement; fair legal process and the right to remedy; freedom of opinion and access to information; family rights and children's rights, rights related to wider community to property rights (land); as well as right to achieve adequate standard of living<sup>13</sup>. In addition, another finding obtained from this study is the chaotic licensing system for palm oil plantations in Central Kalimantan. An important finding is that the total area of land for palm oil plantation licenses exceeds the size of its own district. This incident was found in 5 districts in Central Kalimantan, namely: North Barito, Kapuas Hulu, Gunung Mas, East Barito, and Lamandau District.

Based on the above findings, it could be seen that HGU documents needs to be disclosed. People should also supervise or monitor the licenses issued and actual land usage in the reality through HGU, to stop the prolonged or abandoned conflicts.

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<sup>12</sup> CNN Indonesia, 2019. Agrarian Conflict in the Jokowi Era: 41 People Killed, 546 Persecuted. <https://www.cnnindonesia.com/nasional/20190104084604-20-358395/konflik-agraria-di-era-jokowi-41-orang-tewas-546-dianiaya>

<sup>13</sup> ECOSOC, 2015. PALM OIL PLANTATION INDUSTRY AND HUMAN RIGHTS: A Portrait of the Implementation of Government and Corporate Responsibilities for Human Rights in Central Kalimantan.

**HGU information for palm oil plantations is one of the baseline information regarding the palm oil plantation business licenses status.**

KPK Analysis year 2016<sup>14</sup>, found that there are many palm oil plantation licenses (IUP and HGU) that do not match the land designation. This phenomenon commonly caused by: the absence of integration between the palm oil plantation development and planning system with the spatial planning system. Other causes include, the absence or the lack of Government factual verification system for the requested license because there is no policy of one area spatial map integrated with the licensing system, and many license applications do not meet requirements such as not attaching a map according to the requirements, even though the licenses were still issued.

HGU in the palm oil plantation business itself is one of the obligations that must be carried out by the plantation business license holder. Non-compliance with this may result in the revocation of existing plantation business licenses. Therefore, information on HGU is needed to see the legality of palm oil plantation business licenses as well as to see the suitability of the HGU land designation. So that public supervision of the suitability of HGU land for palm oil plantations with forest areas and also regional spatial planning could be established. The public can also play an active role in identifying and reporting any abandoned and unmanaged HGU lands so that the state could withdraw the HGUs.

14. KPK, 2016. Study on palm oil Commodity Management System. Deputy for Prevention. Directorate of Research and Development. Corruption Eradication Commission.

# Open Access to HGU Information!

## Forest Watch Indonesia's struggles

FWI's background in encouraging the disclosure of HGU information is part of FWI's vision and mission to encourage information disclosure for the realization of sustainable and equitable natural resource management. Another thing, HGU is part of the licensing of palm oil plantations, where palm oil plantations are currently one of the land-based sectors that not only have an impact on natural forest deforestation but also prolonged tenurial conflicts.

The journey of Forest Watch Indonesia (FWI) in fighting for information disclosure on HGU consists of 3 phases, namely:

### Phase 1:

Request for HGU information to the Ministry of ATR / BPN

Information requests were submitted by FWI on September 16, 2015 with details of the information requested are Cultivation Rights Title Documents (HGU) for plantations in Central Kalimantan, West Kalimantan, East Kalimantan, South Kalimantan and North Kalimantan. Because there was no response from the Ministry of ATR / BPN, on 5 October 2015 FWI submitted an objection letter to the Ministry of ATR / BPN. However, up to the time limit determined by the KIP Law, which is 10 + 7 working days with written notification, the PPID of the Ministry of ATR / BPN has not yet responded.

### Phase 2:

Information Disputes

As of 26 October 2016 there was still no response from the Ministry, so FWI registered for information dispute resolution at the Information Commission on 1 December 2016.

## **Information dispute at KIP (Central Information Commission)**

The process towards resolving public information disputes takes about 11 months to produce the Decision of the Central Information Commission Number 057 / XII / KIP-PS-MA / 2015 between FWI and the Ministry of ATR / BPN, dated July 22, 2016. Resolving this information dispute, FWI conducted 9 times trial until the reading of verdict in the period from December 2015-22 July 2016. The Ministry of ATR / BPN was absent 3 times during the trial process at KIP.

## **Information Dispute Resolution Hearing Process (SPSI)**

1. Preliminary Examination Session (18 February 2016 - 22 February 2016), the Preliminary Examination Session is carried out with the agenda of examining legal standing (legal position), namely by examining the completeness of documents starting from the deed of establishment, articles of association, Ministry of Law and Human Rights decree, institutional audits and other document. This initial examination was carried out three times, during the initial examination session the ATR / BPN Ministry did not attend without reason once.

2. Non-litigation Adjudication Session (15 April 2016-3 June 2016, the Adjudication Session is the process of resolving public information disputes between the parties decided by the Information Commission, which could be taken whether when the Mediation effort is declared unsuccessful by writing by one or all the disputing parties, or one or all the disputing parties withdrew from the negotiation. This trial lasted for 3 months, and has been conducted four times with one mediation process. During the adjudication session the Ministry of ATR / BPN did not attend without reason and during the mediation process The Ministry of ATR / BPN was absent again. With the absence and lack of goodwill from the Ministry of ATR / BPN to resolve the dispute, the Central Information Commission stated that the mediation process failed and as stated in the failed mediation statement with number 057 / XII / KIP-PS / 201

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3. Local Investigation Session (16 June 2016), a local examination is conducted to obtain evidence accompanied by the Registrar and may be accompanied by the Petitioner and / or the Respondent at the discretion of the Board of Commissioners. In the event that a local inspection is carried out to examine documents containing exempted information, the examination shall be carried out in the absence of the Petitioner.

4. The verdict of the Session, the decision of the Board of Commissioners was pronounced in an open session to the public on 22 July 2016. KIP decided that the HGU document is public information that falls under the category of “any time’s must available information”. The decision read by the Chairman of the Board of Commissioners Henny S. Widyaningsih stated that the detailed information in the HGU document, in the form of: the name of the HGU holder, the place / location, the area of the HGU area provided, and a map of the HGU area equipped with coordinate points, is an open information for the public.

Obtaining the decision, FWI conducted an open campaign to convey and spread this good news to the public. HGU information can finally be accessed by the public. However, a week later, the decision was challenged by the Ministry of ATR / BPN through the Jakarta State Administrative Court (PTUN).

### **Information Dispute at PTUN**

Not long after the decision on the information dispute at the Central Information Commission was issued, the Ministry of ATR / BPN challenged the KIP decision again through the Application for Objection Number: 2 / G / KI / 2016 / PTUN-JKT dated 9 August 2016 to the Jakarta State Administrative Court. The trial of evidence until the reading of the decision lasts for five months, from 9 August 2016 to 23 December 2016.

1. Evidence Session. This session was conducted four times. During the dispute resolution process at the Jakarta State Administrative Court, the Ministry of ATR / BPN did not attend the trial once. The first and second trial of evidence at the PTUN took place on October 25, 2016 and November 1, 2016, the agenda for this trial is the examination of case evidence.

The result of this trial is that both Forest Watch Indonesia as the defendant and the Ministry of ATR / BPN as the plaintiff must complete the evidence of the case again.

At the fourth trial at the PTUN Jakarta, the parties scheduled evidence and heard expert testimony, so that the Panel of Judges could immediately draw conclusions and read the verdict at the next trial. The process of resolving public information disputes is very slow due to the absence of the Ministry of ATR / BPN.

2. Decision Reading Session, On December 14, 2016, the Panel of Judges won the FWI lawsuit over the opening of the palm oil plantation Right to Use Document. The decision was read out by the Chief Judge at the Jakarta State Administrative Court (PTUN) trial between the Ministry of Agrarian and Spatial Planning (ATR) as the Petitioner and Forest Watch Indonesia (FWI) as the Respondent. The decision at the hearing that was held confirmed the decision of the Central Information Commission (KIP) which stated that the HGU document for palm oil plantations was open information.

On 23 December 2016, PTUN submitted a copy of decision no 2 / G / KI / 2016 / PTUN-JKT to FWI. Prior to the submission of the decision, the Ministry of ATR / BPN submitted a request for cassation.

### **Information Disputes at the Supreme Court**

The information dispute settlement process at the Supreme Court (MA) lasted for approximately four months (23 December 2016-6 March 2017). The information dispute resolution process in the Supreme Court is different from the previous settlement processes. The handling of Cassation at the Supreme Court goes through nine stages, the process begins by sending a Counter Memorandum of Cassation on January 13, 2017 to PTUN-Jakarta. During the cassation handling process, the Respondent did not directly involve both Cassation and the Cassation Petitioners.

The cassation cases status can be monitored directly through the website of the Supreme Court; <https://kepaniteraan.mahkamahagung.go.id/perkara/>. Based on this, FWI monitors the cassation cases registered with no 121 K / TUN / 2017. Based on FWI's observation on February 20, 2017, the material for the FWI case is still in the distribution process and is still being examined by the Judicial Team.

While waiting for the case examination process and the cassation decision at the Supreme Court, FWI conducted a public campaign regarding the disclosure of HGU information. The message of this campaign is to demand the opening of palm oil plantations HGU documents that have not been served by ATR / BPN. After KIP and PTUN won the FWI lawsuit, it turned out that the attitude of ATR / BPN continued to hinder them by filing an appeal to the Supreme Court.

On March 9, 2017, the Supreme Court decided to reject the cassation filed by the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency. This decision strengthens the fact that palm oil plantation HGU document is truly a public document that should be accessed by community. After previously FWI won a series of court proceedings at the Central Information Commission (KIP) and State Administrative Court (PTUN) levels for the same case. The Ministry of ATR / BPN is now obliged the disclosure of Cultivation Rights Title (HGU) palm oil plantations in Kalimantan to the public.

### **Phase 3:**

#### **After the decision the HGU information is opened to the public**

In addition to the litigation efforts that FWI is taking to encourage the disclosure of HGU information, FWI also carries out non-litigation efforts in the form of an open campaign to get broad public attention to demand the disclosure of HGU information to the Ministry of ATR / BPN.



*Future Action in front of the Ministry of ATR / BPN building:*

On June 19<sup>th</sup> 2017, or three months since Supreme Court decision, FWI carried out a peaceful demonstration in front of the Ministry of ATR / BPN building and demanded that the Minister of ATR / BPN to obey the law and carry out the Supreme Court's decision to open HGU documents for palm oil plantations. After this action, FWI was invited to have a dialogue with the Ministry of ATR / BPN to convey their aspirations regarding the demand for HGU document disclosure. In the dialogue, through Mr. Roli Irawan, Director of Regulation and Establishment of Land Rights of the Ministry of ATR / BPN, said that the results of the Supreme Court Decision are currently being discussed at the Ministry's internal. Until the dialogue ended, the Ministry of ATR / BPN was still unable to provide certainty about the time when the HGU document for palm oil plantation could be received by FWI.

The second time FWI held a peaceful demonstration in front of the ATR / BPN Ministry building on May 28, 2018. This action was accompanied by the submission of more than 50 thousand signatures of citizens on the change.org<sup>15</sup> online petition page urging Minister Sofyan Djalil to immediately open HGU data to the public. After FWI gave speeches for one hour, finally the Ministry of ATR / BPN invited FWI to have a dialogue in the press room of the Ministry of ATR / BPN. During the meeting, FWI was received by the Head of Public Relations of the Ministry of ATR / BPN, Mr. Horison Mocodompis, who delivered 2 important points from the results of the hearing. First, the Ministry of ATR / BPN has issued Ministry Decree number 7/2017 on Regulations and Procedures for Establishing Cultivation Rights Title. This Ministerial Regulation ensures that the HGU document is open information. Second, the Ministry of ATR / BPN in relation to the implementation of the Supreme Court decision will still await the outcome of the mediation process that will be carried out by the Indonesian Ombudsman. During the meeting, the Ministry of ATR / BPN did not open space for dialogue regarding the mechanism for providing data, but still questioned what information would be provided and what was its importance.

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14. At the time of writing, netizens' signatures on the Change.org petition have reached 60,463 signatures (<https://www.change.org/p/jokowi-tegur-menteri-atr-bpn-djalil-sofyan-agar-patuhi-hukum-bukainformasihgu>) accessed on 4 September 2019

### *Reporting to KSP (Presidential Staff Office)*

On 27 September 2017, FWI also submitted a Supreme Court decision file that was not complied with by the Ministry of ATR / BPN to the Presidential Staff Office and was accepted by Mr. Hageng Nugroho. This was done to get the situation President's concern, with hopes that the President could immediately take a stand on the disobedience of the Minister of ATR / BPN against the Supreme Court decision. But hope is just hope, there is no meaningful response about this report. And until now this process still not succeed yet.

### *Reporting to ORI (Ombudsman of the Republic of Indonesia)*

Five months past the Supreme Court decision had permanent legal force, on August 22 2017, FWI finally complained the Ministry of ATR / BPN to ORI over the disobedience of the Ministry of ATR / BPN in providing public information services. Two months after reporting, ORI sent a letter requesting clarification I with Number: 043 / KLA / 0750.2017 / AL-54 / TIM-6 / X / 2017 dated 10 October 2017 and did not get a response from the Ministry of ATR / BPN. ORI finally sent a second letter of clarification regarding Alleged Delays by the Ministry of ATR / BPN in Providing Information on HGU for palm oil in Kalimantan, number 0181 / LNJ / 0750.2017 / AL-54 / TIM-6 / XI / 2017 dated 8 November 2017. Because it was 14 days since the receipt of the second request for clarification and the Ministry of ATR / BPN had not yet provided clarification, ORI conducted an examination of the object of the lawsuit without further notification to ATR.

On FWI's monitoring of social media, on February 27 2018, Ahmad Alamsyah Siregar as one of the ORI Commissioners, held a meeting with Sofyan Djalil as Minister of ATR / BPN at the Office of the Ministry of ATR / BPN. The follow-up of the meeting was that the parties would meet at the ORI office in March 2018, which even until this book was published, the plan for the meeting had not yet occurred. FWI finally received a letter from ORI No: 519 / ORI-

SRT / III / 2018 on March 19, 2018 regarding an invitation to the audience to collect complete and comprehensive information regarding protracted disobedience cases conducted by the Ministry of ATR / BPN. After the hearing between ORI and FWI, the complaint report settlement process at ORI had been running slowly for almost 1 year and without any significant progress.

Only after FWI sent a letter to ORI on 27 May 2019 asking for follow-up handling of the report, ORI finally explained through letter Number B / 495 / LM.09.K6 / 0750.2017 / VI / 2019 dated June 21, 2019 which informed that the progress of the report completion was currently ORI has issued an LAHP (Final Audit Result Report) on April 2, 2019, which essentially concluded that there was maladministration carried out by the Ministry of ATR / BPN and requested that the Minister of ATR / BPN take corrective actions, which are:

- 1) Develop a mechanism for providing HGU information to be used as a guide for whistleblowers in particular, and the public in general;
- 2) Provide HGU information to the reporter in accordance with the mechanism as described in number (1) above.

ORI gives a period of 30 (thirty) days to the Ministry of ATR / BPN to submit a report on the implementation of LAHP since the LAHP is received. ORI has also monitored the implementation of LAHP through a letter to the Ministry of ATR / BPN on May 8, 2019, but until now this letter has not been responded by the Ministry of ATR / BPN.

In accordance with the Republic of Indonesia's Ombudsman regulation number 26 of 2017 concerning Procedures for Receiving, Examining, and Completing Reports, the handling of this report then falls under the authority of the Resolution and Monitoring Unit. And again, the public must wait without certainty, when will this HGU information be able to be accessed.

# Proses Penyelesaian Sengketa Informasi Publik FWI dengan KemenATR/BPN

Kurun Waktu September 2015—Juli 2016



Figure 1. Perjalanan Sengketa Informasi HGU untuk Perkebunan palm oil

## **Other Civil Society Movements in Fighting the Freedom of HGU Information.**

The urge for HGU information disclosure has become a virus not only in the central government, but also in the regions. The following are brief notes on the "*#bukainformasiHGU*" movement across Indonesia.

### **Aceh**

The Aceh Orangutan Forum (FORA) requested information on the palm oil plantation Company Profile and HGU in Aceh Province from the Aceh Province Agriculture and Plantation Office. Just like FWI, FORA also went through a long process to get this information. Beginning in the information dispute at Aceh Information Commission in March 2018 until the decision in October 2018 with Number: 021 / III / KIA-PS-A / PNTP / 2018, which states: Public information "a quo" is open information and accept the applicant's request for public information that is controlled and / or documented by the respondent. Even as of early January 2019, the Aceh Provincial Agriculture and Plantation Office had not submitted the information yet. Then FORA mailed Banda Aceh Administrative Court with letter number 06 / I / FORA / A, requesting an execution.

On February 4, 2019, State Administrative Court Decree number 01 / PEN-EKS / 2019 / PTUN-BNA, stipulated: Grant the request for execution of the above and stated that the decision of the Aceh Information Commission, Number: 021 / III / KIA-PS-A / PNTP / 2018, dated 9 October 2018 can be implemented. Even after the PTUN has decided, the requested information still has not yet been executed. So FORA reported this government agency to the Aceh Regional Police for violating Law No. 14 of 2008 on Freedom of Information.

## Bengkulu

Wahana Lingkungan Hidup Indonesia (Walhi) Bengkulu requested some information regarding a. The latest list of HGUs in Bengkulu Province; b. HGU map; PTPN VII, PT. Agri Andalas and PT. Way Sebayur (PT. Sandabi Indah Lestari Seluma) to the Regional Office (Kanwil) of the National Land Agency of Bengkulu Province. The process of requesting information until the dispute trial until the verdict lasts for approximately eight months. In July 2015, Walhi Bengkulu won an information dispute at the Bengkulu Information Commission with Decision Number: 31 / III / KIP-BKL.PSI / A / 2015. After the process at KI Bengkulu, the Regional Office of BPN submitted an appeal to the Bengkulu PTUN on the decision of KIP 31 / III / KIP-BKL.PSI / A / 2015. On 12 October 2015 PTUN Bengkulu finally decided to reject the objection applicant's claim and strengthen the KIP decision with Decision Number: 04 / G / 2015 / PTUN-BKL. Not satisfied with the result, on 26 October 2015 BPN objected again and submitted an appeal to the Supreme Court. The decision of the Supreme Court was to Reject the appeal from the Bengkulu Province BPN Appellant and finally the information requested was obtained by Walhi Bengkulu.

## East Kalimantan

**JATAM East Kalimantan**, represented by Merah Johansyah, requested information regarding the HGU document of PT Perkebunan Kaltim Utama (PKU) to the Regional Office (Kanwil) of the East Kalimantan National Land Agency. Because it did not get a response from the Regional Office of BPN Kaltim, East Kalimantan JATAM registered the dispute over HGU document information with the East Kalimantan Information Commission with number: 00081REG-PSIIXII2015. The dispute gets four months long until settled by the KI decree. The KI decision number: 0008 / REG-PSI / XI / 2015 states that:

a. The Board Commissioners stated that the information requested by the Petitioner in point [2.2] truly is an open information.

b. It also stated that the information requested by the Petitioner is part of public information generated, stored and controlled by the Respondent.

c. Instruct the Respondent to submit the documents requested by the Petitioner as in point [2.2] in hardcopy.

d. Charge all duplication costs arising from obtaining a quo information to the Petitioner.

After the decision from KI stating that HGU information was open, the party from the Head of BPN Kanwil East Kalimantan submitted an appeal to the PTUN with registration number: 11 / G / KI / 2016 / PTUN-SMD on the grounds of objections to the decision of the East Kalimantan Provincial Information Commission regarding the request certificate or land registration document of PT. Perkebunan Kaltim Utama I. The PTUN decided to reject the applicant's objection claim, strengthen the East Kalimantan Provincial Information Commission's decision, and order the Petitioner to provide all information as stated in the East Kalimantan Provincial Information Commission's decision. Only then, JATAM East Kalimantan finally be able to obtain the requested information.

**Darius Saiman** requested information on Cultivation Rights Title (HGU), Maps and Coordinating Points for palm oil plantation HGUs, from: PT Borneo Surya Mining Jaya (PT BSMJ) and PT Munte Waniq Jaya Perkasa (PT MWJP) to the Regional Office (Kanwil) of the National Land Agency of East Kalimantan Province. Until the deadline, there was still no response from the BPN Regional Office of East Kalimantan. Darius Saiman then registered the information dispute to the Information Commission. The dispute took approximately six months from April 2017 to October 2017 until get decided. The results of the KI decision stated that the information requested by the applicant was public information which was open in nature and instructed the Respondent to provide information to the Petitioner, since this decision has permanent legal force. (inkracht van gewijsde). But the decree was not executed by the Regional Office of the BPN of East Kalimantan Province, until June 2018. Muara Tae has carried out the execution of the KIP decision three times and it has not produced any results.

With convoluted reasons, BPN still did not provide the requested HGU. The indigenous people of Muara Tae together with the accompanying agency Kaoem Telapak and the Balikpapan Environmental Advocates Network (JALH) finally complained about the actions of the Kaltim Regional Office of BPN to the Kaltim Police in Balikpapan on (05/09/2018) and on the same day also complained about this process to the East Kalimantan Ombudsman. Only then, Darius Saiman could managed to obtain the requested information.

### **Central Sulawesi**

AGRA Sulawesi Tengah requests information on the HGU of PT. Hardaya Inti Plantation (HIP) which is addressed to the Regional Office (Kanwil) of the National Land Agency of Central Sulawesi Province. Because there was no response from the Regional Office of the Central Sulawesi National Land Agency, AGRA registered a public information dispute with KI. The dispute lasts for one month, from 26 June 2013 to 25 July 2013, before the verdict then issued. The KI decision number: 02 / PTS / PSI / KI-STLG / VII / 2013, which points as follows:

In the Exception: Rejecting the Respondent's Exception (BPN Central Sulawesi) and in the Principal of the Petition:

1. Grant the Petitioner's Application (AGRA) in its entirety
2. State that the information requested by the applicant in the form of a request for a copy of PT. HIP HGU maps, was actually an open information for the applicant
3. Photocopy fee will be charged to the applicant
4. Instruct the respondent to provide information in the form of a copy of the HGU Map of PT. The HIP that the respondent has legalized to the applicant is not later than 14 (fourteen) working days after the copy of the decision is received by the respondent.



The Central Sulawesi Regional Office of BPN did not accept the decision, and made an appeal to the PTUN. In the content of decision No. 16 / G / 2013 / PTUN. PL confirmed the Information Commission's decision.

## **Papua**

LBH Papua requested HGU information operating in Papua province from the Ministry of Agrarian Affairs (ATR) and the National Land Agency (BPN) of the Republic of Indonesia. The dispute took place from March to May 2018 with the results stating that the information requested by the applicant was in the form of HGU documents for 31 palm oil plantation companies in Papua until 2016-2017. It contained the following detailed information: the name of the HGU license holder, place and location, HGU area, type of commodity, and map of the HGU area complete with open coordinate points that spread across eight districts in Papua, which are Jayapura, Keerom, Merauke, Mappi, Boven Digoel, Sarmi, Nabire, and Timika. Even though there has been a decision issued by KIP No. 004 / III / KI-Papua-PS-A / 2018, stating that the document is open, until now the HGU document requested has not been presented yet.



Satu tahun Mahkamah Agung menyatakan  
DOKUMEN HGU SEBAGAI INFORMASI TERBUKA.  
tapi FWI belum juga mendapatkan dokumennya.





## **SPATIAL STUDY OF PALM OIL PLANTATION HGU**

To identify how the HGU is spatially distributed, and its relationship with land rights for plantation business, spatial policies, legality of forest areas, overlapped land use with other sectors, and potential conflicts with indigenous peoples' territories, Forest Watch Indonesia overlaid another spatial data related to HGU, in this spatial study, the data used include:

1. Map of Provincial Administration, KPU 2015
2. Map of Indonesian Forest Areas, KLHK 2017
3. Distribution of land use rights throughout Indonesia map, compiled by FWI 2018
4. Distribution of palm oil plantation Licenses throughout Indonesia map, compiled by FWI 2018
5. Distribution of Natural Forest Timber Forest Product Utilization Business Licenses map, KLHK 2017
6. Distribution of Plantation Forest Timber Forest Product Utilization Business Licenses map, KLHK 2017
7. Distribution of mining maps, JATAM 2013 and compilation of FWI 2018
8. 2010-2030 Papua Province Spatial plan Map, BAPPEDA Papua
9. West Papua Province Spatial plan Map of 2013-2033, *Perda* No 3 of 2013
10. East Kalimantan Province Spatial plan Map of 2016-2036, *Perda* No 1 of 2016

## 11. Participatory customary (*adat*) territories map, Alliance of Indigenous Peoples of the Archipelago (AMAN)

An important note regarding the data used: spatial data, especially licensing data, are not official data from the competent Ministries / Agencies, because until now the public has not been able to access this data freely. Although substantively, the information is stated as open information. On the other hand, several Ministries / Agencies related to this data do have a website-based information system, but until now this information system has been restricted in access and has only become a system to visually display the data without being able to be downloaded or further processed by the public.

Based on the results of the analysis carried out, FWI classified these results in the following findings:

### **Distribution of HGU and IUP for palm oil**

From the overlapping analysis of spatial data on palm oil plantation Business Licenses and HGUs that were successfully compiled by FWI from various sources, the results showed the following:

- The area of palm oil plantation Business Licenses in Indonesia from the compiled spatial data of FWI is around 21.9 million hectares
- palm oil plantation Business Licenses which are not HGU titled, are around 14.8 million hectares or around 68 %, while palm oil plantation Business Licenses which has HGU title are around 7.1 million hectares or around 32 %
- The area of HGU in Indonesia from the compiled FWI spatial data is around 11.1 million hectares
- Around 7.1 million hectares of HGU which are the basis for land rights in the palm oil plantation Business License constitute 64 % of the total HGU area, while around 4 million hectares or 36 % other are HGU that are outside the palm oil plantation Business License.



Figure 2. Map of HGU distribution both inside and outside the palm oil plantation IUP.

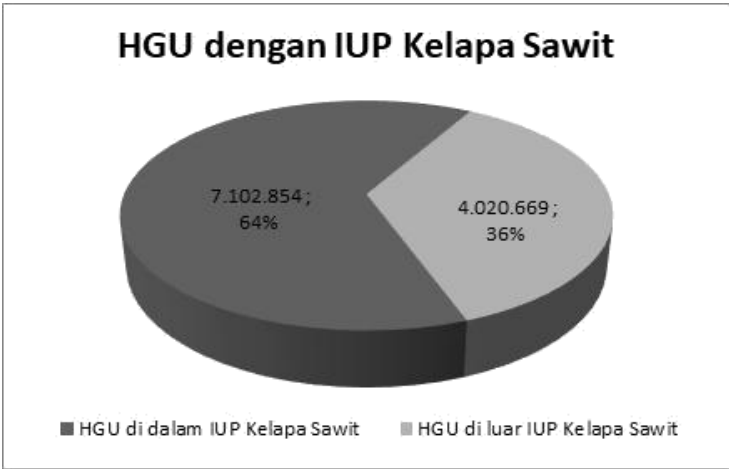


Figure 3. HGU in palm oil plantation IUP.

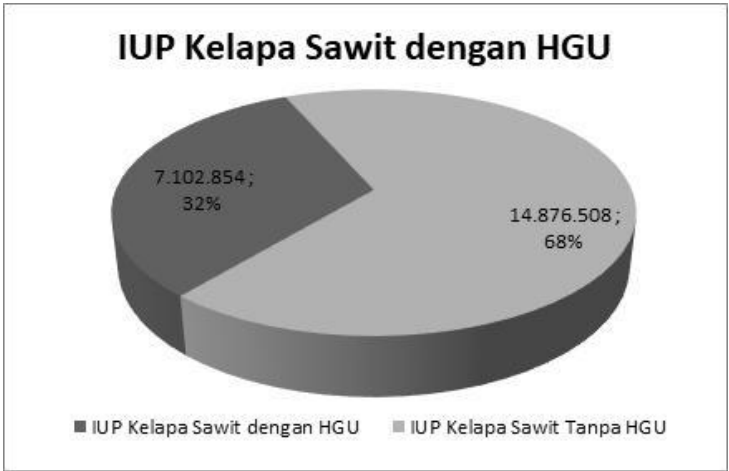


Figure 4. Comparison of IUP for palm oil plantation with HGU.

**Conformity between HGU Commodities and palm oil IUP**

As HGU must be used according to its purpose, law enforcement must be carried out if the usage didn't conform its design, or no license from the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency has been achieved. Based on the results from spatial analysis conducted by Forest Watch Indonesia, out of the 7.1 million hectares of HGU in palm oil plantations, in reality the following commodity allocations are:

- 58.5 % or around 4.1 million hectares of HGU in palm oil plantations are allocated for palm oil commodities.
- 0.8 % or about 59 thousand hectares of HGU in palm oil plantations is allocated for mixed palm oil commodities with other agricultural commodities.
- 2.1 % or around 146.5 thousand hectares of HGU in palm oil plantations are not designated for palm oil plantations
- 38.6 % or about 2.7 million hectares of HGU in palm oil plantations, the allocation information is unknown.

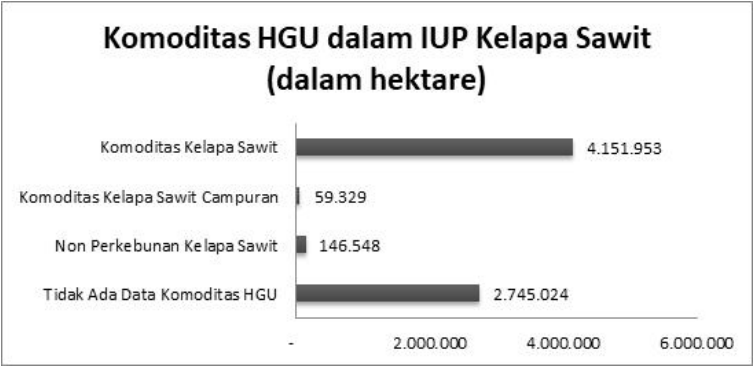
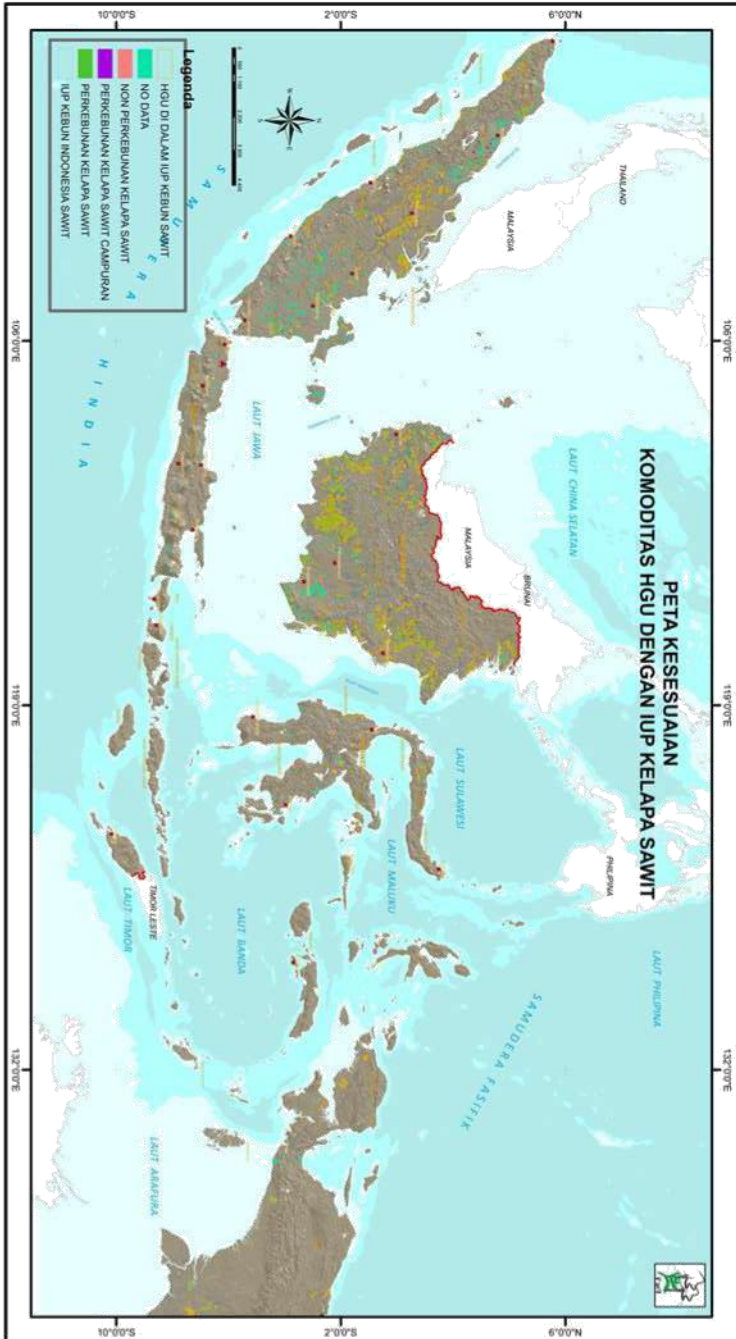


Figure 5. HGU commodity in palm oil plantation IUP



Figure 6. Map of Conformity of HGU with palm oil plantation IUP





**HGU in palm oil IUP in Forest Area**

The granting of a HGU can only be executed after the settlement of land rights thereon. Regarding land that is in a forest area, the status of the forest area must be released first. Based on the results of the spatial analysis conducted by FWI regarding the existence of 7.1 million hectares of HGU in palm oil plantation IUPs with forest areas, it shows the following:

- Approximately 961 thousand hectares of HGU in palm oil IUP or around 13.5 % are in forest areas, which are spread over: 23 thousand hectares in protected forest areas, 5.9 thousand hectares in conservation areas, 389.7 thousand hectares in areas production forest, 87.4 thousand hectares in limited production forest areas and 454.6 thousand hectares in conversion production forest areas
- Around 6.1 million hectares of HGU in palm oil IUP or 86.4 % are in areas for other uses.

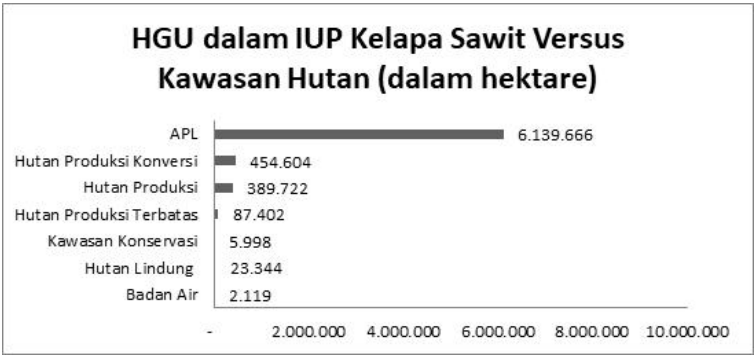


Figure 7. HGU in palm oil plantation IUP in Forest Area and APL

## **HGU in palm oil IUP with other Land-Based License Concessions.**

Had the area for which a HGU is to be applied, been granted other business license related to the utilization of natural resources, then the HGU can only be granted if there is an approval from the business license holder concerned. The spatial analysis results conducted by FWI about the existence of 7.1 million hectares palm oil plantation with forest utilization and land use business licenses IUP HGU, shows the following:

- 86.79 % or around 6.1 million hectares of HGU areas in palm oil plantation IUPs do not overlap with forest utilization and other land use business licenses
- 13.21 % or around 938 thousand hectares of HGU area in palm oil plantation IUP overlaps with forest utilization and other land use business licenses.
- The size and type of overlapped area between the HGU in the palm oil plantations IUP and business licenses for forest utilization and other land uses, could be described by this: around 103 thousand hectares of HGU in palm oil plantation IUP overlaps with Business Licenses for Utilization of Natural Forest Timber Forest Products (IUPHHK- HA), around 219 thousand hectares of HGU in IUP for palm oil plantations overlaps with the Business License for Utilization of Plantation Forest Timber Forest Products (IUPHHK-HT), about 595 thousand hectares of HGU in palm oil plantation IUP overlaps with mining licenses and around 19 thousand hectares HGU in palm oil plantation IUP overlaps with IUPHHK-HA, IUPHHK-HT and / or mining licenses.

Table 1. Overlapping HGU in palm oil plantation IUP with other concessions.

Overlapping types	Area (Hektare)	Percentage
HGU in palm oil IUP	6,164,761	86.79%
HGU in palm oil - IUPHHK-HA IUP	103,166	1.45%
HGU in palm oil - IUPHHK-HT IUP	219,403	3.09%
HGU in IUP palm oil - Mining concession	595,925	8.39%
HGU in IUP palm oil - IUPHHK-HA - Mining concession	13,945	0.20%
HGU in IUP palm oil - IUPHHK-HT - Mining concession	5,654	0.08%
<b>Total</b>	<b>7,102,854</b>	<b>100.00%</b>

### HGU and Customary (*adat*) Territories

Recognition of the existence of customary (*adat*) territories is normatively recognized in the UUPA. In forestry implementation, through Forestry Law 41, customary (*adat*) law communities are increasingly being emphasized through MK 35. Nevertheless, the Government has not actively identified the existence of customary (*adat*) law communities yet. Meanwhile among civil society, many community organizations, especially the National Indigenous Peoples Alliance (AMAN), carry out identification of indigenous peoples' territories on a voluntary basis. One of the results of the identification of indigenous peoples is the distribution of participatory maps of customary (*adat*) territories. Until 2018, the mapped area of indigenous peoples were 16.16 million hectares.

The results of the spatial analysis carried out by FWI regarding the distribution of HGU and its existence with indigenous peoples' territories that have been mapped, shows the following:

- About 875 thousand hectares of HGU that have been granted by the government are in customary (*adat*) territories.
- 62 % or around 544 thousand hectares of HGU area in customary (*adat*) areas are HGUs in palm oil IUPs.
- 38 % or around 331 thousand hectares of HGU area in customary (*adat*) areas are HGU outside palm oil IUP.



Figure 8. Customary areas with HGU inside the palm oil plantation IUP and outside the palm oil plantation IUP

### HGU in palm oil IUP with provincial spatial plan, case study of Papua, West Papua and East Kalimantan Provinces

One of the prerequisites to grant a HGU is that it must conform with the spatial plan, because it is related to the type of business being applied. In order to identify how the granting of HGUs in palm oil IUPs and their compatibility with spatial plans, FWI conducted a spatial analysis of the distribution of HGUs in palm oil IUPs with provincial spatial plan by taking 3 provinces studied, namely Papua, West Papua and East Kalimantan Provinces.

The selection of the 3 provinces was based on the provincial spatial plan data which was available to FWI, again, it did not come from the government official.

The following are the results of the spatial study:

### **Papua Province**

In Papua Province, until 2018, a license for palm oil plantation business covering an area of 2.9 million hectares has been granted. With this area, only about 323 thousand hectares or 11 % of the land rights are in HGU title. From 323 thousand hectares of HGU in palm oil IUP, around 34 thousand of it allocated for palm oil plantations, or about 11 %, while 288 thousand or 89 % of the other commodities are not known.

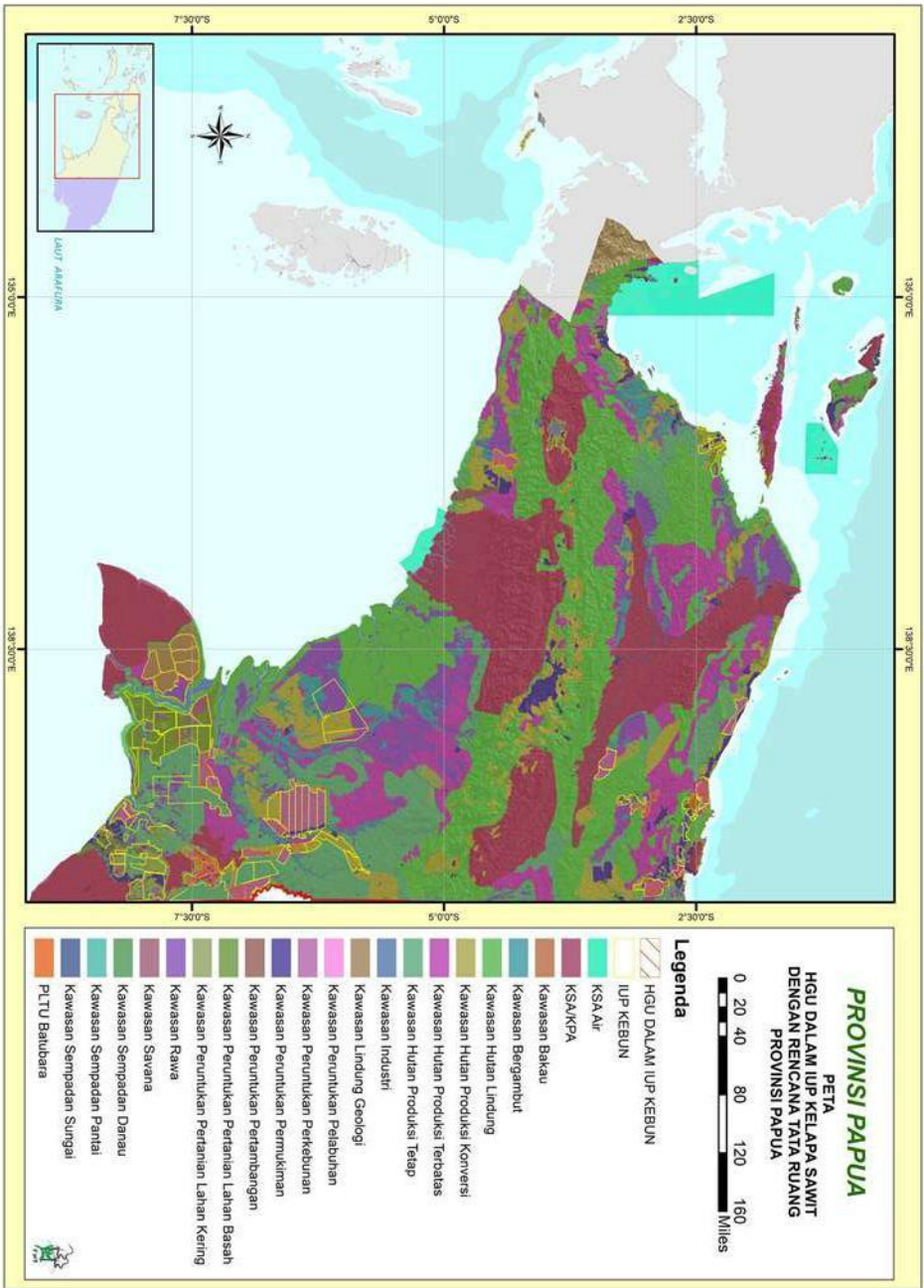
The following are some important findings as an initial indication of the discrepancy over the distribution of 323 thousand hectares of HGU in palm oil IUPs related to the Papua provincial spatial plan:

- About 240 thousand hectares or 74.5 % of the HGU in palm oil IUPs are inside the Plantation Allocation Area, while about 82 thousand hectares or another 25.5 % are outside the allocation for plantation areas
- Around 34 thousand hectares or 11 % of the HGU in palm oil IUP are located in production forest areas and also Nature Reserve / Nature Protection Areas
- Approximately 738 hectares or 0.2 % of HGU in palm oil IUPs are located in Swamp, Savanna and River Border Areas.
- Approximately 9,247 hectares or 2.86 % of the HGU in palm oil IUP are located in Settlement Area
- Approximately 11,931 hectares or 3.69 % of the HGU in palm oil IUPs are located in Wetland Agricultural Allocation Areas

- About 26,318 hectares or 8.14 % of the HGU in palm oil IUPs are located in Dryland Agricultural Allocation Areas
  - The details are in table 2 below;
- Table 2. HGU in IUP with the Papua Provincial spatial plan

Provincial spatial plan	Area (in hectares)	Percentage
Production Forest Conversion Area	28,488	8.81%
Limited Production Forest Area	1,453	0.45%
Permanent Production Forest Area	3,406	1.05%
Swampy Area	157	0.05%
Savannah Area	138	0.04%
River Border Area	443	0.14%
KSA/KPA	957	0.30%
Plantation Allocation Area	240,729	74.47%
Settlement Allocation Area	9,247	2.86%
Wetland Agricultural Allocation Areas	11,931	3.69%
Dryland Agricultural Allocation Areas	26,318	8.14%
Total	323,267	100.00%





## West Papua Province

In Papua Province, up to 2018, as much as 485 thousand-hectare area has been licensed to palm oil plantation. From this area, only about 139 thousand hectares or 29 % of which are based on HGU. Of the 139 thousand hectares of HGU in palm oil IUPs, around 47.8 thousand of HGU were allocated for palm oil plantations, or around 34 %, while 6,533 hectares were allocated for non-palm oil plantations, and 85 thousand hectares or 61 % were still unknown.

Table 3. Allocation of West Papua Province HGU Commodities

HGU types	Area (Ha)	Percentage
No data available	85.348	61%
palm oil plantation	47.868	34%
Non-palm oil plantation	6.533	5%
<b>Total</b>	<b>139.749</b>	<b>100%</b>

The following are some important findings as an initial indication of discrepancy between the distribution of 139 thousand hectares of HGU in palm oil IUPs and the spatial plan of West Papua Province:

- About 70 thousand hectares or 50.3 % of the HGU in palm oil IUPs are inside the Plantation Allocation Area, while around 69 thousand hectares or 49.7 % are outside the allocated plantation area
- Around 3,146 hectares or 2.3 % of the HGU in palm oil IUPs are inside the Protected Forest Area
- Around 178 hectares or 0.1 % of the HGU in palm oil IUPs are inside the Nature Reserve Area (KSA) / Nature Protection Area (KPA)
- Approximately 4,445 hectares or 3.2 % of the HGU in palm oil IUP are inside the Permanent Production Forest Zone
- About 659 hectares or 0.5 % of the HGU in palm oil IUPs are in the Limited Production Forest Zone

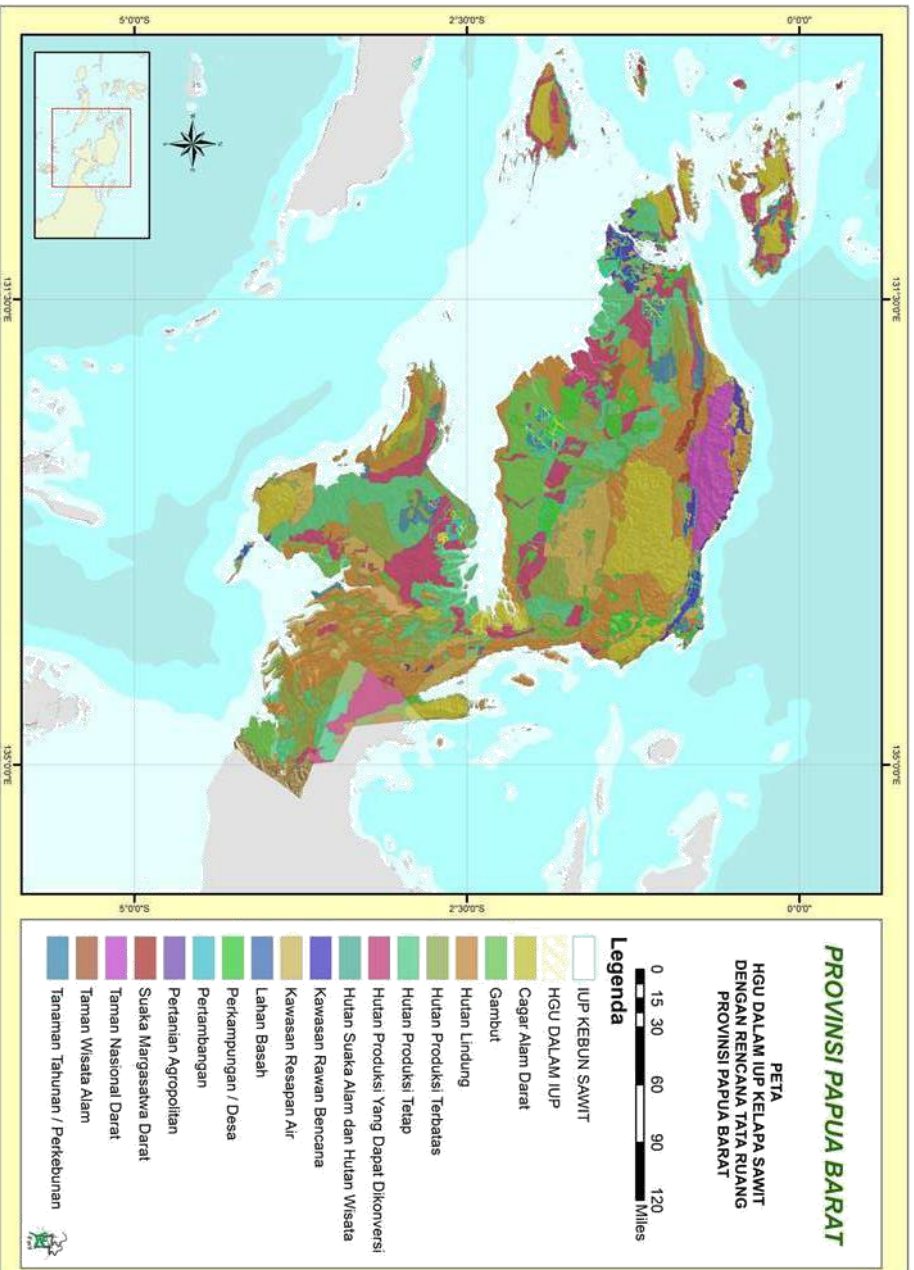


- Approximately 11,923 hectares or 8.5 % of the HGU in palm oil IUPs are in the Convertible Production Forest Area
- Approximately 5,737 hectares or 4.1 % of the HGU in palm oil IUP are in Agropolitan Agricultural Areas
- About 16,324 hectares or 11.7 % of the HGU in palm oil IUPs are located in residential areas
- Around 6,600 hectares or 4.7 % of the HGU in palm oil IUPs are inside the Mining Area
- Around 671 hectares or 0.5 % of the HGU in palm oil IUPs are in Water Infiltration Areas
- and interestingly, around 16,838 or 12 % are HGUs in palm oil IUPs that are in Disaster Prone Areas

Table 4. HGU under IUP with the West Papua provincial spatial plan

Provincial Spatial plan	Area (Ha)	Percentage
Peat	2.900	2,1%
Protected forest	3.146	2,3%
Limited production forest	659	0,5%
Permanent Production Forest	4.445	3,2%
Available Production Forest Converted	11.923	8,5%
Forest and Nature Reserves Travel	178	0,1%
Disaster Prone Areas	16.838	12,0%
Water Infiltration Area	671	0,5%
Village / Village	16.324	11,7%
Mining	6.600	4,7%
Agropolitan Agriculture	5.737	4,1%
Annual Crops	70.329	50,3%
<b>Total</b>	<b>139.749</b>	<b>100%</b>

Figure 10. HGU map of palm oil plantation with West Papua Province Spatial Plan.



**East Kalimantan Province**

In East Kalimantan Province, until 2018 a license for palm oil plantation business covering an area of 2.9 million hectares has been granted. With this area, only about 1.5 million hectares or 50.2 % of the land rights are in the form of HGU. Of the 1.5 million hectares of HGU in palm oil IUP, based on commodity information, it is divided into: the HGU allocation which is indeed for palm oil plantations around 1.3 million hectares or 86.9 %, the HGU allocation for palm oil plantations is mixed with other commodities around 19 thousand hectares or 1.3 %, the HGU allocation for non-palm oil plantations is around 37 thousand hectares or 2.5 % and there is no information on the HGU allocation for about 140 thousand hectares or 9.3 %.

Table 5. Allocation of East Kalimantan Province HGU Commodities

HGU type	Area (in hectares)	Percentage
palm oil plantation	1,308,962	86.9%
Mixed palm oil plantation	19,670	1.3%
Non palm oil plantation	37,611	2.5%
Data not available	140,643	9.3%
<b>Total</b>	<b>1,506,887</b>	<b>100.0%</b>



The following are some important findings as an initial indication of the non-conformity of the distribution of 1.5 million hectares of HGU in palm oil IUPs related to the spatial plan of East Kalimantan Province:

- Approximately 1.24 million hectares or 82.5 % of the HGU in palm oil IUPs are inside the Plantation Allocation Area, while around 147 thousand hectares or 9.8 % are outside the allocation for plantation areas and around 116 thousand hectares or 7, The remaining 7 % have no data<sup>15</sup>

- Approximately 1,587 hectares or 0.11 % of the HGU in palm oil IUP are inside Protected Forest Areas

- About 1,386 hectares or 0.09 % of the HGU in palm oil IUPs are inside the Nature Reserve Area (KSA) / Nature Protection Area (KPA)

- Approximately 44,113 hectares or 2.93 % of the HGU in palm oil IUPs are in the Permanent Production Forest Zone

- Approximately 16,110 hectares or 1.07 % of the HGU in palm oil IUP are inside Production Forest Areas

Limited

- Approximately 5,702 hectares or 0.38 % of the HGU in palm oil IUP are inside Production Forest Areas

Conversion

- About 28,282 hectares or 1.88 % of the HGU in palm oil IUP are inside the Food Crops and Horticulture Zone

- Around 24,255 hectares or 1.61 % of the HGU in palm oil IUPs are located in residential areas

- Approximately 1,618 hectares or 0.11 % of the HGU in palm oil IUP are located in industrial estates

- About 22,942 hectares or 1.52 % of the HGU in palm oil IUPs are in the Inland Tourism Area

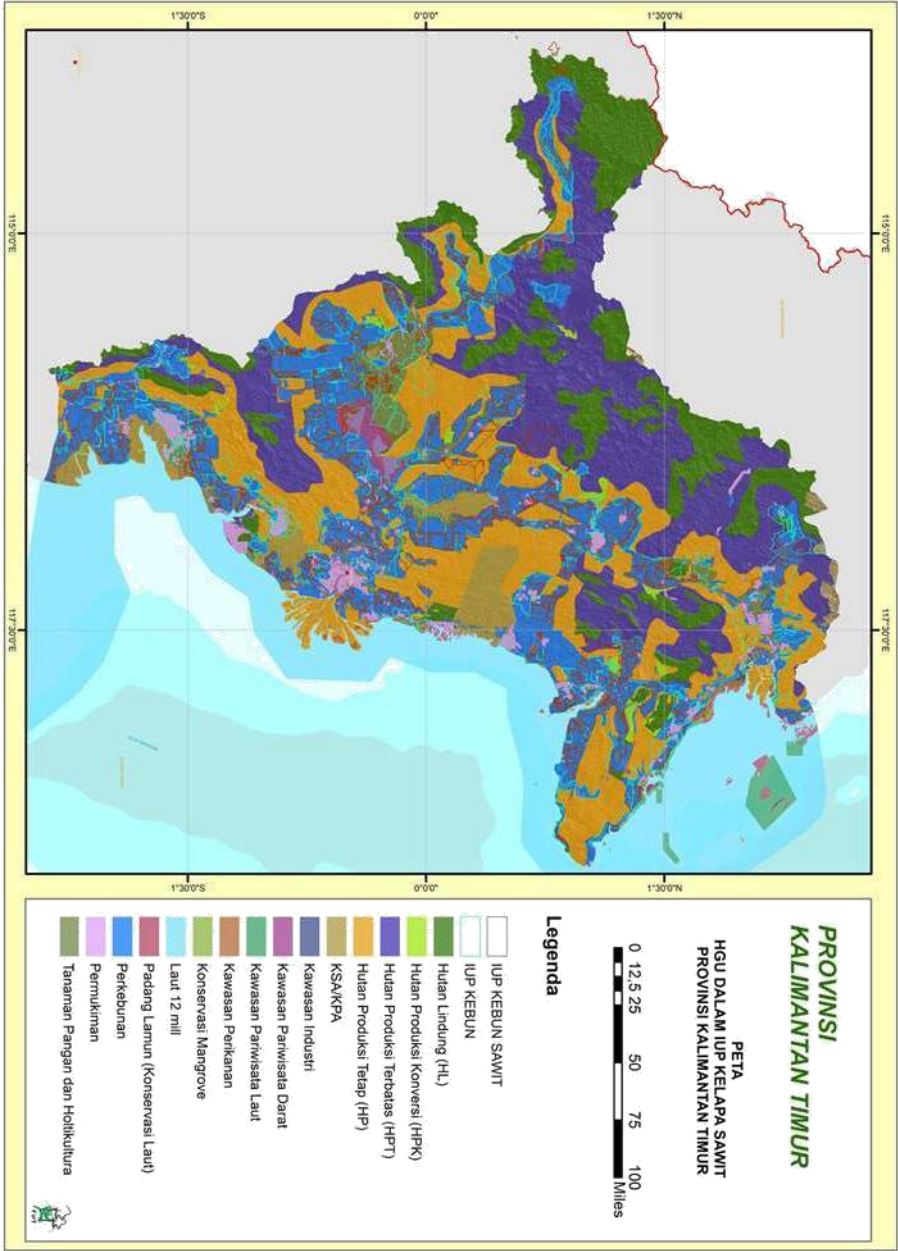
15. The absence of data is likely due to differences in the baseline maps used in the preparation of spatial maps, provincial administration and forest area functions

- Further details can be seen in table 6

Table 6. HGU in palm oil plantation IUP in East Kalimantan Province

Provincial spatial plan	Area (in hectare)	Percentage
Protected Forest (HL)	1,587	0.11%
KSA/KPA	1,386	0.09%
Mangrove Conservation	5	0.00%
Permanent Production Forest (HP)	44,113	2.93%
Limited Production Forest (HPT)	16,110	1.07%
Conversion Production Forest (HPK)	5,702	0.38%
Plantation	1,242,995	82.49%
Food Plants and Horticulture	28,282	1.88%
Settlement	24,255	1.61%
Industry Area	1,618	0.11%
Land Tourism Area	22,942	1.52%
Fisheries Area	711	0.05%
12 mile sea	2	0.00%
Water bodies	451	0.03%
Data not available	116,727	7.75%
<b>Total</b>	<b>1,506,887</b>	<b>100.00%</b>

Figure 11. palm oil plantation IUP HGU overlay map with East Kalimantan Province Spatial plan.





## CLOSING

As a matter of fact, the end of this book does not conclude nor provide any recommendations on any findings from the study conducted. Yet, it is the findings in this book that hopefully could give some alternative baseline information to civil society, as well as to the Government, to encourage improvements in palm oil plantation governance. The momentum of the palm oil moratorium and also the National Movement to Save Natural Resources (GNPSDA) of the KPK can be a good opportunity for parties to provide improvement recommendations to the management of palm oil plantations.

The basis for community participation to be involved in environmental protection and management efforts, in this case related to the environmental impact of the palm oil plantation sector with HGU as the basis for the land rights they cultivate, as stipulated in Law Number 32 of 2008 concerning Environmental Protection and Management:

### Clause 65

1. Everyone has the right to have a good and healthy environment as part of their human rights.
2. Everyone has the right to get environmental education, access to information, access to participation, and access to justice in fulfilling the right to have a good and healthy environment.
3. Everyone has the right to submit proposals and / or objections to the planned business and / or activity which is estimated to have an impact on the environment.



4. Everyone has the right to play a role in environmental protection and management in accordance with statutory regulations.
5. Everyone has the right to make a complaint as a result of allegations of environmental pollution and / or damage.

#### Clause 66

*"Every person who is fighting for the right to have a good and healthy environment cannot be prosecuted civilly or criminally."*

Finally, disclosure of information on HGU and community participation is a prerequisite for the realization of good palm oil plantation governance.





# APPENDIXES

*Appendix 1. HGU outside and inside palm oil plantation IUP, and palm oil plantation IUP that do not have HGU (in hectares).*

Provinces	HGU inside palm oil plantation IUP	HGU outside palm oil plantation IUP	Palm oil plantation IUP without HGU
ACEH	200.046	220.334	113.515
BENGKULU	36.243	141.014	100.904
JAMBI	93.958	133.859	293.232
BANGKA BELITUNG ARCHIP.	15.076	130.507	12.430
RIAU ARCHIPELAGO	2.762	8.757	50.989
LAMPUNG	53.514	289.803	45.621
RIAU	941.537	103.873	1.350.354
NORTH SUMATERA	89.452	597.145	181.865
SOUTH SUMATERA	123.281	652.995	239.983
WEST SUMATERA	76.160	112.923	137.642
BANTEN		16.249	
WEST JAVA		16.605	
CENTRAL JAVA		1.809	
EAST JAVA		27.106	
BARAT KALIMANTAN	1.410.137	132.497	3.889.715
SOUTH KALIMANTAN	256.913	420.938	320.254
CENTRAL KALIMANTAN	1.518.655	237.143	3.043.837
EAST KALIMANTAN	1.506.887	151.240	1.492.770
NORTH KALIMANTAN	144.202	9.920	387.506
BALI		2.626	
WEST NUSA TENGGARA		20.034	748
EAST NUSA TENGGARA		41.127	
GORONTALO	34.031	13.458	19.666
WEST SULAWESI	57.611	61.722	42.467
SOUTH SULAWESI	391	113.941	22.275
CENTRAL SULAWESI	46.596	159.457	124.618
SOUTHEAST SULAWESI	6.052	65.360	16.678
NORTH SULAWESI	207	18.957	6.636
MALUKU		1.720	11.852
NORTH MALUKU	26.161	11.371	22.522
PAPUA	323.267	86.043	2.603.124
WEST PAPUA	139.749	22.983	345.273
<b>Total</b>	<b>7.102.887</b>	<b>4.023.515</b>	<b>14.876.475</b>

*Appendix 2. HGU Commodities in palm oil plantation IUP*

Province	palm oil plantation IUP			
	palm oil plantation	Mixed palm oil plantation	Non-palm oil plantation	HGU Data usage not available
ACEH	63.769	14.229	23.185	98.863
BENGKULU		4.056	7.668	24.519
JAMBI	37.942		3.709	52.306
BANGKA BELITUNG ARCHIP.				15.076
RIAU ARCHIPELAGO				2.762
LAMPUNG			18.966	34.548
RIAU	856.865	14.559	28.767	41.346
NORTH SUMATERA	4.882			84.571
SOUTH SUMATERA				123.281
SUMATERA BARAT	17.493	6.816	3.137	48.714
KALIMANTAN BARAT	307.559		2.028	1.100.550
KALIMANTAN SELATAN	4.301			252.612
CENTRAL KALIMANTAN	1.288.857			229.797
EAST KALIMANTAN	1.308.962	19.670	37.611	140.643
NORTH KALIMANTAN	142.110		2.060	
GORONTALO				34.031
WEST SULAWESI	32.124			25.487
SOUTH SULAWESI				391
CENTRAL SULAWESI	4.828		7.387	34.381
SOUTHWEST SULAWESI			5.290	763
NORTH SULAWESI			207	
MALUKU				
NORTH MALUKU				26.161
PAPUA	34.393			288.874
WEST PAPUA	47.868		6.533	85.348
<b>Total</b>	<b>4.151.953</b>	<b>59.329</b>	<b>146.548</b>	<b>2.745.024</b>

Appendix 3. HGU in palm oil plantation IUP with Other Land-Based Permits.

Provinces	HGU in palm oil IUP	HGU in palm oil IUP – IUPHHK-HA	HGU in palm oil IUP – IUPHHK-HT	HGU inside palm oil IUP – Mining Concession	HGU inside palm oil IUP- IUPHHK-HA- Mining Concession	HGU inside palm oil IUP- IUPHHK-HT- Mining Concession	Total
ACEH	197.206	21	304	2.515			<b>200.046</b>
BENGKULU	35.328			915			<b>36.243</b>
JAMBI	82.144	103	570	11.139		2	<b>93.958</b>
KEP. BANGKA BELITUNG	14.066		9	997		4	<b>15.076</b>
KEPULAUAN RIAU	2.762						<b>2.762</b>
LAMPUNG	53.511		0	3			<b>53.514</b>
RIAU	907.176		10.226	24.135			<b>941.537</b>
SUMATERA UTARA	89.310	108	34				<b>89.452</b>
SUMATERA SELATAN	123.174		107				<b>123.281</b>
SUMATERA BARAT	70.239		5.920				<b>76.160</b>
KALIMANTAN BARAT	1.264.826	2.048	11.129	131.893		241	<b>1.410.137</b>
KALIMANTAN SELATAN	215.835	3.698	30.952	6.156		272	<b>256.913</b>
KALIMANTAN TENGAH	1.339.953	29.627	52.108	93.707	2.706	555	<b>1.518.655</b>
KALIMANTAN TIMUR	1.159.631	34.192	104.321	201.721	4.165	2.856	<b>1.506.887</b>
KALIMANTAN UTARA	67.134	78	19	75.313	684	975	<b>144.202</b>
GORONTALO	34.031						<b>34.031</b>
SULAWESI BARAT	51.880		562	5.170			<b>57.611</b>
SULAWESI SELATAN	391						<b>391</b>
SULAWESI TENGAH	34.526		2.647	8.673		750	<b>46.596</b>
SULAWESI TENGGERA	6.052						<b>6.052</b>
SULAWESI UTARA				207			<b>207</b>
MALUKU UTARA	22.873	1.521		1.767			<b>26.161</b>
PAPUA	296.526	1.662		25.058	20		<b>323.267</b>
PAPUA BARAT	96.212	30.110	496	6.562	6.370		<b>139.749</b>
<b>Total</b>	<b>6.164.789</b>	<b>103.166</b>	<b>219.403</b>	<b>595.930</b>	<b>13.945</b>	<b>5.654</b>	<b>7.102.887</b>

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