



# PROTECTING FORESTS IN INDONESIA

LEGAL OPTIONS IN LAND  
ZONED FOR AGRICULTURE

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N.B. The policies and regulations referenced in this text are translated from the Indonesian language into English. Every effort has been made to stay as close as possible to the Indonesian text and to be made as readable and understandable as possible to English language readers. Where any doubt exists, reference should be made to the original legislation. In matters of interpretation the law as written in Indonesian is always the final authority.

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# 1. TERMINOLOGY AND ABBREVIATIONS

This paper uses several technical terms and acronyms, listed below. The main areas of concern here are High Conservation Value (HCV) areas and High Carbon Stock (HCS) forests.

**High Conservation Values (HCVs)** are biological, ecological, social or cultural values that are considered to be outstandingly significant or critically important at the national, regional or global level. The HCV Resource Network defines [six categories](#) of HCVs: HCVs 1,2 and 3 (on biodiversity), HCV 4 (on environmental services) and HCVs 5 and 6 (on socio-cultural values). While this paper uses this international definition, it is important to note that the Indonesian government are currently working on their own Nilai Konservasi Tinggi (NKT or HCV) criteria. The outcomes of that process will impact the suggestions made in this paper, as discussed in the conclusions section.

**The High Carbon Stock (HCS) Approach** is a practical methodology that uses satellite image analysis and field sampling to distinguishing forest areas that need protection from degraded areas that could be developed. It was developed by Golden-Agri Resources, Greenpeace, and TFT in 2011 to help Golden-Agri Resources put its No Deforestation commitments into practice<sup>1</sup>. The Indonesian government does not currently recognise the HCS methodology or terminology, but instead have a different system for classifying forest based on slope, rainfall and soil type (see section 7). Nevertheless, there is quite a bit of conceptual overlap, and the options for forest protection presented in this paper are relevant for protecting forests defined through the HCS Approach or using government definitions.

While HCS forests are often also HCVs, there is not always 100% overlap, so the two concepts are kept separate in this paper.

<sup>1</sup> For further information on the High Carbon Stock Approach, please see [www.highcarbonstock.org](http://www.highcarbonstock.org)



## 1.1. TERMINOLOGY

- Bupati: Head of a district
- Governor: Head of a province
- Ganti Rugi: the mechanism by which companies compensate communities for their land
- Kawasan Hutan (KH - forest estate): Forest area designated by the government as permanent forest and managed by the KLHK. All land in Indonesia is divided into either APL or Kawasan Hutan
- Production forest (Hutan Produksi): kawasan hutan designated for the production of forest products, sub-classifications include permanent production forest, limited production forest and convertible production forest (i.e. for development of non-forestry purposes)
- Protection forest (Hutan Lindung): kawasan hutan protected area class which allows some economic activities (e.g. non-timber forest product collection)
- Conservation forest (Hutan Konservasi): kawasan hutan strict protected area class; only tourism and research allowed.
- Relinquishment of forest area: a change in status of convertible production forest into non forest area.
- Hutan adat: Customary forest intended to be owned by the indigenous community adhering to customary laws – can be on KH or APL
- Hutan kemasyarakatan: community forest – can be on KH
- Hutan desa: village forest – can be on KH
- Kemendesa: the Ministry of Villages, Rural Development and Transmigration
- Timber utilization permit (Izin Pemanfaatan Kayu, or IPK): a permit to extract timber from a relinquishment forest area for non-forestry development.

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## 1.2. ABBREVIATIONS

- ADD: Alokasi Dana Desa – the village fund
- AMDAL: Environmental Impact Assessment
- APL: Land allocated for any non-forest purpose (also known as non-forest area)
- BKSDA: the KSDAE's protected species unit – operating at the district and provincial levels
- BPN: National Land Agency governing spatial planning – part of the Agrarian Ministry
- Gol: Government of Indonesia
- HCS: High Carbon Stock
- HCV: High Conservation Value
- HGU: Business Right to Use
- ILOK: (Izin Lokasi) a location permit for the development of a palm oil plantation, allowing the company to identify and purchase land from local communities, conduct an AMDAL, obtain an environmental permit, an IUP and eventually a HGU
- IPK: Timber Utilization Permit
- ISPO: Indonesian Sustainable Palm Oil [Indonesia's mandatory certification]
- IUP: Cultivation Business Permit
- KEE: Kawasan Ekosistem Esensial – essential ecosystem area
- KLHK: (Kementerian Lingkungan Hidup dan Kehutanan) Ministry of Environment and Forestry – the Ministries of Environment and Forestry merged into the KLHK in 2014
- KSDAE: the KLHK's conservation directorate – responsible for National Parks and BKSDA units
- MoA: Ministry of Agriculture
- Permenhut: Forestry Ministerial Regulation
- Permentan: Agriculture Ministerial Regulation
- PMNA: Agrarian Ministerial Regulation
- PP: Government Regulation
- UU: Act
- RKL: Environmental Management Plan
- RPL: Environmental Monitoring Plan
- UKL: Environmental Management Effort
- UPL: Environmental Monitoring Effort
- UKL-UPL: agreed environmental management and monitoring plan
- RPJMD: Rencana Pembangunan Jangka Menengah Desa (village medium-term development plan)
- RSPO: Roundtable on Sustainable Palm Oil
- RTRW: Provincial/district Spatial Plans

## 2. INTRODUCTION

Over the past several years, commitments and pledges on ‘no deforestation, no peat, no exploitation’ (NDPE) have been made throughout the Indonesian palm oil sector, primarily in response to pressure from NGOs and the public. The NDPE pledges aimed to transform an industry with social and environmental challenges into one that works for people, nature and business.

At the same time the government of Indonesia (GoI) has made commitments and plans to continue to alleviate poverty in rural communities through rapid oil palm expansion, and maintain its position as the world’s largest palm oil producer. Significantly, much of this expansion is planned to take place in forests and High Conservation Value areas. In 2009, the GoI allocated 18 out of the country’s 57 million hectares of agricultural land to palm oil – but unfortunately, much of this is likely forest. In 2011, a presidential taskforce called UKP4 identified that of the 57 million hectares of land zoned for agriculture, at least 15 million hectares were still forested. Similarly, a 2017 study by Chain Reaction Research identified 6.1 million ha of peatland and forest within Indonesian palm oil concessions<sup>1</sup>.

Companies with NDPE policies whose APL concessions hold forests, peatlands, and other HCV areas have a commitment to protect these areas, but to date have largely been unsure how to do so. This paper presents several legal options for moving HCS forests and HCV areas in APL land into protection. Various pathways exist, including re-classifying APL land into Kawasan Hutan (KH, forest estate), keeping the land as APL, or even designating the area under new classifications just emerging in Indonesian regulation. This paper is not prescriptive, as each company will have to pursue the option that best fits its own situation and remain flexible in choosing another path if one seems blocked. The optimal choice will depend on the amount of forest in the concession, the interest of local communities to get involved in conservation, and government support. But ultimately, companies should be able to avoid simply relinquishing these forest areas and instead contribute actively to protecting Indonesia’s natural resources for generations to come.

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<sup>1</sup> Chain Reaction Research (2017). Indonesian Palm Oil’s Stranded Assets: 10 Million Football Fields of Undeveloped Land.

## 2.1. SCOPE OF THIS PAPER

The options described in this paper focus only on solutions for protecting forests and HCV areas currently classified as agricultural land (APL), which is the main designation for palm oil concessions. Concessions for rubber and other tree plantations, as well as logging, fall under other land use categories. Some of the options described in this paper are also relevant for those activities, but it is recommended that a separate body of research be conducted to examine options for conserving land within the forest estate.

It is also important to note that while we will identify several legal options for protecting HCS forests and HCV areas, it is beyond the scope of this paper to delve into how to finance the protection of these areas, or how best to structure community co-management agreements. TFT and others are researching these topics and aim to publish separate papers to address these challenges.



# 3. CURRENT REGULATORY FRAMEWORK GOVERNING LAND CLASSIFICATION IN INDONESIA

In Indonesia, although the MoA's Directorate General of Plantation officially manages oil palm development, producers must also comply with the regulations of the KLHK and Agrarian Ministry, as well as the BPN's spatial plans, all coordinated by the provincial Governor or district Bupati. To illustrate the overlapping mandates:

- The provincial government manages the process for licensing and granting permits that do not affect KH (i.e. environmental services licenses and permits for the collection of non timber forest products)<sup>1</sup>
- The MoA regulates the development of a palm oil plantation and the mandatory ISPO certification system
- The Agrarian Ministry was put in place in 2014 by current President Jokowi's

<sup>1</sup> UU No 23/2014

administration, to manage the country's APL spatial planning by supporting provincial and district governments with mapping and planning etc.

- The BPN (the spatial planning agency of the Agrarian Ministry) maps current land use at the National, Provincial and District levels
- The national level BAPPENAS, and provincial and district level BAPPEDA, of the Agrarian Ministry, support the Governors and Bupatis in land use planning
- KLHK regulates the conservation of protected species and protection forests, environmental management in and around plantations, and the processes of conducting AMDALs and changing land classification from Kawasan Hutan to APL at the request of local governments.



# 4. THE PROBLEM: FOREST CLASSIFIED AS AGRICULTURAL LAND, AND VICE-VERSA

In Indonesia, all land is legally classified according to its allowable uses: either KH (forest estate), which is managed by KPH (forest management units) under the centralized KLHK and in coordination with the provincial government, or APL (non-forest estate or Areal Penggunaan Lain).

APL is officially managed under the Governor<sup>1</sup> in accordance with the national Basic Agrarian Law<sup>2</sup>. The Governor is able to request relinquishment of KH into APL from KLHK. The classifications determine an area's eligibility for rights and permits that, in turn, determine allowable uses for the land. APL is the area outside of the forest estate and therefore is designated to be used for non-forestry purposes such as settlement, agriculture etc. By contrast, forest estate is designated to be forested and may be used for a variety of commercial and non-commercial purposes — conservation areas, forestry concessions, etc.

However, these land designations do not necessarily match up to the reality on the ground. As stated in the introduction to this paper, millions of hectares of APL land are actually forested. On the other end of the spectrum, the UKP4 GoI Task Force also identified that 26 million ha of forest estate was highly degraded with little or no vegetation left. Complicating matters further, the Agrarian Ministry's APL map overlaps in many places with the KLHK's forest map, leading to the issuing of oil palm location permits (known as Izin Lokasi) in areas of production and protection forest (two of the three main classifications of forest recognized by the KLHK). For example, 4 million ha of KLHK-classified forest in Central Kalimantan overlaps with Izin Lokasi or HGU (business use permits).

The following maps of Central Kalimantan illustrate a story of plantation licensing on KH. The image from 1982 delineates plantation licenses overlapping with protection forest (green), production forest (yellow) and conversion forest (red). Since 1982, the provincial

government have been working with KLHK to revise the KH area; the 2012 map presented below is one such revision. As the maps show, much of the licensed area has now been converted to APL (white), some of the licenses still sit on conversion forest, but there is still a lot of overlap with production forest and protected forest.

The maps also indicate a pattern of reclassification from permanent production forest to conversion forest and finally to APL. This sequence suggests that valuable timber is first extracted in forest concessions, the area then becomes degraded, and it is eventually reclassified to conversion forest or directly to APL which can then be used for large scale plantations or other non-forest uses.

Figure 1 1982, Central Kalimantan, Kawasan Hutan and licensing overlap. Lines show agricultural licenses.

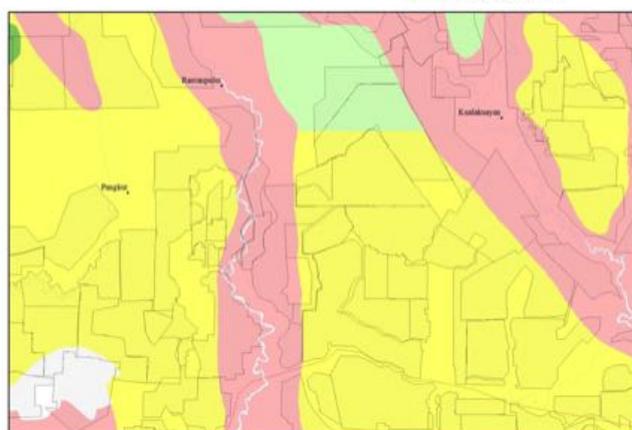


Figure 2 2012 Central Kalimantan, Kawasan Hutan and licensing overlap. Many, but not all, of the agricultural licenses are now on APL land which has been re-classified from Kawasan Hutan.



1 UU No 23/2014

2 Rosenbarger, A. et al. (2013). How to change legal land use classifications to support more sustainable palm oil in Indonesia. WRI Issue Brief.

## 4.1. THE CONSERVATION IMPACTS OF FORESTED AREAS FALLING UNDER APL

One result of these mapping issues is that protection of biodiversity and endangered species can fall through the legal cracks. As has been mentioned, much APL land has forest cover and protected species, and often overlaps with KH maps. For example, it is estimated that only 25% of the Sumatran Orangutan's (*Pongo Abellii*) range falls on KH, the rest is classified as APL. However, according to government classifications, no protected species populate areas of APL. How, then, does forested land which provides habitat for protected species end up with an agricultural (APL) classification?

The most likely explanation is the lack of power of the conservation actors within the KLHK. The KLHK encompasses five directorates, each governed by Director Generals:

- The Directorate of Planology, which manages the classification of forest areas and relinquishing areas from Kawasan Hutan
- The Directorate of Social Forestry, which manages community forest permits
- The PHPL, which manages production forest concessions (i.e. timber and pulp and paper)
- The Directorate of Climate Change Control (PPI)
- The KSDAE, which manages conservation at the national level (i.e. National Parks). The district and provincial unit of the KSDAE is the BKSDA, which manages protected areas (i.e. wildlife reserves).

Ideally, the Directorates of Planology and KSDAE would coordinate closely on accurate maps of the habitats of protected species on both KH and APL in order to delineate and allocate Kawasan Hutan for conservation, protection, limited production, production and conversion (see table 3). However, the KSDAE is notoriously the least powerful of the five directorates and has recently experienced budget cuts of nearly 25%. In reality, it is the provincial governor that requests KH land for conversion from KLHK. For this, the governor may or may not consult with the district Bupatis or the KPH of the area affected. Therefore, inputs from the national KSDAE or district BKSDA are often not sought in making these decisions.

Once the land has been relinquished and becomes part of APL, it falls under agrarian agency management (BPN) and the KLHK has no jurisdiction over it (aside from riparian zones and Kawasan Ekosistem Esensial, see section 7.4). As such, any protected species found on this land fall into a blind spot for protection; the KLHK has no jurisdiction on this land and through relinquishing it to the Agrarian Ministry has indicated that it has no conservation value. Meanwhile, although the Agrarian Ministry has asked concession holders to protect and declare their HCV areas to the local governments<sup>1</sup>, conservation is not one of their functions.

<sup>1</sup> Circular letter No. 10 / SE / VII / 2015



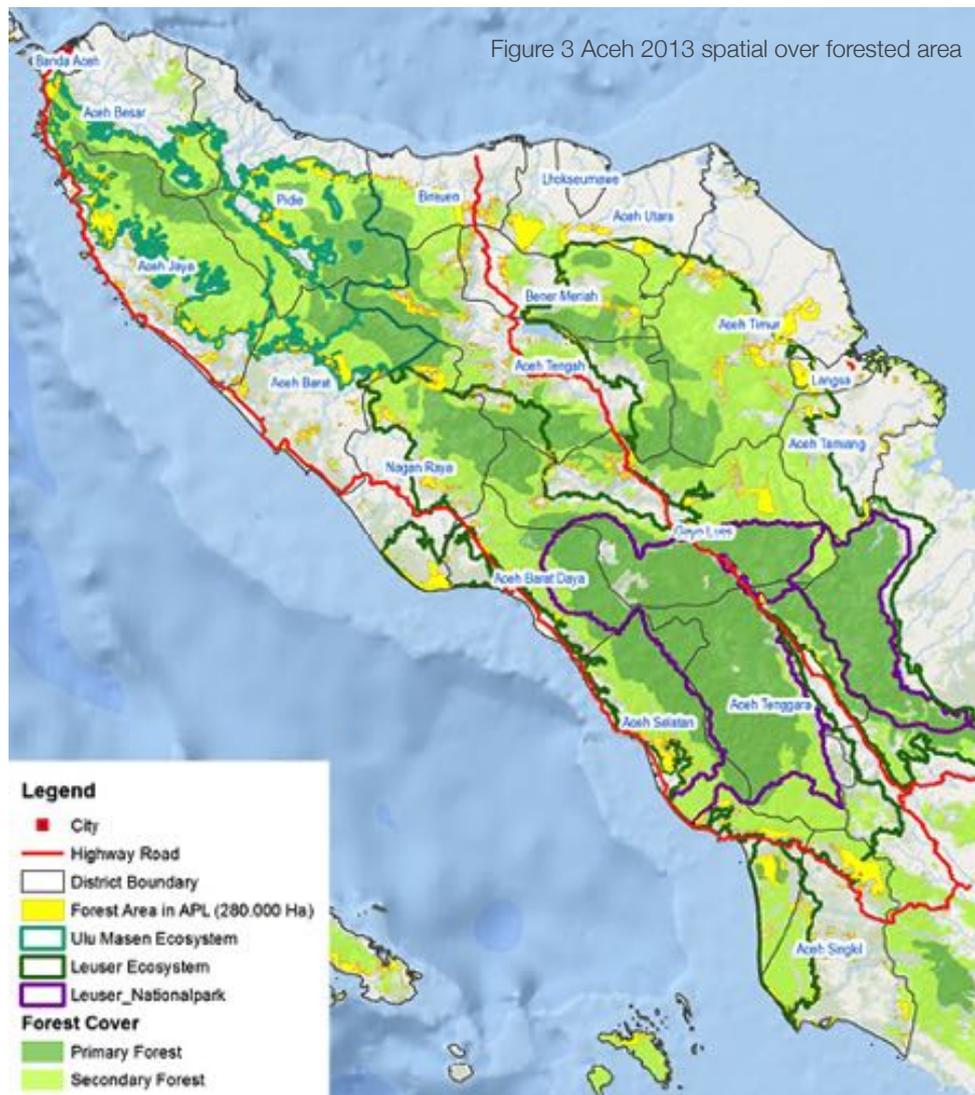
## 4.2. THE DIFFERENT ROLES OF CENTRAL VS. LOCAL GOVERNMENT

Aside from concerns regarding mapping and coordination between ministries, there are also issues regarding alignment between the central Gol and the provincial and district governments that the Gol are now working hard to tackle. During the decentralization of the early 2000s, the central Gol issued several regulations shifting the authority to issue certain permits and collect taxes on palm oil to the provincial or district governments. Local governments now have more authority to manage natural resources sustainably within their territories. However, due to a lack of capacity, provincial and district governments often struggle to develop, execute and manage their own sustainable development plans.

Aceh province provides an interesting case study of these issues. Aceh, along with Papua province, actually has special regional autonomy<sup>1</sup> allowing the province to govern its

lands with a good deal of independence from the central Gol. In Aceh, this has led to the development of the controversial 2013 district spatial plan, in which 610,000ha of forest and 220,000ha of peat within the Leuser and Ulu Masen ecosystems were zoned for conversion, despite the national moratorium on forests and peatland and the areas status as a National Strategic Environmental Areas. Of this proposed conversion area, 145,000 ha was taken directly from protection and conservation forest areas. And although the Gunung Leuser National Park, an area of nearly 800,000 ha at the centre of the Leuser Ecosystem, is protected in the 2013 spatial plans, its status has not afforded it protection from a geothermal development planned for the centre of the park. The map in figure 3 indicates the 280,000 hectares of forested area that is being zoned into APL in yellow, and the proposed highway which would bisect the ecosystems.

<sup>1</sup> PERDASUS, Special Regional Regulation



However, the Indonesian government has taken huge steps to rectify these issues and align the maps and ministries. The [One Map initiative](#) is one such ambitious effort the Gol is making to bring together land use, tenure and other spatial data into a participatory and accessible database. Here, geospatial architecture, national processes and Indonesia's first participatory mapping portal will combine to tackle sensitive issues such as land rights, tenure and ownership.

The Gol has also assembled the Peat Restoration Agency (known by its Indonesian acronym BRG). The BRG has the mammoth task of coordinating and facilitating the restoration of approximately two million hectares of degraded peatland in the provinces of Riau, Jambi, South Sumatra, West Kalimantan, Central Kalimantan, South Kalimantan and Papua over the next 5 years<sup>1</sup>. The BRG also aims to<sup>2</sup>:

- Develop and strengthen peat restoration policy, strategy and planning;
- Inventory, map and determine land-use of peatland in seven provinces;

<sup>1</sup> Wardhana, B. (2016). BRG's Roadmap for Peatland Restoration. CBD and FAO Workshop: "Forest Ecosystem Restoration."

<sup>2</sup> BRG Peraturan Presiden (Presidential Decree) No 1 / 2016

- Develop guidelines, standards, and a supervision program for rewetting infrastructure and plans;
- Review the permits of concessions that fail to manage peat and control degradation or fires;
- Socialize sustainable peatland management and restoration; and
- Coordinate research on alternative economic activities that support the sustainable use of peatlands.

In addition, the Gol has developed the KPH (forest management unit) program that will be elaborated on further in section 7.2 of this paper.

All of these government efforts to improve the land classification process are to be commended and supported. While these ambitious Gol programs progress, there are various ways in which palm oil producers can leverage current regulations and legal mechanisms to secure the long-term protection of conservation areas that fall into their Izin Lokasi. This white paper aims to outline the legal framework and institutional mechanisms that impact HCS forest and HCV protection, including the legal obstacles, and how they may be navigated by the private sector to achieve sustainable best practices.

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## 5. FROM ILOK TO HGU: SUPPORTING COMMUNITY CONSERVATION

Section 5 corresponds to the decision tree in the Appendix, page 36.

The set-up of a plantation, from acquiring the ILOK (Izin Lokasi, or location permit) from the Bupati to the securing of a HGU (a business right to use), is the ideal time to both delineate conservation areas and begin securing their protection.

The first step is to assess how the land on which the ILOK is situated is classified. HGUs and ILOKs should sit only on APL land, but as can be seen from Figure 2, that is not always the reality. The classification of this land will dictate what protection options are available and what mechanisms should be used to secure that protection. It is most likely that the ILOK is situated on a mixture of APL, Conversion

Forest, Permanent Production Forest, Limited Production Forest and possibly Protection Forest (see table 3).

Once the classification pattern of the land is mapped out, local communities will need to be at the centre of the process of delineating conservation areas.

Ideally, the Directorate of Social Forestry would have current and accurate maps of the locations and boundaries of the 111 million Indonesian rural communities on APL and KH land, and would work with the Directorate of Planology and the provincial Governors to delineate land unclaimed and unused by communities for conversion to APL and for company location permits. However, for many of these communities their tenure is not secure and

their locations are not official. Therefore, many companies have received location permits in the past on land where communities were already residing. To counter this, in 2015 the Directorate of Social Forestry was tasked with the aim of securing 12.7 million hectares for communities on or near KH through community forest management options (see section 5); currently, just 500,000 ha have been secured<sup>1</sup>.

Given the risk of their permits overlapping with community land, upon receiving the ILOK the company must then conduct an assessment of the communities living on or near the ILOK. The assessment should aim to ascertain whether the communities have a legitimate claim to the land. In particular, it will be key to understand whether or not communities are indigenous<sup>2</sup>, as if they are, they may be able to apply for a Hutan Adat (Traditional Forest) designation.

**Participatory mapping** should be carried out with the communities found on or overlapping with the ILOK, or who use land within the ILOK. The mapping should aim to delineate:

- The community's current customary boundaries - the border of everything they believe is theirs and that they use (note this may or may not include HCVs 5&6) (called "Area A" in this paper)
- The areas the community wishes to sell or lease to the company within Area A (+Area B+)
- Remaining areas unclaimed by communities ("Area C")

Any overlaps of village boundaries within Area A will be the government and villages' responsibility to resolve.

An **AMDAL, supported by an HCS-HCV study**, should then be carried out on Areas B and C to delineate the HCV/HCS. Although participatory maps have been developed, it is still key that HCV 5&6 are included in this mapping as they will identify community lands missed in the participatory mapping.

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1 Mongabay article "Indonesian Government moves farther from community forestry target" 02/2017

2 "Indigenous Peoples: communities that live on a customary area, have sovereignty over land and natural resources, and for whom social and cultural life is governed by customary law and customary institutions that sustain their lives as indigenous communities." (AMAN at the first Congress in 1999)

If HCV/HCS are found within areas B and C, the company can begin a dialogue with communities on the next step for those areas: **Participatory Conservation Planning (PCP)**. The PCP will aim to delineate:

1. If the community is willing to manage and protect the HCV/HCS
2. If so, the options that are available to secure their rights to this land and the options that are available to finance their protection

The PCP should aim to communicate the full value of the HCV/HCS to the community and secure their protection and management. The company should maintain full disclosure with the communities about which areas need to be protected and for what reasons. Gaining the support for the protection of these areas from communities is paramount, even if the communities do not wish to own or manage that land. Ideally this would take place alongside the negotiations for lands.

If the community insists on developing HCV/HCS in area B, the company should not compensate the community for this land and should not buy any future products of this land.

Several options are available for the HCV/HCS that the community wishes to protect, depending on whether it is situated on APL or KH, and whether or not the community is considered indigenous (see section 5.1 for definitions of indigenous):

**1. If the community is considered**

**indigenous**, the company should help the community in securing the Hutan Adat land ownership (see section 5.1). Hutan Adat is technically available on APL and KH and is not limited in size or in percentage that can be forested.

**2. If the HCV/HCS is on APL land, and the community is NOT considered indigenous**

the company should support the community in applying for Hak Milik (land ownership). This could be Hak Privat (private ownership through families and individuals) or Hak Komunal (communal ownership). Hak Milik is not limited in size or in percentage that can be forested. The community would then own this land outright and be free to manage it however they see fit.

3. If the **HCV/HCS is on KH** and the **community is NOT considered indigenous**, the company should support the community in obtaining either Hutan Desa or Hutan Kemasyarakatan (see sections 5.2 and 5.3).

A map delineating all areas the community wishes to manage, should then be sent to the district government along with community plans and budgets for this land. A medium-term village development plan or RPJMD (Rencana Pembangunan Jangka Menengah Desa) – a five year description of the village’s vision and mission and the management programs they will use – must also be developed. Under the Indonesian village law<sup>1</sup>, villages can receive around 850 million rupiah (65,000 USD) per year in state support from the government’s Alokasi Dana Desa (ADD) village fund upon submission of their village development plan to the district government. The size of the fund is calculated depending on population, size, poverty rate and geographic location<sup>2</sup> and allocated by Kemendesa (the Ministry of Villages, Rural Development and Transmigration).

This village fund and development plan could represent both a monetary incentive to complete the mapping work and gain Hutan Adat/Hutan Desa/Hutan Kemasyarakatan, as well as an entry point to participatory conservation planning and ensuring sustainable development. Many NGOs are currently working with communities to develop sustainable RPJMDs, in the context of climate change, which incorporate HCV mapping and restoration zones.

Other than the ADD (village fund), the following options can be explored with the community and the district government, including:

- a) A Payment for Ecosystem Services (PES) scheme
- b) A REDD+ program
- c) Training in sustainable forestry or NTFP collection
- d) The development of ecotourism facilities and business

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1 UU No 6/2014 on Desa (villages)

2 The Jakarta Post “New law allows direct cash payment to villages” 12/2013

If the area is already classified as KH or community management is listed under Hutan Adat and it is possible to convert to KH, the company and community should look into developing a a carbon credit or PES scheme and applying for an IUPHHK-RE permit to restore the area to its full biological function. The objective of this permit is to allow for revenue generation through restoring natural forests with important ecosystem functions to their full potential. The revenue generation, through a REDD+ or PES program, would finance the restoration and safeguarding of the area from encroachment whilst alleviating poverty in the surrounding communities. In particular, the Izin Penyimpanan and Penyerapan Karbon (Pan-rap Karbon) version of the IUPHHK-RE permit also supports sustainable agroforestry, including selective logging and intensive planting methods.

In order to sell carbon credits, the area’s carbon must first be assessed through a complicated and expensive process in order to later be able to prove that the carbon has been maintained or increased, this could be planned for in the RPJMD and funded through the ADD. However, the process for applying for the IUPHHK-RE permit is also lengthy and complicated, moreover, the carbon market can be unpredictable and with the current low value of carbon credits, forest carbon projects are risky. In time this may change, as forest carbon trading is a core part of the Paris climate agreement, making forest carbon a potentially interesting option in the future.

If communities do agree to manage, protect and monitor the area, the following permit options may be applied for to support community management: Hutan Adat, Hutan Desa, Hutan Kemasyarakatan and Kawasan Hutan Dengan Tujuan Khusus. More information on how to apply for these social forestry options can be found in KLHK’s regulation<sup>3</sup>, introduced in 2016 in support of the Gol’s plan to secure 12.7 million ha for communities. These permits are explained in the following sections.

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3 KLHK regulation No 83/2016 on Social Forestry

## 5.1. HUTAN ADAT

Hutan Adat (HA) is a form of land ownership reserved for indigenous and tribal peoples. HA strengthens the rights of these peoples by allowing them to delineate, manage and officially own forests under their customary laws, outside of KLHK management. This includes the trade of forest products with outside bodies, as well as allowing other parties to use their forests. In 2013, the Indonesian Constitutional Court ruled that HA can now, theoretically, be recognised on APL areas, previous to this Hutan Adat could only be recognised on KH.

Despite the long-standing legislation, it was not until January 2017, when President Jokowi's administration acknowledged nine HA areas, that this permit type materialized on either APL or KH. The nine HA areas<sup>1</sup> that are now officially recognised by the state encompass a total of 13,100 ha. AMAN (the Indigenous Peoples Alliance of the Archipelago) believes there is potential for an additional 8.2M ha still to be permitted as HA for Indonesia's 50-70 million indigenous people.

It is important to note that KLHK's regulation 83/2014 on social forestry does not provide a definition for indigenous or tribal peoples, although recent Acts and Decrees have defined these groups as "masyarakat adat" or "traditional communities". And while Indonesia is a signatory to the [UN Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#), government officials have argued that, according to UNDRIP's definition, almost all of Indonesia's 1,128 ethnic groups (with the exception of the ethnic Chinese) are indigenous, entitling them to the same rights. Thus the government has, until recently, not accepted applications from groups identifying themselves as indigenous.

However, as AMAN has led the nine HA cases that have been granted, and some Acts<sup>2</sup> have used AMAN's working definition of indigenous peoples, the AMAN definition of indigenous peoples is relevant to determining if HA can be granted. A translation of AMAN's definition is provided here:

"Indigenous Peoples: communities that live on a customary area, have sovereignty over land and natural resources, and for whom social and cultural life is governed by customary law and

<sup>1</sup> Mongabay (04/01/17) 'Jokowi grants first-ever indigenous land rights to 9 communities'

<sup>2</sup> Act No. 27/2007 on Management of Coastal and Small Islands and Act No. 32/2010 on Environment

customary institutions that sustain their lives as indigenous communities." ([AMAN at the first Congress in 1999](#))

The social forestry regulation mandates that indigenous and tribal peoples should apply directly to the Minister for HA and that verification procedures are regulated by the Director General of Social Forestry. However, there is currently no published guidance on the application mechanism for KH or APL, and the exact format and content of HA community management rights is yet to be made clear<sup>3</sup>.

At this stage a company wanting to secure the protection of HCVs in this way would need to aid the community legally and financially. But with President Jokowi's ambitious goal to return 12.7M ha to indigenous community control, and KLHK's aims to include 6.8 million hectares of indigenous maps into the One Map Initiative, this may become a viable option in the future.

<sup>3</sup> For further reference see: Safitri, M. A. (2010). *Forest tenure in Indonesia: the socio-legal challenges of securing communities' rights* (Faculty of Law, Leiden University) and Workman T, Fisher M, Mulyana A, Moeliono M, Yuliani et al (2015) *Out of the Lion's Den, Into the Crocodile's Jaws?: Lessons from policy developments on customary forest in Bulukumba*. World Agroforestry Centre (ICRAF)



An indigenous Papuan woman and her child

## 5.2. HUTAN DESA

Hutan Desa (HD)<sup>1</sup> is a social forestry license that grants villages, as the smallest administrative level of government in Indonesia, rights to manage village forest within KH. 35-year licenses can be applied for within a village's administrative boundaries, on KH with no existing rights or permits. The objective of this designation is to allow for village management of resources for the benefit of the village community. Within the HD, villagers can gather non-timber forest products,

1 Safitri, M. A. (2010). *Forest tenure in Indonesia: the socio-legal challenges of securing communities' rights* (Faculty of Law, Leiden University)

Selmat, F. (2011) *Seeing the forest for the trees. Inside Indonesia*. 106: Oct-Dec 2011. [Link](#)

Moeliono M, Mulyana A, Adnan H, Manalu P, Yuliani EL, Balang. 2015. *Village forests (hutan desa): empowerment, business or burden? Brief 51*. Bogor, Indonesia. World Agroforestry Centre (ICRAF) South-east Asia Regional Program.

use ecosystem services from the area and, if applied for, acquire permits for commercial activities such as timber utilization (provided the area is classified as production forest)<sup>2</sup>. There are limits to cubic meters of wood and tonnes of non-timber forest products that can be collected annually per hectare.

In order for communities to gain HD status for their land, they first need to map it, provide evidence of their right to the land and navigate the complex administrative application process, for this it may be necessary for the company to provide financial and technical support. In addition, villagers are required to create management plans providing details of how the village will conserve existing forests and rehabilitate degraded areas.

2 Regulation of the Minister of Forestry of the Republic of Indonesia No 89, 2014 on Hutan desa

### CASE STUDY: HUTAN DESA IN THE BERAU FOREST PROGRAMME<sup>1</sup>

The Nature Conservancy (TNC) is working together with the district government and communities in Berau district, East Kalimantan Province as part of the REDD+ Berau Forest Carbon Program (BFCP). In this project, TNC are supporting efforts in Mandau village to improve livelihoods and secure land tenure while ensuring ecologically sensitive areas are preserved.

The project has focused on securing management rights under HD for 8,245 ha of protection forest in an area that includes historically and ecologically important karst caves with ancient cave drawings. Despite its protected status, the area was under threat of development from coal mining.

Through the establishment of a HD, villagers' land is legally protected against encroachment. As part of the conditions for acquiring these management rights, the village, whose 235 inhabitants depend heavily on the forest for their livelihoods, was asked by KLHK to: (i) limit their use of slash-and-burn to current plots (i.e. avoid further expansion), (ii) contribute to restoring degraded areas within the HD, and (iii) patrol the forest to protect against encroachment. In return, villagers have a right to gather non-timber forest products, including highly sought-after bird's nests and wild honey, and have access to a host of alternative livelihood activities including rubber agroforestry, bee-farming, palm sugar production and eco-tourism. These projects have been chosen and developed jointly by the villagers, TNC and district government, and form part of the RPMJD that had to be created in order to gain HD status.

1 Anandi, C. A. M., Komalasari, M., Ekaputri, A. D., & Intarini, D. Y. (2014) TNC's initiative within the Berau Forest Carbon Program, East Kalimantan, Indonesia. In *REDD+ on the ground: A case book of subnational initiatives across the globe*. Center for International Forestry Research (CIFOR)

Rahman, S. (2014). *Linking Berau REDD+ Initiatives with National Strategies*. Presentation at World Bank Asia, Jakarta, 2014

Hartanto, H. Hayden, L. Mayers Madeira, E. Yulianto, T.S. & Hidayat, T. n.d. *Envisioning a Green and Prosperous Future with Berau Forest Carbon Program, Indonesia*. TNC. Case Studies in Community Green Development.

## 5.3. HUTAN KEMASYARAKATAN

Hutan Kemasyarakatan (Hkm)<sup>1</sup>, is an extendable 35-year community forest license that allows forest user groups such as cooperatives and farmer groups to use products and ecosystem services from the forest area. Hkm can only be granted on areas free of other existing rights or permits, and on land that communities are already using to support their livelihoods.

If the Hkm falls on production forest, the types of activities allowed are limited to those that maintain the forest cover, although if the communities want to extract timber a special permit can be obtained<sup>2</sup>. In this case it is recommended that the company supports the forest user group in developing and implementing a sustainable forest management plan.

If the Hkm falls on a protection forest, a special license is required to use the forest to gather non-timber forest products as well as benefit from the area's ecosystem services including the potential to create carbon sequestration projects and tourism-related activities. In return for user rights, communities must protect the forest from illegal encroachment and maintain its productive potential.

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1 Ota, M. (2011) Implementation of the Community Forest (Hutan Kemasyarakatan) scheme and its effects on rural households in Gunungkidul district, Java, Indonesia

Safitri, M. A. (2010) Forest tenure in Indonesia: the socio-legal challenges of securing communities' rights (Faculty of Law, Leiden University)

2 KLHK regulation, No 88, 2014, on community forestry

### CASE STUDY: IMPROVING COMMUNITY LAND TENURE THROUGH HKM IN LAMPUNG, INDONESIA<sup>1</sup>

ICRAF is working with district government and communities in Sumberaya, Lampung to secure land tenure for communities in a protection forest area. The project was initiated to help farmers avoid eviction when the government re-zoned their land as protection forest, while ensuring that critical areas such as river banks and forests were maintained and used sustainably.

Under Hkm, 6,400 farmers in Lampung have gained 35-year management rights over the forest, which by 2011 covered 13,000 ha. Participating farmers are asked to manage a cultivation block where they can grow coffee (the traditional cash crop in the area) provided they plant at least 400 non-coffee trees per hectare and use appropriate soil and water conservation practices. In addition, farmers are also asked to manage a protection block against encroachment and restore any degraded areas. Farmers can use the protection block for collection of NTFPs provided that no activity disturbs the forest cover.

Research on the program has found that it has improved tenure security, increased household incomes by 30% and reduced corruption. Moreover, it includes many poorer households that depend on the community forests for livelihoods.

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1 Förster, J. (2012). Outcome based payments for improved water quality, RUPES, Indonesia  
Pasha, R. and Beria, L. (2011) PES and Multi-Strata Coffee Gardens in Sumberjaya, Indonesia. In: Payments for Ecosystem Services and Food Security  
Pasaya, G. Suyanto, S.W. (2008) Facilitating Conditional Land Tenure in Watershed protection Forest in Indonesia. ICRAF



## 5.4. KAWASAN HUTAN DENGAN TUJUAN KHUSUS – FOREST AREA WITH A SPECIAL PURPOSE

As an alternative to community management, Kawasan Hutan Dengan Tujuan Khusus, or KHDTK, is a forest designation issued for the protection of public interests. According to Indonesian law<sup>1</sup> these public interests are diverse, encompassing research, development, education, training, religion and culture. Customary communities may gain rights to manage land under KHDTK. However, there is no clear legal procedure for this, with the KLHK deciding on a case-by-case basis what the management rights should cover. To date only a handful of KHDTK licenses have been granted (see case studies below).

If the HCV/HCS area is already significant for religion or culture, or there is a current interest in the area for research, training or education, a KHDTK designation presents an obvious choice for protection. However, to sustainably develop any one of these in the area it would be wise to conduct an EIA beforehand and ensure that development does not impact the HCVs.

<sup>1</sup> KLHK regulation No 43, 2013, dating back to Forestry law No 41, 1999, Article 8

### CASE STUDY: KHDTK LICENSE IN LANDAK DISTRICT, WEST KALIMANTAN<sup>1</sup>

On November 21st 2016, Indonesia's National Tree Planting Day, the Governor of West Kalimantan inaugurated 19,662 ha of forest in Landak district as KHDTK. In a symbolic gesture the Governor and his wife planted trees to cement the area's new status.

The KHDTK forest will be managed by the University of Tanjungpura for the purposes of education and the maintenance, establishment and restoration of forests. The Governor stated the importance of forests in protecting ecosystem functions and reducing climate change and his plans to focus on increasing the productivity of palm oil as opposed to expansion.

The management of the area will also involve the following local and international NGOs: Belantara, Sampan, PRCF, WWF, LPS-AIR, Yari, IJ-REDD, GIX, GCF, ITTO and IDH, and the following institutions: IPB, UGM, Kochy University and Kyoto University.

<sup>1</sup> <http://pontianak.tribunnews.com/2016/11/22/tingkatkan-mutu-pendidikan-gubernur-kalbar-resmikan-khdtk>

### CASE STUDY: THE KRUI DAMAR AGROFORESTRY SYSTEM<sup>1</sup> KHDTK LICENSE

The Krui Region in West Lampung is renowned for its traditional agroforestry systems producing damar, or tree resin, in an area inhabited and managed by 35,000 farmers next to the Bukit Barisan Selatan National Park. In 1991, the government decided to incorporate the Krui region in the state forest zone, reclassifying the area as mainly production forest and barring communities from using their agroforestry plots and the surrounding area.

After a lengthy conflict and a resolution process, communities were granted management rights over 29,000 ha of damar forest in 1998, after the area was classified as a Forest Area with Exceptional Purpose (Kawasan dengan Tujuan Istimewa: KdTI), a type of KHDTK classification. This license grants communities the right to use the area for commercial purposes and manage the agroforest by replanting, cutting old trees and planting other useful trees in and around the gardens. Communities can also gather non-timber forest products and fallen wood from the surrounding forest areas. In return, communities are required to maintain the forest cover of the area and to pay tax on any products extracted from the forest and sold commercially.

The current KdTI license grants management, not ownership, rights to communities, but since the KLHK decree, none of the communities has asked for formal recognition of their land rights. Recent research has shown this to be due to a lack of awareness, unsupportive forestry officials and a community reluctance to acknowledge the land as state-owned. Nonetheless, declaring the Krui region an area of special purpose has protected it from being converted into logging or oil palm concessions. Moreover, the agroforests are acting as a buffer zone for the national park, protecting it from encroachment and illegal logging.

<sup>1</sup> Safitri, M. A. (2010). Forest tenure in Indonesia: the socio-legal challenges of securing communities' rights (Faculty of Law, Leiden University)

## 5.5. THE RUSH TO SET UP A PLANTATION

The previous sections described several ways that forests and HCV areas can be protected through community conservation during the permitting process. However, it is worth noting that the rapid nature of this process does not currently support the careful mapping, planning and negotiating process required for the delineation and protection of HCV areas or HCS forests.

An ILOK covering an area larger than 50 ha has an expiry date of three years, within which time the HGU must be issued<sup>1</sup>. This can be extended by one year at the end of the three-year period if the company has been successful in securing (i.e., compensating through a Ganti rugi) more than 50% of the total Izin lokasi area from the local communities. So within at most four years, a company must:

- a) map land designations;
- b) assess local communities;
- c) conduct participatory mapping;
- d) conduct an AMDAL-HCS-HCV assessment;
- e) conduct participatory conservation planning;
- f) negotiate with and compensate communities for their land;
- g) secure community land ownership or management permits;
- h) obtain an IUP (the IUP also has an expiry of two years, in which time the company must obtain the HGU through purchasing land use rights), and;
- g) obtain a UKL-UPL and environmental permit.

An outline of these steps is shown in the following pages.

As the communities often have no formalized rights to the land and boundaries are unclear,

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<sup>1</sup> The New Plantation Act, No 39, 2014

steps b) to g) can take years if the company is following FPIC correctly. However, the realities of the permitting process mean that there is a rush to map these areas and delineate and decide which course of action to take to protect them.

Biodiversity conservation and ecosystem services are thus not normally carefully considered when obtaining either the ILOK or the HGU. There are no technical guidelines for the Minister, Governor or Bupati to administer environmental permits or permit conditions against which to sanction negative environmental impacts. AMDALs alone are not sufficient to cover all six HCVs, and assessors often lack the capacity to execute an AMDAL correctly. Finally, the majority of companies regard AMDALs and environmental permits as mere administrative steps in the process of obtaining a HGU. The end result is often that forests and HCV areas end up being included in the HGU.

To overcome these challenges, it is recommended that the AMDAL is strengthened by and conducted in parallel with HCV and HCS assessments and that HCV and HCS areas are included in the AMDAL and earmarked for conservation. The company could then release a Chief Executive decree (SK DiRut) to the BPN stating that the conservation areas within the HGU are under the active management of the company and are not to be considered 'abandoned land'. The company should also provide a clear management plan for the conservation areas and, once development activity starts, should report on all company activities, including the management of the conservation area, through an RKL-RPL presented to the district environmental agency (Dinas Lingkungan Hidup), BPN and other relevant government offices every six months.



A riparian zone, legally required for protection

# 6. SECURING PROTECTED AREAS ONCE THE HGU HAS BEEN ISSUED

If local communities are not interested in protecting forest areas through management or ownership rights, even after understanding that they will not have access to these areas as plasma, the next best option is to register them with the district/provincial government, as conservation set-aside within the HGU. (For riparian areas, this is the legal requirement.)

In March 2017, KLHK released a set of maps delineating the country's protection and cultivation peatlands (see figure 4). According to KLHK's peat definitions, Indonesia has 12,100,408 ha of protection peat, 12,118,083 ha of cultivation peat, totalling 24,218,491 ha of peatlands nation wide. Along with the maps, KLHK released a collection of peatland regulations underpinning the moratorium on peatland development, and instructing private companies and smallholders of their responsibilities to this land depending on whether or not the land had already been cleared and planted.

All HGUs issued on protected peatlands before the release of the regulations will remain effective but the permit holder will be required to maintain the hydrological function of the peat area by<sup>1</sup>:

- Developing and implementing a peat management and protection plan, inline with the government's

1 Permen LHK No P.14/MenLHK/Sekjen/ Kum.1/2/2017 Procedures to Inventory and Determine Peat Ecosystems

- revise their spatial plans
- submitting spatial plans to local government planning agencies

If the area has not yet been developed, the company is obliged to maintain the area as a protected peatland<sup>2</sup>. If the area has already been planted, the company can harvest the area until the end of the plantation cycle, the area must then be restored and assigned as a protected peat ecosystem<sup>3</sup>. Indeed, any further damaged caused to protected peat areas must be repaired through restoration within 30 days of the damage detection. Failure to restore or protect these areas sufficiently could result in sanctions through fines and ultimately license revocation. If the protected peat area exceeds 40% of the licensed area the license holder may apply for a landswap.

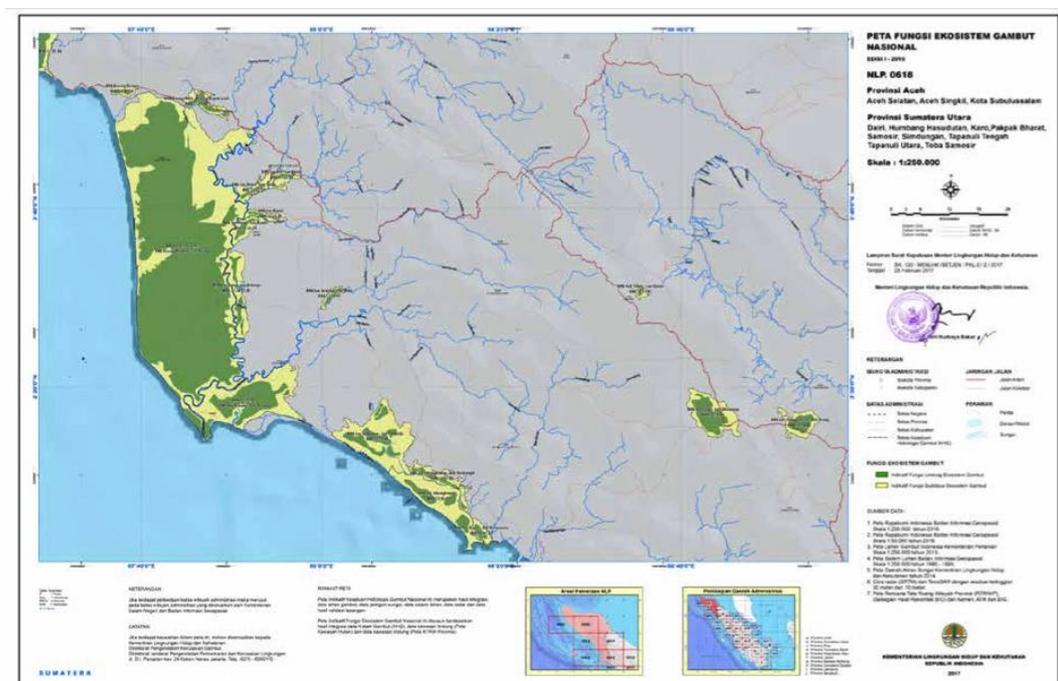
These regulations have yet to be rolled out on the ground and the peat map is currently of a fairly low resolution. One suggestion would be for companies to map out their peat areas for protection and submit them to the local authorities in order to strengthen the KLHK's map.

2 Permen LHK No. P.17/MenLHK/Sekjen/ Kum.1/2/2017 Regarding changes to LHK No. P.12/ MenLHK-II/2015 on the development of industrial plantations

3 Permen LHK No. P.16/MenLHK/Sekjen/ Kum.1/2/2017 Regarding the technical guidelines for recovering peat ecosystem function

Figure 4 KLHK's peat map delineating protection (green) and cultivation (yellow) peat on the Singkil and Kluet peatdomes, Aceh<sup>1</sup>.

1 KLHK Decree No SK.130/MenLHK/Setjen/ PKL.0/2/2017 on the stipulation of the national peat ecosystem function map



If the HCS forest or HCV area does not fall within the KLHK's protected peatlands, there are limits to how much of a concession can be set aside; normally 10% but potentially up to 25% with justification (see tables 1 and 2). If these limits are exceeded, the company can potentially lose the areas as 'idle land'. However, protection areas on APL land are designated through provincial or district regulations (Perda) and as such there may room to work with the relevant government departments on officiating the set-aside.

The HCV Resource Network recommends that the company be proactive in explaining why these areas are for conservation, and demonstrates an active management plan to the local authorities through<sup>1</sup>:

- providing the relevant government departments with copies of the HCV assessment, management plans and periodic monitoring results;
- inviting local government representatives to visit the HCV management area to fully understand its conservation value;
- establishing an MoU with the government departments outlining a commitment by both parties to conserve an important habitat; and
- collaborating with the BKSDA or Dinas Kehutanan on tackling human wildlife conflict and encroachment.

After the initial rush to obtain the HGU, the company then has a maximum of six years to develop all land that technically can be planted with plantation crops. If HCV areas were not included in the palm oil development proposal which was submitted to the District Head to get the necessary permits, a company can still revise the proposal including a plan for conservation and management of HCS/HCVs and then resubmit the proposal to the District Head and other related parties (BPN, Environmental Agency, MoA, KLHK and Ministry of Finance) for their consideration.

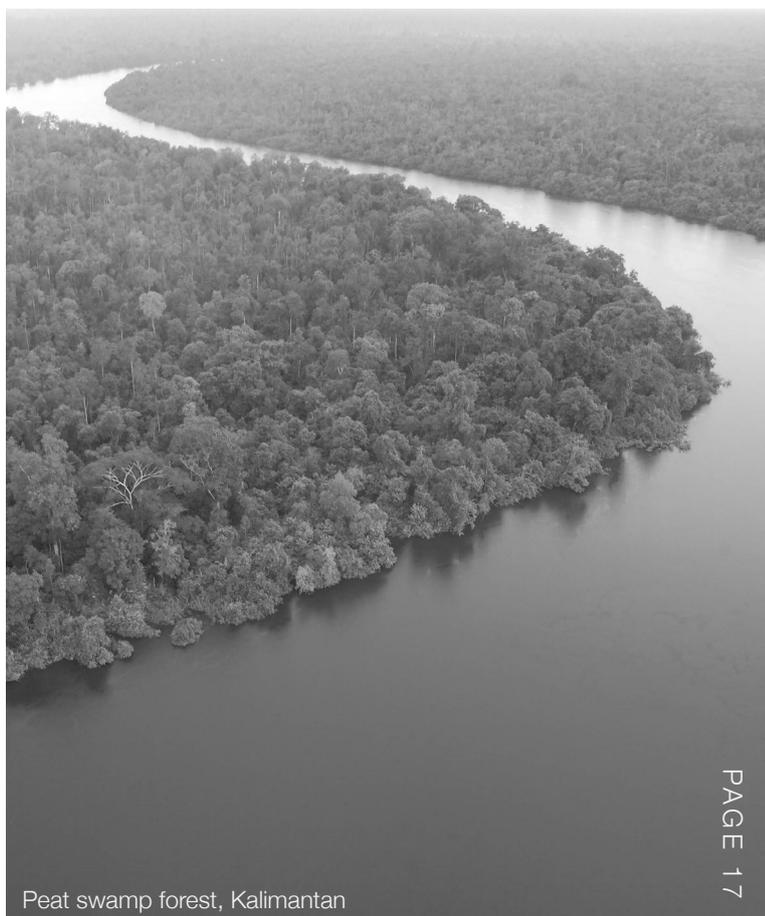
While the GoI does not officially recognize the terms HCS or HCV, in 2014 the government developed the Nilai Konservasi Tinggi guidelines (NKT - Indonesian for High Conservation Value), a set of guidelines for the assessment of HCVs which overlap a good deal with the international HCV concept. Although NKT guidelines have yet to be written into government legislation the system has garnered much support from

<sup>1</sup> Persey, S, Imanuddin & Sadikin, L. (2011). A Practical Handbook for Conserving High Conservation Value Species and Habitats within palm oil landscapes. The Zoological Society of London.

ministerial representatives. For instance, in 2015 the Minister of Agrarian and Spatial Planning issued a circular letter<sup>2</sup> to the KLHK asking them not to release any more land with NKTs for new licenses. In another circular letter, released by the same minister, it was confirmed that district/provincial governments have the authority, and even the responsibility, to publically recognize NKTs that concession holders wish to register; this letter warned that there could now be no excuses from companies for not registering these areas with the district/provincial authorities.

More recently, in a landmark move, the KLHK and the MoA have begun working together through the Indonesia Palm Oil Platform's NKT taskforce to strengthen the definitions of NKT. With support from the HCV Resource Network, the taskforce plans to develop an Indonesian NKT Toolkit including identification and management guidelines. Once the improved guidelines are recognised by the KLHK, under their Kawasan Ekosistem Esensial (KEE) program (see section 6.4), the taskforce will aim to have them adopted at the highest level of Indonesian law. This recognition may happen through an Undang-Undang (UU), a constitutional revision in Parliament. The intent of this is to legally secure the protection of HCV in palm oil concessions across Indonesia.

<sup>2</sup> Circular letter No. 10 / SE / VII / 2015



Peat swamp forest, Kalimantan

## 6.1. THE THREAT OF RECLAIMING “IDLE LAND”, AND POSSIBLE ANSWERS

There has traditionally been one law in particular that companies have pointed to as the reason they cannot set aside HCVs, other than riparian zones, within the HGU. Ministry of Forestry Decree No 70, of 1995, mandates that  $\pm 85\%$  of a plantation must be used for growing and harvesting oil palms or raising oil palm seedlings, and that only  $\pm 10\%$  of the plantation can be set aside for conservation areas (the remaining  $\pm 5\%$  is for facilities and infrastructure).

If a plantation exceeds the 10% limit for conservation, the excessive conservation area is at risk of being labelled ‘unproductive abandoned land’ and reclaimed by the BPN<sup>1</sup> so as to ‘optimize the land in line with its economic, environmental and social functions’. The BPN define abandoned land as an area that is not being cultivated or used in accordance with the permit or rights that the state has granted for the area<sup>2</sup>. In fact, in 2009, one large palm oil producer tried to set aside HCV land only to have it repossessed by the BPN. Other sanctions for violating the provisions of the land permit may include fines or even the temporary suspension of business activities<sup>3</sup>, although no cases of these sanctions are known to the author.

However, even if the conservation area represents more than 10%, the permit holder can make a legitimate case that the land is being used in accordance with its permit if it can justify that the conservation area is key to the functioning of the plantation. In fact, Regulation No 11, 2011, details the BPN process for assessing the land including groundtruthing, analysing the reasons for not developing the land, preparing a report and conducting a committee hearing to discuss and provide recommendations to the provincial or district BPN head. As such, there is scope for a company to explain that the setting aside of this land is integral to the function of the palm oil development, and provide the BPN with an HCV-HCS-AMDAL report of the area. Explaining that market demands require forest protection could be a legitimate reason for setting aside tracks of forest within the HGU.

<sup>1</sup> Government Regulation No 11, 2011 and 2010, on the control and utilization of abandoned land

<sup>2</sup> BPN Regulation No 4, 2010

<sup>3</sup> Options to address law of the Republic of Indonesia. No 39-2014, TFT



Palm oil fields , Aceh

A few other arguments for setting aside these areas can be used within the current Indonesian legal framework. Although there are no current Indonesian regulations specifically requiring a company to allocate and protect HCV/HCS areas within the HGU, there are regulations that can be used to support the protection of natural environments, biodiversity and cultural heritage. For example, Ministerial Regulation No 8, 2006, mandates the following be protected; biodiversity, natural heritage, water resources, air quality and cultural heritage, nearly mirroring 5 of the 6 HCVs (1-3 on biodiversity and natural heritage, 4 on water resources and air quality, and 6 on cultural heritage). Table 1 outlines the various legal references which can be used to justify setting aside HCV areas as critical to plantation functioning. Of course, the success of this would depend on the BPN’s willingness to accept a) that the protection of these areas improves the functionality of the plantation development and b) the HCV report as valid evidence of areas that need to be protected by law.

Once the area has been approved as set aside within the HGU, to counter the possible claiming of unproductive land and encroachment from communities, the estate manager should inform local communities, the BPN and Dinas Kehutanan dan Perkebunan, the district forestry and plantation office, of the HCV/HCS location and details of why it is protected by law. If the HCV is a protected species, the BKSDA must also be informed.

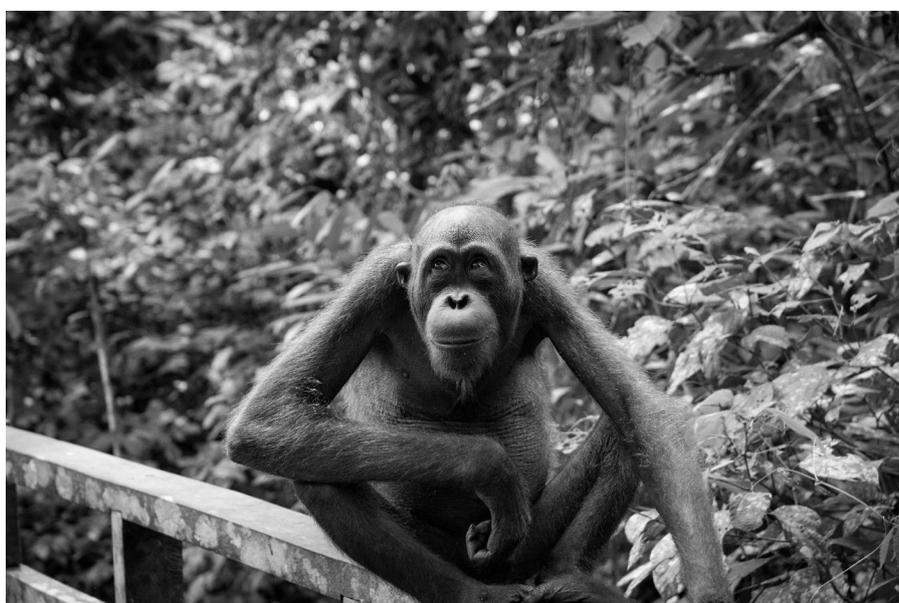
**TABLE 1. SELECTION OF POLICIES AND REGULATIONS SUPPORTING HCV PROTECTION**

Law/Regulation/Policy	Implications on HCVs	HCV					
		1	2	3	4	5	6
Ministry of Forestry Regulation No 8, 2006: Guidelines for AMDAL	Mandates that the following be protected; biodiversity, natural heritage, water resources, air quality and cultural heritage	✓	✓	✓	✓		✓
Presidential decree No 32, 1990: Management of protected areas	River and spring riparian zones are protected to prevent degradation or damage to local fresh water quality and riverbeds: large rivers receive 100m protected riparian, creeks upstream of settlements receive 50m, springs receive 200m				✓		
	Peat zones are protected to maintain hydrology, prevent flooding and preserve the peat ecosystem			✓	✓		
	Forested slopes of 18 degrees (40%) or more receive protection				✓		
Law No 37, 2014: Conservation of land and water	Local actors are required to preserve soil function, and subsequently water quality, through protection, maintenance and recovery of top soil from weather erosion and human activities				✓		
Law No 5, 1990: Conservation of living resources and their ecosystems	The preservation of plant and animal species shall be implemented both inside and outside natural sanctuaries. Persons are prohibited from killing, injuring, disturbing, catching, buying, selling or possessing all listed protected species	✓					
People's Consultative Assembly Decree of the Republic of Indonesia No. 9, 2001: The principles of agrarian reform and natural resource management	Sustainability, as to provide optimal benefits for present and future generations, whilst supporting environmental functions				✓		
	Recognizing and respecting the rights of indigenous people and cultural diversity					✓	✓
Law No 40, 1996: Article 12 Obligations of the HGU owner	To improve and maintain environmental infrastructure within the leasehold area		✓		✓		
	To maintain soil fertility, prevent destruction of natural resources, and preserve environmental functions				✓		

TABLE 1. (CONTINUED) SELECTION OF POLICIES AND REGULATIONS SUPPORTING HCV PROTECTION

Law/Regulation/Policy	Implications on HCVs	HCV					
		1	2	3	4	5	6
Law of the Republic of Indonesia No 32, 2009: Protection and management of the environment	Aim: to anticipate global environmental issues				✓		
	a) An environmental permit is required to obtain and keep an IUP						
	b) An actor that pollutes/degrades the environment is required to recover environmental functions through restoration				✓	✓	
Presidential Moratorium No 6 2013	c) Actors are required to maintain their environment through conservation or natural resources, protection of natural resource reserves and preservation of the atmosphere				✓	✓	
	There will be a continued delay in granting new permits on primary forests and peatlands on conservation, protection and production forests (see table 3) and on APL		✓	✓	✓		
KLHK's 2017 peat maps and regulations and revisions of previous regulations affecting peat	Concession holders with protected peat inside their concessions are obligated to restore and protect the peat areas and if the peat areas are already planted, once the plantation cycle is complete, restore the peatland to its full hydrological function		✓	✓	✓		
Agrarian Minister's Circular letter No. 10 / SE / VII / 2015	Concession holders are asked to protect and register their NKTs with local governments The KLHK is asked not to release any more land with NKTs for conversion	Pending the finalisation of the Gol's NKT criteria					

The Bornean Orangutan (*Pongo pygmaeus*), legally protected under Ministry of Forestry Regulation No 8, 2006 and Law No 5, 1990



## 6.2. ISPO

The ISPO is a standard based on a compilation of existing Indonesian regulations and is therefore mandatory for all palm oil producers, aiming to improve the competitiveness of Indonesian palm oil in the world market and support the reduction of GHGs and environmental impacts in Indonesia<sup>1</sup>. As such it could offer another government policy lever to protect HCS/HCVs.

<sup>1</sup> MoA Regulation No 11, 2015

In 2011, the ISPO governance actually updated their principles and criteria (P&C) to require companies to identify areas of high conservation value (NKT). However, this update was controversial (see section 3), and the standard was later revised to exclude this requirement.

The remaining P&Cs that could be leveraged in support of HCS/HCV protection are outlined in the table below.

**TABLE 2. LIST OF ISPO PRINCIPLES AND CRITERIA SUPPORTING HCV CONSERVATION**

Number	P&C	HCV					
		1	2	3	4	5	6
4.6.	The preservation of biodiversity. This includes the reporting of plant and animal species to the BKSDA, socialising the protection of rare species to the public and documenting any conflicts with wild animals	✓					
4.7.	The conservation of resources and water quality, which requires a water quality monitoring program and the management and maintenance of water resources				✓		
4.8.	The preservation of protection areas. This includes identification of the conservation area in and around the plantation, submission of shape files to the regional government, the socialization, and the protection of the area. (Note that the mechanism to put these protections in place remains unclear)			✓	✓	✓	
4.9.	Protection of land with high erosion potential, ie. river borders. Including the restoration of riparian zones				✓		

As can be seen from Tables 1 and 2, there are a number of regulations and policies that support the protection of HCVs. HCV 4 (basic ecosystem services in critical situations, including protection of water catchments and control of erosion of vulnerable soils and slopes<sup>1</sup>)

<sup>1</sup> "The Six HCVs – HCV Resource Network". Hcvnetwork.org. N.p., 2016. Web. 15 Nov. 2016.

is particularly well protected under Indonesian law by policies safeguarding water and soils through the protection of riparian zones. Thus even though the High Carbon Stock Approach and international definition of HCVs are not recognized as methods to identify forests under Indonesian law, there are multiple regulations and national standards that do protect forests.

## 6.3. FINANCIAL INCENTIVES AND DISINCENTIVES

In addition to the legal limits to set-aside area, there may be fiscal issues deterring companies from setting aside more land within the HGU. RSPO standards require a company to avoid damage to and deterioration of HCV habitats through identification of those HCVs and implementation of comprehensive management and monitoring protocols. Many small to medium sized companies view the management and monitoring of HCVs to be financially costly but also risky because if any HCV destruction or loss occurs within the HGU, the company could lose their RSPO certification. They therefore may choose not to get RSPO certification, or to excise these areas from their HGUs.

Chain Reaction Research's report, "Indonesian Palm Oil's Stranded Assets: 10 Million Football Fields of Undevelopable Land"<sup>1</sup>, outlines several other fiscal deterrents to protecting HCV/HCS within the HGU:

- Reduced earnings from the HGU
- Unjustified capital expenditures – purchasing the concession rights, developing roads etc.
- Increased cost of equity and debt due to a perceived increase in risk
- Reduced cash flow and profit
- Reduced intrinsic and market value

HGU owners are also required to pay taxes not only on their harvest<sup>2</sup> and labourers<sup>3</sup> but also their hectares<sup>4</sup>, which means that taxes must be paid on set-aside areas which are not generating any revenue. However, property tax can be avoided if the land is being used for one of the following<sup>5</sup>:

- i) Serving the public interest in the fields of religion, health, education or culture
- ii) Preserving ancient heritage
- iii) Safeguarding a protected forest, forest reserve, national park or village grazing lands
- iv) Housing agencies or international organizations approved by the finance minister

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1 Chain Reaction Research (2017). Indonesian Palm Oil's Stranded Assets: 10 Million Football Fields of Undeveloped Land.

2 Finance Ministry Regulation PMK 21/PMK 11/2014 and PMK 138/PMK 11/2014

3 Directorate General of Taxation Regulation No. PER-16/PJ/2016 and Finance Ministry Regulation 101/PMK.010/2016 and 102/PMK.010/2016 on income tax

4 Directorate General of Taxation Regulation PER. 31.PJ / 2014 on property tax for plantation

5 Law No. 12/1994 renewing Law No. 12/1985 on Property Tax

It may be possible to register the land as serving the public interest in health or culture or preserving ancient heritage, depending on whether the land is HCS or HCV 4, 5 or 6, and therefore avoid taxation on these areas. In this case, the company will have to negotiate with the Bupati regarding the possibility of organizing a tax break for protected areas.

There may also be financial opportunities for companies wishing to protect HCV/HCS within the HGU borders to counterbalance the above risks. Several conservation financing schemes are currently available or in trial phase including carbon credits and PES schemes (see section 5). There are also funds available to the private sector for eliminating deforestation from their supply chain through increasing production, from organisations such as the [Global Environment Facility](#).

The protection area could also be used as collateral to qualify as a "green investment". This is a GoI designation under their classifications of business sectors that are open or closed to foreign and domestic capital investment based on health, culture, environment, national defence, security, morals and other national interests<sup>6</sup>.

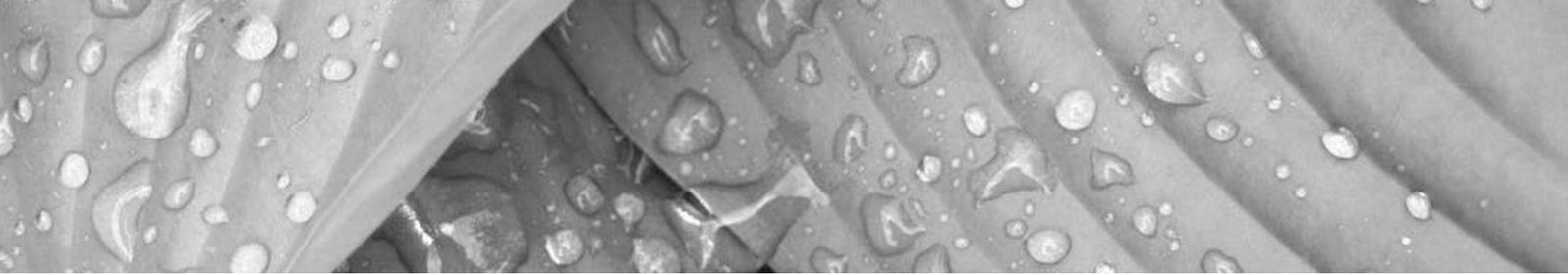
"Green investors" have obligations to:

- Meet corporate-social obligations
- Respect the culture and traditions of the peoples affected by the investment activities
- Protect the environment

Companies and the GoI could view the assessments, conservation, monitoring and management of HCV within the HGU as an integral part of capital investment in plantation development, incentivising the preservation of HCVs, i.e. seeing the protected area as an asset, not a burden. Companies that are already protecting their HCVs could even be rewarded by the state with investment incentives.

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6 Presidential Regulation No 25, 2007



## 6.4. KAWASAN EKOSISTEM ESENSIAL - THE KEE TO PROTECTION?

One possible new way around these issues is through a Kawasan Ekosistem Esensial (KEE, Essential Ecosystem Area) program<sup>1</sup>, whereby a section of forest that is critical for either protected species, peatland or ecosystem functions at the landscape level can be protected on APL land, under the management of a multi stakeholder group assigned by Governor and supervised by KLHK. The Ministry of Agriculture and KLHK are currently preparing a Ministerial Regulation as the framework for this program.

For example, if the company's HCV area within the HGU is connected, or is a 'stepping stone' to a larger forest on other areas within APL, and is key to the survival of a population of one or more protected species, the company can propose a KEE program to the Governor and Bupati.

A KEE Collaborative Management Forum, developed by the Governor or Bupati, is a fundamental part of the Gol's description of the KEE program. The Forum is intended to ensure a multi-stakeholder approach to the management of the protected areas and benefit sharing, detailing the structure, responsibilities and duties of each party. The Gol's KEE description also suggests the following as members of the forum: the local village heads, traditional leaders, universities, NGOs, the Forestry Department and the district government (Department of Agriculture, the Executive Agency of Agricultural Extension, Fisheries and Forestry Department, BAPPEDA, Department of Animal Husbandry and Fisheries, the tourism office, etc). The KEE area, assigned by the Forum, will remain in the HGU but will also receive protection from local communities who may want to convert it to plasma.

The principles of the KEE program are as follows:

1. Conservation: protecting, maintaining,

<sup>1</sup> Ministry of Environment and Forestry of the Republic of Indonesia, No. P.101 / Menhut-II / 2014

and improving the quality of the ecosystem's resources

2. Education: changing behaviour and building an attitude of compassion, responsibility and commitment to the preservation of the ecosystem

3. Economy: sharing benefits for the welfare of society and the driving force of economic development and balance in the area around the essential ecosystem

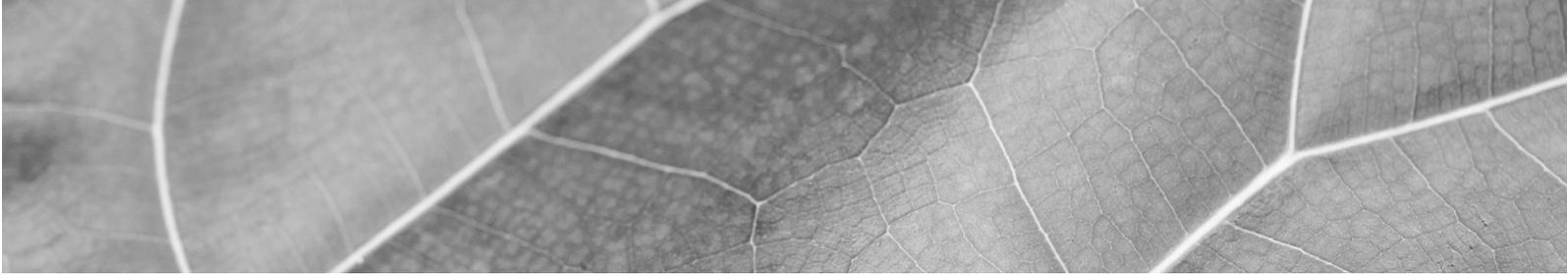
4. Community participation: building public support and public participation in the development of the essential ecosystem

5. Recreation: providing benefits to the local community and tourists through service-standard recreational activities

The KEE program has been an option for most of the last decade; however, it has been used in only a handful of cases because the application process was only made feasible when law No 23/2014 transferred the authority on these areas from the KLHK to the Governor or Bupati. This resulted in the application, agreement and conversion processes becoming easier to coordinate with one local government body.

As APL land is viewed by many stakeholders in terms of its ability to generate profit and tax revenues through development, the local government may feel public, political and financial pressure not to zone off an entire KEE section for protection. If this is the case, it may be wise to propose implementing a 'forest swap' (see section 7.1); releasing an equivalent-sized area of degraded land from KH to the APL landbank.

Another interesting option would be to negotiate a tax exemption with the Bupati or Governor for the protected lands that fall within the HGU in exchange for protecting that land and providing conservation jobs for local people.



## CASE STUDY: KEE IN WEHEA-KELAY LANDSCAPE, EAST KALIMANTAN

In 2016, the 532,143 ha [Wehea-Kelay landscape](#), in Kutai Timur and Berau, was designated a KEE by the Governor of East Kalimantan and the KSDAE Director General. Wehea-Kelay was deemed an important habitat for the protected orang-utan, with an estimated 2500 individuals spread across the area's lowland forest, plateau forest, hills and oil palm plantations. Wehea-Kelay is also an area rich in biodiversity and carbon, and key in supporting ecosystem functions for local communities.

The KEE boundaries were based on orangutan habitat, water shed, rivers, soil types, land cover, administrative boundaries and roads, and also took into account the concessions' HCV assessment documents.

According to the KSDAE report on the Wehea-Kelay KEE, the Forum intend to apply for restoration licenses for this land and implement educational programs to prevent encroachment and forest fires.

## CASE STUDY: KEE IN WEST KALIMANTAN

As part of West Kalimantan's sustainable development plans, Governor Cornelis is supporting the development of a [KEE program in Kayong Utara](#), Kubu Raya and Ketapang districts, in coordination with KSDAE, local companies, communities and IDH. These stakeholders have collaboratively identified a definitive KEE area, agreed upon a joint action plan to protect and monitor the area, and developed a public forum to direct the implementation of the action plan.

The KEE area overlaps with the companies' concessions and forms part of a larger forest block connecting the peat forest of the river Putri, the protected Gunung Tarak forest, and Gunung Palung National Park. Upon receipt of initial mapping implemented by IDH, the KSDAE Director General recommended the area for a KEE program as an important wildlife corridor.

The project will also look at generating sustainable alternative incomes and training on smallholder best agricultural practice to limit encroachment; the forest has historically been at risk of illegal logging, mining and forest fires. Other supporting activities include reforestation and developing village level land-use plans (see section 5).



## 6.5. ENCLAVE AREAS

An alternative to conserving areas within the HGU through KEE or registering set-aside with the relevant government departments would be to excise the area from the HGU and seek conservation permits on the unlicensed APL land. Options for protecting land under the APL classification are limited and unclear. This study found only two: enclaved areas or Hutan Adat (customary forest).

As discussed in section 5.1, Hutan Adat may still not be a viable option on APL. However, an enclaved area only requires the approval of the Bupati and can be established through district regulations (Perda), so it is a potentially swift option for protecting HCS or HCVs outside of the HGU. Once the enclave is granted by the Bupati, it is then treated as a protected area.

There are a few case studies that can be found on this approach:

- NGO Flora & Fauna International (FFI) initiated a protected area with the Bupati in Kapuas Hulu, West Kalimantan

- The Bupati of Kutai Ketenegara district, in East Kalimantan, initiated the district's own protection area
- PT KAL in Ketapang, West Kalimantan, worked with the BKSDA, the police, YIARI and TNC to develop an enclaved conservation area of 3,800ha outside the HGU on other APL land

A comparison study of these cases and others is recommended to better understand the mechanisms to apply for this type of protection area and what groups have the responsibility of protecting it.

Because this option requires strong support from the Bupati, it is recommended that, if the company cannot secure protection within the HGU itself and does not have strong support from the local Bupati for an enclaved area, it would be best to excise the area from the HGU, try to convert it to KH (see section 7) and seek options for protection under the KH designation.





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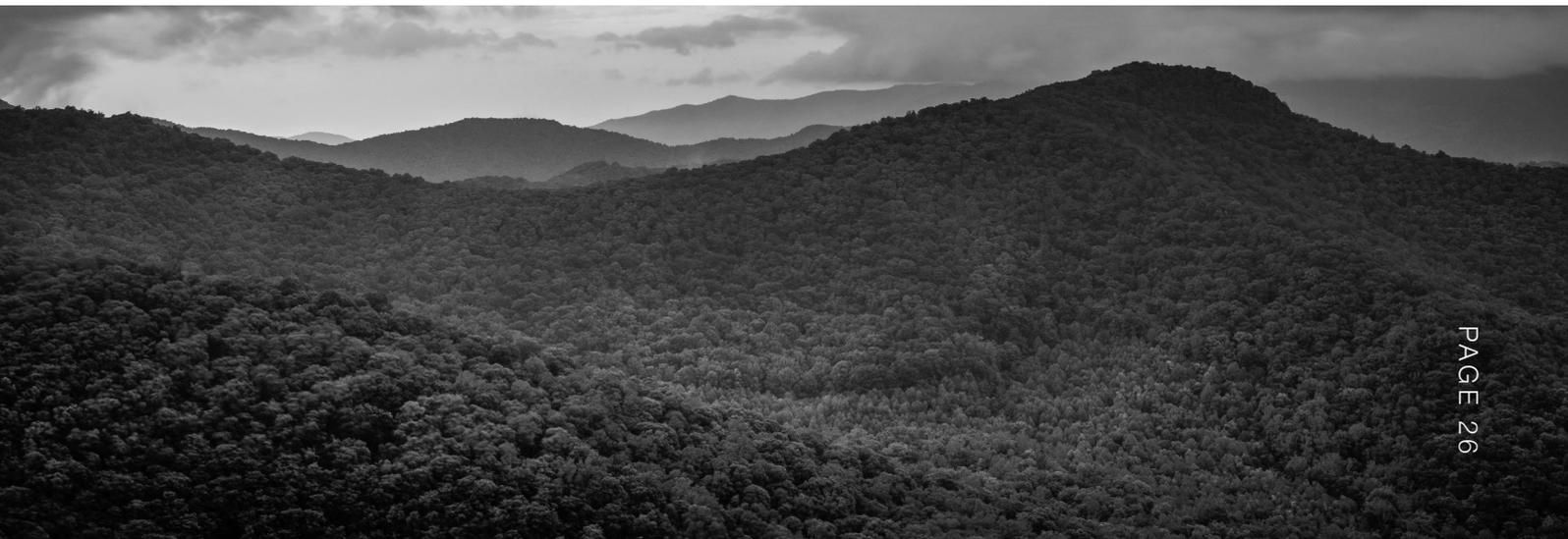
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## 7. CONVERSION OF APL TO KAWASAN HUTAN

APL areas can be reclassified as forest estate through a ‘forest estate gazettement’ process (pengukuhan kawasan hutan). The KLHK would conduct a four-step forest inventory process, after which there would be a review of national, provincial and district spatial plans<sup>1</sup>. Conversion of APL land to forest estate is a time-consuming and complicated process with unpredictable costs for companies. However, as KH law is designed to allow for protection

<sup>1</sup> Rosenbarger, A. et al. (2013). How to change legal land use classifications to support more sustainable palm oil in Indonesia. WRI Issue Brief.

and conservation as well as production, there are more permit options that allow for protection of land and utilization by communities. Converting to KH also provides more security that the area will not be developed in the future. Finally, of the various community-management permits outlined in section 5, Hutan Desa, Hutan Kemasyarakatan and KHDTK can only be applied for on KH. If the area intended for protection under these permits is on APL, this it will need to be converted to KH.



## 7.1. A FOREST SWAP

As mentioned previously, APL land is often viewed in terms of its ability to generate profit and tax revenues through development, thus local government may feel pressure not to convert APL to KH. One option for expediting this process would be to incentivise conversion by exercising a ‘forest swap’ resulting in no net loss of APL area for the district.

Under regulation No 32, 2010, a company can propose a ‘forest swap’ to exchange KH for APL, and vice-versa, to the district BPN. Although this has never before been implemented, theoretically, this would allow a reclassification of APL land with HCVs, to KH and an equivalent sized degraded forest area to be reclassified from KH to APL. In provinces where the KH is less than 30% of the provincial area, a forest exchange will be executed at a ratio of 2:1, so twice as much APL is re-classified to forest as forest is to APL. In provinces where the KH exceeds 30% the ratio drops to 1:1. The clearest route for doing this would be to influence the BPN’s district spatial planning revision process (RTRWK) to exercise swaps which result in classifications which more accurately reflect the conditions on the ground.

To execute a forest swap a company would have to identify a suitably degraded area in KH, also taking into consideration social, legal and economic criteria (community willingness, existing permits, feasibility for a plantation etc.) through desk top studies and field assessments. They would then have to i) propose to the government to re-classify APL as KH and vice-versa, ii) transition from no existing permits on the degraded area to an oil palm development permit, and iii) transition from an oil palm development permit to a permit supporting sustainable forestry activities on the new KH. Permits supporting sustainable forestry activities might include a community-managed forest option (see section 5) this could be supported by an IUPHHK-RE license to restore and utilize carbon through a carbon credit scheme.

Politically, the company must also assess the site-specific stakeholder interests e.g. of local communities, the district or provincial

government, and the private sector. Although legally an area might be considered protected, in reality the future of the area and the success of a forest swap will be determined by the local stakeholders. Their desired land use, willingness to participate in land management and economic wishes for the area should be taken into consideration, and a dialogue with these stakeholders should be initiated to negotiate and agree on a plan for the land. District and provincial governments can and have blocked forest swaps in the past, particularly when the swap would have taken place between two districts and one government risked a net loss of APL, which is worth more financially in taxes.

The company and any organization working with the company must also be realistic about the timeframe in which a forest swap will need to be executed. There will almost certainly be delays in the process due to negotiations and setbacks with other stakeholders, and meanwhile the company will be under pressure to start development, both from investors and also regulations enforcing the speedy set up of a plantation (see section 5.5). It may be that the company does not have time to negotiate a forest swap, in which case another management option must be implemented to secure the long-term protection of the HCVs.

Nonetheless, although a forest swap is yet to be successfully implemented and would most likely be a complicated, time consuming and potentially costly process for a company, there is a potential for forest swaps to become a common solution for companies trying to secure forest and HCV protection. In February 2017, KLHK announced a new regulatory framework that will expedite forest swaps for agricultural licensed areas with peatland<sup>1</sup>. This amendment will underpin President Jokowi’s goal to restore 2,000,000 ha of peatland under the BRG. In addition, there may be an opportunity to earn extra revenue from timber sales if there are trees on the degraded ex-KH land, through acquiring a timber utilization permit (or IPK).

<sup>1</sup> <https://m.tempo.co/read/news/2017/04/14/173866208/paskah-2017-kebak-tian-jumat-agung-di-bandar-lampung-khidmat>



## 7.2. KLHK'S KPH (KESATUAN PENGELOLAAN HUTAN – FOREST MANAGEMENT UNIT) PROGRAM

Once the area is converted from APL to KH, perhaps the simplest option would be to leave the area to the management of the KLHK instead of using one of the community-management designations outlined in section 5. Indeed, if there is a clear lack of community or private sector interest in managing the area, this may be the best possibility for long-term protection of the HCVs.

The primary KLHK management approach to areas without existing utilization permits is now the KPH (forest management unit) program. KPH has been designed by the KLHK with the aims of improving forest governance through breaking up the KH into smaller more manageable units and improving partnerships with local communities through the co-management of these units. Under this program each family in a village manages two hectares for their own use and the remaining hectares are allocated under KPH management. The KPH also provides support in the application process for a number of permit options (e.g. HD, HA, Hkm - see section 5) for villagers as well as assistance in the management of these areas. As a prerequisite for this program the villagers must provide participatory maps of their customary boundaries and land use, and document their approval for the KPH program.

However, under the KPH program protection of the HCV areas or HCS forests is not guaranteed. Once reassigned as KH, the KPH would further classify the area into one of the following functional designations: permanent production forest, limited production forest, protection forest or conservation forest, differing in allowable activities (see table 3). Some of these activities, such as the development of timber or rubber plantations, could actively degrade and destroy the HCV/HCS areas.

The designation process is based on a scoring system that assesses certain biophysical characteristics such as class of slope, soil type and rainfall<sup>1</sup>. This assessment may indicate certain HCVs such as riparian zones but is clearly not sufficient enough to pick up on endangered species, rare habitats or culturally significant areas, and so may result in HCV areas becoming production forest, i.e. converted to a tree plantation. The HCS and HCV methodologies could be utilised here to strengthen the process by which the KPH delineates conservation, protection and production forests.

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<sup>1</sup> KLHK P50 of 2016



**TABLE 3. DESIGNATIONS, CLASSIFICATIONS AND FUNCTIONS OF KAWASAN HUTAN (BASED ON WRI 2013)**

Functional designation	Function	Classification	Function	Permitted activities
Production Forest	The production of either timber or intensive non-timber forest products such as pulp and paper	Convertible Production Forest	Reserved for non-forestry development, can have forest product generation in the meantime	Clear cutting, industrial timber plantations, conversion to APL
		Permanent Production Forest	The production of forest products	Clear cutting and industrial timber plantations
		Limited Production Forest	The selective or limited production of forest products	Selective or limited timber extraction
Protection Forest			The protection of life-supporting functions eg. water management, flood and erosion prevention	Extraction of NTFPs and forest area utilization eg. cultivation of medicinal plants/fungi, apiculture, ecotourism, cattle feed etc.
Conservation Forest	The protection of biodiversity and ecosystems	Nature conservation area	The protection of ecosystem functions, biodiversity, sustainable utilization of natural resources	Research, science, education, cultivation activities, limited tourism
		Nature Reserve	Preserve biodiversity and ecosystems	Research, science education and limited tourism

In 2015, President Joko ‘Jokowi’ Widodo released a decree<sup>1</sup> prohibiting the issuance of new HGU licenses on primary forest or peatland in either protection or production forest or on APL. However, as Jokowi did not include secondary forest or regenerating forest in his description, it is possible that HCV of this type would be auctioned to a developer. Moreover, the regulation revision<sup>2</sup> underpinning Jokowi’s decree has been heavily criticised by environmental groups for not clarifying plans for restoration and addressing issues concerning agricultural licenses overlapping with peat and spatial plans not affording protection for peat.

<sup>1</sup> Presidential Decree No 8, 2015

<sup>2</sup> KLHK Regulation No 57, 2016

However, a company may be able to secure a protection forest designation for a peat area by leveraging Jokowi’s 2015 decree and its underpinning regulations. Nevertheless, as the KSDAE is considered a highly under-funded directorate, it should be noted that a protection or even a conservation designation does not necessarily guarantee an active management plan to protect the area. Thus the company should work with local communities, NGOs and authorities to actively promote and find funding for the protection of the area.

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## 8. CONCLUSIONS AND RECOMMENDATIONS

As this paper has shown, there are currently several different options for gaining protected status for HCS forests and HCV areas found within palm oil concessions in Indonesia. The appropriate solution from among the various options will likely emerge early on in the land use planning process, and depend mainly on how the area has been classified (APL or

KH, protection peat, cultivation peat or non-peat) and the interest of local communities in getting involved in protection or sustainable management of the area. A decision tree outlining the different options is presented in the appendix, and each step is described below.

### FROM ILOK TO HGU: SUPPORTING COMMUNITY CONSERVATION (SEE DECISION TREE)

1) Once the Izin Lokasi (ILOK) has been obtained a company should map out the land designation pattern of the ILOK (APL, conversion forest, permanent production forest, limited production forest and protection forest).

2) The company should then work with the local communities to better understand whether claiming Hutan Adat is an option (whether the community would be considered indigenous). The company can then conduct Participatory Mapping (PM) of areas the communities want to keep and want to lease to the company for compensation.

3) An AMDAL, supported by HCV and HCS assessments, should then be conducted on the ILOK areas that the communities either want compensation for or do not claim. The HCV and HCS studies should be included in the AMDAL to support conservation claims.

4) The company should then work with the communities on Participatory Conservation Planning (PCP). The aim of this will be to secure community protection and sustainable management for as much of the HCV areas and HCS forest as possible, resulting in participatory conservation and management plans. The communities must be made fully aware that even if they do not want to get involved in protection, the company will seek other forms of protection

for that land (i.e. the community will not be able to utilise that land for any other purpose such as plasma plantation). If the community do not wish to hand over these lands to the company for protection, the company should not buy any future products from that land. This is a good time for the community and the company to scope conservation funding options such as the ADD village fund or carbon credits.

5) Once the company and community have agreed upon protection areas and a conservation and sustainable management plan, the company should support the community in applying for either Hak Milik, Hutan Adat, Hutan Desa or Hutan Kemasyarakatan. This will depend on the designation of the land, whether the community can be considered indigenous, and the communities management plans.

6) The company should support the community in developing a RPJMD (village development plan) that also includes their conservation plans in order to secure the ADD (village fund).

7) If the land is classified as protected peat or riparian, the communities must be made aware that they are legally obligated to protect that land.

8) The company should also support the community in applying for ADD.

## PROTECTING LANDS INSIDE THE HGU (SEE DECISION TREE)

9) For the excess HCV areas and HCS forests that could not be included into community management, or for already-permitted HGU with HCVs and HCS forests inside, the company has several options for protection.

10) If the area is classified as protected peat by KLHK's "National peat ecosystem function map" the company is obliged to protect the area and submit maps and a management and monitoring plan to the local KLHK peat representative. If the protected peat area exceeds 40% of the licensed area the license holder may apply for a landswap.

11) If the protection area is not protected peat, the company should submit the AMDAL-HCV-HCS reports and maps, Sk DiRut and management plans to the district level BPN, Dinas Kehutanan dan Perkebunan (the district forestry and plantation office) and BKSDA (if the HCV is a protected species). These documents should state that the conservation areas are under active management and are not to be considered 'abandoned'. The company would then need to report on all company activities, including the management of the conservation area, through an RKL-RPL every six months to the district/provincial environmental agency and BPN. Technically the HGU can have up to 10% but it may be possible to secure more

conservation area through negotiations.

12) If the company has already submitted their palm oil development proposal to the District Head and has not included HCV areas and HCS forests, the proposal can be revised to include a protection and management plan for HCVs and resubmitted to the Bupati and other relevant parties (BPN, Environmental Agency, MoA, KLHK and Ministry of Finance).

13) Through communication with the local government, neighbouring companies and local communities, it may be possible to negotiate the implementation of a KEE program. A KEE designation would allow for a connected protection zone within APL recognised at the district or provincial level and co-managed by multiple stakeholders, and would be the ideal scenario for ensuring the long-term protection and viability of HCV areas and HCS forests.

14) If the Bupati is reluctant to lose any productive APL land to protected area, then the company could propose a forest swap. To identify degraded KH area the companies would have to conduct a mapping process and negotiate with the affected communities regarding the optimal outcome.



## SECURING PROTECTION OUTSIDE THE HGU (SEE DECISION TREE)

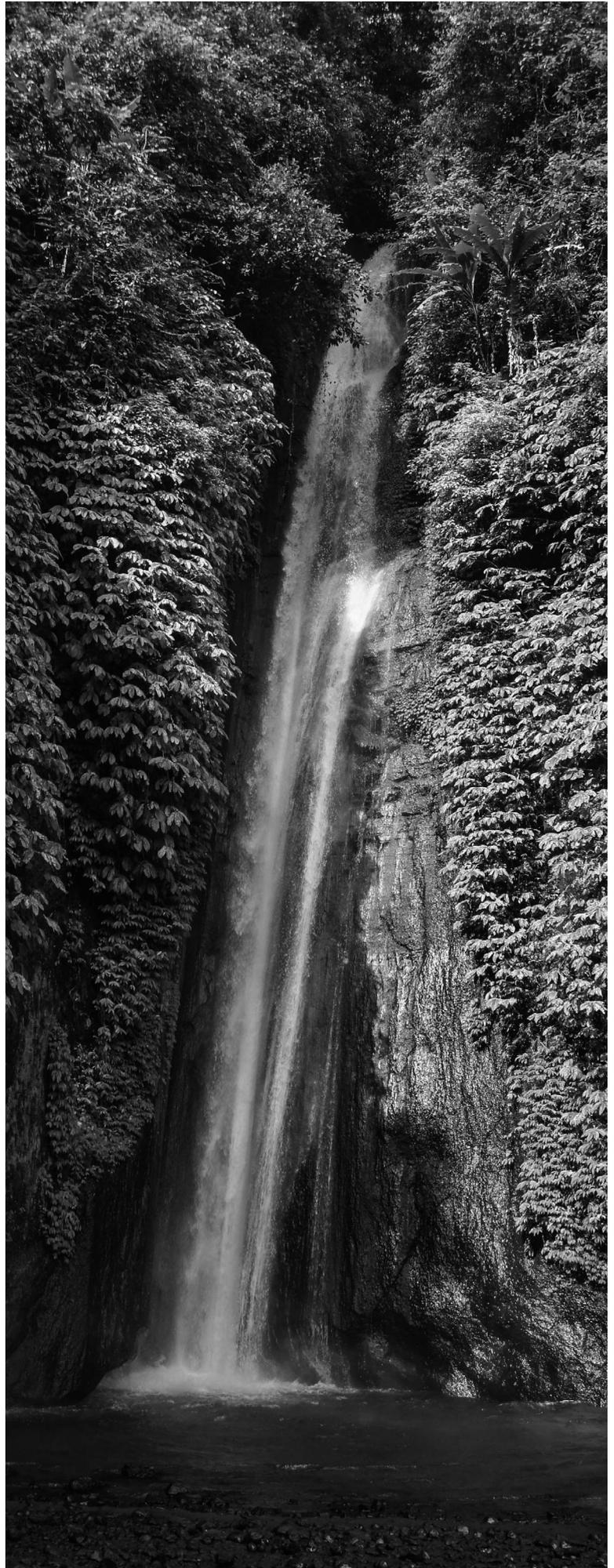
15) If the local government is unwilling to approve a KEE or accept protection areas inside the HGU, the next best option would be to excise the HCV/HCS from the HGU, and support the Bupati and BPN in enclaving and protecting the area with a management and monitoring plan.

16) If the enclave option is not possible, the company can propose a forest gazettement to the Bupati and BPN, which could also be incentivised through a forest swap. This would require supporting the Bupati and BPN in the conversion of this area to KH and support the local KPH (forest management unit) in their assessment of the area through providing the AMDAL-HCS-HCV reports and maps.

17) Failing this, the company could present mapping data to the Governor, using this as a basis for a discussion to alter the RTRW (provincial planning) process and ensure the protection of the HCV areas and HCS forest. This could take the form of a community forest, enclaved area, KEE, changing the classification to KH, or other options outlined in this paper. To strengthen this approach a multitude of companies, NGOs and communities should collaborate with local government agencies (perhaps through the One Map Initiative) to map HCV areas, HCS forest and customary boundaries of an area to produce a participatory conservation plan, which can then be submitted to the Governor and local parliament for final approval and integration into the RTRW.

18) In areas where district or provincial government is not interested in protecting HCV areas and HCS forest it is key that the estate management is familiar with the laws protecting HCVs (table 1) and can articulate these laws to the local authorities or in the supreme court in order to secure protection of the areas.

All of the conservation options described here are technically and legally possible. However, many of them will require political support, and many would benefit from further policy changes. The next section describes policy reform that would assist in the implementation of the various options identified in this paper.



## 8.1. POLICY RECOMMENDATIONS

Addressing the full range of helpful policy changes is not within the scope of this paper. Nonetheless, it is important to mention some recent policy developments which could create more options for companies to protect forests and HCVs in their concessions and supply sheds, beyond the options identified in this paper.

Since his inauguration in 2014, President Jokowi has been a strong and ambitious advocate for Indonesia's natural environment. Early on in his presidency he signed the New York Declaration on Forests (23rd September, 2014), aiming to cut natural forest loss in half by 2020 and halt it altogether by 2030. The Gol has been striving to reform land use policies and improve customary land rights to better protect peatlands and forests and thereby meet the country's pledge to reduce its GHG emissions by 29% by 2030. The government aims to fulfil these pledges through several activities; namely redistributing 12.7 million ha of forest to local and indigenous peoples, restoring two million hectares of peat through the peat restoration agency, and reforming Indonesia's land use policies.

The reformation of Indonesia's land use policies is critical. In particular, the Gol's NKT (HCV) concept must be supported and written into legislation across Ministries with a clear definition of what constitutes an NKT and the acknowledgement of NKTs as protected entities under KLHK management, similar to that of riparian zones. Parallel to this the directorates of Planology and KSDAE will need to work closely

on mapping and ensuring NKT areas receive protection. When NKTs are found within APL land and cannot be managed by communities, the BKSDA will need jurisdiction and financial support to establish special APL NKT zones (possibly KEE), allowing the recognition and protection of conservation areas found outside of KH.

Land use policy reform could also be used as a platform to review the procedures of developing a plantation. The critical period between obtaining the Izin Lokasi and the HGU, could be lengthened to support the sensitive mapping and negotiation procedures required to safeguard wildlife, ecosystem functions and community rights. The Gol could also review KLHK Decree No 70, 1995, on the control and utilization of abandoned land, to include a clear mechanism for companies wishing to secure protection for more than 10% of the HGU, ensuring that the excess conservation land is not mistaken as 'abandoned' and reclaimed by the BPN. It is crucial that the Gol publically recognise that the assessment, conservation, monitoring and management of HCV areas within a HGU are not in violation of the law, but instead an obligation and responsibility of a company as stipulated in prevailing law and regulations.

Another recommendation would be to strengthen the AMDAL process with the HCV and HCS methodologies. These methodologies could also be used to strengthen the process by which the KLHK delineates conservation, protection and production forests (see table 3).

## 8.2. RECOMMENDED FUTURE STUDIES

Recommended future studies to further the understanding of options to protect HCS/HCVs found on company-managed land are outlined in the following bullet points:

- A similar survey on the possibilities to protect HCVs found within the estates of rubber, timber, pulp and paper companies within KH would make an ideal follow-up study.
- This paper does not dive into the mechanisms for securing community tenure or the issues driving the negligence of land rights on KH and APL. A future study could look at legal support for the FPIC process and how FPIC could support the Ganti rugi process for compensating communities for their lands.
- To encourage small to medium sized companies in protecting HCV/HCS areas, two studies are required: one developing the business case for protecting these areas and another analysing of the costs of AMDAL, HCS and HCV studies and their subsequent management and monitoring per hectare.
- A gap analysis of the AMDAL and HCS-HCV studies would be key to delineate where HCS/HCV can strengthen the AMDAL process.
- Case studies of successful and unsuccessful attempts to influence the RTRW process to alter protection and development areas in order to build a methodology for working with local government on land use planning.
- An analysis of the land allocation process conducted by the KLHK directorates to understand how KH is earmarked for conversion to APL.
- A comparison study on the “enclave” case studies in Kapuas Hulu, Ketapang and Kutai Kartanegara is recommended to better understand the mechanisms to apply for this type of protection area and what groups have the responsibility of protecting it.
- Case studies for how various conservation groups are working with communities on their RPJMD to plan community conservation and secure the ADD.



# APPENDIX

## DECISION TREE: OPTIONS FOR PROTECTING HCV AREAS AND HCS FOREST FOUND ON LAND ZONED FOR AGRICULTURE IN INDONESIA

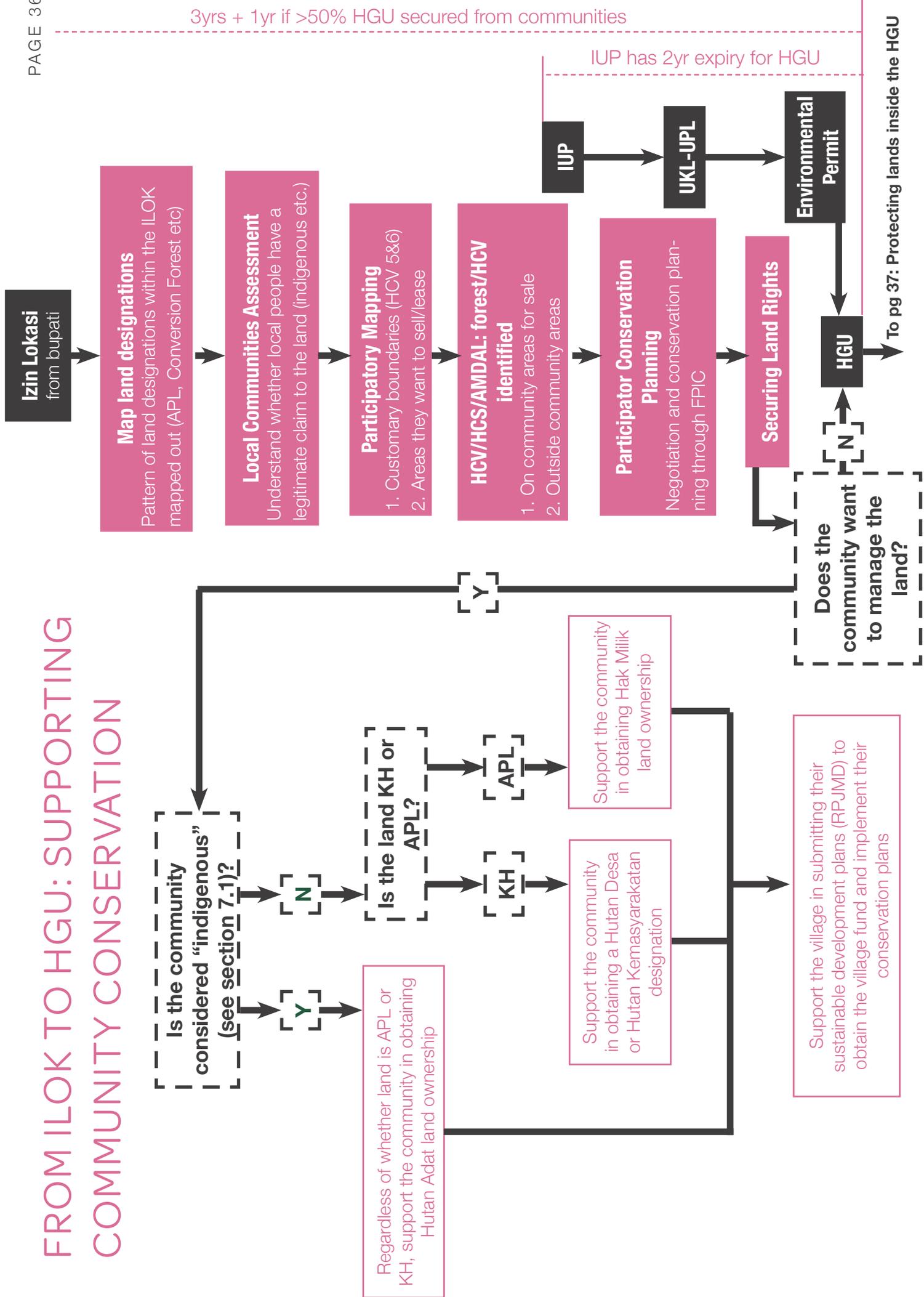
### **Please Note:**

The following decision tree is not prescriptive. It represents a host of different options companies can take in order to protect HCV areas and HCS forests found on their estates. It is intended to be used in conjunction with the paper 'Protecting HCV areas and HCS forests found on oil palm estate'.

If the company has outstanding compensation issues or if they happen to have a strong relationship with the district government or local communities they may wish to bypass some stages in favour of more applicable options.

This decision tree and the accompanying paper 'Protecting HCV areas and HCS forests found on oil palm estate' are based on best available information as of April, 2017. They will likely change depending on local regulations and the introduction of new regulations, for example that of peat restoration on APL.

# FROM ILOK TO HGU: SUPPORTING COMMUNITY CONSERVATION





# SECURING PROTECTION OUTSIDE THE HGU

If the company cannot secure protection within the HGU the HCV/HCS will need to be excised from the HGU and the company will need to work with other stakeholders to secure protection for this land.

