



Governmental action against the Indonesian palm oil industry

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1 Introduction

For decades, investigative research by civil society and other groups has exposed the significant and wide-ranging adverse impacts that palm oil companies have caused to the environment, human rights, and labour rights around the world. In July 2018 Milieudefensie published a report “Draw the Line: A black book about the shady investments of Dutch Banks in palm oil,” that summarized over 100 cases of palm oil companies’ alleged involvement in socially and environmentally damaging business activities.¹

Several of the cases in “Draw the Line” showcased public sector action to expose or address the adverse impacts. These efforts were undertaken not only by civil society groups, but also by government entities who investigated and sometimes penalized palm oil companies for their harmful business conduct. In late 2018, Milieudefensie commissioned research to deepen understanding of the extent to which governments are taking action to respond to allegations of palm oil companies’ involvement in harmful or illegal business activities.

To address this query, SOMO researchers undertook a research project between late December 2018 and April 2019. The research sought to identify cases when Indonesian governmental entities took steps to investigate, engage with, convict, or penalize certain palm oil companies accused of harmful or illicit business activity. The research proceeded by seeking evidence of public complaints, being:

- ❑ formal and informal administrative and judicial complaints as well as protests by community groups;
- ❑ that were directed toward any entity of government (including courts, administrative bodies such as ministries and commissions, and parliaments at national and sub-national levels);
- ❑ regarding palm oil companies’ alleged harmful or illicit activities (including environmental harm, labour or land rights violations, and acts of corruption).

The research found 85 cases and collected evidence of both action and inaction by Indonesian government entities, showing the range in the extent to which government is responding to allegations of palm oil companies’ misconduct. ◂

The research for this paper focused solely on Indonesia and relied only on public and digitally accessible resources, thereby missing likely extensive data available only in print in Indonesia.² The search focused on three companies and their subsidiaries: Golden Agri-Resources and its subsidiaries (part of Sinar Mas), Indofood and its subsidiaries (part of Salim Group) and Wilmar and its subsidiaries.³

Although the research was limited in scope, the research shows that palm oil production continues to cause major problems for people and the environment. The research results, explored in further detail in the sections below, identified, for example:

- ❑ **19 court cases** involving palm oil companies or about government's handling of impacts of palm oil companies;
- ❑ **18 cases of parliamentary engagement**, such as through parliamentary investigations, mediations, or demands on companies to address harmful impacts;
- ❑ **16 investigations** by administrative governmental entities (excluding investigations by courts or parliaments);
- ❑ **15 orders or warnings to companies**, including orders correcting land ownership records in favour of communities, orders requiring a company to compensate an individual, or warnings of permit revocations;
- ❑ **7 government-led mediations** (as opposed to parliament-led mediations) between companies and communities;
- ❑ **4 orders to compensate** communities or make a severance payment;
- ❑ **3 fines** against companies or executives; and
- ❑ **2 cases of imprisonment** of palm oil executives.

The search covered sources dating from 2011 and later, but about three quarters of the cases identified date to 2016 or later.

The limited scope of the research (only online sources and three companies in Indonesia) suggest that what has been identified is merely the tip of the iceberg in terms of the number of complaints being raised to government about harmful impacts of palm oil companies, and responsive actions by governments to investigate and respond to the allegations of harm.

This report provides in section 2 an explication of the research methodology and limitations in the evidence collected. Section 3 provides overall numbers on the types of complaints found for the three companies studied in Indonesia: Golden Agri-Resources, Indofood, and Wilmar. Sections 4, 5, and 6 provide a deeper dive on subsidiaries of Golden Agri-Resources, Indofood, and Wilmar Group. Each of these three sections provides an overview of the range of cases identified for each company group, followed by four to five case examples exemplifying the range of

reported harmful activities as well as the range of responsive actions taken by various governmental entities. The cases include a few examples where government is responsive to the harm, but does not definitively affirm the truth of the allegations, address the impacts, or provide remedy for victims. It is important to note that in our sample, most claims by local communities that are filed to court end with a ruling favourable to the company.

2 Methodology and limitations

Methodology

The research focused on identifying formal and informal judicial or administrative complaints to, and resulting responses from, authorities against the selected palm oil companies and their subsidiaries. Responses include actions in favour of community complainants such as fines, warnings, suspensions of permits, and also responses in favour of companies such as rejections of complaints or affirmations of right to land for the company. SOMO researchers identified relevant subsidiaries of the four companies using the Draw the Line report and the corporate database Orbis and annual accounts of the selected companies.⁴ The search was limited to cases, which became public from 2011 and onwards. As mentioned, 75% of the cases date from 2016 or later.

To identify complaints and government responses, SOMO researchers searched country-specific legal databases showing court rulings from national and sub-national courts, websites of state entities (ministries, commissions, etc.), and numerous news outlets. The majority of sources cited are news sources. The research drew from English, Dutch and, in most cases, Indonesian language resources.

SOMO researchers used the Draw the Line database as a launch for identifying cases. The researchers began by investigating each of the allegations of wrongdoing mentioned in the Draw the Line database that occurred in Indonesia and were linked to the three companies. Material from these cases was included in a spreadsheet created for this project only if the information went beyond what was already included in the Draw the Line database. Next, researchers searched for additional complaints related to these three companies in Indonesia, adding to the spreadsheet any information not already included in the Draw the Line database.

The spreadsheet that SOMO researchers created for this project identifies, for each case, key information including the company and subsidiary (e.g. palm oil plantation), type and description of harm, identity of complainant and government entity to which the complaint was directed, response (if known) by the government, and sources.

The spreadsheet also indicates for each case whether a government response to the complaint has been identified.

The case examples presented in this report are drawn from this spreadsheet and are chosen to provide examples of the kinds of cases governmental institutions are handling, and the manner in which governmental entities are responding.

After compiling the data in the spreadsheet and case examples, SOMO researchers reached out twice to the companies to give them the opportunity to review and provide factual corrections to the material collected. Only Wilmar Group and Golden Agri-Resources (GAR, part of Sinar Mas Group) responded with comments. Indofood (part of Salim Group) did not respond to our request and reminder to review the findings we shared with them. With Wilmar and GAR a follow-up round of review was pursued by SOMO regarding some remaining points concerning the cases identified. Subsequently the company comments received were processed in this report and in the spreadsheet. As a result of the review process, seven cases (beyond the 85 still included in this report) were deleted due to a lack of link between the company and the named subsidiary, or due to a weakness in the source located.

Limitations

Reasons for non-evidence of governmental responsive action: The spreadsheet includes for Indonesia some cases for which we could not locate publicly available records of governmental responsive action. We include these complaints because they make allegations of serious misconduct by palm oil companies and have been directed to government entities. There are various reasons why it has not been possible to locate governmental responsive action to these complaints, such as:

- ❑ Some of these complaints were raised very recently (e.g. late 2018) and therefore government may not yet have acted.
- ❑ Governmental records are not always publicly digitally available nor is governmental action consistently reported in digital media sources. Therefore, even if a governmental entity has taken action on a complaint, we might not have found evidence of this response.
- ❑ Governmental entities may not have acted. Governmental entities may not have acted out of indifference, inability, or corruption/complicity in the harm. We have no evidence, however, of why a governmental entity has not acted in these cases.

Wrongfulness of company action: In respect of some cases listed in the spreadsheet, a governmental entity has confirmed that a company has breached some law or

regulation. In such cases, it may be said that the company has taken illicit (illegal) action. However, in other cases the government has confirmed the company is acting wrongfully, but the government has not confirmed allegations that the company has broken a law or regulation. Care must be taken not to conflate evidence of illicit activity with evidence of general wrongdoing that may not be illegal. Further still, criminal conduct must not be conflated with illicit conduct. Not every breach of a law represents a crime; only breaches of criminal laws constitute crimes. Further care must be taken not to describe wrongful or even illicit activity of companies as criminal activity, unless the activity truly is of a criminal nature.

Examination of cases: This report provides an overview of publicly available reports of complaints raised to governmental entities, along with identification of reports of government's response or non-response. It was beyond the scope of this research to evaluate at a deeper level the nature of the complaints and the reported governmental responsive actions. Further research would be needed to assess these elements.

3 Overall numbers of complaints

Table 1 on the next page shows a breakdown of the 85 cases identified for all three of the companies and their subsidiaries studied in Indonesia: GAR (Sinar Mas Group, Indofood (Salim Group) and Wilmar Group. Of the cases, 33 relate to land rights issues including failures to (properly) implement a government-led smallholders land programme. Seventeen relate to environmental issues, such as pollution or forest fires. Six of the cases concern acts of corruption or tax fraud. Labour complaints identified include violations of labour laws, wrongful dismissal of union members for union activities, and underpayment of staff. Finally, other cases consist of a combination of these issues (included in the 'cross-cutting' category).

A majority of these cases (54%) involved administrative bodies, such as the police; local, regional or national governments; and the Indonesian anti-corruption commission (known as the KPK). At least 16 cases were brought to courts, including local courts and the Supreme Court. Regional or national parliaments were involved in another 14 cases, excluding cross-cutting cases in which parliament was also involved. The majority of cases brought to court were civil as opposed to criminal cases, and the majority were decided against communities and in favor of companies (only four cases out of 16 were decided in a manner beneficial to communities).

Conclusive data on the response from government was lacking for 20% of the 85 cases.

Table 1 Overview of number of complaints for Wilmar, GAR and Indofood and their subsidiaries, by type of misconduct and type of authority involved.

	Land rights	Environmental	Tax/corruption	Small-holder prgm.	Labour	Cross-cutting	Other	Total	%
Administrative body	17	11	5	4	4	2	3	46	54
Court	9		1		3	1		14	16
Cross-cutting	4	2				5		11	13
Parliament	2	4		3	1	2		12	14
Other	1						1	2	2
Total	33	17	6	7	8	10	4	85	100
%	39	20	7	8	9	12	5	100	

Company responsibility is independent of government responsibility

This report identifies governmental response to allegations of misconduct by palm oil companies. As mentioned, in some cases the government acts to reject the allegations against companies, in other cases the government's response does not appear commensurate to the level of harms alleged, and in still other cases no government action is identifiable at all. It is important to note that under international soft law standards such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises, companies have responsibility, independent of state action, to undertake due diligence to identify harms to which they may be linked and to take action to prevent or mitigate those harms. In other words, companies have a responsibility under international norms to respect human rights whether or not states fulfil their own duties to protect human rights.

4 Sinar Mas & Golden Agri-Resources



Overall case statistics for Sinar Mas & Golden Agri-Resources

This study found 36 reported cases of harmful business activities for Golden Agri-Resources (part of the Sinar Mas Group) for at least 24 different subsidiaries (Table 2). Half of the cases (17) relate to land rights issues, while the other half relate to environmental, fiscal/corruption, or labour issues. At least 10 cases were brought to court, while administrative bodies were involved in 24 cases. One bribery case implicating two GAR subsidiaries led to the imprisonment of several palm oil executives. The government launched investigations in four cases, while nine cases involved warnings or orders from government officials to the subsidiary companies. In some cases, insufficient data was available to confirm a response by governmental authorities at all.

Table 2 Thematic overview of the types of misconduct found for GAR (Sinar Mas Group) and subsidiaries

Type	Number of occurrences
Environmental issues	4 (11%)
Fiscal/corruption issues	1 (3%)
Implementation of smallholder (plasma) programmes	4 (11%)
Labour issues	5 (14%)
Land rights issues	17 (47%)
Cross-cutting	4 (11%)
Other	1 (3%)
Total	36 (100%)

Case 1

Corruption and environmental harms – PT Binasawit Abadi Pratama and PT Sinar Mas Agro Resources & Technology Tbk

Location: Central Kalimantan

Year: 2018-19

Company: PT Binasawit Abadi Pratama and PT Sinar Mas Agro-Resources & Technology Tbk (PT SMART)

Parent company: Golden Agri-Resources

Issue: Indonesian Corruption Eradication Commission accuses parliamentarians and palm oil executives of bribery in water pollution case.

The case: In September 2018, Indonesian media began reporting on the pollution of lake Sembuluh. Inhabitants of villages near the lake, who use the lake as a freshwater source and fishing ground, assert the lake is polluted with pesticides.

On 27 October 2018, the Indonesian Corruption Eradication Commission accused officials of PT Binasawit Abadi Pratama (PT BAP) of having bribed four members of the provincial parliament of Central-Kalimantan with 240 million Indonesian Rupiah (€15,000). The members of parliament allegedly ensured there would be no hearing about the pollution of lake Sembuluh by the palm oil company and that the company would not be harassed by the government for not having had the right permits. The suspects in the case are the four parliamentarians and also three top executives of PT BAP, one of which was also vice-CEO at PT SMART, the parent company of PT BAP and the primary subsidiary of GAR in Indonesia. Six of the suspects, including the vice-CEO of PT SMART, were jailed in October 2018 pending further inquiry into the case. In March 2019, a court in Jakarta sentenced the three BAP officials to 20 months imprisonment and a fine of IDR 100 million (€6,237).

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Case 2

Violation of land concession and tax regulations – Sinar Mas Group

Location: Riau

Year: 2015-2018

Company: PT Buana Wira Lestari, PT Bumi Palma Lestari Persade, and PT Ramajaya Pramukti.

Parent company: Sinar Mas Group

Issue: Provincial parliamentary land committee investigates about 600 companies, inquiring about possible violations of land concessions and taxation laws.

The case: In 2015, the Pansus lahan, a parliamentary special committee on the monitoring and evaluation of land permits of the Riau province, issued a finding that about 600 plantation companies and forestry businesses in Riau possibly had violated land use regulations by exceeding the borders of their concessions. The report is not publicly available; however, according to media writing about the report, the report accuses Sinar Mas companies (potentially including palm, pulp and paper companies) of also having not paid enough taxes. Three palm oil companies of GAR were mentioned in connection to the investigation of the special committee: PT Buana Wira Lestari, PT Bumi Palma Lestari Persade, and PT Ramajaya Pramukti. According to GAR there was no wrong-doing by these subsidiaries. Late in 2018 the provincial parliament of Riau questioned Sinar Mas companies during a new hearing again about the findings of the committee. According to the news reports, it concluded that the companies had improved their compliance with tax regulations.

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Case 3

Land grabbing – PT Ramajaya Pramukti

Location: Riau

Year: 2015-2018

Company: PT Ramajaya Pramukti

Parent Company: Golden Agri-Resources

Issue: Regency (district) government helps mediate a land dispute between villagers and a palm oil company.

The case: In 2015, families from the village Beringin Lestari in the province of Riau claimed that the plantation company PT Ramajaya Pramukti had been working outside its concession and annexing their land since 1996. Two-hundred fifty-seven household heads asked the regency government of Kampar to resolve the dispute. The regency government agreed to help mediate the dispute. Reportedly, the head of the regency has proposed that the heads of families participate in the company's "plasma programme," a programme mandated by the Indonesian government in which large companies lease land plots to smallholders and offer them competitive prices for their crop. By October 2018, however, the conflict was yet not resolved. Mediation led by the regency government is reportedly ongoing. Villagers complain that they lack the resources to hire a surveyor to substantiate their land ownership claim.

PT Ramajaya Pramukti is mentioned as one of the GAR companies in the special committee's report about the violations of land use regulations in Riau (discussed in Case 2 above). In 2017, a research report by Indonesian network organisation Eye on the Forest found that PT Ramajaya Pramukti had cultivated 3500 hectares of land. Because the company only had a permit for 2000 hectares, the report asserted that the company had exploited the other 1500 hectares illegally. This report seems to confirm the villagers claim.

When contacted, GAR claimed that its subsidiary is operating in accordance with applicable laws and regulations. GAR asserted that the case of the village Beringin Lestari has been closed following a 2004 court ruling in favour of the subsidiary. However, this assertion is at odds with the news reports of ongoing dispute and mediation by the regency government in 2015-18. The matter appears unresolved.

Sources

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Case 4

Labour rights – PT Sawit Mas Sejahtera

Location: South-Sumatra

Year: 2016-2019

Company: PT Sawit Mas Sejahtera

Parent company: Golden Agri-Resources

Issue: Regency-level labour agencies order palm oil company to compensate workers for overtime hours.

The case: In 2016 the Central All-Indonesian Workers Organisation (a union) began protesting union busting activities by PT Sawit Mas Sejahtera palm oil company in Lahat regency, after the company fired a union official. Union members had been arguing that PT Sawit Mas Sejahtera underpays its employees, requires them to work longer hours than agreed and without pay for the extra hours worked, and undermines the position of the regular workforce by outsourcing and offering workers temporary contracts. Workers also alleged that the company PT Sawit Mas Sejahtera hires military and police to suppress peaceful protests. Several union officials have been fired in recent years, including Fauzi Azwar, who had supported a letter critiquing the Indonesian palm oil industry which Indonesian civil society sent to the European Union in May 2018. Following the dismissals, in January 2019, 97 Indonesian organisations protested the anti-worker and anti-union behaviour of PT Sawit Mas Sejahtera in an open letter to parent company Sinar Mas and to the Roundtable on Sustainable Palm Oil (RSPO).

Labour agencies of the regency of Lahat and the province of South-Sumatra had investigated the violation of worker rights by the company in May 2017, at which time they reportedly ordered the company to compensate employees for overtime hours. When contacted about this report, GAR said the complainant and PT Sawit Mas Sejahtera reached a formal mediation agreement on 27 March 2019, as witnessed by the regency government. Furthermore, PT Sawit Mas Sejahtera promised a severance payment.

Sources

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Case 5

Environment – PT Bahana Karya Semesta

Location: Jambi

Year: 2016

Company: PT Bahana Karya Semesta

Parent company: Golden Agri-Resources

Issue: Ministry of Environment and Forestry issues temporary stop-work order to a palm oil company, according to Indonesian media.

The case: In June 2016, three Indonesian news sites reported that the Ministry of Environment and Forestry ordered palm oil plantation PT Bahana Karya Semesta to stop operations until it had complied with the demands of the government. According to the environmental office of the Sarolangun regency, the company had to comply with a request by this office to improve the processing of toxic and hazardous waste materials. Media reports quoted a regency official saying that the company also had an obligation to return an area of land that was affected by fires to the government. The regency official said that the regency also gave PT Bahana Karya Semesta more than three stop-work orders. Media reports in 2016 show that PT Bahana Karya Semesta kept on working, arguing that it could not comply because dismissing its 3,000 workers would be too harmful to them.

When contacted about this report, GAR denied that its subsidiary PT Bahana Karya Semesta received orders from the government to shut down its operations temporarily. Instead, GAR asserted that PT Bahana Karya Semesta had received a sanction from the Ministry of Environment and Forestry mandating it to rehabilitate land damaged by forest fires and implement fire preventive measures. GAR also asserted that it holds the necessary waste management licenses and has always complied with regulations on the processing of waste material.

Sources

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5 Salim Group & Indofood



Overall case statistics for Salim & Indofood

This study found 25 reported cases of harmful business activities for Indofood (part of the Salim Group) and its subsidiaries in Indonesia (Table 3). The complaints involved at least 20 different subsidiaries. Nine of the identified cases relate to land rights issues. The remaining 16 cases relate to environmental, fiscal/corruption or labour issues, or cross-cutting combinations of these issues. At least six cases were brought to court, while administrative bodies were involved in 10 of the cases. Another nine cases involved parliamentary bodies. Although for many of the complaints, insufficient data was available to confirm the response to these cases from the authorities, the authorities launched investigations for at least three cases, and supported mediation for at least two.

Table 3 Thematic overview of the types of misconduct found for Indofood (part of Salim Group) and subsidiaries

Type	Number of occurrences
Environmental issues	5 (20%)
Fiscal/corruption issues	1 (4%)
Implementation of smallholder (plasma) programmes	2 (8%)
Labour issues	2 (8%)
Land rights issues	9 (36%)
Cross-cutting	6 (24%)
Other	-
Total	25 (100%)

Case 1

Environment – PT Agro Subur Permai

Location: Central Kalimantan

Year: 2017

Company: PT Agro Subur Permai

Parent company: Indofood⁵

Issue: Regency court issues ruling requiring accountability for palm oil companies that caused forest fires.

The case: In 2016, the regency court of Palangkaraya issued a ground-breaking ruling in a class action of communities harmed in 2015 by devastating forest fires in Central Kalimantan. In that case, citizens had sued the government, demanding that it stop blaming local farmers for the fires and instead reconsider and recall the permits of the palm oil companies that were actually responsible. The court sided with the citizens, requiring decisive action by administrative government to punish responsible companies with prison sentences or administrative and civil sanctions.

The Indonesian government is appealing the ruling at the Supreme Court. Nevertheless, the ruling has given civil society organisations a basis to demand accountability moving forward. In August 2017, civil society organisations exposed PT Agro Subur Permai as one of the palm oil companies responsible for the 2015 forest fires. The company's concession was identified as a starting point of the fires that caused severe distress in the area. Civil society is demanding that the Indonesian government comply with the ground-breaking ruling by punishing palm oil companies responsible for the fires and removing their permits to operate.

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Case 2

Environment – PT Riau Agrotama Plantation

Location: West-Kalimantan

Year: 2018

Company: PT Riau Agrotama Plantation

Parent company: Indofood

Issue: A regency government head warns a palm oil company to stop exploiting protected national park land outside of its concession.

The case: In October 2018, a politician of the Kapuas Hulu regency parliament, Iman Shabirin, called upon the regency government to stop palm oil company PT Riau Agrotama Plantation from harming a protected forest area. A media report indicates that the protected area is part of the Betung Kerihun National Park, where bears and orangutans have their habitat. Reports assert that PT Riau Agrotama Plantation owns a concession of 18 thousand hectares in Kapuas Hulu, but has begun encroaching onto the protected forest area without a legal permit. In response to the politician's demand, the head of the regency government said he had already in 2012 issued a warning letter to the company to stop exploiting in the protected area. The head of the regency government announced that a regency government team would conduct a field investigation again.

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Case 3

Land grabbing and environment – PT Serikat Putra

Location: South Sumatra

Year: 2018

Company: PT Serikat Putra

Parent company: Indofood

Issue: Regency parliament orders palm oil company to mediate to resolve land dispute with villagers.

The case: In August 2017, the parliament of the Pelalawan regency gave palm oil company PT Serikat Putra an ultimatum that it must, within one month, resolve an ongoing land dispute with 13 villages in the regency. The communities demanded that the company should

start a palm oil partnership programme with them.

The Chairman of the regency parliament supported them, asserting that the company should begin a partnership programme. Villagers argued furthermore that PT Serikat Putra had violated national conservation regulations by planting in riverine areas. Villagers also alleged the plantation had taken over land outside its concession that was formerly used by local farmers, and had also absorbed a burial site, preventing villagers from tending family graves.

By October 2018, the company had not yet heeded the ultimatum from the regional parliament, leading villagers to protest at the PT Serikat Putra head office in Jakarta. In response to the demonstration, the company agreed to mediation. Protesters have asked support from the national parliament and the president.

Sources

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Case 4

Land grabbing – three Indofood subsidiaries

Location: Riau

Year: 2018

Companies: PT Salim Ivomas Pratama, PT Cibaliung Tunggal Plantation, and PT Gunung Mas Raya

Parent company: Indofood

Issue: National parliament mediates land dispute between palm oil companies and ethnic groups, affirming that company failed to implement smallholder land programme.

The case: In March 2018, the Regional Representative Council of the Republic of Indonesia (one of the two chambers of the national parliament) started to help mediate a land dispute between four ethnic groups in the Rokan Hilir regency in Riau and three Indofood subsidiaries (PT Salim Ivomas Pratama, and PT Gunung Mas Raya). The three Indofood subsidiaries, together with another palm oil company, are exploiting an area of 157 thousand hectares in the Rokan Hilir regency that the four ethnic groups claim as their hereditary land. During the mediation, the Indofood subsidiaries agreed to allow the size of their concessions to be reviewed.

The subsidiaries also agreed to reserve 20 percent of their concessions for local smallholder farmers as part of the plasma programme, and to execute a Corporate Social Responsibility programme. A politician from Riau province has asserted that the permits of the companies should be withdrawn if the companies do not keep their promises.

Sources

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6 Wilmar Group



Overall case statistics for Wilmar Group

This study found 24 reported complaints of harmful business activities for Wilmar subsidiaries. Eight of the cases relate to environmental issues, while seven cases relate to land right issues. Four cases involve fiscal/corruption issues, one case is about labour issues and one case is about the implementation of smallholder programmes. Researchers identified three other cases involving conflicts between security forces of the Wilmar subsidiaries and local communities.

The researchers counted three cases that were brought to a court, four cases that were dealt with by a parliament, and 14 cases with a response from administrative bodies. A tribal council dealt with a case, after the police had started an inquiry. The tribal council decided that the company had to give the local community compensation for the destruction of tribal sites.

Table 4 Thematic overview of the types of reported misconduct found for Wilmar

Type	Number of occurrences
Environmental issues	8 (33%)
Fiscal/corruption issues	4 (17%)
Implementation of smallholder (plasma) programmes	1 (4%)
Labour issues	1 (4%)
Land rights issues	7 (29%)
Cross-cutting	0 (0%)
Other	3 (13%)
Total	24 (100%)

Case 1

Potential abuse of subsidies for the development of biofuels – PT Wilmar Bioenergi Indonesia and PT Wilmar Nabati Indonesia

Location: National level

Year: 2015-2018

Company: PT Wilmar Bioenergi Indonesia and PT Wilmar Nabati Indonesia

Parent company: Wilmar

Issue: Governmental bodies investigated the use of subsidies from a palm oil fund.

The case: The corruption eradication commission Komisi Pemberantasan Korupsi (KPK) and the governmental auditing body Badan Pemeriksa Keuangan (BPK) looked into potential abuse of subsidies from a national palm oil fund. This fund is fed with a levy of the Indonesian government over crude palm oil that is exported.

Allegedly, large companies such as Wilmar, via its subsidiaries PT Wilmar Bioenergi Indonesia and PT Wilmar Nabati Indonesia, received too much funding for the development of bio-fuels, while the money was also meant for other uses. A spokesman of KPK told CNN Indonesia that the division of the subsidies did not comply with the regulations, for large companies absorbed 81.7% of the funding, more than their intended share.

Smallholders announced in 2018 that they would start a court case against the Indonesian government because it was hard for them to get access the fund. They wanted more subsidies from the fund for planting of new oil palm trees. According to the farmers, 89% of the fund went to big palm oil companies for the development of biofuels. However, the farmers lost their case at the Supreme Court.

When contacted about this report, Wilmar initially responded to SOMO that investigations by the Indonesian government, including KPK, had found no proof of abuse of subsidies by its subsidiaries. In a second response, Wilmar claimed there never was a formal investigation into the matter by governmental bodies. This statement contradicts media reports from BBC Indonesia and CNN Indonesia. The statement also contradicts the 2016 annual report of KPK, which says that KPK has studied the oil palm management system of Indonesia and found "a weak export levy implementation" and "a weak implementation of fund use".⁶

Sources

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- <https://www.bbc.com/indonesia/indonesia-42737649>
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- <https://www.cnnindonesia.com/ekonomi/20180403095136-532-287789/bpk-subsidi-konglomerat-sawit-langgar-perpres-jokowi>
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Case 2

Violence security forces against local farmers – PT Bumi Sawit Kencana II

Location: Central Kalimantan

Year: 2017

Company: PT Bumi Sawit Kencana⁷

Parent company: Wilmar

Issue: Local farmers shot on plantation by security forces.

The case: Civil society organisations demanded that police take action against security forces responsible for a shooting incident in the plantation of PT Bumi Sawit Kencana II on 18 December 2017 in Tangar village in the subdistrict Mentaya Hulu. The forces fired at two local farmers, who were wounded and had to undergo medical treatment in a hospital.

Villagers hold that PT Bumi Sawit Kencana II has taken their land without paying them compensation. After the confrontation in December 2017, civil society organisations urged the police to investigate the behaviour of the security forces during the incident. They also demanded that the regional and national government reconsider the permits for PT Bumi Sawit Kencana. The governor of Central Kalimantan province announced an investigation into the legitimacy of the land use by PT Bumi Sawit Kencana.

According to civil society organisations, this was not the first violent confrontation between security forces and local communities in the area. The organisations assert that such incidents show that security forces use violence as a way to resolve conflict with local communities.

When contacted about this report, Wilmar commented that its subsidiary had nothing to do with the confrontation in December 2017 between security forces and villagers. Wilmar referred to the prison sentences of eight months that were imposed upon the two victims of the shooting by a district court. One of the victims was found guilty of abuse and the other of having carried a machete during the confrontation with the security forces. It is unknown if security staff involved in the shooting incident were prosecuted.

Sources

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- <https://pusaka.or.id/2017/12/protes-keras-atas-kesewenang-wenangan-aparat-keamanan-dan-perusahaan-pt-bumi-sawit-kencana-yang-menembak-petani-warga-desa-tangar/>
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Case 3

Neglect of waste water management and pollution of rivers – PT Agro Palindo Sakti

Location: West-Kalimantan

Year: 2014-2017

Company: PT Agro Palindo Sakti⁸

Parent company: Wilmar

The issue: Rivers used by local communities for bathing and washing of clothes were polluted by company.

The case: The news site Suara Pemred reported in 2017 that rivers in West Kalimantan were in critical condition due to pollution. The news outlet reported both the mining industry and palm oil industry as sources of the deterioration in water quality.

A member of the regional parliament announced that firm measures would be taken by the environmental agency against PT Agro Palindo Sakti (PT APS), a subsidiary of Wilmar, and another palm oil company suspected of the pollution. The environmental agency could reconsider permits. According to the news report, installations for the processing of wastewater were not looked after and PT Agro Palindo Sakti had allegedly neglected its duty to make an environmental impact assessment of its activities. The content of the news report finds confirmation in other news sources and also the 2016 annual report of the province of West Kalimantan, which mentions that a local community submitted complaints in 2014 about pollution due to wastewater from PT APS.

The polluted rivers were used by local communities for bathing and cleaning of cloths. A regional parliamentarian demanded in the Suara Pemred report that the communities be compensated for the damage caused by the company. The politician also stated that PT APS had to restore the water quality in the rivers.

Wilmar admitted, when asked about the pollution, the allegations in the Suara Pemred news report, stating the case was settled, followed by PT APS having made improvements to ensure that such an incident never reoccurs in future.

Sources:

- <https://www.suarapemredkalbar.com/berita/ponticity/2017/10/05/sungai-di-kalbar-dalam-kondisi-kritis>
- http://kalbarprov.go.id/file/SPM_Kalbar_2016.pdf
- <https://www.suarasanggau.co.id/2017/09/sungai-sekayu-sosok-berbau-dan-berubah.html>

Case 4

Land dispute and destruction of a sacred tribal site – PT Mustika Sembuluh

Location: Central Kalimantan

Year: 2017-2018

Company: PT Mustika Sembuluh

Parent company: Wilmar

The issue: Government investigates land dispute between company and village. Company pays for destruction of a sacred tribal site by its security forces.

The regency government of Kota Waringin Timur decided in 2017 to audit the activities of PT Mustika Sembuluh. The Wilmar subsidiary was involved in a dispute with a local community near the plantation in Central Kalimantan. The company allegedly took over land of the village Pondok Damar, including graves.

A member of the national parliament of Indonesia supported the audit by the regency government of PT Mustika Sembuluh. He urged the national parliament to investigate the activities of palm oil companies in Central Kalimantan. The MP said the companies should return land if land grabs were proven. The Indonesian news outlet Borneo News reported in April 2018 that the prosecutor's office start an investigation into the land dispute between PT Mustika Sembuluh and the village Pondok Damar.

Apart from the land dispute, the security forces of the company were also accused of having damaged a sacred tribal site in the village. The police investigated the destruction, but this incident was eventually resolved by a tribal council. The council ruled in 2018 that the company had to pay IDR 577 million (€36,000) in compensation for the destruction of the site.

When contacted about this report, Wilmar confirmed to SOMO that its subsidiary had paid the compensation for the destruction. Wilmar did not give a clear comment about the land dispute.

Sources

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- <https://beritakalteng.com/2018/03/06/dugaan-pengrusakan-situs-budaya-gubernur-minta-masyarakat-menahan-diri/>

7 Conclusion

This report provides a quick scan of information on the numbers of complaints raised to Indonesian governmental entities regarding harmful or illegal activities of three palm oil companies, and the manner and nature of the government's response. Table 1 shows overall numbers of complaints linked to three companies and their subsidiaries in Indonesia, while Tables 2, 3, and 4 show numbers of complaints linked to Golden Agri-Resources (GAR, part of Sinar Mas Group) Indofood (part of Salim Group), and Wilmar. The tables help give an understanding of the range of harms to which palm oil companies are connected in Indonesia, the range of government actors that receive these complaints, and the range of government response to the allegations. In sections 4, 5 and 6, case examples help add context and colour by exploring a few of the cases identified.

Findings

Local communities and civil society organisations in Indonesia do turn to governmental institutions with their complaints about palm oil companies. These governmental entities are also taking a range of actions in response to allegations of wrongful or illegal conduct by palm oil companies. Courts are considering communities' land rights claims and law enforcement against palm oil companies responsible for forest fires. Administrative bodies do issue sanctions and warnings. Legislative bodies hold parliamentary hearings and investigations. Regional governments are involved in mediation of disputes. The KPK, the corruption eradication commission, arrested three top executives of two palm oil companies. They were subsequently sentenced to 20 months of imprisonment.

Nevertheless, a finding of the research is also that complaints are frequently dismissed by governmental institutions. Most claims by local communities in court, in our sample, end with a ruling favourable to the company. Local bureaucrats and politicians can have close ties to the palm oil industry, to finance their election campaigns, and will therefore not hinder these companies too much. Mediations by government may also be a strategy to assuage concerns of communities without actually taking action against the palm oil industry. Although government action supporting communities is visible, the findings underscore the need for a strengthening of civil society and rule of law in Indonesia. The findings also show the need for palm companies themselves to fulfil their responsibilities under international soft law to independently undertake due diligence to identify harms to which they may be linked and to take action to prevent or mitigate those harms.

Because the findings derive from a brief scan of just three companies in one country, from digital and publicly available documents only, over a short span of eight years, we believe they likely represent just the tip of the iceberg of complaints raised to governmental entities about palm oil companies' impacts, and responsive action by governments. Because the material for these cases is drawn largely from the public sphere, these cases can be known to any actors undertaking due diligence of the palm oil industry. Finally the research scope did not include investigating the follow-up to all cases to establish to what extent complaints are actually solved and adverse impacts are remediated. That is a topic that deserves further research.

8 Annex

Subsidiaries of Sinar Mas Group for which cases were identified in the spreadsheet

PT Agro Lestari Mandiri
PT Agrokarya Primalestari
PT Bahana Karya Semesta
PT Bangun Nusa mandiri
PT Binasawit Abadi Pratama
PT Buana Artha Sejahtera
PT Bumi Duta Laksana
PT Bumi Permai Lestari
PT Bumi Sawit Permai
PT Foresta Lestari Dwikarya
PT Ivo Mas Tunggal
PT Kresna Duta Agrindo
PT Maskapai Leidong West Indonesi
PT Oleokimia Sejahtera Mas
PT Paramitra Internusa Pratama
PT Perusahaan Perkebunan Panigoran
PT Primatama Kreasimas
PT Prisma Cipta Mandiri
PT Ramajaya Pramukti
PT Satya Kisma Usaha
PT Sawit Mas Sejahtera
PT Sinar Kencana Inti Perkasa
PT Smart Tbk
PT Tapian Nadenggan

Subsidiaries of Salim Group for which cases were identified in the spreadsheet

PT Agro Subur Permai
PT Bintuni Agro Prima Perkasa
PT Cibaliung Tunggal Plantations
PT Citra Kalbar Sarana
PT Gunung Mas Raya
PT Indoagri Inti Plantation
PT Indriplant
PT Intimegah Bestari Pertiwi
PT Kebun Ganda Prima
PT Kebun Mandiri Sejahtera
PT Perusahaan Perkebunan London Sumatra Indonesia
PT Mentari Subur Abadi
PT Riau Agrotama Plantation
PT Rimbun Sawit Papua
PT Salom Ivo Mas Pratama
PT Serikat Putra
PT Subur Karunia Raya
PT Swadaya Bhakti Negaramas
PT Tani Musi Persada

Subsidiaries of Wilmar Group for which cases were identified

PT Agro Palindo Sakti
PT AMP Plantation
PT Buluh Cawang Plantation
PT Buluh Cawang Plantation
PT Bumi Pratama Khatulistiwa
PT Bumi Sawit Kencana II
PT Gresindo Minang Plantation
PT Mentaya Sawit Mas
PT Mentaya Sawit Mas
PT Kerry Sawit Indonesia
PT Multimas Nabati Asahan
PT Multimas Nabati Asahan
PT Multimas Nabati Asahan
PT Musi Banyuasin Indah
PT Musi Banyuasin Indah
PT Mustika Sembuluh
PT Mustika Sembuluh
PT Mustika Sembuluh
PT Permata Hijau Pasaman I
PT Rimba Harapan Sakti
PT Sarana Titian Permata Estate
PT Wilmar Bionergi Indonesia
PT Wilmar Nabati Indonesia
PT Wilmar Nabati Indonesia

Eindnoten

- 1 Milieudéfense, Draw the Line: A black book about the shady investments of Dutch Banks in palm oil, July 2018, available at <https://milieudéfense.nl/actueel/draw-the-line-english.pdf>.
- 2 An example of recent research in which print media are included is that of Dr. Ward Berenschot, <https://www.kitlv.nl/palm-oil-conflicts-and-access-to-justice-in-indonesia/>.
- 3 This report does not provide descriptions of the three companies; please see the company profiles in Draw the Line for this information. See the Annex for a list of subsidiaries for Sinar Mas Group, Salim Group and Wilmar in relation to which complaints were identified.
- 4 Unless stated otherwise, the information on subsidiary-parent company links in the highlighted cases is based on the 2017 annual reports of GAR (<https://goldenagri.com.sg/wp-content/uploads/2018/03/GAR-AR2017.pdf>), Indofood (<https://www.indofood.com/investor-relation/annual-report/10>) and Wilmar (https://wilmar-iframe.todayir.com/attachment/20180820153929356279245_en.pdf).
- 5 Indofood was owner of a 31.9% minority share of PT Agro Subur Permai on 31 December 2017, according to Indofood's 2017 Annual Report.
- 6 Komisi Pemberantasan Korupsi (KPK), Going beyond the tip of the iceberg, Annual Report 2016, p. 233.
- 7 Source for subsidiary-parent company link: <https://askrspo.force.com/Complaint/s/case/50090000028Es0SAAS/detail>
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Colophon

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