Failing governance - Avoiding responsibilities

European biofuel policies and oil palm plantation expansion in Ketapang District, West Kalimantan (Indonesia)

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Photo cover: Young oil palms planted amidst stumps of burned trees in Ketapang.

Contents

Executive summary

This case study demonstrates how the emerging bio-energy market is contributing to an excessive expansion of the oil palm industry in West Kalimantan. It shows how sustainability schemes in biofuel policies and palm oil sector initiatives fail to prevent illegal operations, deforestation, carbon emissions, and social conflicts. It also shows that government institutions in a major biomass producer country, Indonesia, fail to keep the industry in check. While policy makers in Europe have established an obligation to use biofuels, the Ketapang study demonstrates that they are unable to take on the ultimate responsibility to ensure its sustainable supply.

Fast track permits

In merely three years time, the government of Ketapang issued oil palm permits covering no less than 40% of the district's total land territory. The issuance of oil palm permits in Ketapang – now totaling around 90, with a total area of 1.4 million hectares - has obviously gone through a fast track manner, de facto waiving legal requirements designed to protect the environment and local communities and to ensure state income from forest conversion.

No approved Environmental Impact Assessments

Numerous permits were issued without the legally required approvals for the companies' Environmental Impact Assessments. In 2008, the Indonesian Ministry of Environment categorized 78% of all EIA reports in Indonesia as being of poor quality and the situation in Ketapang is not better. In 2008, only 17 out of some 90 oil palm plantation companies had an approved EIA report. The district has not even installed a Commission for the review of EIA reports. Numerous companies in Ketapang, including subsidiaries of RSPO(Round Table for Sustainable Palm Oil) member companies such as Sime Darby, Cargill and SMART, have commenced activities on the ground without having obtained the required approvals of their EIA reports.

Encroachment in forestlands

The Ketapang district government has issued no less than 39 oil palm permits that fully or partially overlap with some 400,000 hectares of protected forestland area. Not only will this result in more biodiversity losses, deforestation, peat land drainage and carbon emissions, without further intervention, the Indonesian State is set to forego US$ 150 million of due forestry taxes.

Land conflicts and failed smallholder schemes

Typically, local communities discover that the land on which they depend has been allocated to oil palm companies only once the bulldozers are moving into their lands. By the end of 2008, at least 20 major land conflicts had already surfaced and this number is set to rise as more companies commence their operations in the coming years. Communities are often lured into surrendering their land with the promise of smallholder schemes but too often they find themselves waiting for the small plots of land to be transferred back to them. In 2008-2009, furthermore, some 40,000 villagers in Ketapang had not been paid by a plantation company for four months in a row. Having lost alternative sources of subsistence and income, thousands of villagers eventually took to the streets to force the government and company to act on their precarious situation.

Inadequate safeguards

In their effort to capture a share in the biofuels "pie" the Ketapang government together with oil palm plantation companies proactively contribute to the collapse of efforts towards good governance in Indonesia. It is disconcerting that the Indonesian national government, the European Union and private sector sustainability initiatives like the RSPO are not addressing this problem.
The Indonesian Ministry of Environment has been forced to relax EIA regulations because it was overwhelmed by violations of the country's environmental laws. The Ministry of Forestry

is confronted with large scale oil palm expansion within the forestland area. It faces an uphill struggle to reclaim its authority over this land.

Meanwhile, Europe's Renewable Energy Directive does not require biofuel companies to guarantee and demonstrate the legality of their imports. It is likely that palm oil from illegal sources ends up being subsidized and promoted by EU member state governments. At the same time, palm oil that is imported into the EU for food applications is not even bound to any legal or sustainability requirements.

The RSPO does require plantation companies to comply with relevant legislation, but this is screened only when a member company applies for certification. RSPO members control over 600,000 hectares of plantation land in Ketapang, but up to date, not a single plantation has been certified.

All considering, plantation development in Ketapang represents little else but a massive land grab leading to biodiversity losses and carbon emissions from the illegal conversion of protected forests and peatlands. Indigenous people are forced to give up their sustainable livelihoods and are being made dependent on the capricious global commodity and biofuels market. The local government in conjunction with plantation companies is directly undermining efforts towards good governance in Indonesia.

Signaling strong future demands for palm oil for energy, the EU mandatory targets are an important driver of unsustainable oil palm expansion in places like Ketapang right now. While land grab and deforestation are ongoing, sustainability schemes are too limited, too late, unable to prevent replacement effects and do not address the problem of unsustainable levels of demand.

Recommendations:

To prevent the negative impacts of oil palm expansion, European countries should not expand the use of palm oil. This includes a clear signal to not use palm oil and other edible oils for bio-energy, but focus on real climate savers instead, like energy efficiency and reduction of transport needs. The district government in Ketapang should change its extreme plantation program, review the licenses to prevent further expansion at the costs of forest and people, and work with the affected communities to restore what was lost.

1. Europe opens the green lane for biofuels

1.1. Introduction

Since more than a decade ambitions are growing in the European Union (EU) to support the development of bio-energy, especially the use of biomass for fuel and electricity. The Netherlands are aware that their national ambition will mainly be realized with imports because the potential to source biomass domestically is limited. At least 60% of feedstock is projected to come from imports in 2030[1].

The current Dutch bio-energy policy is based on EU policies that have set targets for the mandatory consumption of renewable energy in EU member states in 2020. In the future energy scenario of the Netherlands, biomass has to deliver the major share of green electricity by 2020. In extension of the European 10% target for renewables in transport, the Dutch future scenario even counts on 20% of transport running on biofuels in 2020.[2]

Palm oil and energy companies are eager to serve this new guaranteed market. The area for palm oil plantations is rapidly expanding in the tropical countries, and large installations are being built in harbors like Singapore and Rotterdam, to turn vegetable oils into biofuel. The Dutch palm oil demand and import will

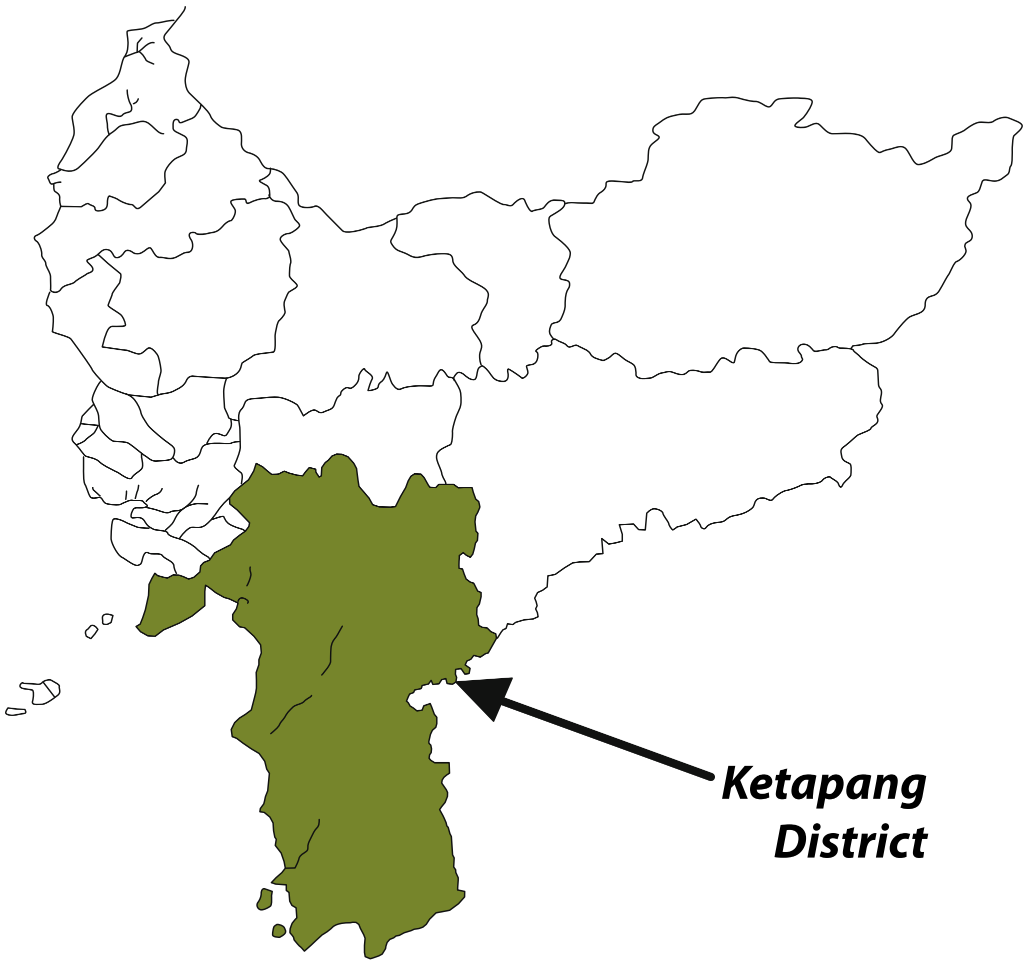


Figure 1. Location of Ketapang District in West Kalimantan province on the Indonesian part of the island Borneo.

Ketapang is a district in Indonesian Borneo. Its size is comparable to Belgium.

rise substantially when the installations from companies like Neste Oil Rotterdam and Clean Energy Zwijndrecht come on stream, and when palm oil is used for co-firing by energy companies.

As one of the cheapest vegetable oils on the market, palm oil is likely to replace other edible oils that are now diverted from food or oleochemical uses into biofuel production, for instance, rapeseed and sunflower oil. It is also increasingly used directly for biofuel production, although palm oil production comes at a high cost to people and planet. Public outcry about deforestation, biodiversity loss and conflicts with local populations in connection with oil palm expansion, has lead to the formation of the Roundtable of Sustainable Palm Oil (RSPO). Scientific doubt about the contribution of palm oil based biofuels to climate conservation effect has contributed to the introduction of sustainability provisions in the Renewable Energy Directive (RED) of the EU. Both RSPO and RED rely heavily on voluntary certification.

Policy makers in the Netherlands and elsewhere have put much of their trust in voluntary certification initiatives to address sustainability in the production of bio-energy. This trust is based on an underlying assumption that producer country governments are capable and willing to provide and enforce the necessary legal safeguards and framework for the sustainable production of bio-energy feedstock. In addition, it is widely assumed that certification initiatives guarantee legal production as the foundation of sustainability.

While policy makers in Europe have established a new demand for biomass imports, the question arises what will this imply for palm oil production in an average Indonesian district, such as Ketapang?

1.2 Objective and structure of this report

This case study aims to demonstrate how the emerging bio-energy market is contributing to oil palm expansion in West Kalimantan, and how sustainability safeguards in biofuel policies and palm oil sustainability initiatives fail to prevent illegal operations, deforestation, carbon emissions, social conflicts and the collapse of good governance in Indonesia.
The case of palm oil expansion in Ketapang, a large district in West Kalimantan, reveals that in the end nobody is assuming the responsibility for the effects on the ground.

Following the introduction, the Ketapang case is presented in five parts. Chapter 2 describes the development of plantation expansion in Ketapang district, followed by an explanation of the local government's fast track licensing practice in chapter 3. Chapter 4 elaborates on the legal requirements for Environmental Impact Assessments in Indonesia, and how these requirements are flouted by the local government and plantation companies in Ketapang. Chapter 5 describes how oil palm expansion encroaches in protected forestlands.. Some examples of the social implications of oil palm expansion in Ketapang are presented in chapter 6. The final chapter assesses the Dutch policy and sustainability frameworks for palm oil in the face of increasing demand for palm oil for bio-energy, using the Ketapang experience as an example.

2.Plantation expansion in Ketapang

2.1. The role of the biofuel boom

Twenty to thirty years ago, the district of Ketapang was still covered in primary tropical rainforest. This forest was then diminished by the logging industry to supply the global market with tropical timber. Oil palm plantations were first introduced in the 1980s when log supply started to decline. The oil palm plantation acreage remained modest for years to come but from 2004 onwards, the Ketapang District government began to push forward its plans to expand the oil palm plantation acreage.

It was around 2004 that biofuels became known as an interesting investment target, both in producer and consumer countries. The EU targets for biofuels were motivated by environmental goals, as well as economic interests, considering that the targets opened a perspective for an additional market for palm oil. In view of the envisaged growth of the European biofuels market, Indonesia and Malaysia readily announced to commit a big share (40%) of their total palm oil output to biofuels. Governments stated to formulate policies and incentive packages, and the private sector stepped up investments in the biofuels business. Biofuel feedstock prices, along with other commodity prices, began to rise dramatically until the boom was busted early in 2008 (see Figure 2).

Prior to the biofuels boom, only 3% (less than 100,000 ha) of Ketapang's land area was planted with oil palm plantations. However, by the end of 2005, the district government had

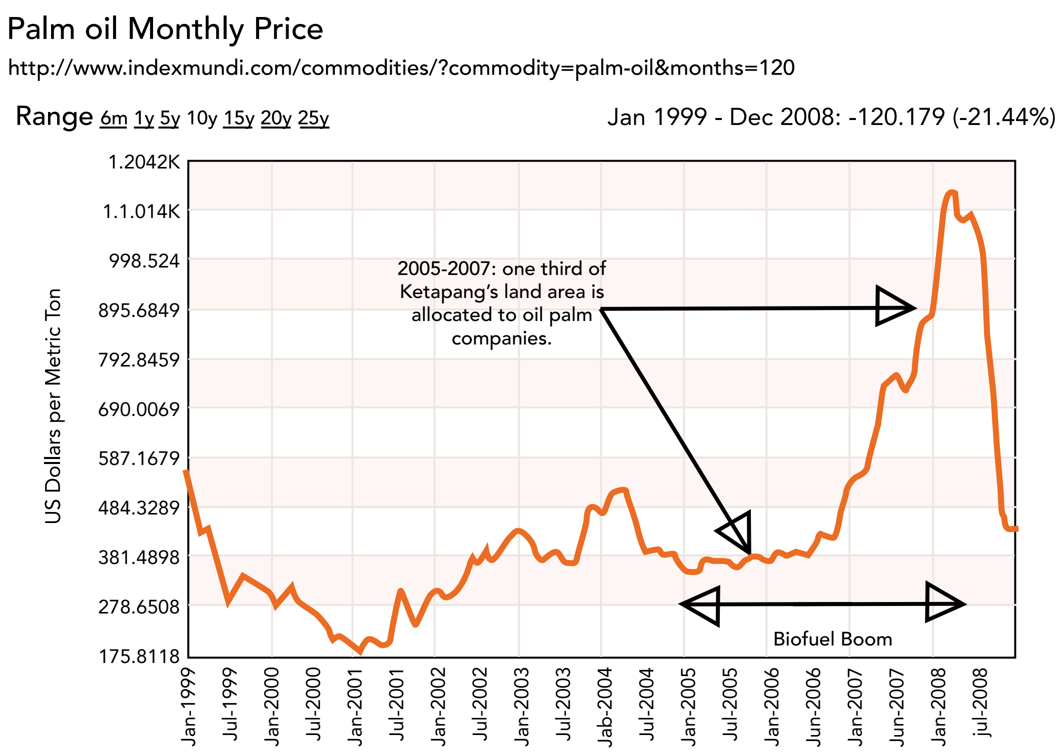
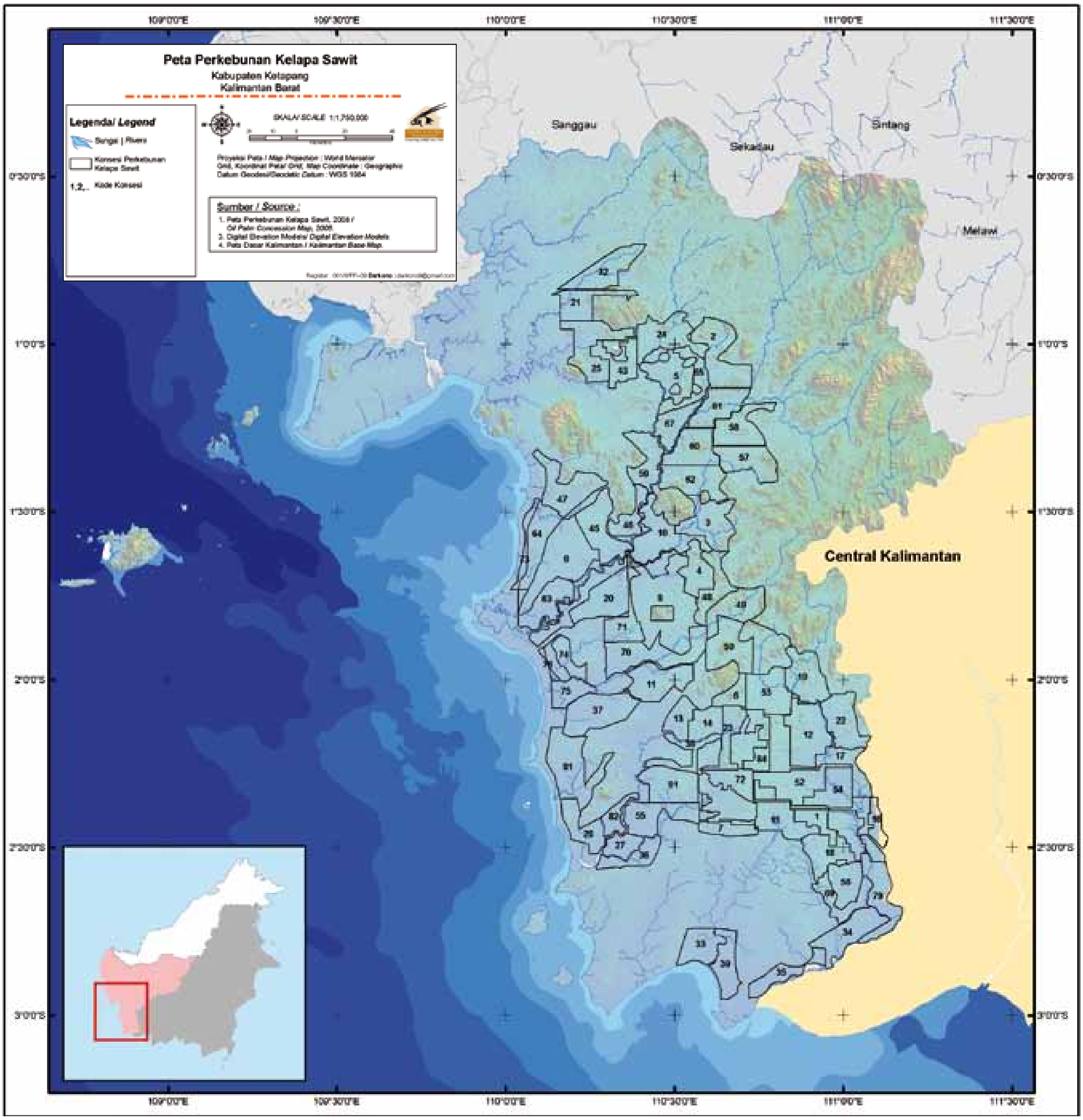


Figure 2. The issuance of oil palm plantation permits in Ketapang coincided with the global palm oil price boom.

Description: Palm oil, Malaysia Palm Oil Futures (first contract forward) 4-5 percent FFA, US$ per metric tonne

Unit: US Dollars per Metric Ton

Figure 3. The oil palm plantation concession map of Ketapang. 2008



Kode	Nama Perusahaan	Luas Ijin (Ha)	Luas Area (Ha)	Kode	Nama Perusahaan	Luas Ijin (Ha)	Luas Area (Ha)	Kode	Nama Perusahaan	Luas Ijin (Ha)	Luas Area (Ha)
0	HTI PT. MULIA TIARA LESTARI	-	32,708	24	PT. Mulia Bhakti Kahuripan	-	20,749	55	PT. Andes Sawit Lestari	-	18,690
1	PT. Harapan Hibrida Kalbar	6,933	7,656	25	PT. Cipta Usaha Sejati	-	22,828	56	PT. Mitra Saudara Lestari	-	13,120
2	PT. Arga Jaya Bhaktitama	-	25,149	27	PT. Gunajaya Ketapang Sentosa	-	8,068	57	PT. Permata Sawit Mandiri	-	17,284
3	PT. Sawit Jaya Makmur	-	20,812	28	PT. Gunajaya Karya Gemilang	3,993	13,321	58	PT. Citra Sawit Cemerlang	-	16,793
4	PT. Kusuma Alam Sari	-	12,853	32	PT. karya Makmur Langgeng	-	18,287	59	PT. Sawit Mitra Abadi	-	14,512
5	PT. Batu Mas Sejahtera	26,503	16,299	33	PT. Sukses Karya Sawit	-	13,552	60	PT. Sawit Sandai Lestari	-	16,765
6	PT. Agri Plus	-	7,147	34	PT. Kalimantan Prima Agro Mandiri	12,704	19,260	61	PT. Sepanjang Inti Surya Indah	-	15,761
7	PT. Wirakarya Nusa Tani	-	7,434	35	PT. Bumi Sawit Sejahtera	-	11,007	62	PT. Sepanjang Inti Surya Mulia	-	19,408
9	PT. Benua Indah Group	27,021	17,116	36	PT. Agro Sejahtera Manunggal	-	14,616	63	PT. Sinar Karya Mandiri	-	15,301
9	PT. Benua Indah Group	29,648	44,857	36	PT. Agro Sejahtera Manunggal	-	10,207	64	PT. Sungai Putri Agro Sawit	-	16,851
10	PT. Agro Lestari Mandiri	-	22,825	37	PT. Ketapang Sawit Lestari	-	24,092	65	PT. Prakarsa Tani Sejati	-	12,870
11	PT. Agro Maju Sejahtera	-	19,456	38	PT. Karya Bhakti Agro Sejahtera	-	8,986	67	PT. Lanang Bersatu	-	11,487
12	PT. Bangun Nusa Mandiri	19,200	24,568	39	PT. Berkat Nabati Sejahtera	-	13,689	69	PT. Usaha Agro Indonesia	-	11,648
13	PT. Cahaya Nusa Gemilang	-	9,372	43	PT. Swadaya Mukti Perkasa	-	12,150	70	PT. Arrtu Plantation	12,915	25,658
14	PT. Kencana Graha Permai	22,771	10,405	45	PT. GY Plantation	-	20,382	71	PT. Arrtu Borneo Perkebunan	-	17,815
15	PT. Ayu Sawit Lestari	10,118	16,150	46	PT. Ladang Sawit Mas	-	9,162	72	PT. Arrtu Agro Nusantara	-	13,797
16	PT. Harapan Hibrida Kalbar Timur	8,798	5,845	47	PT. Kayung Agro Lestari	-	21,481	73	PT. Arrtu Energi Resorses	-	6,202
17	PT. Harapan Sawit Lestari	9,838	12,237	48	PT. Mitra Alam Pratama	-	13,734	74	PT. Prana Indah Gemilang	-	7,301
17	PT. Harapan Sawit Lestari	5,087	11,544	49	PT. Hijau Permata Wanalestari	-	17,562	75	PT. Prana Indah Gemilang	-	9,573
18	PT. Indo Sawit Kekal	-	14,965	50	PT. Asset Pacific International	-	20,312	76	PT. Pendamar Kreasi Mandiri	-	1,210
19	PT. Fangiono Agro Plantation	18,975	19,163	51	PT. Andes Agro Investama	-	19,273	79	PT. Anugerah Palm Indonesia	7,590	18,401
20	PT. Limpah Sejahtera	-	19,675	52	PT. Polyplant Sejahtera	40,381	19,970	81	PT. Putra Sari Lestari	-	18,799
21	PT. Mitra Karya Sentosa	-	13,724	53	PT. Andes Sawit Mas	18,422	18,933	81	PT. Putra Sari Lestari	-	28,642
22	PT. Umekah Sari Pratama	13,836	18,687	54	PT. Maya Agro Investama	40,381	14,819	82	PT. Ladang Sawit Kendawangan	-	6,605
23	PT. Budidaya Agro Lestari	22,771	11,340	54	PT. Maya Agro Investama	40,381	3,078	84	PT. Sandika Nata Palma	22,735	10,731

already allocated 742,000 hectares (ha) of land for expansion and by July 2006, this area had increased to 900,000 ha. A year later, the figure had increased to 1.4 Mha. **In just 3 years, the district government increased the area licensed out for oil palm expansion from 21 to no less than 40 percent of the district's total land area (see Figure 3 and 4**). Ketapang was not unique in this trend. Statistics show that many other districts in Kalimantan have allocated comparable or even larger land banks to oil palm companies in the past 5-7 years.

In addition to the area allocated to oil palm expansion, already over 1 million ha of land in the district (30%) has been allocated to industrial tree plantation companies. In total, no less than **70% of Ketapang's land area has been licensed out to corporate plantation developers in the past decade.** The remaining 30% of the district's land area comprises either mountainous land or swamp land along the coast.

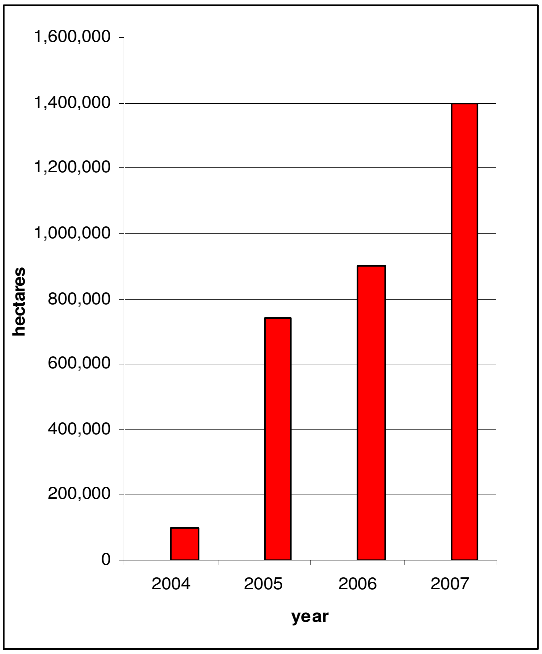


Figure 4. Oil palm plantation expansion in Ketapang (2004-2007).

2.2. RSPO members in Ketapang

Many palm oil buyers, investors and governments wishing to certify palm oil as sustainable , have put their trust on the Roundtable on Sustainable Palm Oil (RSPO). The RSPO has come into being to address concerns about the sustainability problems associated with oil palm plantations. This raises the question to what extent RSPO is represented in Ketapang and what share of the plantation area has been certified as meeting the RSPO standards.
RSPO members are well represented in Ketapang. Nine company groups in Ketapang are RSPO members, and these groups have access

Table 1. Gross oil palm land banks allocated to RSPO member groups in Ketapang (2008).

#	RSPO member with presence in Ketapang	RSPO member since	National origin and joint venture partners	Number of subsidiaries	Gross land bank
1	Asiatic Development	Nov. 2006	Malaysian group belonging to Genting Berhad; joint venture with the Sepanjang Group	6	114,200
2	Sime Darby	May 2004	Malaysian group, in joint venture with the Benua Indah Group	2	49,398
3	IOI Corporation and Bumijaya Gemliang Agro (BGA)	May 2004 Oct. 2007	IOI is a Malaysian group, in joint venture with BGA, which is part of the Indonesian Harita Group	9	87,094
4	PT SMART	Jan. 2005	Indonesian group, belonging to the Sinar Mas Group	4	82,500
5	First Resources	Mar. 2008	Indonesian / Singaporean group, belonging to First Resources Group (formerly Surya Dumai Group)	6	115,650
6	First Mujur Plantation and Industry	June 2008	Indonesian Group, owned by the Artha Graha / Tommy Winata Group	3	70,000
7	Sampoerna Agro	June 2007	Union Sampoerna Triputra Persada is a joint venture of the Indonesian Sampoerna Agro and Triputra Persada Groups	2	11,524
8	Austindo Nusantara Jaya Agri (ANJ)	Feb. 2007	Indonesian group belonging to the Austindo Nusantara Agri Group	1	29,400
9	CTP Holding	May 2004	Joint venture of Cargill (USA) and the Temasek Group from Singapore	4	48,977
	Total number of subsidiaries linked to RSPO members				37
	Total number of active subsidiaries (2008)				18
	Total land bank (ha)				612,747
	Total area allocated to oil palm (ha), including non-RSPO members				1,422,000
	Share of RSPO members in total area				43%

to 43% of the total land bank allocated to oil palm expansion in this district (See Table 1). Of the nine RSPO member companies in Ketapang, three (Sime Darby, Cargill and IOI) have certified estates in Malaysia or other parts of Indonesia. However, up to date, **not a single hectare of oil palm plantation in Ketapang has been certified as meeting the RSPO standards.** Furthermore, not one of the public certification audit reports of the three RSPO members who have obtained certifications outside of Kalimatan (Sime Darby, Cargill and IOI) provides meaningful detail about these companies' compliance (or non-compliance) with RSPO standards in their Ketapang concessions. This, however, is an obligatory requirement of partial certification under RSPO. This raises doubts as to whether these three companies really comply with the RSPO standards. All three companies are suppliers to the biofuels markets in Europe or the United States.

RSPO's requirements for non-certified plantations under partial certification

Organizations with more than one management unit and/or that have a controlling holding (more than 51%) in more than one autonomous company will be permitted to certify individual management units and/or subsidiary companies only if:

(a) The organization is a member of RSPO; and

(b) A time-bound plan for achieving certification of all relevant entities is submitted to the certification body during the first certification audit. The certification body will be responsible for reviewing the appropriateness of this plan (in particular, that the time scale is sufficiently challenging), and verifying and reporting on progress in subsequent surveillance visits; and

(c) There are no significant land conflicts, no replacement of primary forest or any area containing HCVs since November 2005, no labor disputes that are not being resolved through an agreed process and no evidence of non-compliance with law in any of the non-certified holdings.

New acquisitions which have not replaced primary forests or HCVs are required to comply with these requirements within three years.

Certificates for all of the company's holdings shall be suspended if there is non-compliance with any of these requirements.

3. Fast track licensing

Just like in Europe, Indonesian legislation clearly outlines the steps to be undertaken before a development project can commence. Companies have to apply for permits in various stages and they have to supply the required supporting documentation in order to be granted the permits. The interests of local governments or companies do not always follow national interests and legislation, which is a phenomenon that is also familiar to many European governments. However, when a local government licenses out some 40% of a district's territory as big as Belgium to oil palm plantation corporations in merely 3-5 years, sustainability is at a serious risk, and it is unlikely that due processes have been followed.

In order to understand what is happening in Ketapang District, we first need to briefly explain the permitting process for oil palm expansion. Indonesian law requires companies to obtain a series of permits and supporting documents in a predefined order before they may commence major activities on the ground. The basic order that applies to the oil palm sector is:

Land Survey Permit > Plantation Business Permit (IUP) > Location Permit (IL) > Land Use Right license (HGU).[3]

In addition, when applying for each permit, plantation companies are required to present various pieces of supporting documentation. For example, an application for a Plantation Business Permit must be accompanied with a recommendation letter from the Governor for the company's Environmental Impact Assessment (EIA). If the proposed concession area overlaps with the permanent forest estate (forestland), the company must attach the approval letter for forestland release from the Ministry of Forestry. If the order of licensing is not followed, or if permits are issued without the required supporting documents, the governance system falls apart.[4] This is exactly what is happening in Ketapang District, as well as many other districts in Indonesia, because local governments and the plantation companies ignore the due legal procedures, especially the procedures defined by national law.

Although the Ketapang District government does issue the permits in line with the basic order described above, permits are typically issued before the companies have secured several of the required supporting documents. In general, **three to five years are considered standard for the completion of the full permitting process, but in Ketapang companies can move from a Survey Permit to Location Permit within 6 months.** A subsidiary of RSPO's member First Resources, PT Fangiono Agro Plantation obtained its Location Permit in merely 6 weeks (see Table 3).

Permit type	Issued by	Total area	% of total
Survey Permits (Informasi Lahan)	District	526,000	37%
Plantation Operation Permits (Ijin Usaha Perkebunan)	District	75,000	5%
Location Permits (Ijin Lokasi)	District	614,000	43%
Land Use Right license (Hak Guna Usaha)	National Land Agency (BPN)	207,000	15%
Total under permit		1,422,000	100%

Table 2. Oil palm plantation permits issued in Ketapang (2007-2008).

Table 3. Dates of issuance of permits issued to a selection of oil palm companies in Ketapang District.

Companies	Land Survey Permit	Plantation Operation Permit	Location Permit
PT Agro Lestari Mandiri	16 August 2004	01 November 2004	21 December 2004
PT Ladang Sawit Mas	27 October 2005	30 May 2006	10 June 2006
PT Kayong Agro Lestari	26 July 2003	12 March 2004	26 April 2004
PT Kencana Graha Permai	2 February 2005	17 March 2005	15 June 2005
PT Sinar Karya Mandiri	6 September 2004	25 May 2005	13 June 2005
PT Fangiono Agro Plantation	31 March 2005	3 May 2005	13 May 2005

The *fast track* licensing process in Ketapang is only possible because Plantation Operation Permits are issued before the companies have secured the legally required approval letters for their Environmental Impact Assessments from the governor, and before the required letters of forestland release from the Ministry of Forestry are obtained. As a result, **numerous oil palm companies in Ketapang requested for, and obtained permits of questionable legality.** The companies are guilty of illegal acts if they start to physically develop the plantations on the ground without an approved EIA and/or without having obtained forestland release letters.

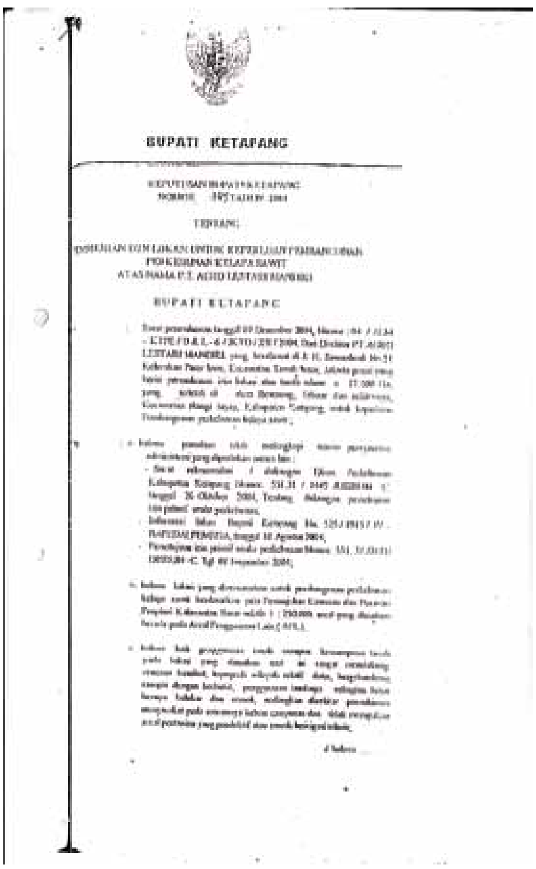

BUPATI KETAPANG

Figure 5. Example of an irregularly issued location permit, PT. Agro Lestari Mandiri (PT SMART).

Companies who followed the fast track system should encounter problems when they apply for Land Use Right licenses from the National Land Agency (BPN). The BPN reviews all documentation prior to issuing the license so as to ensure that the area granted complies with all legal requirements and is free of conflict.

However, the National Land Agency is often presented with fait a complit because the companies are already fully operational on the ground before having obtained the Land Use Right license. **As of 2008, only 13 out of over 90 oil palm plantation companies in Ketapang had obtained the final Land Use Right license.**

The fast track licensing process in Ketapang shortcuts the legal procedures defined in Indonesia's national legislation that aims to safeguard the environment and local communities from undue damage. **Plantation companies that request for and accept fast track, irregular permits directly undermine Indonesia's efforts towards good governance.** The practice is largely undetected by government agencies and sustainability initiatives.

The due process of issuing permits, and the required supporting documents, is not considered in RSPO's standards, but is taken for granted once permits are acquired. In fact, the EU's Renewable Energy Directive itself does not even require companies to demonstrate that they comply with relevant laws and legislation.

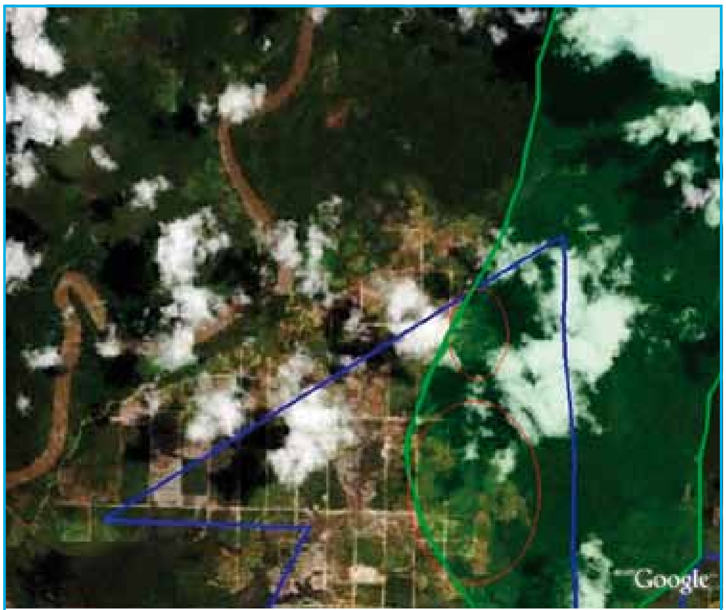
In that way, illegal palm oil can enter the European market and can also be counted as contributing to green energy targets. **Consumers, forced to buy it at filling stations through mandatory blending in transport fuel, have no information or choice to avoid possibly illegal and unsustainable products.**

Figure 6. Most environmental impacts occur in the early stages of plantation development but in Ketapang, land clearing often commences without EIA approval.

4. Plantation expansion without EIA approval

Environmental Impact Assessments aim to help companies to prevent and mitigate negative environmental impacts and enable the authorities to monitor impacts accordingly. Plantation companies are required to commission EIA studies and these reports are subsequently reviewed by a multi-stakeholder panel and require their approval for the governor to issue an EIA approval letter. The letter of approval of the company's Environmental Impact Assessment (EIA) report is one of the key pieces of supporting documentation for a Plantation Business Permit.

The Indonesian Environment Management Act (1997), the EIA Regulation (1999) and Plantation Act (2004) clearly stipulate that companies whose planned activities have potentially significant environmental impacts must obtain approvals of their EIA report from the relevant multi-stakeholder EIA Commission. **Companies are not allowed to undertake physical activities on the ground in an area of 25 hectares and beyond unless they have obtained the EIA approval and the Plantation Business Permit.**



Blue line: concession boundary; green line: protection forest; red circles indicate the illegal land clearings. PT.Agro Lestari Mandiri, overlay of concession map and provincial land use map with an Ikonos image

Figure 7. Illegal land clearing in a protected forest without an approved EIA report (PT ALM).

Companies who fail to meet the EIA requirements should see their operation permits withdrawn by the governor, according to the above mentioned laws.

The 2001 Ministry of Environment Guide for the Implementation of Environmental Audits stipulates that poorly conducted EIAs shall trigger an Environmental Audit. Such an audit is a review of the companies' practices and is undertaken by the Ministry of Environment. The audit team may issue recommendations to mitigate environmental damages caused by the company or, if legal infractions are identified, the company may be prosecuted under the Environment Management Act.

In 2002, the Indonesian EIA review process was delegated from the provincial level to the EIA Commissions at the district level, while the provincial Environmental Monitoring Agency (Bapedalda) oversees the process. The national level Ministry of Environment prepares legislation, undertakes law enforcement and supervises the overall implementation of the regulations.

Many plantation companies consider the EIA approval letter a troublesome and time consuming formality, but **if a company commences operations on the ground without approval of its EIA report, there is no public consultation, no legal review, no baseline data, no monitoring, and no mitigation of negative impacts.** In short, without an approved EIA, there is no oversight, no governance. This is exactly what is happening in Ketapang District, as well as many other districts in Indonesia, where local governments and plantation companies ignore the due legal procedures around EIA approvals. Numerous companies in Ketapang, including subsidiaries of RSPO member companies such as Sime Darby, Cargill and SMART, have commenced activities on the ground without having obtained approvals of their EIA reports.

The private sector's ignorance of EIA procedures played a major role in the recent crisis in the implementation of Indonesia's environmental legislation. Every three years, the Ministry of Environment reviews the quality of EIAs prepared for a multitude of economic projects. **In 2008, the Indonesian Ministry of Environment categorized 78% of all EIA reports as being of poor quality.** In addition, it was found that almost 50% of the District EIA Commissions did not conduct the reviews at all. In 2007, the number of poor quality EIAs had mounted to the extent that the Ministry of Environment could not any longer handle the problem. In an attempt to stem the flow of Environmental Audits, the Ministry issued a special regulation on 25 September 2007 to deal with companies who had commenced operations on the ground without approved EIAs.[5]

In essence, Ministry of Environment Regulation Nr.12/2007 relieved (plantation) companies of their legal obligation to halt their activities on the ground up to September 2009 if they operated on the ground without an EIA approval. Instead, the regulation required companies to complete an Environment Monitoring and Management Document (DPPL, Dokumen Pemantawan Pengeolahan Lingkungan) which is to be submitted to the district level EIA Commission for review.[6]

The September 2007 Ministry of Environment regulation removed the single power that EIA Commissions and the provincial Environment Monitoring Agency had over the companies, namely to issue stop work orders.

The Ministry of Environment regulation came as a relief to many oil palm plantation companies in Ketapang, where only 17 out of some 90 oil palm plantation companies had an approved EIA report in 2008 and where only 10 companies had their EIA in process. Still, as of January 2009, the provincial Environment Monitoring Agency had not received a single Environment Monitoring and Management Document (DPPL) report from any of the companies in Ketapang. Thus, **even the Ministry of Environment's lenient policy towards land development without approved EIA reports was widely violated by the oil palm plantation industry in Ketapang.**

The Environment Monitoring Agency of West Kalimantan required companies to state in writing that the company has no physical activities on the ground when the EIA report is filed with the EIA Commission. **Despite having received written statements that companies had no physical activities on the ground, the West Kalimantan Environmental Monitoring Agency has come across several cases where plantation companies in Ketapang had lied in writing about their land clearing activities.**

One example is PT Agro Lestari Mandiri (PT ALM), a subsidiary of RSPO member PT SMART (Sinar Mas) The company signed a statement for Bapedalda stating that it had no activities on the ground, whereas in actuality the company was already well on its way to becoming fully operational. Another case is PT Cipta Usaha Senate (PT CUS) which is part of PT First Major Plantation and Industry (PT FMPI), another RPSO member, belonging to the Artha Graha Group.

In Ketapang, there are many cases of plantation companies who have commenced land clearing without having secured approvals of their EIA reports. This practice directly undermines Indonesia's efforts towards good governance. The practice is largely undetected by government agencies and sustainability initiatives.

The due process for Environmental Impact Assessments is not considered in RSPO's standards or Europe's biofuel policies, but taken for granted. It is therefore likely that palm oil from plantations developed without approved EIA reports enters the European market as a supposedly sustainable product for European consumers.

Figure 8. Rainforests removed; oil palm as far as the eye can see.

5. Clearing forestland without approval

Figure 9. Deforestation for oil palm expansion in Ketapang (2008).

Indonesia is internationally and traditionally known as the "emerald rim", but more recently it has also obtained the dubious status as a Guinness Book record holder, as the country with the world's fastest rate of deforestation. Emissions resulting from the clearing of forests, often by way of forest fires, as well as from the conversion of peat land areas into palm oil plantations have positioned Indonesia as the third biggest emitter of Green House Gases after China and the United States. The evidence that the oil palm industry is currently the most forceful driver of Indonesia's rampant forest loss is simply overwhelming.

Indonesia has allocated large tracts of its forested area for development into other land uses. The process of planned deforestation is, like in most other countries, regulated by law. But oil palm companies in Ketapang are clearing forestland even without the approval of the responsible authorities, and thereby are also opening up forested land set aside for environmental protection functions.

Some two thirds of Indonesia land area is defined by the government as forestland ("kawasan hutan"). The management responsibility for these lands falls under the Ministry of Forestry. The forestland area was first identified through the national Forest Use Plan Agreement (TGHK). Of the 133 million ha of forestland, some 30 million ha is allocated for conversion into other land use (so-called Conversion Forest). The remaining forestland is allocated for forestry and conservation. With the implementation of decentralization policies in 1999-2001, a process was started to harmonize the Forest Use Plan Agreement (TGHK) map with provincial and district level land use plans. The Forestry Act and the National Spatial Planning Act stipulate that every provincial and district level spatial plan should be based on this map. Local governments are required by law to consult with the Ministry of Forestry during the spatial planning process. The harmonization process was successfully completed in most provinces, except for Riau and Central Kalimantan. The TGHK and the West Kalimantan provincial land use map have been harmonized and this resulted in a base map for the forestland area in West Kalimantan fixed through Ministry of Forestry Decree 259/2000.

Under pressure to release forest land for profitable oil palm expansion, the Ministry of Forestry released substantial tracts of forestland for plantation expansion up to 2001. Under subsequent pressure from the Indonesian donor community, the Ministry of Forestry issued regulations in 2000 and 2001 that put a stop on any further forestland releases for oil palm expansion. In October 2005, Minister of Forestry Kab'an reopened this seal through Decree No.31/2005, but it was noted that the issuance of further forestland release letters would be strictly controlled. Since 2005, the number of forestland releases has indeed been moderate. In 2005 and 2006, the Ministry of Forestry issued a net area of around 110,000 ha of forestland to 12 oil palm companies in the whole of Indonesia. **Between 2003 and 2006 no forestland release letters were issued to oil palm companies in West Kalimantan (including Ketapang District)** and as of October 2008, the Forestry Planning Agency was not aware of any recent forestland releases in Ketapang since 1996.

Because oil palm plantations are not considered to be forests, the proposed conversion of forestland areas into oil palm plantations requires the explicit approval of the Ministry of Forestry. This approval is a legally required supporting document for the approval of a Plantation Operation Permit. **The Indonesian Minister of Forestry has clearly pointed out that whoever clears forestland for oil palm plantations without the written approval of the Ministry of Forestry may be prosecuted for undertaking a criminal action.**

Regardless of the harmonization process, many district governments continued to allocate forestland to plantation companies without having consulted with or having sought a recommendation from the Ministry of Forestry. Ketapang District is no exception. **Based on overlay of the harmonized forest use plan and the Ketapang oil palm concession map, it was found that no less than 39 oil palm companies in Ketapang have concessions that fully or partially overlap with almost 400,000 hectares of protected forestlands. Of these, none have been issued release letters from the Ministry of Forestry.**

The majority (55%) of the total oil palm concession area that overlaps with the forestland area (218,000 ha of forestland) is not even slated for future conversion (see Table 4). RSPO member Asiatic Development (Genting Berhad) even has a concession that partially overlaps with Gunung Palu National Park, a key orangutan conservation area. In addition, 16 oil palm companies have concessions that overlap with Limited Production Forest and Protection Forest. Some 13 companies have concessions that overlap with Production Forest and 11 companies have concessions that overlap with Conversion Production Forest. None of these companies had obtained formal approvals to actually convert these forests into oil palm plantations.

Only four plantation companies in Ketapang have obtained approval letters from the Ministry of Forestry. **Satellite imagery and field investigations show that several oil palm companies (including RSPO members) have already been clearing away in forestland that has not been legally released for conversion by the Ministry of Forestry.**

One example of illegal oil palm plantation development in Ketapang's forestland area is that of the Malaysian company GY Plantation, controlled by VS Industry Berhad and with a minority (yet significant) shareholding of the Ketapang district government (Figure 10). The company cleared a large area of Sungai Putri Forest Reserve without permission from the Ministry of Forestry.

Measurement of peat depth in Sungai Putri Forest Reserve for Flora and Fauna International (FFI) indicated that the average peat depth was around 7m, with 15m as the deepest point measured.

As of 2008, GY Plantation did not have an approved EIA, no forestland release letter and no timber removal permits. Also note the mismatch between the Location Permit boundary (red boundary) and the actual plantation clearings shown on the satellite image.

The fact that many oil palm concessions overlap with the forestland area is not merely an environmental and administrative problem. Done right, the process of releasing forest land requires consultation with stakeholders, mapping and delineation of the area excised. The approval of the excision of the forestland area, if granted, would then trigger a process by which the applicant company applies for permits to clear the forestland area. Indonesian regulations stipulate that this requires the company to apply for Timber Cutting Permits (IPKs) and that the company pays forestry taxes over cutting commercially valuable timbers. The taxes to be paid by the companies include provincial forestry taxes and contributions

Figure 10. Overlap of the Golden Youth Plantation concession with forestland.

Blue line: boundary of land clearings (June 2008), red line: GY Plantation concession area; green line: Production Forest. Satelite image: IKONOS, June 2008.

Table 4. Oil palm concessions overlapping with protected forestland in Ketapang, as of August 2008.[7]

Plantation company name	Associated RSPO member	Area (ha)1	Notes	HPK	HP	HPT	HL	NP
PT Sawit Sandai Lestari	Asiatic Development	19,900	Not active		85			
PT Sepanjang Inti Surya Mulia		19,900	Active				75	
PT Citra Sawit Gemilang		19,400	Not active	19,400				
PT Permata Sawit Mandiri		19,500	Not active	19,500				
PT Sawit Mitra Abadi		15,800	Nursery est.				88	1,310
PT Mustika Agung Sentosa	PT FMPI / Artha Graha	20,000	Not active	20,000				
PT Cipta Usaha Sejati		20,000	Active	15,000			13	
PT Jalin Vaneo		30,000	Active	17,500				
PT Agro Lestari Mandiri	PT SMART	27,500	Active				315	
PT Kencana Graha Permai		10,000	Active				588	
PT Smart Sinar Mas		35,000	Not active		35,000			
PT Cahaya Nusa Gemilang		21,000	Not active		21,000			
PT Fangiono Agro Plantation	First Resources	20,000	Not active			2,440		
PT Borneo Bhakti Sejahtera		20,000	Not active		20,000			
PT Marsam Citra Adiperkasa		19,000	Not active		19,000			
PT Mekar Karya Kahuripan		20,150	Not active	20,150				
PT Cipta Karsa Kahuripan		16,500	Not active	16,500				
PT Harapan Sawit Lestari	CTP Holdings	10,828	Release approved					
PT Poliplant Sejahtera	Sampoerna	4,004	Release approved					
PT Budidaya Agro Lestari	Sime Darby	35,398	Active				2,653	
PT Sandhika Natapalma		8,406	Active				1,350	
PT Kalimantan Agro Lestari II	none/n.a	21,500			21,500			
PT Surya Mukti Perkasa	none/n.a	2,028		3,000				
PT Kurnia Kapuas Agro Indo	none/n.a.	n.a.		na	na	na	na	na
PT Agra Jaya Bhaktitama	none/n.a	n.a.			7,500		75	
PT Golden Youth Plantation	none/n.a.	18,300	Active		17,500			
PT Lahan Agro Inti Ketapang	none/n.a.	26,750		na	na	na	na	na
PT Indota Kalbar	none/n.a.	n.a.			380			
PT Ketapang Agro Pratama	none/n.a.	15,500				2,300		
PT Agro Palma Panca Mitra	none/n.a.	18,200				32		
PT Agro Maju Sejahtera	none/n.a.	22,000			20,000			
PT Borneo Khatulistiwa Sawit	none/n.a.	19,800					390	
PT Mustika Graha Kencana	none/n.a.	20,150					1,645	
PT Umekah Sari Pratama	none/n.a.	19,000			15,240	1,032		
PT Ladang Sawit Malindo	none/n.a.	9,100		9,100				
PT Aditya Agro Indo 2		20,000			3,800			
PT Prakasa Tani Sehat	none/n.a.	16,079	Release approved					
PT Bangun Maya Indah 3		4,034	Release approved				153	
PT Antar Mustika Segara 3		2,230	Release approved					
PT Wira Karya Nusa Tani 3		23,000			21,432			
PT Surya Maleno Sejahtera 4		24,000		24,000				
PT Mitra Karya Sentosa 4		15,665		14,135			1,530	
Total concession area	709,622			HPK	HP	HPT	HL	NP
Total area of forestland overlap	396,551			178,285	202,352	5,804	8,800	1,310
Area of released forestland	35,800	8% released		45.96%	51.03%	1.46%	2.22%	0.33%

HPK: Conversion Production Forest; HP: Production Forest; HPT: Limited Production Forest; NP: National Park. Areas stated in hectares. Only companies with overlaps listed. 1 based on latest available permits; 2 Shares address with PT Inti Indosawit Subur; 3 Shares address with Benua Indah; group; 4 Shares address with PT FMPI subsidiaries.

Figure 11. "Degraded forest" often still has a significant timber stand.

Table 5. Total forestry taxes to be paid by oil palm companies with concessions overlapping with forestlands in Ketapang district.

Secondary forest area in Ketapang (ha)	360,751
HCV area set asides (ha)	unknown
Total forestland area (to be) cleared (ha) in Ketapang	360,751
Secondary dryland forest timber stand (mixed species only) (1996)	25
Total timber stand (m3) in Ketapang	9,018,775
Payable Provincial (PSDH) forestry tax / m3 for mixed species in Rp/m3 (2008)	36,000
Payable Reforestation Fund / Dana Reboisasi (DH) in Rp$/m3 (2008)	119,000
Total due Provincial forestry tax in Rp	324,675,900,000
Total due Reforestation Fund contributions, in Rp.	1,073,234,225,000
Total forestry taxes to be paid, in Rp	1,397,910,125,000
Total forestry taxes to be paid in US$	153,210,950

Figure 12. Peatland forest cleared for oil palm expansion in Ketapang districts. Black marks on the stumps suggest that the plantation company may have burnt the land to clear debris.

to the national reforestation fund. These taxes apply to forest clearing in any type of land use, and they are all but negligible (see Table 5).

It is estimated that oil palm plantation companies in Ketapang with concessions in protected forest lands would have to pay forestry taxes amounting to US$ 153 million in total, if the release of forested areas were to be granted in a regular fashion. The RSPO member companies alone in the same district would have to pay an US$ 83 million so as to conform with Indonesia's forestry legislation and, thus, to comply with the RSPO standards.

In sum, the Indonesian Ministry of Forestry authority is by-passed by the district's spatial plans and oil palm plantation companies have been found to start clearing forested land without having followed due procedures, without having obtained the legally required permits and without having paid the obligatory forestry taxes. These practices clearly undermine Indonesia's efforts towards good governance. The due process for the excision of forest land for oil palm expansion is not considered in RSPO's standards or Europe's biofuel policies. **It is therefore likely that European governments will accept palm oil from plantations developed on protected forestlands, and might count the resulting biofuel as renewable transport energy supposedly protecting the climate.**

6. Failing to protect the poor

Although oil palm plantation development is heavily promoted by Indonesia's national and local governments as a poverty alleviation tool, current practice fails to safeguard the interests of indigenous peoples, plantation workers and smallholders in a place like Ketapang.

Just like in many other areas in Borneo, Ketapang's indigenous communities are not necessarily poor when poverty is measured in terms other than just the level of hard cash income. With free access to their customary land and provided access to markets, Ketapang villagers prove to be excellent farmers, capable of securing their own subsistence while supplying a range of commodities to the local and global market place.

The current development practices in Ketapang do not allow for this type of community based economic development. What is happening in Ketapang represents a typical example of corporatization of customary rights land, a trend that is taking place all over Borneo. The new plantation projects in Ketapang district are all licensed out by the government to large plantation corporations.

Most plantation concessions in Ketapang directly overlap with indigenous peoples' customary land. It is thus no wonder that **at the end of 2008, the Ketapang Plantations Office reported that out of the 54 oil palm companies that are operational in the district, some 20 are involved in land conflicts.**[8] The land conflicts in Ketapang include:

1. Land development by companies without communities' consent;
2. Double issuance of oil palm concessions over the same area;
3. The re-sale of smallholder plots that are still subject to credit schemes;
4. Failure of plantation companies to develop legally required local development projects (such as oil palm smallholdings);
5. Failure of plantation companies to hand over smallholder estates to the actual smallholders in a timely fashion.

Despite calls from district government leaders upon local communities to calm down and resolve conflicts amicably, villagers' frustrations continue to build. In the near future, the number

Figure 13. NGO activists discussing oil palm expansion in Ketapang District.

Position statement by the Perimakng indigenous community in Ketapang

Earth Day, Pontianak 5 June 2008

We the indigenous peoples of Ketapang district on behalf of forum Perimang Hutan Tanah Ea'k Ketapang urge the Ketapang District government to:

- Stop oil palm expansion, illegal logging and any kind of mining in the customary rights land of Ketapang district
- Stop issuing new permits and cancel all plantation permits and any type of mining
- Resolve wisely and fairly all conflicts that are caused by the plantation expansion programme and mining
- Resolve all cases of illegal logging and illegal mining.
- Cancel local regulation (Perda No.15/2006) on Spatial Planing in Ketapang.
- Adopt a policy that chooses to support the needs of the indigenous peoples.

of land conflicts in Ketapang is set to increase because as the local communities struggle to defend their rights before the bulldozers arrive, the companies continue to consider the concession areas allocated to them as the sites that they may rightfully clear and plant. If it was not for NGOs in West Kalimantan, most land conflicts would remain undisclosed, remain unaddressed or be "resolved" in ways that are unfair to local communities.

While the plantation concessionaires are granted access to some 15,000 to 20,000 hectares of land for a 30 year period with possible extensions up to 90 years, **the customary land rights of Ketapang's indigenous communities (approximately 400,000 people) are denied by the local government.** Even when there is some basic recognition on the companies' side that local communities should be compensated, the one off prices offered for land are so low (Rp. 70,000, or just over € 5 per hectare) that these raise eyebrows even among communities elsewhere in West Kalimantan.

True pro-poor policies are missing in the recent plantation development drive. In the eighties, plantations generally had a larger percentage reserved for smallholders than today, often comprising 70 to 80 percent of the overall plantation area.[9] Although those schemes had a similar negative impact on the environment and indigenous people, current policies are far less directed at the participation of smallholders.

Ministry of Agriculture Regulation Nr.26/2007, article 11 requires companies to develop at least 20% of their land bank into community projects, such as smallholder plots, but in Ketapang few companies seem to work towards achieving this minimum target. In the rush to expand their plantations, companies fail to commence fair and fully informed negotiations with local communities regarding smallholdings and the conditions and prospects for local communities, resulting in disappointment and conflict. Tensions become even more pronounced where communities had lost former lucrative economic activities like rubber production, and had to surrender their land for oil palm plantations.

Once established, oil palm smallholders are subject to unfavorable terms in attaining a fair share of the value chain. Also, they are most vulnerable to changing market conditions. They typically depend on the plantation company which owns the mill as the single buyer and provider of transport for the smallholders' harvest. Since fresh fruit bunches have to be processed within two days after being picked, there is little slack for negotiating a fairer price with the company for the produce. Having lost all or parts of their land for agriculture, smallholders now are forced to buy their food for cash. This can lead to dire situations when a company is not functioning or refuses to follow up on obligations.

In the case of the Benuah Indah Group ("PT BIG") in Ketapang, smallholders were forced to stage large demonstrations during March 2009. The demonstrators represented at least 40,000 villagers from 26 villages in 6 sub-districts in Ketapang who had not been paid by the company for their palm oil fruit since October/November 2008. The four subsidiaries under the company group finally owed the smallholders nearly 100

Figure 14. The March 2009 villagers' demonstration against PT BIG in Ketapang.

The banner reads: "We're hungry: help us to ensure the payment for 4 months of palm oil supply".

billion rupiah (€ 7 million). Before taking to the streets the villagers had tried to negotiate with the company, and rallied the local government to act. They complained not to have any money left to buy basic food and some of the villagers were forced to take their kids out of school. Demonstrators were disappointed that the district government could not force the company to pay their outstanding obligations or offer substantial relief.[10] In February 2009, the Ketapang district government had to allocate 1.5 billion rupiah to support the smallholders with rice and sugar. And finally, just before the local elections, the company promised to start with the payments in April 2009.

Plantation workers in Ketapang earn low wages and are typically employed on a daily basis. Female workers are in particular risk because they are usually employed as sprayers of herbicides or pesticides. In February 2008, local media in Ketapang reported that thirty seven plantation workers had been poisoned by chemicals in the plantation PT Gunajaya Karya Gemilang, a joint venture of IOI with the Harita Group. The chemicals were applied in the nursery, apparently without proper protective meaures. According to the media report, two workers were in such a critical condition that they had to be submitted to the provincial hospital, a 15 year old female worker remained unconscious for several days.[11] The girl had been working for the company since June 2007, as a daily worker without a fixed contract.

Oil palm expansion brings companies, the Indonesian state and district governments substantial income. District governments go to great length to attract investment and sell permits. Resistance from communities that refuse to release their land are often depicted as anti-development. But the costs for society are high. Smallholders, workers and local communities bear the largest risk to lose their lands and livelihoods, to work under unsafe conditions for low wages and to be duped into unfair deals as indebted smallholders, if they become part of the palm oil industry at all.

Also in Europe, import of biomass from developing countries in the South has been promoted as a chance for rural development. However, during the discussion of the EU sustainability criteria for the RED directive, strong resistance prevented any binding social criteria.

In sum, there is little evidence that palm oil production in Ketapang contributes to true poverty alleviation. On the contrary, in Ketapang large-scale corporate run palm oil production is a major trigger of conflict over land and benefits.

7. Framing Sustainability

The Dutch government has committed itself repeatedly, to only use biomass or biofuels if and when they are produced sustainably. At this very moment, however, biomass and biofuels are imported into the Netherlands for the Dutch biofuel targets without any sustainability requirements and without public information about the origins of the feedstock.
Unfortunately, this is also true for the EU as a whole. Despite a heated discussion about the negative impacts of biofuels, incentives and subsidies are currently facilitating the build up of a new biofuel industry. This does not bode well for the implementation of the RED transport target and its 'sustainability criteria', set to begin 2011.

7.1 Dutch dealings

Recognizing the concerns over the negative effects of biofuel production, Dutch politicians, industry officials and a number of NGO's have put in major efforts to come to a broadly accepted standard for 'sustainable biomass'.
A theoretical framework for sustainable biomass, the so-called "Cramer criteria", and a set of guidelines for reporting by companies, had been developed in 2007 by the Dutch government. However, citing EU rules and WTO limitations, the Dutch government abstained from introducing the Cramer criteria, or the reporting guidelines, in national rulings. **The EU Renewable Energy Directive (RED), which was adopted in December 2008, is now the most important binding policy framework that will shape future biofuel policies in the Netherlands.** According to the common interpretation of the RED, the EU rules do not allow for a stronger national set of sustainability criteria for biofuels. The sustainability provisions for biofuels within the RED are significantly more limited compared to the Cramer criteria. Nonetheless, Malaysian and Indonesian missions continue to lobby Brussels to lower the sustainability requirements for palm oil within the RED.

Although the Netherlands do not have a specific policy for palm oil, the Netherlands government entered into the tripartite Public Private Partnership (PPP) on Market Access for Palm Oil with Malaysia and Indonesia in 2003. The Dutch government insisted that sustainability issues are a fixed agenda item during the tripartite meetings. **Unfortunately, problems of failing governance and illegality have never been discussed in the relevant intergovernmental dialog.** The PPP on Market Access for Palm Oil has focused on the engagement of pro palm oil government institutions (Ministries of Agriculture) and has not once engaged or sought inputs from other relevant Ministries (Environment, Forestry), national enforcement agencies (Bapedalda, BPN) or local governments. In early 2008, this PPP was extended for three more years.

The Dutch government puts a lot of trust in voluntary certification schemes, and supports the Roundtable on Sustainable Palm Oil (RSPO). Companies building installations for the production of biofuels in the Netherlands have announced to use (only) RSPO palm oil in the future, if and when it becomes available in sufficient quantities. These announcements are also successfully used to gain permits and support from Dutch authorities for the build up of biofuel installations in the Netherlands, like in the case of the planned Neste Oil installation in Rotterdam.

A large share of the concession area in Ketapang is controlled by RSPO member companies but up to present, none of their concessions is certified. In fact, **there has been no discernable difference between the (mal) practices of RSPO and non-RSPO members in Ketapang** and there is little public evidence that RSPO member companies in the district are proactively working to comply with the RSPO standards.

IIt is a big question whether or not the RSPO members in Ketapang, among them IOI and Sime Darby, will have their estates certified, and if so, whether the certification will be legal. Given the gross uncertainty of the situation, it is clear that the resulting oil palm products should not be considered a green feedstock for Dutch biofuels.

7.2 Increasing demand, less sustainability

Despite a growing body of evidence from the field and scientific assessments to the contrary, the Dutch government continues to count on the availability of large amounts of sustainable biomass for imports in its future energy scenario. This creates new realities in the market place right now and for the future.

Oil companies like Neste Oil and palm oil giants like Sime Darby are taking up the policy signals and are currently investing in large-scale biofuel installations in the Netherlands. Dutch harbors position themselves as 'bio-mainports' for Europe and the Rotterdam Port Authority started a joint venture with the port of Lahad Datu in Borneo to ship over the large amounts of tropical biomass necessary to fulfill the European renewable targets to Rotterdam. And Malaysian plantation companies like IOI and Sime Darby are expanding into Indonesia, where new licenses and smaller Indonesian plantation companies can still be acquired relatively cheap.

The current build-up of infrastructure creates an additional, high and long lasting demand for palm oil. Despite written commitments and policies to ensure sustainability, this is in itself a major driver for oil palm expansion.

Although some extra volumes of palm oil could be derived from more efficient plantation management, increases in demand for palm oil have in the past mostly driven further expansion. It seems that so long as laws that regulate plantation expansion can be disregarded, expansion remains a more attractive solution to increased market demand, compared to enhancing yields in existing estates. What such an expansion drive means for a district like Ketapang, we have shown in the previous chapters.

Considering the prevailing situation in the oil palm sector, curbing the demand for palm oil on the market would deliver more sustainability benefits than using palm oil for energy purposes, especially if replacement effects are taken into account.

7.3 Replacement effects

The demand and use of palm oil in Europe and beyond for bio-energy purposes is in addition to the already large and growing demand for palm oil in food and other uses. This is valid also for other edible oils. Since many energy companies are more comfortable with using rapeseed for energy compared to palm oil, the food sector has lost volumes of these oils and is replacing them with additional palm oil imports. In that way, using rapeseed and sunflower for bio-energy in Europe's biodiesel installations, still leads to the expansion of palm oil use. This replacement effect cannot be addressed by sustainability schemes, but gives energy companies the appearance of using 'less destructive' feedstock.

A similar replacement effect can be expected for certified palm oil for biofuel production from identifiable estates. Long-time established plantations have provided the food sector with palm oil. They are usually easier to certify, since any clearing of forests during their development phase falls outside the RSPO cut-off date. However, when these estates are getting certified and are now providing the new biofuels market, the food sector needs to look for that amount of palm oil from elsewhere. In that way, use of palm oil from certified estates still leads to unsustainable palm oil expansion.

In the Ketapang case, two Malaysian biofuel players have certified some of their older estates in Malaysia. At least one of them is selling palm oil to a European biofuel company. At the same time they are expanding with new, uncertified palm oil operations into Ketapang. Any possible sustainability benefits created through the palm oil for bio-energy on the certified identifiable estate in Sabah, for instance, is likely to be undone by the operations in Ketapang.

Policy makers and certification initiatives find it hard to capture the replacement effects in policies and criteria and have limited their focus on the sustainability and traceability of specific batches of biofuels or plantation estates. This leaves the major problem of replacement effects unaddressed.

Summarizing these developments, there is no reason to believe that commitments to only use sustainably produced palm oil for energy purposes in Europe can and will be fulfilled. Taking Ketapang as an example, sustainability requirements for bio-energy only come into the picture once land grab and clearing have taken their toll. Questions of failing governance, replacement effects and spatial planning urgently need to be addressed, but until today, European policy makers have been unwilling to do so and rely on private sector certification initiatives instead. While the incentives for palm oil expansion are established already with the EU mandatory targets for 2020, no conditions are in place to substantially improve the sustainability performance. of the sector within the same timeframe. Pushing ahead with creating new demands for palm oil under this circumstances is irresponsible.

Recommendations

The Members of the European Union should:
- prevent the use palm oil and other edible oils for bio-energy purposes
- use maximum leverage of car and transport efficiency measures instead of biofuels
- work towards an early review of the 10% renewable target in transport for 2020

The Dutch government should:
- adopt the targets in Schoon & Zuinig (the future Dutch energy scenario) for the use of biofuels to more realistic and sustainable levels
- freeze the use of biofuels in transport at current level until at least the 2014 EU review and adopt the National Renewable Energy Action Plan accordingly
- discourage the build-up of biofuel installations based on vegetable oils and give a clear signal to producer countries that these fuels will be phased out in the near future
- focus on real climate savers like energy and transport efficiency and reduction
- support the Indonesian government in developing effective spatial planning policies

The Indonesian Government, RSPO, palm oil producers and buyers should:
- Strictly uphold the law, and enforce strong consequences for not meeting the legal requirements
- Prevent the expansion and use of unsustainable palm oil
- Work towards a solution of ongoing conflicts with local communities

The Ketapang District government should:
- Rethink its extreme plantation policy and work with local communities to restore whathas been lost
- Review the current licenses to prevent further degradation of the environment and solve existing land conflicts in accordance with the principle of free, prior and informed consent

"The European Union must seek and support alternatives for palm oil as a source of biofuel. They should know that the increased use of biofuel from palm oil will bring about more deforestation in Indonesia and that many indigenous peoples will loose their land as a result".

Jefri Seragih, Sawit Watch

References and notes

1 Biomass in the Netherlands, Senter Novem, 2009

2 20% biobrandstoffen in 2020, Senter Novem, 2008 and Verkenning Schoon en Zuinig, ECN, April 2009

3 A Land Survey Permit allows the company survey the land; a Plantation Operation Permit allows it to develop a nursery and land clearing on undisputed land; a Location Permit allows it to acquire land from local communities and only the Land Use Right license allows the company to commence full scale operations. In 2006, the order was overhauled through Permentan 26/2006, which requires companies to first obtain a Location Permit and then an IUP. This regulation did not come into force until the first quarter of 2007.

4 Individual supporting documents may trigger the requirement to apply for additional supporting documents and permits. If, for example, a company has obtained the approval letter for forestland release, it would have to apply for timber cutting permits and pay due forestry taxes.

5 Menteri Negara Lingkungan Hidup. Tata Laksana Penyusunan Dokumen Pengelolaan dan Pemantauan Lingkungan Hidup. Nr.12/25 September 2007.

6 The legal basis of the DPPL regulation is questionable. The DPPL does not make any reference to the Environmental Management Act or the Plantation Act, which require an EIA.

7 Sources include: Peta Perkembangan Perkebunan dan Transmigrasi Kab. Ketapang Tahun 2006 (BPN Kanwil Kalbar); Perkembangan Perijinan Perkebunan Mei 2007 (Dinas Perkebunan Provinsi Kalbar); Daftar Pelepasan Kawasan Hutan untuk Budidaya Perkebunan (www.bpkh3.go.id);-Perkiraan luasan lahan perkebunan tumpah tindah dengan kawasan hutan lindung dan taman nasional berdasarkan perkiraan polygon di Google Earth.

8 Sejengkal Tanah Terakhir di Kalimantan. Kompas, 22 December 2008.

9 Zahari Zen, John F. Mc Carthy, Piers Gillespie, Crawford School of Economics, Australia National UniversityPolicy Brief 5 (2008), Linking pro-poor policy and oil palm cultivatio

10 Terancam Kelaparan Akibat Tak Bisa Lagi Ngutang Sembako, 5 February, 2009 www.pontianakpost.com/index.php?mib=berita.detail&id=14271

11 http://pontianakpost.com/berita/index.asp?Utama&id=154382

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