

NEW PATTERNS OF PALM LICENSING EXPANSION: ACCESS AND POWER RELATIONS IN FOREST AREAS IN INDONESIA

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Article	Abstract
<p>Keywords: Licensing, Oil Palm, Forest</p> <p>DOI: 10.28946/scls.v1i1.2693</p>	<p>Indonesia is one of the most significant palm oil contributors in the world. Palm oil is one of the leading commodities supporting the running of Indonesia's national economy. The high influence of the economic growth of oil palm in Indonesia has caused a shift in the cultivation of rubber and other conventional cash crops at the community level, changing to oil palm regardless of the role of oil palm in the nation's economy. The oil palm plantation industry is not welcomed by some Indonesian people affected by oil palm plantations. This is because the practice of oil palm plantations in Indonesia is suspected as one of the triggers for various environmental and social problems, such as deforestation, clearing of peatlands, forest fires, loss of biodiversity, and tenure conflicts. The issues to be discussed are, first, how the permits are granted to the palm oil industry in forest areas by the government; second, what control strategy must be carried out against the palm oil industry in Indonesian forest areas. This research was conducted using the socio-legal research method. Without an accountable and strict control system in the licensing process, it will impact the large number of oil palm plantation permits issued that tend to violate spatial regulations. Apart from that, further regulation of policies regarding palm oil in the work copyright law will increase the length of conflicts that occur and complicate reforming palm oil governance. Applying the "whitewash smell" model as a settlement effort will only reduce the chances of settlement, ignore permits, not be transparent, and ultimately harm the community.</p>

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A. INTRODUCTION

Global demand for palm oil is estimated to have increased since the 1990s. Demand from Western Europe for palm oil products has begun to stabilize. Still, on the other hand, demand from India, Pakistan, China, and the Middle East has increased very sharply and made these four countries the new markets, followed by markets in Eastern Europe are also increasing.

Such high growth in the palm oil market is the main driver for expanding palm oil in Southeast Asia.¹ Consumption of palm oil-based products continues to increase massively.

Palm oil is one of the supporting ingredients for many industrial products, mainly processed foods, cosmetics, cleansers, and others. Palm oil is also one of the leading commodities, the most significant contributor to Indonesia's foreign exchange, surpassing oil, gas, and coal. Palm oil production is projected to increase in the next few years, driven by the global demand for biodiesel, which is increasingly in demand.² The increasing global demand for vegetable fats has pushed the price of palm oil on the global market and has kept the price of palm oil products high on the international commodity market. This condition accelerates the investment process even further, triggers the trading of palm oil companies on the stock exchange, and encourages the takeover of forest areas for oil palm.

The takeover of forest areas is inseparable from the history in the development of the post-independence Indonesian palm oil industry can be divided into two main phases. First, the phase of government domination around the 1970s - 1998 characterized by the emergence of smallholder oil palm plantations (*plasma*) in Indonesia. Second, the phase of market domination around 1999-now characterized by liberalizing the market for the palm oil industry in Indonesia and dominating company plantations.³ The two phases of the development of the palm oil industry made the government play its role through the implementation of different mechanisms. During the government domination phase, the bureaucrats created subsidy policies for national plantations and smallholder oil palms.

As a result, private investment is difficult to compete with. While in the market domination phase, the government realized the importance of creating an open market for private investment. The government's awareness can be seen from the government's reduced ability to continue to finance subsidy policies for large industries. In the end, the development of market liberalization for the national palm oil industry was able to drive the growth of the palm oil industry significantly.⁴ Based on these problems, the authors try to dissect several legal issues that will be discussed in the article, including: (1) how are the permits granted to the palm oil industry in forest areas by the government?; and (2) how the control strategy should be applied to the palm oil industry in Indonesian forest areas?

B. RESEARCH METHODS

This research was conducted using the socio-legal research method.⁵ Because in this study, study was carried out by observing how the reactions and interactions occur when the norm system works in society. The method used in this study is based on the problems that are the object of the author's research. These problems originate from the community, which arises as a form of reaction to the implementation of positive regulatory provisions and can also be seen from the community's behavior as a form of action in influencing the establishment of a positive legal provision.⁶

¹ Marcus Colchester et al., *Palm Oil Expansion In Southeast Asia* (Bogor: Forest Peoples Program and SawitWatch, 2011), 21.

² HRW, *Kehilangan Hutan Berarti Kehilangan Segalanya (Perkebunan Kelapa Sawit Dan Pelanggaran Hak Asasi Manusia Di Indonesia)*, (United States: Human Rights Watch, 2019), 10.

³ Marcel Gatto, Meike Wollni, and Matin Qaim, "Oil Palm Boom and Land-Use Dynamics in Indonesia: The Role of Policies and Socioeconomic Factors," *Land Use Policies* 4, no. 5 (2015): 292-303.

⁴ Directorate General of Plantations, *Indonesian Oil Palm Plantation Statistics 2015-2017* (Secretariat of the Directorate General of Plantations: Ministry of Agriculture, 2017).

⁵ Mukti Fajar & Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2015), 47.

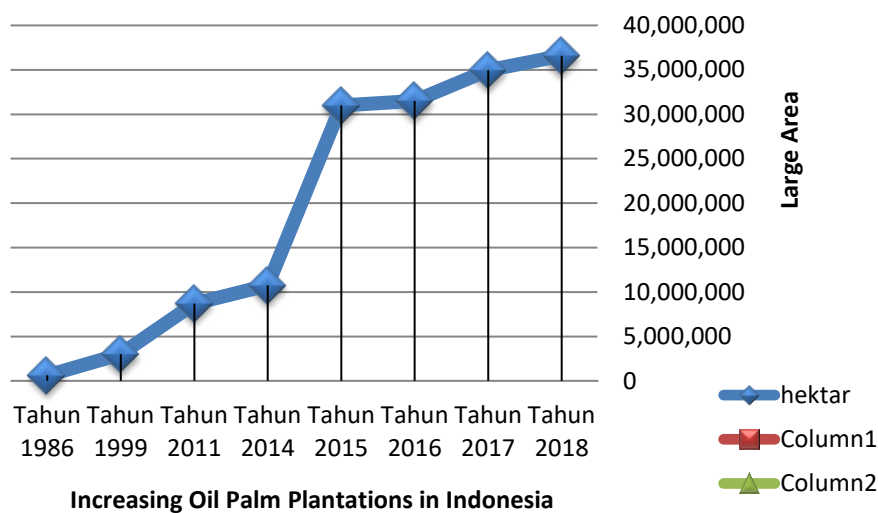
⁶ *Ibid.*, p. 51.

C. RESULTS AND DISCUSSION

1. How are Palm Oil Permits in Indonesian Forest Areas

The Indonesian agricultural sector is essential and strategic in national economic activities. This can be proven by data from the Ministry of Agriculture of the Republic of Indonesia which shows the role of the agricultural sector to the GDP (Gross Domestic Product) in 2014. The agricultural sector (including forestry and fisheries) contributed around 13.14% to the national economy, with an increase in 2017 to 13.53%. The plantation is one of the sub-sectors with a significant development with a value of 3.30% of the total GDP of 25.75% for the agricultural, plantation, and forestry sectors based on data from the Indonesian Palm Oil Statistics in 2018. According to the Ministry of Home Affairs, oil palm is a yield commodities that has an essential role in economic activities in Indonesia because of its ability to produce vegetable oil which is much needed by the industrial sector.⁷

The following is a graph of the increase in oil palm plantations in Indonesia:



Indonesia has been one of the most significant Crude Palm Oil (CPO) producing countries in the world since 2005 until now.⁸ Based on this graph, the expansion of oil palm plantations in Indonesia continues to increase from year to year. In 1986 the area of oil palm plantations in Indonesia was 606,780 Ha. In 1999, it increased to almost 3 million Ha; In 2011, it reached 8.7 million Ha; In 2014, the land area reached 10.75 million Ha. In 2015, it increased to 11.26 million Ha, but in 2016 it decreased to 11.20 million Ha; in 2017, it was 12.38 million Ha, and in 2018 again experienced a rapid increase of 12.76 million Ha.⁹ Indonesian Palm Oil Statistics, in 2018, stated that one of the provinces that have the most unprocedural oil palm plantations and the most significant plantation growth rate, as well as the highest deforestation rate in Indonesia, is the Province of Central Kalimantan.

The development of decentralization that supports the expansion of the palm oil industry in forest areas is the reason for granting palm oil plantation licensing authority to local governments,¹⁰ increasingly triggering the opening of new land for oil palm plantations in the

⁷ Badan Pusat Statistik Indonesia, *Statistik Kelapa Sawit Indonesia 2014* (Jakarta: Badan Pusat Statistik Indonesia, 2014)., 96.

⁸ *Ibid.*

⁹ Denis J Murphy, "The Future of Oil Palm as a Major Global Crop: Opportunities and Challenges," *J Oil Palm Res* 26, no. 1 (2014): 1-24.

¹⁰ Indonesia, *Statistik Kelapa Sawit Indonesia 2014*.

area.¹¹ Therefore, without an accountable and strict control system in the licensing process, the large number of oil palm plantation permits issued tend to violate spatial planning regulations and the environment's carrying capacity.

In line with this, the government has issued many permits that conflict with the concept of forest area protection or overlap with other permits, thus triggering the emergence of oil palm plantations in forest areas. The palm oil industry is located in forest areas which should be obliged to maintain environmental sustainability and not violate community property rights. It is by complying with all permits that the palm oil industry must own and involving the community to participate in every policy-making that palm oil companies will design. The goal is that there are no more illegal oil palm plantations¹² triggering deforestation in Indonesia's forest areas. According to the data we found during 2006-2009, there were 1.1 million hectares of illegal oil palm plantations in Central Kalimantan Province.¹³, around 1.8 million Ha in 2018, which is in Riau Province.¹⁴

Palm oil is a leading commodity in the plantation sector, becoming Indonesia's economic development engine. The plantation sub-sector in Indonesia has become a significant source of non-oil and gas foreign exchange and can employ more than 6 million people.¹⁵ Existing facts show that since 2015, the export value of palm oil has been in the second-highest position (12.3 billion US dollars) of all national export commodities after coal. Indonesia is also the largest palm oil producer in the world. The economic contribution of oil palm plantations through the sale of CPO (Crude Palm Oil) to state revenue is substantial, namely 12% of seven hundred trillion total state revenue in 2008.¹⁶

In addition to the significant role of the palm oil industry as a source of revenue for the state budget, palm oil also supports the national economy, which grows yearly. This has an impact on conditions where Indonesia must face various challenges that are very complex. One of them is the existence of oil palm lands controlled by companies, individuals, or community groups that enter forest areas illegally without clear permits. The rapid development of the palm oil industry has led to the truth that the big push theory is true, where industrialization is the only way to solve unemployment.

This simultaneously has both positive and negative impacts, even though the development of the palm oil industry has had a significant impact on the progress of the national economy. The real conditions and existing field actions show that the palm oil industry in Indonesia is in a chaotic state. Indonesian oil palm plantation practices are allegedly one of the triggers for social conflicts and various environmental problems, such as deforestation, peat land clearing, water pollution, soil degradation, and loss of biodiversity.¹⁷ There are two kinds of negative impacts resulting from the expansion of plantations and oil palm companies, namely direct impacts and indirect impacts. The direct negative impacts of large-scale oil palm plantations occur in ecological, economic, social, and cultural aspects, conflicts over land and agricultural resources, environmental pollution, global warming, food insecurity, and water, soil, and air pollution.

¹¹ *Ibid.*

¹² Budy P Resosudarmo et al., "Forest Land Use Dynamics in Indonesia," *Livelihood, the Economy and the Environment in Indonesia, Yayasan Obor, Jakarta*, 2012, 20-50.

¹³ John McCarthy and Zahari Zen, "Regulating the Oil Palm Boom: Assessing the Effectiveness of Environmental Governance Approaches to Agro-industrial Pollution in Indonesia," *Law & Policy* 32, no. 1 (2010), hlm. 153-179.

¹⁴ Sofie Arjon Schutte and Laode M Syarif, "Pemberantasan Korupsi Di Sektor Kehutanan Pelajaran Dari Kasus KPK," *U4 Issue*, 2020, 17.

¹⁵ Mouna Wasef and Firdaus Ilyas, "Merampok Hutan Dan Uang Negara," *Indonesia Corruption Watch* (2011), 21.

¹⁶ Gatra.com, "2,1 Juta Ha Hutan Dikuasai Korporasi dan Dikorupsi," diakses 28 Juni 2020, <https://www.gatra.com/detail/news/500667/kebencanaan/21-juta-ha-hutan-dikuasai-korporasi-dan-dikorupsi>.

¹⁷ World Growth, "The Economic Benefit of Palm Oil to Indonesia" (World Growth Melbourne, Australia, 2011), 24.

The indirect impacts are poor system governance and legal institutions, weak political will, institutional commitment, and government capacity in law enforcement in controlling the impacts of oil palm plantations. The palm oil industry is one of the plantation companies in which practices of corruption, collusion and nepotism, smog, labor exploitation, child labor, human trafficking, tax evasion, gender injustice, violations of labor rights, human rights, and so on are mushrooming.¹⁸ Research that has been conducted shows that around 2.8 hectares of oil palm plantations are found in Indonesian forest areas, with 65% of the total being land owned by companies.¹⁹ The existence of oil palm plantations in forest areas is a transparent form of violations that have occurred.²⁰

Concerning the above, Indonesia is included in the list of 10 countries with the highest loss of tropical rainforests in 2018.²¹ As a result of the expansion of the oil palm plantations, fires occurred, as well as the conversion of forest land for settlements is the trigger for deforestation.²² The analysis results of FWI and GFW show that the area of Indonesian forest cover has decreased by around 40% in 50 years from the total forest cover throughout Indonesia. Most of Indonesia's forest destruction (deforestation) is caused by a political and economic system that considers forest resources as a source of income and can be exploited for political gain and personal gain.²³ Law Number 32 of 2009, concerning environmental protection and management, defines environmental destruction as an action that causes direct or indirect changes to its physical and/or biological characteristics, resulting in the non-functioning of environmental areas in supporting sustainable development.

In line with this description, based on Law No. 18 of 2013 concerning the prevention and eradication of forest destruction mentioned in article one, the forest destruction referred to is illegal logging. Use of forest areas without permits or use of permits contrary to the intent and purpose of granting such permits, which is carried out in an organized manner. The Ministry of Forestry in 2012 recorded that 282 oil palm plantation companies in Central Kalimantan illegally encroached on three million hectares of forest area.²⁴ The latest data from the Directorate General of Plantations in 2018 stated that the total area of national oil palm plantations reached 14.03 million hectares. Around 2.5 million hectares, or 21% of the total plantation area, was indicated to be in forest areas which consisted of plantations with an area of a total of 800 thousand hectares controlled by private companies/BUMN. Smallholders own a total area of around 1.7 million hectares.

The spatial data results on oil palm cover and forest area data indicate that out of 16.8 million hectares of oil palm cover, around 3.4 million hectares are in forest areas. In other words, there are 20.2% of the total area covered by oil palm in the archipelago. This figure includes palm oil that has permits or is managed by companies and palm oil that is not licensed, including smallholder oil palm. Furthermore, data on oil palm cover in forest areas can be classified based on the function of forest areas. The results show that 115 thousand hectares of oil palm plantations are located in nature reserves or nature conservation areas (KSA/KPA) or 3% of the total oil palm cover in forest areas, then in succession, protected forests (HL) with an area of around 174 thousand hectares (5%),

¹⁸ Ari Wibowo, "Review Of Reducing Green House Gas Emission For Forestry Sector To Support The Policy Of Presidential Regulation No. 61/2011," *Jurnal Analisis Kebijakan Kehutanan* 10, no. 3 (2013), hlm. 235-254.

¹⁹ Krystof Obidzinski et al., "Environmental and Social Impacts of Oil Palm Plantations and Their Implications for Biofuel Production in Indonesia," *Ecology and Society* 17, no. 1 (2012).

²⁰ TuK Indonesia, "Dampak Kelapa Sawit," 2015.

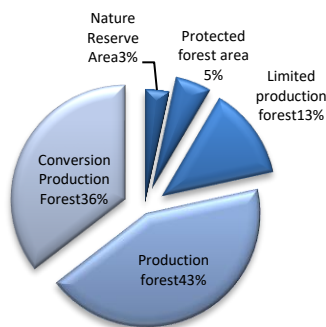
²¹ Mongabay.co.id, "Kajian UGM: 2,8 Juta Hektar Kebun Sawit Di Kawasan Hutan, 65% Milik Pengusaha, Solusinya?," 2018.

²² Eusebius Pantja Pramudya, Otto Hospes, and C. J.A.M. Termeer, "The Disciplining of Illegal Palm Oil Plantations in Sumatra," *Third World Quarterly* 39, no. 5 (2018), hlm. 920-940.

²³ Weisse dan Goldman, "Dunia Kehilangan Hutan Primer Seluas Belgia Di Tahun 2018," 2019.

²⁴ Arie Mega Prastiwi, "Ironi Di Balik Ekspansi Perkebunan Kelapa Sawit Arie Mega Prastiwi," 2019.

Figure 1.1. Oil Palm Cover Based on the Function of Forest Areas in Indonesia.



Source: The data diagram above was obtained from KEHATI, rewritten in words by *Hutan Kita Sawit* 2018.

The data above shows that spatial planning issues are one of the main factors triggering the rampant expansion of oil palm plantations in forest areas. This is supported by the many IUPs (Plantation Business Permits) issued by authorized officials that do not follow their regional spatial plans.²⁵ This form of violation should also be followed by law enforcement that is fair and prudent in its implementation, but in Indonesia, such cases are often dealt with weakly. The impact that occurs, in the end, is that the number of conversions of forest areas from year to year is getting worse.

Cases that can be seen and used as examples are the many oil palm plantations in forest areas.²⁶ Riau Province has the most extensive oil palm plantations in forest areas in Indonesia, followed by Central Kalimantan Province, which also has oil palm plantation areas in forests that are in conditions similar to those in Riau Province. Uncertainty regarding the arrangement of the existing regional spatial plans has also been the leading cause of the rampant expansion of massive oil palm plantations in Riau Province and Central Kalimantan Province.²⁷ It is recorded that around 984.5 thousand hectares of land have been planted with oil palm in forest areas.

The existence of these plantations is not only in an area that can be converted as a production forest function (without the process of releasing the area) but also into production forest areas, protected forests, and even conservation forests. The main problem of controlling oil palm in forest areas is related to licensing and spatial planning issues. Based on laws and regulations, companies that manage oil palm plantations must have a set of permits. These permits include location permits, environmental permits, plantation business permits (IUP), decrees on releasing forest areas, and usufructuary rights (HGU). According to data quoted from the Directorate of Research and Development, Deputy for Prevention of the Corruption Eradication Committee of the Republic of Indonesia (2016), it is stated that there are many permits for oil palm plantations, both IUP and HGU.²⁸

²⁵ Risal Firdiansyah, "Pertanggungjawaban Hukum Pidana Terhadap Pelaku Kejahatan Pembalakan Hutan," *Dinamika: Jurnal Ilmiah Ilmu Hukum* 25, no. 9 (2019).

²⁶ Eko N Setiawan, Ahmad Maryudi, and Gabriel Lele, "Konflik Tata Ruang Kehutanan Dengan Tata Ruang Wilayah (Studi Kasus Penggunaan Kawasan Hutan Tidak Prosedural Untuk Perkebunan Sawit Provinsi Kalimantan Tengah)," *BHUMI: Jurnal Agraria dan Pertanahan* 3, no. 1 (2017), hlm. 51-66.

²⁷ Eyes on The Forest (EoF), "Kebun Sawit Beroperasi Dalam Kawasan Hutan Di Provinsi Riau Tanpa Izin Maupun Pelanggaran Lainnya," 2018.

²⁸ Pramudya, Hospes, and Termeer, "The Disciplining of Illegal Palm Oil Plantations in Sumatra."

2. What is the Strategy for Controlling the Palm Oil Industry in Indonesian Forest Areas

The government has issued PP No. 104/2015 concerning procedures for changing the designation and function of forest areas. By making this regulation, the government hopes to resolve the issue of the continuity of land use in forest areas, one of which is related to oil palm plantations in forest areas. Permits issued in implementing oil palm plantations and spatial planning are challenging to decompose. This occurs because of the neglect made by the government to the companies. The problem of smallholder oil palm in forest areas is very complex. The conflict between oil palm and forests is solely rooted in the pattern of inequality in land tenure in rural areas. Occupation of land by palm oil companies and poor and unorganized management of forest areas. Based on data from Interpretation of High-Resolution Imagery, PKTL, 2018, states that:

Figure 1.4. The area of oil palm plantations in Forest Areas that have not received a release from the MENLHK

No	Palm Oil Plantation Area in Forest Areas	Area (Ha)
1.	Conservation Forest (HK)	119,537
2.	Protected Forest (HL)	152,932
3.	Permanent Production Forest (HP)	521,431
4.	Limited Production Forest (HPT)	1,318,001
5.	Convertible Production Forest (HPK)	1,065,114
Total		3,177,014

Source: Based on High-Resolution Image Interpretation, PKTL, 2018

The table above shows that the potential for conflicting land is dominated by Conservation Forest Areas (HK), Protected Forests (HL), Production Forests (HP), Limited Production Forests (HPT), and Convertible Production Forests (HPK). Data on potential tenurial conflicts in Riau Province also corroborate the above data:

Figure 1.5. Overlay Results of Forest Area Map of Riau Province

No.	Forest	Area (ha)	Percentage
1	Protected forest	107,528.98	5.45
2	Production forest	416,479.06	21.11
3	Conversion Production Forest	941,939.45	47.75
4	Limited production forest	422,119.53	21.40
5	Nature Reserve Conservation/Nature Preservation Conservation	84,631.64	4.29
Amount		1,972,698.67	100.00

Source: Attachment to Regional Regulation No. 10 of 2018 Riau Province, processed.

Oil palm plantations are spread across 28 states, with 90% of oil palm plantations located in Sumatra and Kalimantan. Oil palm plantations continue to experience very rapid development, connecting eastern Indonesia, the coast, and small islands in recent years. The expansion of oil palm plantations, which is now rampant in its implementation, threatens people's lives. Sawit Watch noted that 1,061 communities conflicted with the existence of oil

palm plantations.²⁹ The situation for agricultural workers is precarious because of the many violations in the substance of the labor law. The ratification of the work copyright law will only worsen the conditions for oil palm plantation workers, leaving behind job security, the certainty of wages, and social and health security.

Indonesia is one of the largest palm oil producers in the world. Its implementation cannot be denied. Sawit Watch's statement regarding Indonesia's oil palm plantations, which will reach 22.6 million hectares in 2020, is accurate, where 30% of the area is owned by smallholders and the rest is controlled by companies.³⁰ Data from the Ministry of Trade for January-October 2020 stated that palm oil exports amounted to IDR 225.37 trillion. Based on this, the oil palm plantation industry significantly contributes to the national economy. However, many problems must be resolved, such as environmental damage, agricultural disputes, and threats to the availability of labor and food. However, as stated, the issue can be delayed after a work copyright law exists.³¹

Policy regulations that are more supportive of investment without paying attention to the rights of labor groups or small communities, including oil palm plantations, will only exacerbate existing conflicts in practice. So far, oil palm workers have the status of contract and casual workers, are subject to employment status and wages, and continue to work without social security certainty. This has influenced many policies. The passing of this work copyright law will make reforming palm oil governance even more complicated. The law breaks through the ongoing reform by presenting a "whitewash smell" settlement model. However, implementing the settlement model presented by the Job Creation Law will only reduce the chances of settlement, ignoring permits.

D. CONCLUSION

Some of the results found in the conclusion of this paper are: First, related to palm oil licensing in Indonesian forest areas, starting from the absence of comprehensive data and information. Determination of forest area boundaries and spatial planning in the regions, the licensing process, and spatial planning are problematic. There are many opportunities for violations to occur. The urgency of the authorized official's role, namely the Ministry of Environment and Forestry, governors, and regents/deputies as permit grantors, is excellent for obtaining one item of plantation requirements. Each item must have certain document requirements/legality, so from the start, there has been a filter in the mechanism for granting permits by authorized officials.

Second, the control strategy for the expansion of the palm oil industry in forest areas in Indonesia can be pursued through several legal arrangements addressing the problem of the existence of oil palm plantations in forest areas, as well as policies issued by the Coordinating Ministry for the Economy in the form of Guidelines for Inventory Teams and Verification of Land Tenure in Forest Areas. It will be in the form of commitment and synergy between the central government, local governments, and other stakeholders in overseeing the policy. However, in the future, this policy needs to be evaluated comprehensively to measure the extent to which oil palm plantations are re-arranged in forest areas in Indonesia. As well as, the regulation of the work copyright law policy will further increase the conflicts in oil palm plantations in Indonesia, which will make reforming palm oil governance even more complicated. The law breaks through the ongoing reform by presenting a "whitewash smell"

²⁹ Elham Sumarga et al., "Hydrological and Economic Effects of Oil Palm Cultivation in Indonesian Peatlands," *Ecology and Society* 21, no. 2 (2016).

³⁰ KPK, "Kajian Sistem Pengelolaan Komoditas Kelapa Sawit, Direktorat Penelitian Dan Pengembangan Kedeputian Pencegahan Komisi Pemberantasan Korupsi," 2016.

³¹ Sawit Watch, "Siaran Pers Sawit Watch [061020] - Perbaikan Tata Kelola Sawit 'Runyam' Akibat UU Omnibus Law Ciptaker.," *Siaran Pers Sawit Wacth*, 2020.

settlement model. However, applying the settlement model presented by the Job Creation Law will only reduce the chances of settlement, ignore permits, are not transparent, and ultimately harm the community.

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