

HCV and RSPO:

Report of an Independent Investigation into the effectiveness of the application of HCV zoning in palm oil development in Indonesia

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HuMa
<http://www.huma.or.id>

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HCV in the RSPO process



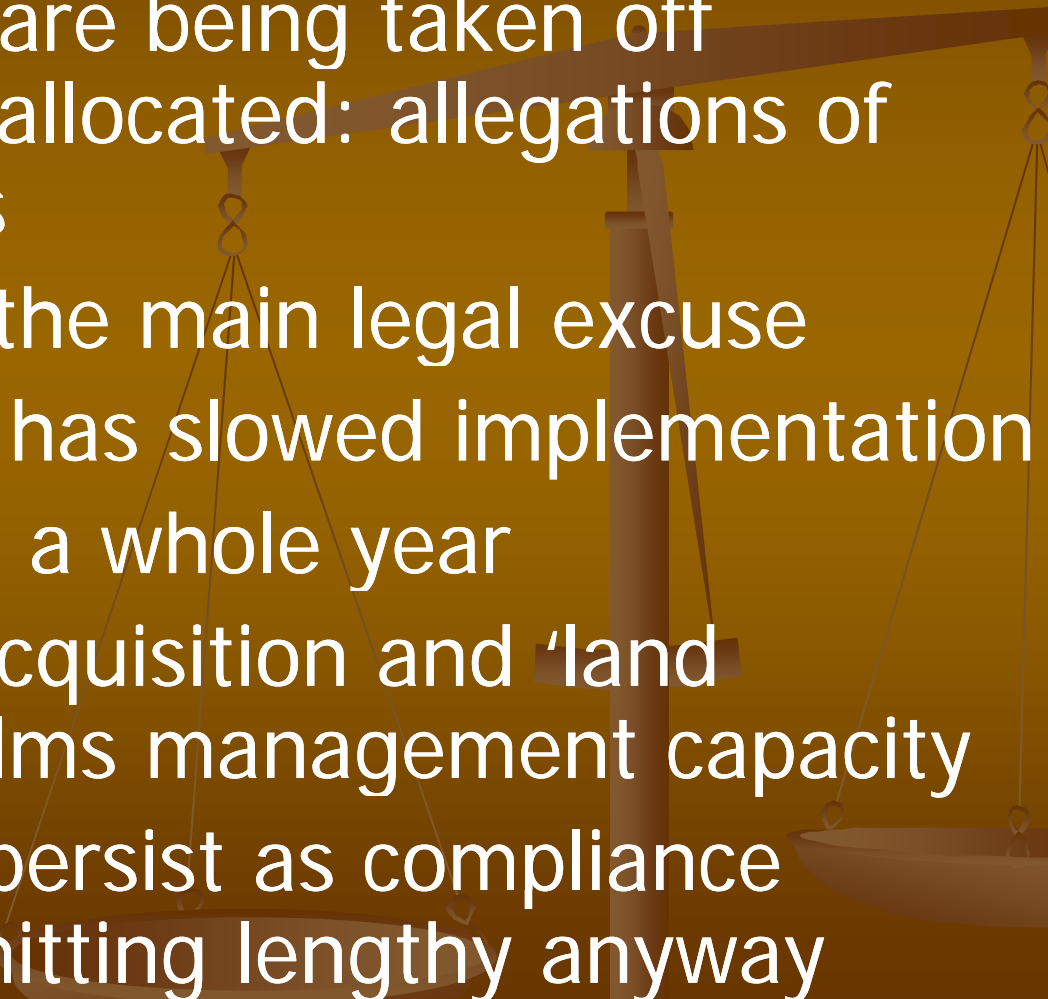
- Aim of RSPO P&C is to deflect palm oil expansion away from areas valuable to conservation and for livelihoods and identities
- This is mainly through P&C 7.3 (plus related provisions on land acquisition)
- Adjusted in National Interpretations
- In practice the HCV approach is being applied using the HCV Tool Kit for Indonesia

The issue and the investigation



- August: Rumour that lands that had been zoned for HCV were being reallocated to other companies to clear for palm oil plantations
- Laws and voluntary procedures not compatible ?
- HCVRN SG and RSPO EB members endorse investigation
- FPP, SW, HuMA and Wild Asia.
- Wilmar and GAPKI involved but allowed team to have autonomy. Special thanks to them for collaboration.
- Interviews (govt. communities, companies and consultancies) and field visit in late September
- Legal analysis and drafting: September, October
- Draft circulated to companies for comments: Late October
- Final report as a Discussion Document: not the last word on the issue

There is a real problem

- Substantial areas are being taken off companies and reallocated: allegations of clearance of HCVs
 - Slow preparation the main legal excuse
 - RSPO compliance has slowed implementation
 - HCV process adds a whole year
 - Over-hasty land acquisition and 'land banking' overwhelms management capacity
 - Problem likely to persist as compliance onerous and permitting lengthy anyway
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REVISED IZIN LOKASI AND HCV AREA LOST WILMAR KALBAR

Companies	Old Izin		Revised Izin		Differences	
	Total Ha	HCV	Total Ha	HCV	Total Ha	HCV
PP	20,000	4,235	5,135	228	14,865	4,007
PI	20,000	7,304	6,498	1,195	13,502	6,108
IPM	18,000	5,811	8,441	1,695	9,559	4,116
APS	20,000	5,463	12,000	3,581	8,000	1,882
DLP	15,000	7,276	7,140	4,883	7,860	2,393
PANP (WSP)	14,100	1,653	3,100	1,083	11,000	570
BCP	13,000	2,671	9,890	457	3,110	2,214
Total	120,100	34,414	52,204	13,123	67,896	21,291

(HCV = 28%)

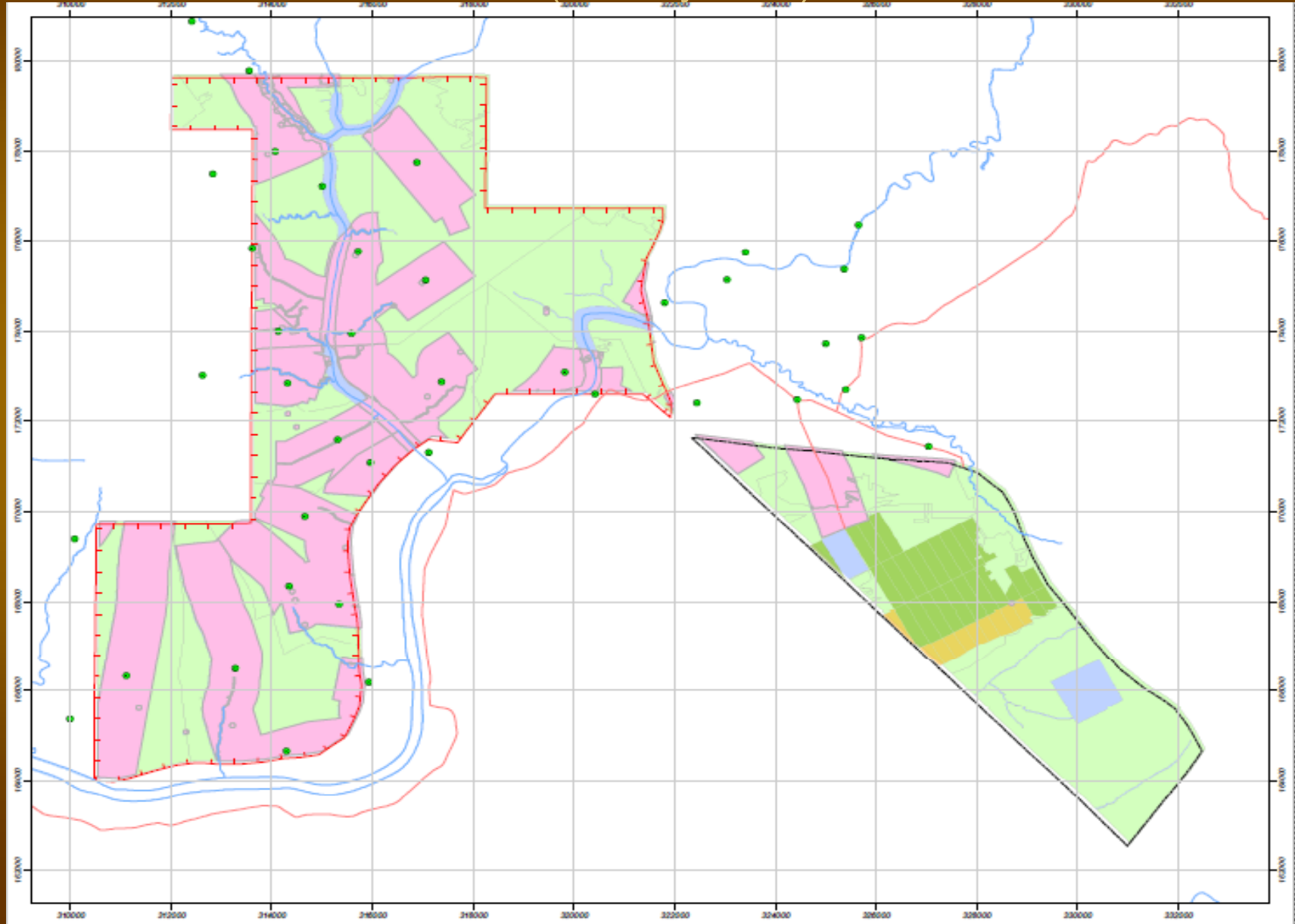
(HCV = 25%)

TOTAL HCV LOST = 21,291 ha

TOTAL PLANTABLE AREA LOST (HCV FREE) = 46,605 HA

Source : Wilmar

WILMAR- KALBAR REGION PANP SAMBAS (HCV by MEC) Source : Wilmar



The law and permitting process

- The law does not explicitly protect HCVs: there is some potential for protection but not being used to date.
- The law: leaseholds on State lands allocated in complex stages
- The interpretation of the law: 51% in 3 years has to be acquired – otherwise forfeit
- Reallocation of permits:
 - Extension is possible but being refused
 - Ijin lokasi to info. lahan for other companies
 - Bupati's (ab-)use of his discretionary power: seeks development revenue
 - Not clear that bupati understand RSPO and HCV purposes
 - Appeals possibilities not used because may spark further conflict
- Less clarity about security of HGU: unlikely that HGU will be forfeit even if extensive lands are set aside for HCV
- (Legal study in BI in Annex: see website not copied)

HCV assessments:

- Quite impressed by quality of Assessments
 - Participation in Assessments seems weak
 - Socialisation of HCV by companies needs strengthening
- HCV 1 'cloud' forest (remnant forest)
- HCV 4 watersheds and riparian protections
- HCV 5 *tembawang* and rubber gardens
- HCV 6 sacred sites and graves

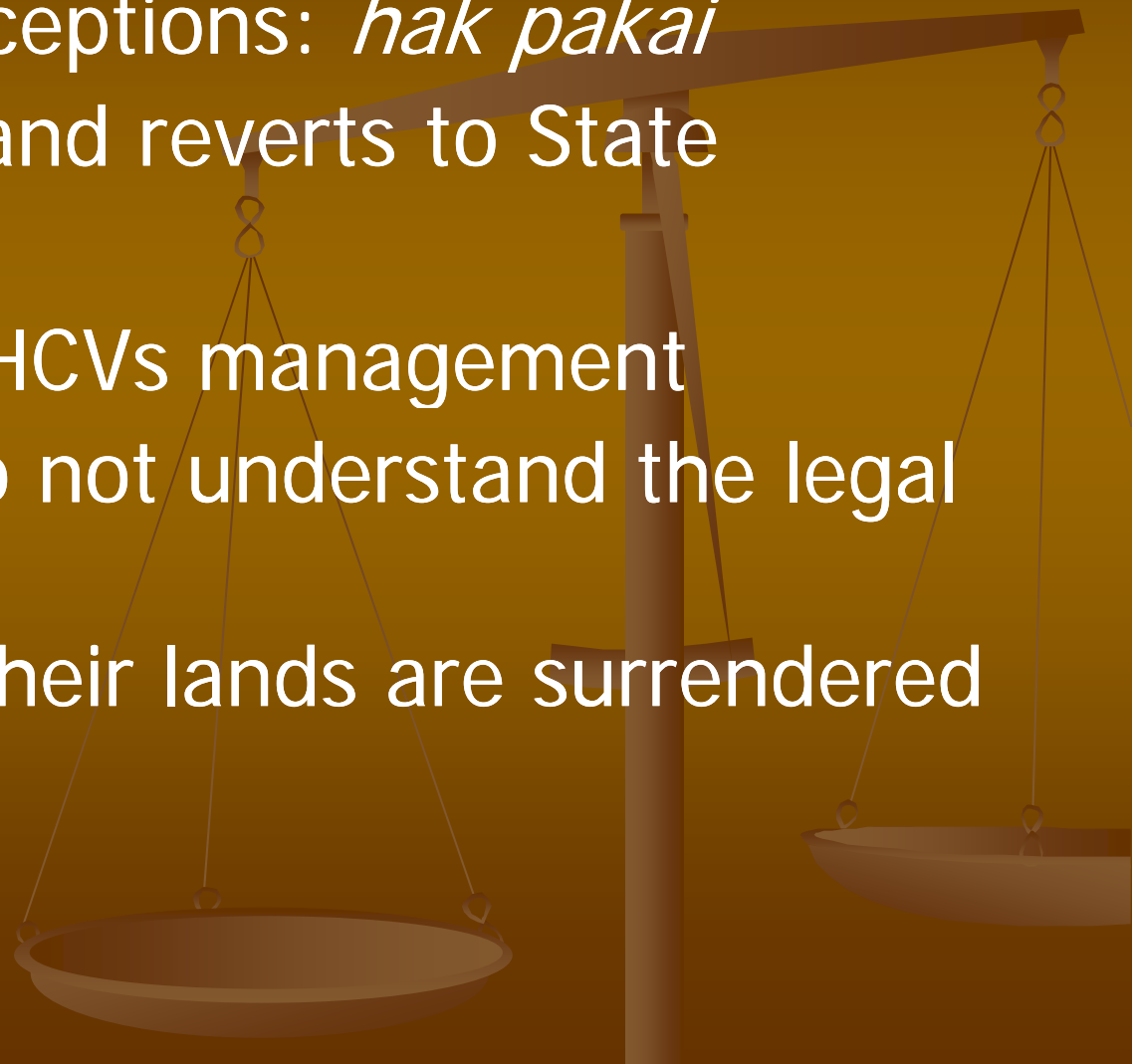
- HCV 5 limited interpretation of what is 'critical to livelihoods': this could squeeze communities into clearing HCVs
- Assessment indicative – company to complete
- Lack of completion of participatory mapping by company (time issue again).

Management options

- Human dominated landscapes, HCVs already reduced to mosaic
- 1. Enclaving within HGU (small HCV areas or large areas with conservation NGO partners)
- Enhancement of HCV 5 (eg Illipe nut project -Aidenvironment)
- 2. Relinquishment of large areas back to Government
 - Common pattern - one example Sinar Mas area in Kapuas Ulu
- No one in government to manage such areas
- 3. Leaving HCV 5 and 6 under community management: but their land rights are in fact not secure so could be allocated to another company.
- Further challenges:
 - Comprehension of HCV approach: awareness raising
 - Capacity to manage
 - Are communities being squeezed into HCV?
- HCV Tool Kit provides too little guidance to companies on how to deal with these legal and management challenges

Land acquisition challenge:

- Community perceptions: *hak pakai*
- Legal 'reality': land reverts to State
- This will affect HCVs management
- Communities do not understand the legal implications
- Not being told their lands are surrendered permanently
- Not FPIC



Companies are also voluntarily relinquishing large HCV areas

- Companies are handing large HCV areas back to the Government (Ijin Lokasi -> HGU)
- To avoid management costs of enclaved HCVs
- To reduce the taxation burden on their land holdings
- To reduce the amount of land that needs to be secured for 'plasma' (proportional allocations)
- So easier to comply with P&C (only have responsibility for what is within their permits)
- Trouble is these HCV areas are not secure and may be allocated by bupati to other companies

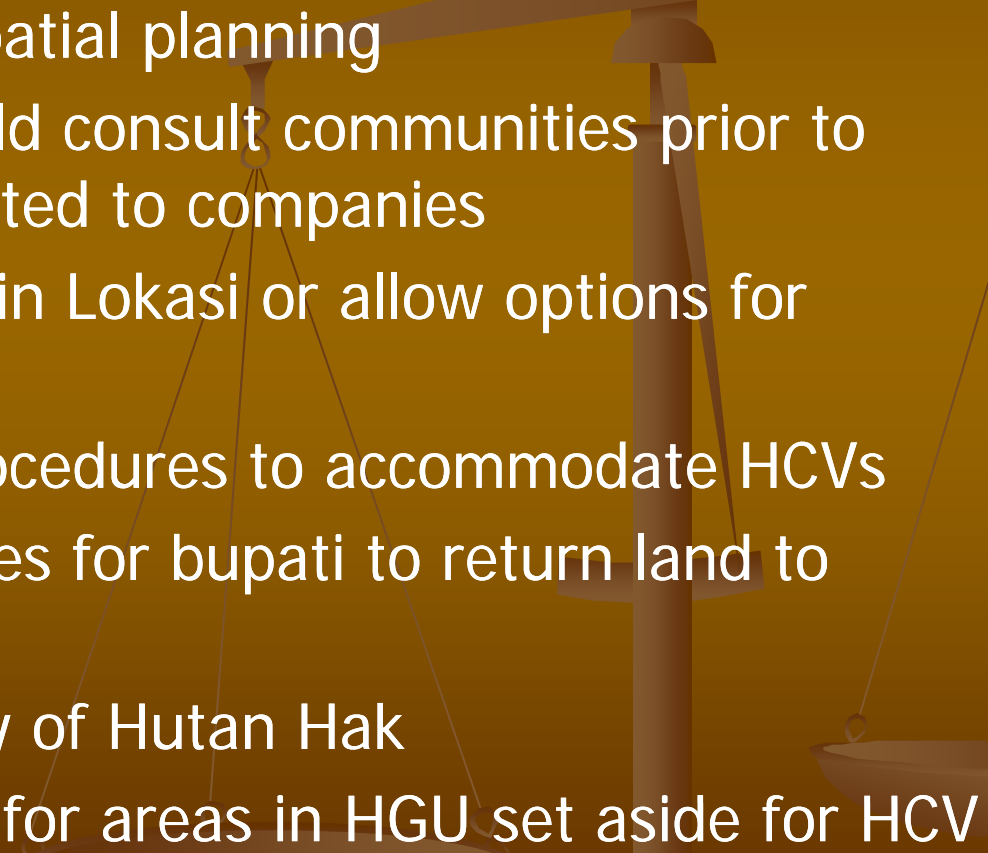
Recommendations

for discussion (these are not prescriptions)

- Build up government comprehension of RSPO and HCV approach
- Strengthen administrative capacity
- More awareness raising among communities
- Legal reform: Environment Law, regulations re ulayat under BAL, new law on Customary Rights, PERDA, allow land to revert to community on expiry of HGU

Recommendations (cont.)

■ Procedural reforms

- Identify HCV in spatial planning
 - Government should consult communities prior to areas being allocated to companies
 - Consider longer Ijin Lokasi or allow options for extension
 - Revise AMDAL procedures to accommodate HCVs
 - Develop procedures for bupati to return land to 'forests'
 - Use legal category of Hutan Hak
 - Impose lower tax for areas in HGU set aside for HCV
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Recommendations (cont.)



- Task RSPO sub-group to look into this issue further with good participation of social groups
 - Engage with govt. to push for reforms
- Review Guidance on P&C
- Improve Guidance in Indonesian P&C
- Supplement HCV Tool Kit for Indonesia:
 - Give clearer guidance about management options
 - Revise guidance about HCV 5 (especially re 'non-natural' areas and ensuring adequate land base for community livelihoods)