

Commodity Crimes:

Illicit land grabs, illegal palm oil, and endangered orangutans

A joint publication of Friends of the Earth Europe, Friends of the Earth US, WALHI (Friends of the Earth Indonesia), Milieudefensie (Friends of the Earth Netherlands), Les Amis de la Terre (Friends of the Earth France), Jordens vänner (Friends of the Earth Sweden)



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Bumitama plantation LSM. New development plantation drainage channel in peatland
Photo: Jason Taylor

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Executive Summary

The case of Bumitama Agri in West Kalimantan

Friends of the Earth Europe, Milieudefensie (Friends of the Earth Netherlands), Walhi (Friends of the Earth Indonesia), Les Amis de la Terre (Friends of the Earth France), Jordens vänner (Friends of the Earth Sweden) November, 2013¹

Two of the world's leading distributors of palm oil, a staple ingredient in many consumer food and personal care products and an important feedstock for biofuels in Europe, are obtaining the commodity from illegal sources – growers who are clearing vast areas of rainforests, including sensitive orangutan habitat and protected forest reserves, in violation of the law, the criteria of the Roundtable on Sustainable Palm Oil (RSPO) and their financiers' investment policies.

Our investigation used satellite imagery, trade data and on-the-ground reporting to uncover how, at the other end of a long chain of culpability, unwitting consumers are being sold products that are killing orangutans and destroying some of the world's last forested lands.

Friends of the Earth has alerted the companies involved about the problems detailed in this report. We have also alerted financiers to their role in land grabbing previously. Their comments are summarized in this report.

The chain extends thousands of miles, through many actors:

- The producer, **Bumitama Agri Ltd**, one of the largest owners of palm oil plantations in Indonesia.
- The palm oil industry's "sustainability" association, the **Roundtable on Sustainable Palm Oil**, which does little to prevent illegal activity and has proven ineffective at providing comprehensive protections for the environment and human rights.
- The traders, such as **Wilmar International** who distribute palm oil to a global market which is expected to more than double by 2030 – a serious and growing threat to human rights and tropical forests.
- The financiers and investors – including **HSBC, Rabobank, Deutsche Bank as well as the largest pension funds in the Netherlands and Sweden** – who provide the needed capital for Bumitama's key shareholders like IOI and clients like Wilmar. All three companies are violating not only voluntary standards like RSPO and the financiers' own Environment, Social and Governance (ESG) policies, but also national legislation.

Bumitama Agri Ltd, (BUMI.SI) is headquartered in Jakarta, Indonesia and operates through a number of subsidiaries. Bumitama controls over 200,000 hectares of plantation land bank in Central Kalimantan, West Kalimantan and Riau, Indonesia.

Since 1990, development of palm plantations by Bumitama and others has cleared about 16,000 square kilometers of forested land in Kalimantan. The company has been a member of the Roundtable on Sustainable Palm Oil since 2007, and sells to global palm oil traders including IOI Corp. of Malaysia and Wilmar International of Singapore.

This investigation specifically documents that:

- **Bumitama has knowingly destroyed forest that is the home for endangered orangutans.** In April 2013, in response to a complaint filed at the RSPO, Bumitama promised it would not clear land near forest reserves in West Kalimantan until studies were completed to appraise the land's ecological importance. These reserves host one of the largest, and last, populations of the Central Bornean orangutan in the region. However, satellite imagery shows that hundreds of hectares of peatland and forests in the area were cleared between May and September 2013. So while Bumitama was negotiating with the RSPO to address the complaint, the company continued to clear land, *despite its pledge to stop the cutting*.
- **Bumitama's actions are unpermitted.** The plantation in West Kalimantan that is managed by Bumitama was cleared in violation of national laws, without permits or proper approval of the Ministry of Forestry and the Environmental Monitoring Agency. This land bank consists of at least 7,000 hectares of "ghost estates"² – plantations that lack valid permits. Selling palm oil from unpermitted plantations is illegal.
- **Bumitama's investors knowingly or unknowingly purchased shares of an illegal operation.** Prospective investors were informed through Bumitama's prospectus in April 2012 that Bumitama's expansion plans included preferential rights to manage and harvest from a plantation that was operating illegally, without



the required licenses for its operation and management, and that the Hariyanto family – the majority owner of Bumitama Agri – would bear the liability risk while the permits were sorted out. Despite this admission of illegality, all the shares were sold.

- **After gaining control over thousands of hectares of unpermitted plantation landbank Bumitama continued the illegal production of palm oil without the necessary permits and engaged in further illegal land grabbing and clearing. Wilmar International and IOI Corp. bought shares of Bumitama despite their likely knowledge of the illegal landgrab.** Before Bumitama's public offering in April 2012, IOI Corp. became one of Bumitama's controlling shareholders, with a current stake of 31 percent of the company. At the same time, Wilmar bought between 0.9 percent and 4.3 percent of shares of Bumitama's stock. This makes IOI and Wilmar not just purchasers of the palm oil illegally produced by Bumitama, but significant investors in its illegal operations.
- **The RSPO provides greenwash for the industry's illegal, unethical and environmentally harmful practices.** The Bumitama Group, IOI Corp. and Wilmar International are all members of the Roundtable on Sustainable Palm Oil. They have been involved in several illegal landgrabs in Kalimantan over the past five years, but the RSPO has been unable to prevent this, nor has it taken any effective enforcement action.

The revelations about Bumitama Agri in this report illustrate how palm plantation companies and commodity traders use the lack of legal enforcement, complicated transfers of land and assets, and inter-company agreements to take illegal control over land, regardless of its legal status, traditional use or ecological importance. The report also highlights the role of financiers, including banks and equity investors, in Bumitama Agri, IOI and Wilmar, and on the kind and amount of money invested in these companies, their Environmental, Social and Governance (ESG) Policies and the responses investors gave to inquiries by Friends of the Earth on this case. The bottom line is that the current system of producing palm oil as a global commodity is unjust and unsustainable and all actors involved should take immediate action to address this.

Demands

We therefore call on all **banks and financiers** of Bumitama Agri Ltd, IOI, and Wilmar International to use their influence over these companies to bring an end to the problems with PT Ladang Sawit Mas and PT Gemilang Makmur Subur, the Bumitama-associated companies named in this report. If this does not happen immediately, they should cancel their loans or withhold from providing other financial services and commit to issue no more loans and purchase no more shares in Bumitama or any company associated with it and take steps toward public divestment from these companies.

We call on **Bumitama** to halt all activity on land without location permits and to return illegally hold concessions to the Ministry of Forestry whereby land which belonged to the community should be returned to them. And we call on Bumitama to stop any further expansion on peatlands of any depth.

We call on **IOI and Wilmar** to publicly commit to stop purchasing palm oil from Bumitama and sell their shares in Bumitama until Bumitama has implemented the demands mentioned above.

And we urge the **government of Indonesia** to immediately implement and enforce its existing moratorium on the conversion of peatlands and forests, to save the most threatened forests, peatland ecosystems, and endangered wildlife, and to take immediate steps to resolve social and land conflicts.

Land grabs and deforestation for palm oil are being driven by increasing EU and global demand for vegetable oil – for food and for biofuels. We therefore call on **governments and companies** to reduce their consumption of palm oil, and in particular on the **EU** to end the use of crop-based biofuels including palm oil, and account fully for the greenhouse gas emissions from indirect land use change caused by biofuels expansion.

Chapter 1.

Introduction

The rapid rise of palm oil to become the world's leading plant-based oil has been shadowed by its rise as the world's leading cause of rainforest destruction and the illegal and illegitimate acquisition of land (land grabbing). This dubious distinction has been enabled by rising world consumption of palm oil in food, cosmetics, chemicals and biofuels – indeed Europe has increased the palm oil used in car fuel by 365 percent over the past six years.³ And it has been enabled by the absence of comprehensive and enforceable social and environmental standards guiding palm oil production by governments, the weakness of voluntary initiatives such as the RSPO, and the apparent eagerness of national governments to hand over huge swaths of land to palm oil producers.

Bumitama Agri Ltd. is an Indonesian company listed on the Singapore Stock Exchange. With extensive oil palm operations in Indonesia, Bumitama is one of many com-

panies whose current practices take advantage of weak governance and lack of enforcement to contribute to widespread environmental and social devastation. Bumitama Agri operates through its company PT Bumitama Gunajaya Agro, and has a number of subsidiaries operating under different names. The company has been a member of the RSPO since 2007, and sells to global palm oil traders including Wilmar International, Sinar Mas and Musim Mas. IOI engages in joint ventures with Bumitama Agri, but claims not to have sourced palm oil directly from Bumitama Agri since 2009.⁴

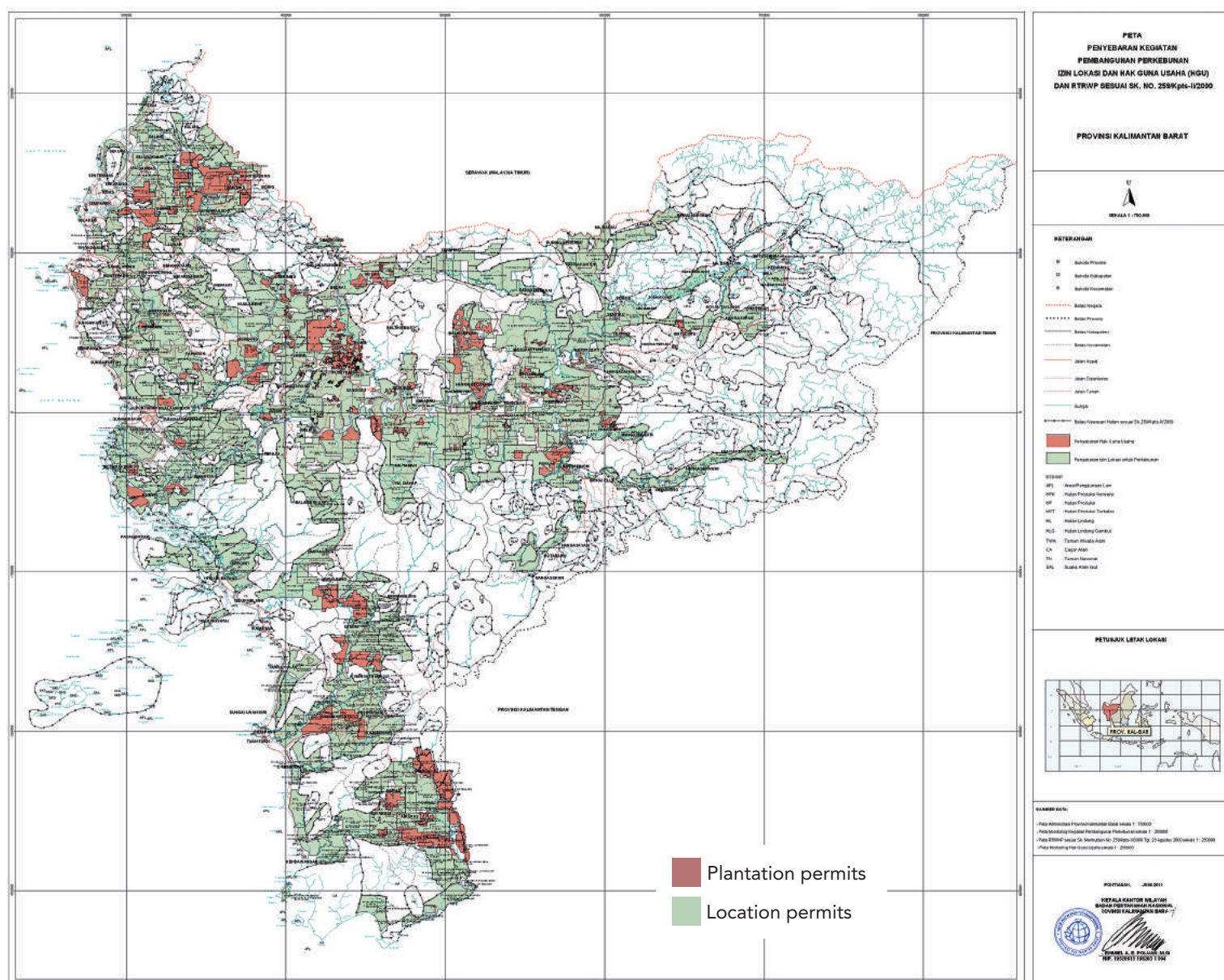
The report that follows reveals that Bumitama Agri is clearly and explicitly engaged in illegal practices. Responsibility for these practices falls not only to the company's executives, but to Bumitama's financiers and downstream purchasers as well, who have a hand in putting illegal palm oil on the world market.



FRIENDS OF THE EARTH, ANOUK VAN BAALEN

Palm oil nursery in illegal GY plantation with over 20 million seedlings ready for new land clearings.

Figure 1: West Kalimantan



Map of province West Kalimantan. Within the 14.7 million hectares of land in the province of West Kalimantan, 380 permits have been issued by the government for the development of oil palm plantations covering an area of 4,263,525 hectares, almost evenly distributed in 13 districts in West Kalimantan.⁵

Beyond merely exposing the crimes of one company, the Bumitama case reveals how plantation companies and commodity traders use absence of legal enforcement, complicated transfers of land and assets, and inter-company agreements to illegally take control over land, regardless of that land's legal status, customary and practical use, or ecological importance. Further, the case serves to illustrate the nature of the global palm oil market, where international consumer brands purchase from powerful multinational palm oil traders like Wilmar, who in turn purchase from smaller national producers such as Bumitama Agri. This complex chain of custody, made all

the more complicated by unclear land tenure laws, masks the crimes and abuses in the sector, enables the corrupt practices of corporate and government officials, and insulates government agencies, investors, and financial regulators, as well as consumers, from accountability. In an environment that virtually depends on lack of transparency, this report argues, the voluntary Environmental, Social and Governance (ESG) standards that banks and investors have adopted to prevent their exposure to land grabbing and deforestation activities are clearly not effective.

Chapter 2.

Bumitama Agri

Bumitama Agri is an Indonesian palm oil plantation company group set up by the Harita Group, a mining business conglomerate created by billionaire Lim Hariyanto Wijaya Sarwono. In 2012, Forbes ranked Lim Hariyanto as number thirty of Indonesia's forty richest people.⁶ Bumitama Agri owns and/or controls approximately 200,000 hectares of plantation land bank in Central Kalimantan, West Kalimantan and Riau, Sumatra. Over 60 percent of this land bank had been planted by the end of 2011, with 72,786 hectares of uncultivated land which, according to the company, is available for future planting.⁷ Bumitama Agri released its IPO (initial public offering) on the Singapore Stock Exchange in April 2012. A notable feature of the IPO was Bumitama's strong emphasis on future growth: "We are ... continuously seeking opportunities to increase the size of our land bank and planted area through selective external acquisitions and additional concessions from the Indonesian government. We have not encountered any significant problems with our past acquisitions."⁸ *Notably, 103 million Euro from Bumitama's IPO was allocated for expansion and development of its existing uncultivated land bank.*⁹

In the financial year 2012, Bumitama Agri generated revenues of IDR 3,526 billion (€ 277 million), resulting in a net profit of IDR 902 billion (€ 71 million). At the end of December 2012, the company owned total assets of IDR 9.089 billion (€ 714 million).¹⁰

Major financiers of Bumitama Agri are the DBS Bank (Singapore) and HSBC (United Kingdom), which are involved in financing activities by providing several major bank loans and assisting in a share issuance.

Shareholders are the most important financial stakeholders of Bumitama Agri, financing 54 percent of its total assets. The financial institutions holding the largest part of the shares of Bumitama Agri are the Value Partners Group (China), Hwang Investment Management (Malaysia) – owned by Hwang-DBS (53 percent) and Nikko Asset Management Asia (30 percent) and Amundi (France) – controlled by Credit Agricole (75 percent) and Société Générale (25 percent).

Bank loans finance 28 percent of the total assets and therefore also play an important role. HSBC and Dutch

Table 1:

Most important European and North American financiers of Bumitama Agri since 2010 ^{10A}

BUMITAMA AGRI			
Investor	Country	Share Value (€ mln)	Loans (€ mln)
Amundi (75% Credit Agricole, 25% Société Générale)	France	3.18	
MassMutual Financial Group	United States	1.51	
Schroders	United Kingdom	0.78	
Deutsche Bank	Germany	0.5	
BlackRock	United States	0.4	
State Street Corporation	United States	0.3	
Wellington Management Company	United States	0.3	
Fidelity Investments	United States	0.06	
SVM Asset Management	United Kingdom	0.1	
HSBC	United Kingdom		78.6
Rabobank	Netherlands		47.26

New land clearing, digging of drainage canal in peatland in LSM concession.

JASON TAYLOR



Rabobank provided significant loans to Bumitama.

In April 2012 Bumitama Agri made an IPO of 297,570,000 shares on the Singapore Stock Exchange, issuing shares with a total value of US \$ 195.2 million (€ 133.43 million). The proceeds were used for general corporate purposes, working capital, capital expenditures, investments and to reduce indebtedness. HSBC participated in the issuing syndicate, underwriting an estimated amount of € 66.72 million.

Bumitama Agri is a member of the RSPO. During the writing of this report there are four complaint filed against Bumitama about violations of the RSPO criteria.¹¹

2.1 Irregular permits, clearing protected forest, and endangering orangutans: The case of PT Ladang Sawit Mas (LSM)

PT Ladang Sawit Mas (LSM) is an oil palm plantation company in Nanga Tayap sub-district, Ketapang district in West Kalimantan, Indonesia.¹² In October 2011, six

months before Bumitama's IPO, the company was sold by its former owner, V.S. Industry, to Bumitama Agri Group for US \$2.2 million.¹³

In May 2012, now under the ownership of Bumitama Agri, LSM commissioned subcontractors to begin clearing land within a concession area it had acquired near the Sentap Kancang and Gunung Tarak Forest Reserves and the Gunung Palang National Park in West Kalimantan. But even before any land was cleared, LSM had started off on the wrong legal footing, due to irregularities in the permitting process.

Irregular permits

Under Indonesian law, plantation companies must acquire a Location Permit specifying the location and other features of any land to be developed, followed by an Environmental Permit and a Plantation Business Permit (IUP)



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Orangutan in dangerous decline

There has been an estimated decline of orangutan well over 50 percent during the last 60 years. The decline of the species is predicted to continue at this rate, primarily because of forest loss due to forest fires and conversion of forest to agriculture. The majority of remnant wild populations are located outside of protected areas, in forests that are exploited for timber production or in the process of being converted to agriculture.

Source: IUCN Red List²¹

Baby Orangutan in rehabilitation centre IAR (International Animal Rescue).



FRIENDS OF THE EARTH, ANOUK VAN BAALEN

Orangutan in captivity for the rest of her life. Rescued by International Animal Rescue.

which allow it to do business on that location. For an Environmental Permit to be issued requires that the company presents an Environmental Impact Assessment (EIA) and a Social Impact Assessment to the environmental committee of the province. Both of these processes must involve key stakeholders, including local communities and civil society organizations.

LSM was awarded its Plantation Business Permit in May 2006, *before having obtained a Location Permit (in June 2006) and long before it had obtained an Environmental Permit (on 27th January 2010)*¹⁴. Further, the total land bank specified in the Location Permit (8,300 hectares)¹⁵ is smaller than the land bank specified in the Plantation Business Permit (9,300 hectares)¹⁶. This discrepancy implies that the company could develop plantations beyond the boundaries of its legally acquired land. All of this clearly shows that the permitting system in Indonesia is functioning poorly.

Encroachment on orangutan habitat

According to LSM's 2008 Environmental Impact Assessment (EIA) report, 8,075 hectares, or nearly the entire concession area, is covered with natural forest. The EIA failed to note the proximity of the LSM concession to the

Sentap Kancang Forest Reserve and the Gunung Tarak Forest Reserve and the Gunung Palang National Park. This was a serious oversight, especially given the significant population of orangutans both within the forest reserves and in the buffer zones surrounding them, which fall within LSM's concession area.

According to Fauna and Flora International, Gunung Tarak and its surrounding areas are home to 14 mammal species, 158 bird species, 24 amphibian and reptile species, 48 tree species¹⁷, and at least 1,975 individual Southern Bornean orangutans (*Pongo pygmaeus wurmbii*).¹⁸ Given that the LSM concession overlaps the buffer zone of these forest reserves, the presence of these endangered and protected primates in the forests in the LSM concession should not have escaped the EIA assessors. In order to move between seasonal feeding areas, nesting sites, and other key habitat, orangutans need forest corridors to move between protected forest areas, making forest conservation outside protected areas essential.

In March 2013, International Animal Rescue and BKSDA (Agency for Natural Resources conservation) Ketapang rescued four orangutans from land clearing sites in the Ladang Sawit Mas concession. Those orangutans were translocated, after the recommendation by LSM, to an adjacent area to LSM belonging to Bumitama (GMS area).

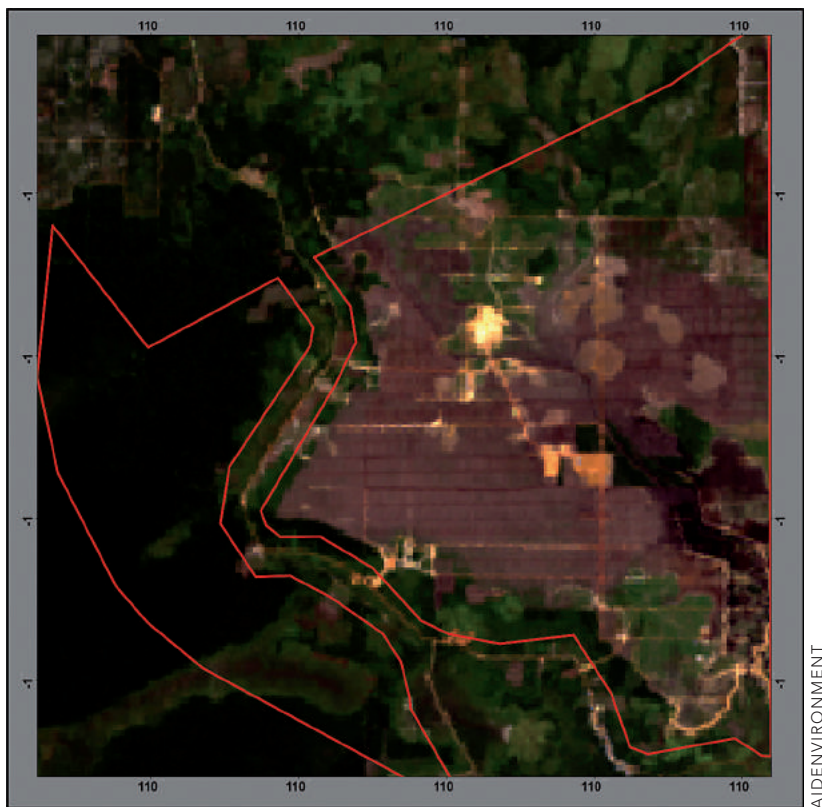


Figure 2

New land clearings after 18 April 2013 in Ladang Sawit Mas

— concession border
 ■ new land clearings

Landsat 8, 30 May 2013.

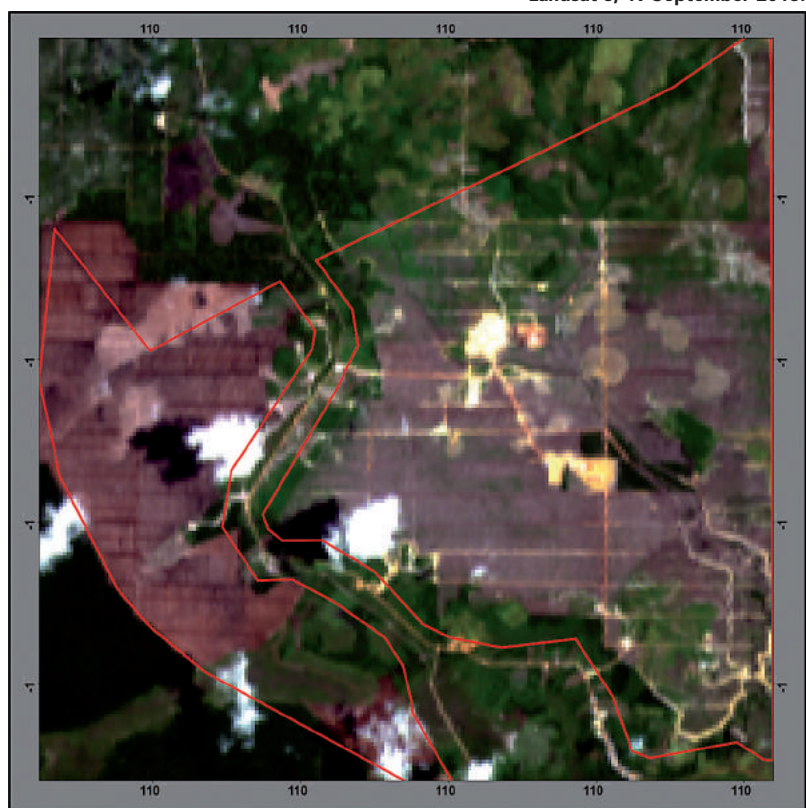
On 8th April, International Animal Rescue (IAR) and Friends of Borneo filed a formal complaint to the Roundtable on Sustainable Palm Oil (RSPO) against PT LSM (subsidiary of Bumitama Agri Group) about the violation of RSPO principles 5 and 7.¹⁹ In September IAR and BKSDA translocated two more orangutans from LSM to Gunung Tarak protection forest.²⁰

On April 18, 2013, in response to the RSPO complaint, Bumitama stated that it would not recommence operations in LSM before High Conservation Value/ Social Impact Assessment studies were completed. However, the company failed to keep its promise: satellite imagery over the period May to September 2013 shows that more than 460 hectares of land – mostly peat swamp and forest – was cleared during this period (see figure 2).

Clearing in the buffer zone of protected areas

On September 24 2013 – five months after the initial complaint filed by International Animal Rescue – RSPO reached an agreement with the company regarding planned improvements.²² RSPO and Bumitama issued

Landsat 8, 19 September 2013.



a common joint statement, where Bumitama committed to collaborate with IAR on monitoring the existence and conditions of orangutans in the concession area and compliance with RSPO's New Planting Procedures. But, notably, the violations cited above occurred while the stated agreement was being negotiated, and appear to have escaped the notice of the RSPO, revealing Bumitama's utter disregard for the authority of the RSPO.

RSPO is insufficient to prevent abuses

The Roundtable on Sustainable Palm Oil, established in 2004, is widely referred to as the body to settle grievances, arbitrate disputes, and bring palm oil companies into line with broad sustainability criteria. But experience over the nearly ten years of the RSPO's existence has made it clear that membership in the RSPO, a commitment to source RSPO-certified palm oil, or use of so-called "Green Palm" certificates, has little or no relevance to the presence of deforestation and land grabbing in the palm oil supply chain.²³

RSPO certifies palm oil produced by companies engaged in destruction of natural forests, ultra-high carbon stock peatlands, and forests with endangered species, and tolerates use of hazardous chemicals such as paraquat.²⁴ Very few of the complaints filed with RSPO since 2008 have been resolved to the satisfaction of complainants and defendants; complaints generally take months or years to resolve, by which time the damage has been done; and the growing backlog of cases tends to stall progress on meaningful improvements in the palm oil sector.²⁵

In early 2013, WWF, the primary founder and key stakeholder in the RSPO, released a statement that



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Oil palm fresh fruit bunch.

RSPO certification can no longer be considered an adequate measure to ensure sustainability.²⁶

Scientific research also confirms that companies will only come up with solutions that do not harm them financially. Therefore voluntary solutions like RSPO are very limited in regulating a sector and solving sustainability issues.²⁷

2.2 Ghost estates and illegal land grabs: The case of GY Plantation

PT Gemilang Makmur Subur is the new name of a company previously known as PT Golden Youth Plantation Indonesia, or GY Plantation. The company was previously a 53 percent subsidiary of V.S. Industry from Malaysia, a publicly listed plastic television remote control producer.²⁸ In 2011, GY Plantation was sold to PT Karya Manunggal Sawitindo (KMS) and Westbrook International which are owned by the Hariyanto family, the controlling shareholders of the Bumitama Agri Group.²⁹ It was agreed on November 1st, 2011—six months before Bumitama's IPO—that Bumitama's subsidiary BGA would manage the plantations and maintain the exclusive right to buy and sell palm oil produced from its concessions.³⁰

The GY Plantation concession is located in Ketapang, West Kalimantan, close to the aforementioned LSM concession, and overlaps the Sentap Kancang Forest Reserve. *However, neither GY Plantation nor its new owners have permits from any Indonesian government authority to occupy and plant on the majority of this land.*³¹

Irregular permits and illegal clearing

Former Ketapang district head, H. Morkes Effendi, established the GY Plantation project on 21st April 2004,³² several months before he had issued a Plantation Business Permit (IUP) to the company, and also prior to obtaining a Location Permit and Environmental Permit, making the permitting illegal.

In June 2004, GY Plantation obtained a Location Permit for an area measuring 18,300 hectares.³³ GY Plantation, however, never obtained an Environmental Permit, and never gained the legal rights to develop the land, *because the bulk of its concession (approximately 63 percent) overlapped with the Sentap Kancang Forest Reserve, which is managed by the Ministry of Forestry. The Ministry of Forestry has never relinquished this land.*³⁴

GY Plantation was well aware that its license "was issued pending the issuance of the land utilization right and rezoning of land area by the relevant government authorities".³⁵ However, this did not deter the company from starting land clearing and planting oil palm inside the forest reserve without approval and oversight of Indonesia's Ministry of Forestry and Environmental Monitoring Agency.



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Palm oil nursery in illegal GY plantation with over 20 million seedlings ready for new land clearings.

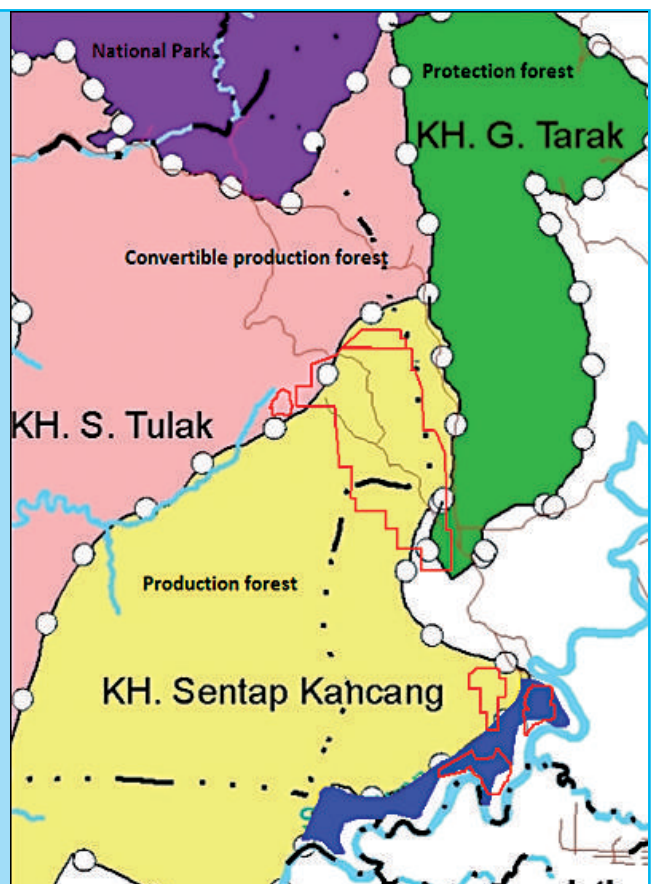
Figure 3

Kawan Hutan GY Plantation overlap forest

Land cleared and planted in forest reserves by GY Plantation and Bumitama.

— Cleared land (see satellite in figure 4)

■ new GY Plantation permit



AIDENVIRONMENT

Peatlands: a carbon time-bomb

The peat swamp forest in Kalimantan is a unique ecology that is home to many rare species such as orangutans and diverse tropical trees standing on a 10-12 meter layer of peat (partly decayed and water-logged plant material). These specialized ecosystems store massive amounts of carbon. When deforested and drained for palm plantations, peat soils decay and release huge stores of carbon into the atmosphere. According to the United Nations Environment Programme, palm oil production on peatlands can result in more than 2,000 percent more greenhouse gas emissions than burning diesel oil.³⁷

Between 2004 and 2011, GY Plantation cleared an estimate of 5,694 hectares of forestland (see figure 3). One quarter of this forest was cleared illegally outside the company's Location Permit boundaries, and within the boundaries of the forest reserve. By the middle of 2011, when Bumitama purchased the company, GY Plantation had planted 4,191 hectares of oil palm.³⁶

GY Plantation's "ghost estates" and faulty permitting

The illegal development of GY Plantation's land bank contributed to deforestation, loss of orangutan habitat, illegal logging, and peatland degradation. The company appeared well on its way to start clearing a vast area of forest on very deep peat in the Sungai Putri peat dome – an action that patently violates Indonesian law, which bans development on peatlands deeper than three meters – until it ran into trouble with the head of Ketapang district.

In 2007, Indonesia adopted a new Spatial Planning Act with provisions that hold government officials personally liable for land use decisions that violate national law and provincial spatial plans. Shortly thereafter, numerous permits, including those of GY Plantation, were revised. According to updated permits and concession maps, GY Plantation's concession area was scaled down in June 2009 from the original 18,300 hectares to a mere 2,330 hectares.³⁸

The revised concession area (renamed PT Gemilang Makmur Subur) overlaps with only 1,284 hectares of the original area. Only a minute portion of the new concession was previously planted by GY Plantation, so that the bulk of the plantation land developed by GY Plantation now exists *without any valid permit from any government authority* in the Sentap Kancang and Gunung Tarak forest

reserves. In order to comply with the changes in the law, these "*kebun hantu*" (ghost estates) should have been transferred back to the Ministry of Forestry. Land that belonged to the community should have been returned to them. Instead, the estates were "sold" by V.S. Industry and its directors to the controlling shareholders of the Bumitama Agri Group.³⁹

Bumitama takes over GY Plantation

In July 2011, V.S. Industry announced its intention to dispose of GY Plantation. According to an analyst of RHB, V.S. Industry's decision to sell GY Plantation "was mainly prompted by regulatory issues with the local authority."⁴⁰ V.S. Industry reported to have sold GY Plantation at a loss for US\$ 4.1 million in October 2011.⁴¹ The new owners, PT Karya Manunggal Sawitindo (KMS) and Westbrook International are in turn owned by the Hariyanto family, the controlling shareholders of the Bumitama Agri Group.⁴²

On November 1st, 2011, Bumitama Gunajaya Agri (BGA), a subsidiary of Bumitama Agri, entered into an agreement with KMS and Westbrook with the following terms:

- (i) BGA will take on the management and operation of 4,310 hectares of cultivated oil palm plantations located in Ketapang and any other designated oil palm plantations that may be owned by GY Plantation or KMS and/or Westbrook;
- (ii) BGA will have the exclusive right to purchase any [palm oil] Fresh Fruit Bunches (FFB) produced from the plantation of GY Plantation; and
- (iii) KMS and Westbrook will favor the Bumitama Group to acquire up to 95.0 percent of GY Plantation.⁴³

The acreage of cultivated plantations (4,310 hectares) mentioned in the terms of reference makes clear that the agreement refers to the areas planted previously by GY Plantation, and not the much smaller concession held by PT GMS Plantation after the revision of its permits (see figure 4). It implies that Bumitama continues the illegal operations that VS Industry started. The agreement furthermore shows that Bumitama intends to benefit from the FFB produced from the GY Plantation until it eventually buys the plantations from PT KMS and Westbrook.






Given that Bumitama sells its product to Wilmar International, and other global traders, it is clear that palm oil harvested from these illegal plantations has made it to the world market.

Bumitama is well aware that it needs to avoid legal and reputational liability for GY Plantation illegal plantations, and that the problems had to be disclosed in its prospectus for its public offering in April 2012.⁴⁴

Figure 4

Illegal oil palm plantations in GY Plantation.

The land cleared by GY Plantation lies almost entirely outside the new GMS concession. Also BGA continued clearing outside the concession.

-  Land clearings GY Plantation
-  Land clearings Bumitama
-  Old GY concession
-  New GMS concession
-  LSM concession

Overlay with Landsat 8 (August 2013)



AIDENVIRONMENT

The liability for the legal problems is placed with the billionaires of the Hariyanto family until such time as the legal issues are sorted out, which is extremely unlikely if all applicable Indonesian laws are to be complied with. **Meanwhile, Bumitama Agri will serve as the exclusive buyer of palm fruit from GY's illegal plantations, and will sell palm oil products to Bumitama's major customers.**

Due to the fact that most of GY's 4,310 hectares of cultivated oil palm plantations in Ketapang lacks permits,⁴⁵ every time the company accesses the land to harvest palm fruit, they are in violation of Indonesia's Forestry Act, the Environmental Act, and the Plantation Act.

Continued illegal land grabbing

Satellite imagery (figure 4) shows that after GY Plantation was sold by V.S. Industry, new lands were cleared both within and outside the boundaries of the old GY Plantation concession. Many of these clearings occurred within forested areas, as well as in the new concession that now operates under the name PT Gemilang Makmur Subur. One of the new developments outside the old concession boundary is an oil palm nursery (see photo).



An illegal nursery outside the old GY Plantation boundary (June 2013).
Date: 28/06/2013 16:50:39
Coordinates: S1°27'51.95"; E110°14'23.80"

Table 2**The illegal land grab by V.S. Industry and Bumitama Agri in hectares ⁴⁶**

Company	Total developed land	Inside location permit	Outside location permit	<p>A: Inside Location Permit but without Environmental Permit and Forestland Release Permit (so all is illegal).</p> <p>B: Inside and outside the Location Permit map of PT GMS and the former PT GYP concession. Not including new developments in PT LSM.</p> <p>C: Clearings outside PT GMS Location Permit (LP) and inside + outside ex PT GYP.</p> <p>D: 229 ha of this is illegal, since it overlaps with forest land without a forest release permit.</p>
By VSI/PT GYP (2004-2011	6,908	4,489 ^A	2,419	
2011: location permit PT GYP revoked. PT GMS location permit issued over 2,330 ha. Of this, 1,284 ha overlaps with the old PT GYP location permit.				
By BGA/PT GMS (2011-August 2013)	1,003 ^B	468	535 ^C	
Total area under BGA management, excluding PT LSM (August 2013)	7,911	606 ^D	7,305	

Table 3**Bumitama Agri's Relationships with Wilmar International and IOI Corporation**

Bumitama's main customers for fiscal years 2009, 2010 and 2011				
Company	Type of product	Percentage of revenue (%)		
		FY2009	FY2010	FY2011
Wilmar Group	CPO and PKO	47.2	64.7	56.8
Sinar Mas Group	CPO and PKO		13.3	25.3
Musim Mas Group	CPO and PKO	44.4	14.4	4.1
<ul style="list-style-type: none"> • Wilmar is Bumitama's biggest customer. In 2011, Wilmar bought 56.8 percent of Bumitama's total Crude Palm Oil (CPO) and Palm Kernel Oil (PKO) • Wilmar is among Bumitama's most substantial investors. Wilmar bought between 0,9 percent and 4,3 percent of all the shares. • IOI has a strategic partnership with Bumitama Agri that includes co-owned joint venture plantation companies. • IOI Corporation owns a 31.2 percent stake in Bumitama, and IOI's Chief Executive Officer, Lee Yeow Chor, holds a position on Bumitama's Board of Directors.⁴⁷ 				

Chapter 3:

Bumitama Agri, Wilmar International and IOI

3.1 Bumitama and Wilmar International

Wilmar International is an important partner of Bumitama Agri. In 2011, Wilmar bought 56,8 percent of Bumitama's total Crude Palm Oil (CPO) and Palm Kernel Oil (PKO) production (most of the remainder of supply being bought by the Sinar Mas and Musim Mas groups).⁴⁸ Wilmar bought between 0,9 percent and 4,3 percent of all the shares offered at Bumitama's Initial Public Offering.⁴⁹ Wilmar officials acknowledge that the company buys palm oil from Bumitama and say they are working to eliminate deforestation and exploitation from the company's supply chain.⁵⁰ Wilmar's response to the Bumitama case will be a critical test of this claim.

Shareholders and banks are the most important financial stakeholders of Wilmar International. As of the end of 2012, shareholders financed 34.2 percent of its assets, while banks accounted for 52.4 percent, largely in the form of short-term loans. European and U.S. financial institutions own or manage 4 percent of Wilmar International's outstanding shares, with a value of 351 million euro. Pension funds hold 52,49 million euro of Wilmar International shares. These North American and EU investors hold the largest shares in Wilmar International.

3.2 The Bumitama Agri – IOI partnership

IOI Corporation is a Malaysian conglomerate active in the palm oil industry and property development. The group is headed by its founder, Lee Shin Cheng. Forbes ranked Lee as #6 of Malaysia's 50 Richest in 2012.⁵² IOI has a total land bank of 229,000 hectares, with 169,000 hectares located in Malaysia and 60,000 hectares in Indonesia.⁵³ The company first ventured into Indonesia in 2007, in partnership with Bumitama Gunajaya Agri (BGA), a subsidiary of Bumitama Agri.

Bumitama Agri and IOI Corporation started collaborating in 2007 through the foundation of joint venture plantation companies in Kalimantan. Some of these are majority (67 percent) owned by Bumitama Group while others are majority-owned by IOI. The Sawit Nabati Agro (SNA) and Berkas Agro Sawitindo (BAS) groups of companies, majority-owned by IOI, have a 40,000-hectare land bank, of which about 9,000 ha were planted by the end of 2011. Bumitama and the Hariyanto family jointly hold 33 percent of the shares in this group.⁵⁴

After the public listing of Bumitama in April 2012, IOI

Corporation became one of Bumitama's controlling shareholders, with a 31.2 percent stake at present.⁵⁵ IOI's Chief Executive Officer, Lee Yeow Chor presently holds a position on the Board of Directors of Bumitama Agri. The two palm oil companies have agreed to mutually support each other. Bumitama taps into IOI's technical expertise, and IOI buys Crude Palm Oil from Bumitama at a discounted price and extends interest-free loans to Bumitama. Bumitama set aside up to US \$27.9 million from the net proceeds of its IPO to finance the capital expenditure of subsidiaries under IOI's SNA and BAS groups.⁵⁶

Repeat Offenders

IOI's involvement with the illegal practices of Bumitama Agri is not unique in its history. In 2010, Friends of the Earth Europe and Milieudefensie published an investigation into IOI's operations in Ketapang district, West Kalimantan⁵⁷. The report found evidence that challenges IOI Corporation's compliance with its own corporate responsibility policy, the requirements of the RSPO, and Indonesian law. The following observations were made at the time:

1. Plantation development without approved Environmental Impact Assessments.
2. Fraudulent statements regarding activities in relation to Environmental Impact Assessments of plantation subsidiaries.
3. Plantation development in forestlands without full approval of the Ministry of Forestry.
4. Land clearing inside production forest and outside the concession boundary of one plantation subsidiary (PT BNS).
5. Encroachment in protected forestlands and peat lands.



To green to be true, report by Milieudefensie and Friends of the Earth Europe, 2010.

Table 4:**Most important European and North American financiers of Wilmar International since 2010⁵¹**

WILMAR INTERNATIONAL				
Investor	Country	Share Value (€ mln)	Bonds (€ mln)	Loans (€ mln)
Van Eck Associates Corporation	United States	135.78		
Blackrock	United States	72.67		
Vanguard Group	United States	41.62		
J.P. Morgan Chase	United States	31.5		
MassMutual Financial Group	United States	16.38		
CalPERS	United States	14.79		
Dimensional Fund Advisors	United States	13.58		
Fidelity Investments	United States	13.27		
Northern Trust	United States	11.46		
State Street Corporation	United States	10.62		
Capital Group of Companies	United States	9.91		
TIAA-CREF	United States	8.48		
Crédit Agricole	France	8.24		111
ING Group	Netherlands	7.4		81
Pensioenfondszorg en Welzijn	Netherlands	7.21		
ABP	Netherlands	7		
Invesco	United Kingdom	3.57		
Deutsche Bank	Germany	3.38		36
HSBC	United Kingdom	3.22	64	857
BNP Paribas	France	1.98		317
Aegon	Netherlands	1.79		
Fourth Swedish National Pension Fund	Sweden	1.73		
Axa	France	1.55		
Lloyds Banking Group	United Kingdom	1.51		
Ecommerce Alliance	Germany	1.41		
Third Swedish National Pension Fund	Sweden	1.16		
Bank of New York Mellon Corporation	United States	0.86		
Société Générale	France	0.81		
Barclays	United Kingdom			102
KBC	Belgium			66
Citigroup	United States			177
ABN Amro	Netherlands			37
Rabobank	Netherlands			222
Bank of America	United States			81

Table 5:**Most important European and North American financiers of IOI Corporation since 2010⁵⁹**

IOI Corporation				
Investor	Country	Shares (€ mln)	Bonds (€ mln)	Loans (€ mln)
Safra National Bank of New York	United States	404		
Van Eck Associates	United States	141.9		
BlackRock	United States	98.7		
The Vanguard Group	United States	82		
Prudential	United Kingdom	35.9	3.03	
Emerging Global Advisors	United States	15.9		
California Public Employees' Retirement System (CalPERS)	United States	14.3		
Pensioenfonds Zorg & Welzijn	Netherlands	13.7		
Northern Trust	United States	13.3		
Dimensional Fund Advisors	United States	12.6		
ABP	Netherlands	12		
ING Group	Netherlands	11.2	8.83	
Fidelity Investments	United States	10.1		
Principal Financial Group	United States	9.5		
Schroders	United Kingdom	8.5		
First Swedish National Pension Fund (Första AP-fonden)	Sweden	3.2		
bpfBouw	Netherlands	1.4		
Seventh Swedish National Pension Fund (AP7)	Sweden	1.4		
Second Swedish National Pension Fund (AP2 Andra AP Fonden)	Sweden	0.4		
Alliance Bernstein Luxembourg, part of Axa	France		3.41	
HSBC	United Kingdom			74

Shareholders finance over 50 percent of IOI's assets, and much of the rest is divided between bond holders and outstanding bank loans. Following are important European and North American shareholders, banks, and bond holders from the most recent filing date.

The picture that arose from this investigation differed considerably from the promise of sustainable palm oil presented by the IOI Corporation. Friends of the Earth concluded, that decision-makers in the marketplace and the political arena cannot rely on the company's announced green ambitions, partial certification, glossy PR and participation in multi-stakeholder initiatives. The

fact is that RSPO has certified IOI as 'legally compliant' and 'sustainably managed' despite having engaged in the unauthorized clearing of some 10,000 hectares of land. Green credentials presented by the company itself and by voluntary stakeholder initiatives are clearly no guarantee for sustainable practices in the field.⁵⁸

Chapter 4.

Responses by European financiers

Many European investors have developed ESG (Environment, Social and Governance) policies. Some ask the companies they invest in to uphold U.N. Global Compact Principles, while others require companies to respect the Organization for Economic Cooperation and Development Guidelines or the RSPO criteria.

Some investors, like Rabobank, have developed their own palm oil investment policies. All these policies require companies to protect natural forests and respect national laws on land rights and the environment.

Friends of the Earth Europe and its national groups has reached out twice in 2013 to the investors of palm oil companies that are involved in land grabbing. Wilmar is involved in land grabbing in Uganda and Sime Darby is involved in land grabbing in Liberia. Already the Norwegian Pension Fund has divested from Wilmar because its production of palm oil is unsustainable.

Netherlands

PfZW

PfZW Pension fund PfZW takes environmental, social and governance (ESG) factors into account in its equity index investments. PfZW screens and engages companies on the basis of UN Global Compact principles. Following a set procedure it may exclude companies for specific reasons and/or after extensive but fruitless engagement efforts.

As a response to Friends of the Earth, PGGM, asset manager of PfZW, has communicated that they are talking to several palm oil companies including Wilmar and IOI in the context of the UNPRI working group which has 27 investors. The Bumitama case will also be addressed during these conversations.

- PfZW has shares with a total value of € 7.21 million in Wilmar since December 2012.
- PFZW has shares with a total value of €13.7 million in IOI Corporation since December 2012.

ABP

Pension fund ABP has a sustainable investment policy which is based on the OECD Guidelines for Multinational Enterprises. But the starting point is that all companies ABP invests in should respect the principles as defined

by the UN Global Compact. ABP has communicated the Bumitama case to Wilmar and IOI.

- ABP has shares with a total value of €7 million in Wilmar since June 2013.
- ABP has shares with a total value of €12 million in IOI Corporation since 2013.

ING

ING has a specific social and environmental policy on companies that are active in the forestry and agricultural commodities sectors. ING requires companies they invest in to demonstrate that they respect social and environmental regulations, that they strive to implement RSPO criteria and that they apply the Free, Prior and Informed Consent (FPIC) principles. ING communicated to Friends of the Earth that they are in contact with Wilmar but that they feel no responsibility to take on the Bumitama case since ING is not financing the GY and LSM plantations.

- ING has shares with a total value of €7.40 million since July 2013 in Wilmar International and provided loans with a total value of €81 euros.
- ING group has shares in IOI Corporation with a total value of €11.2 million and bonds with a total value of €8.83 million.

Rabobank

The Rabobank has a sectoral policy on the palm oil value chain which provides aspects to address in lending as well as investment criteria. Rabobank requires companies involved in the production of palm oil to commit to the standards and criteria of RSPO (or equivalent), and fully implement them. This means, among others, adherence to the RSPO criteria on Free, Prior and Informed Consent (FPIC). Rabobank is also member of the human rights working group of RSPO, that has as an objective to address human rights issues and propose solutions to them in the RSPO.

Rabobank communicated to Friends of the Earth that they engage with Wilmar and Bumitama and are following the course of the RSPO complaint procedure against Bumitama closely in order to decide the next steps.

- Rabobank provided Wilmar with loans amounting to €222 million since 2010.
- Rabobank has provided a loan to BGA Group (a subsidiary of Bumitama Agri) with a total value of €47.26 million since 2010.

ABN AMRO Netherlands

ABN AMRO has developed a policy for companies in the forestry and timber sector which should ensure that the bank does not get involved in activities like illegal or unsustainable logging in native forests or forests with a large value for nature. ABN AMRO responded to Friends of the Earth by saying that they will address the issues raised in their ongoing engagement with Wilmar.

- ABN AMRO provided Wilmar International with a loan in September 2013 with a total value of €37 million.

Sweden

AP 1, 2, 3 and 4

Pension funds Första AP-fonden (AP1), Andra AP-fonden (AP2), Tredje AP-fonden (AP3) and Fjärde AP-fonden (AP4) coordinate their work on environmental and ethical issues through the joint Ethical Council. The Ethical Council engages with companies to improve their policies and processes and their transparency and to address crucial ESG issues in general. The most important conventions for the Ethical Council are the UN Global Compact and OECD guidelines. The Ethical Council responded on behalf of AP 1, 2, 3 and 4 and commented to Friends of the Earth that the information will be included in their general processes but that if the Ethical Council decides to engage with a company this is done on a confidential basis.

- Första AP-fonden has shares with a total value of €3.2 million in IOI Corporation since June 2013.
- Andra AP-fonden (AP2), has shares in IOI Corporation with a total value of €0.4 million since June 2013.
- Tredje AP-fonden (AP3), has shares with a total value of €1.16 million since June 2013 in Wilmar International.
- and Fjärde AP-fonden (AP4) has shares with a total value of €1.73 million since June 2013 in Wilmar International.

AP7

In terms of corporate governance, the Seventh AP Fund has chosen to take the OECD Principles of Corporate Governance as a basis for action in ownership issues. It also states that the companies in which the fund invests in are reviewed at least twice a year according to these principles. AP 7 has not responded to Friends of the Earth.

- AP7 has shares with a total value of €1.4 million in IOI Corporation since June 2013.

UK

HSBC

HSBC is a signatory of the UN Global Compact which pledges to combat corruption in all its forms, supports a precautionary approach to environmental challenges, promote greater environmental responsibility and respects human and indigenous rights. They sign up to and promote the Equator principles which aim to manage environmental and social risk in corporate loans and finance. HSBC also has a sectoral policy on Forest Land and Forest Products, which demands that activities they finance must "minimize harm to ecosystems, maintain forest productivity, ensure ecosystem health and vitality, safe guard traditional and customary rights of forest dwelling communities." It also prohibits planting in high nature value forest areas, and mandate that clients must obey local laws and regulations. Despite having been contacted by both Rainforest Action Network (RAN) and the Environmental Investigation Agency (EIA), HSBC refused to comment on the case.

- HSBC has shares with a total value of €3.22 million since September 2013 and has bonds with a total value of €64 million in Wilmar International and provided loans with a total value of €857 million since 2010.
- HSBC has provided loans to BGA Group (a subsidiary of Bumitama Agri) since 2010 with a total value of €78.6 million
- HSBC provided a loan to IOI Corporation with a total value of €74 million in September 2010.

Barclays

Barclays is also a signatory to the Equator Principles. It claims to "operate in accordance with the Universal Declaration of Human Rights and take account of other internationally accepted human rights standards." In its environmental policy it aims to comply with all national level legislation, and reduce natural resource use and pollution. Friends of the Earth has not contacted Barclays about this case.

- Barclays has given out loans to Wilmar International with a total value of €102 million.

Friends of the Earth did not contact the UK investors which are mentioned below about this case.

Schroder Investment Management

Schroder Investment Management wants the companies they invest in to have awareness of environmental, social and governance issues, because it 'enables companies to potentially mitigate risks and liabilities that could arise from these issues as well as realize opportunities'. Schroder is a signatory to the United Nations principles on Responsible Investment (UN PRI) through which investors commit to incorporating environmental and social governance (ESG) into their investment analysis and decision making. UN PRI signatories also commit to being active owners and to seek appropriate disclosure from companies on ESG issues.

- Schroders has shares with a total value of €0.78 in Bumitama Agri since March 2013.
- Schroders has shares with a total value of €8.5 million in IOI Corporation since March 2013.

SVM Asset Management

- SVM Asset Management has shares with a total value of €0.15 million in Bumitama Agri since July 2013.

Prudential

- Prudential has shares with a total value of €35.9 million in IOI Corporation.

- Eastspring Investments is also part of Prudential and has bonds with a total value of €3.03 million in IOI.

Invesco

- Invesco has shares with a total value of €3.57 million since August 2013.

Lloyds Banking Group

- Lloyds Banking Group has shares in Wilmar International with a total value of €1.51 million since August 2013.

France

Amundi

Amundi is 75 percent owned by Crédit Agricole S.A. and 25 percent by Société Générale.

- Amundi fund has shares with a total value of €3.18 million in Bumitama Agri since May 2013.

Crédit Agricole S.A. (CASA)

CASA is the second largest retail banking group in Europe. Its asset management subsidiary is Amundi. Crédit Agricole is a member of the UN Global Compact. Credit Agricole has not responded to Friends of the Earth's inquiries about their investment in Wilmar.

- Credit Agricole has shares with a total value of €8.24



Bumitama is building a factory in the LSM concession to locally process fresh fruit bunches.

million since July 2013 in Wilmar International, and provided loans with a total value of €111 million since 2011.

Société Générale S.A.

Société Générale S.A. is the parent company of Lyxor Asset Management, an investment company based in France. Société Générale also holds a 25 percent stake in Amundi. Société Générale has adopted and supports a couple of voluntary best practice initiatives like the UN Global Compact. Société Générale has not responded to Friends of the Earth's inquiries about their investments in Wilmar.

- Société Générale has shares with a total value of €0.81 million in Wilmar International since September 2013.

BNP Paribas

BNP Paribas has a sectoral policy on palm oil. This policy applies to all activities of BNP Paribas, including loans, and to companies directly involved in the palm oil value chains. BNP Paribas encourages palm oil companies to become members of the RSPO and requires that they comply with existing social and environmental laws. Companies should also not develop a new plantation on lands previously owned or occupied by local communities without having conducted a proper consultation process and achieved an acceptable compensation arrangement. As a response to Friends of the Earth on questions regarding their relation with Wilmar in May 2013, BNP Paribas has communicated that they have engaged with them since the beginning of 2012 on the basis of their palm oil policy. BNP Paribas holds the view that Wilmar is exerting a lot of energy and efforts to improve the sustainability of its plantations, particularly with respect to social policies (with the FPIC – Free, Prior and Informed Consent- of local communities). Friends of the Earth contacted BNP Paribas again on the Bumitama case, whereupon BNP Paribas responded that they maintained a strong dialogue with Wilmar and are in a process of investigation to review their performance against BNP Paribas' palm oil policy.

- BNP Paribas has shares with a total value of €1.98 million since September 2013 in Wilmar International and provided loans with a total value of €317 million since 2010.

Alliance Bernstein Luxembourg

- Alliance Bernstein Luxembourg (part of Axa) has shares with a total value of €3.41 million in IOI Corporation.

AXA

AXA is a French global investment, retirement, and insurance group. It is the parent company of Alliance Berstein. AXA has adopted voluntary initiatives such as the UN

Global Compact and the UN Principles for Responsible Investment.

Axa said in a response to Friends of the Earth that they acknowledge the limits of the RSPO but decided to base its own policies on the RSPO norms as Axa believes that the RSPO forum pushes its members towards better practices and permit local NGO's to initiate investigations. Axa's policy on palm oil focuses exclusively on palm oil producers. They have no shares in the company Bumitama. They decline all responsibility in Bumitama's activities but declare they will follow the development of the case and will share their concerns with IOI and Wilmar in regards to ESG risks.

- AXA has shares with a total value of €1.55 million in Wilmar since September 2013.

Germany

Deutsche Bank

Deutsche Bank's assessment criteria are global norms like the OECD criteria and the UN Global Compact. Deutsche Bank claims that before making a decision on a potential investment they perform various ESG related tests. Deutsche Bank has been a member of the Global Compact since 2000. Deutsche Bank has told Friends of the Earth that they are in contact with the relevant players, but their influence is limited because Deutsche Bank holds the shares for third parties.

- Deutsche Bank has shares with a total value of €3.38 since September 2013 in Wilmar International and provided a loan with a total value of €36 million in 2011.
- Deutsche Bank has shares with a total value of €0.5 million in Bumitama Agri since July 2013.

Chapter 5:

Conclusion and Recommendations

The case of Bumitama is grave, and should be taken seriously by all actors along the palm oil value chain, from financiers to consumers. But the case of Bumitama is not unique. The rampant and uninhibited expansion of industrial scale palm oil is unsustainable; with few exceptions, the palm oil industry depends on regulatory failure, corrupt bureaucracy, non-disclosure, land grabbing, deforestation, human rights and labor abuse, and other practices to maintain low costs, high production, and the land base demanded to enable continued growth.

We call on financiers to avoid investing in or lending to companies that continue to cause deforestation, high greenhouse gas emissions from plantation development on peatlands of any depth, land grabbing, and human and labor rights violations.

Financiers with outstanding loans or who hold shares to Bumitama should use their influence over these companies to bring an end to the problems with PT Ladang Sawit Mas and PT Gemilang Makmur Subur named in this report. If this does not happen immediately, they should cancel their loans and cancel other financial services and commit to issue no more loans to Bumitama or any company associated with it.

In addressing this case, asset managers, institutional investors and pension funds that finance, Wilmar International and IOI should use their influence over these companies to bring an end to the problems with PT Ladang Sawit Mas and PT Gemilang Makmur Subur named in this report. If this does not happen immediately, they should commit to purchasing no more shares in Wilmar International or IOI, and begin the process of publicly divesting from these companies.

Already the Norwegian Pension Fund has divested from Wilmar because its production of palm oil is unsustainable.⁶⁰

Financiers should engage with Bumitama's senior management and make clear that they will terminate their financial relationships with the company if Bumitama fails to take the following actions:

1. Halt any land clearing and FFB harvesting in lands without location permit, forestland release permits, environmental permit (with Environmental Impact Assessment & Social Impact Assessment), plantation business permit (IUP) or Land use right license (HGU), particularly in

PT LSM, PT GMS and the plantations in the former GY Plantation concession.

2. Halt and prohibit all further clearing of High Conservation Value (HCV) forests or drainage or expansion on peatlands of any depth.
3. Return the illegal concessions to the Ministry of Forestry, land which belonged to the community should be returned to them.
4. Compensate for the illegally cleared land, and set aside conservation forest within the current concessions.
5. Clearly instruct estate managers to not proceed with land clearing if and where HCV assessments have not been completed.
6. Make concession maps publicly available.
7. Obey and respect all of the procedures and regulations governing palm oil plantations in Indonesia, including immediate cessation of peatland development and destruction of orangutan habitat.
8. Respect and recognize agriculture and cultivation areas of community around palm oil plantation area.

IOI and Wilmar should:

1. Publicly commit to stop purchasing palm oil from Bumitama until and unless Bumitama has implemented the aforementioned demands.
2. Sell all shares in Bumitama.
3. Comply with points 1-8 above in regards to the specific case of Bumitama, and in regards to their operations in general.

The government of Indonesia should immediately implement the existing moratorium on conversion of peatlands and forests in Indonesia, by undertaking the following steps:

1. Conduct immediate investigations into the findings in this report and in the reports released by several other organizations, especially regarding illegal activities being conducted by Bumitama Agri, IOI Corporation, and Wilmar International.
Take control of the illegal concessions and return the land that was used by communities to them directly.
2. Revoke the permits of the companies when illegalities are found.
3. Stop issuing new permits and renewals of permits for logging concessions, pulp wood estate, plantation and mining operations.
4. Conduct independent third party review of all existing permits on forest extraction, plantations and mining



JASON TAYLOR

Digging of drainage canal next to natural forest in LSM plantation.

with the result of the review used for law enforcement, including revocation of permits for any finding of illegality.

The government of Indonesia should, further, implement the moratorium on conversion of peatlands and forests⁶¹ according to the following performance indicators:

1. No conversion of natural forests, as well as forest and peatland landscape, for industrial or commercial purposes.
2. No overlap of forest with other land uses in spatial planning at all levels of government.
3. No new industrial and commercial permits in critical ecological areas, high conservation value areas, and communities' livelihood areas.
4. Recovery and protection of areas that have important ecological function, without compromising local communities' access to benefit from the areas in ecologically and environmentally sustainable manners.
5. Guarantee the rights of access and control of indigenous peoples and local communities in and around forest areas.
6. Legal recognition and support through policies and programs on the rights of indigenous peoples and local communities to determine appropriate development for themselves.
7. Implementation of the Constitutional Court decision No. 35/PUU-X/2012, and the Peoples' Assembly (MPR) No. IX year 2001 which guarantee the rights to land and natural resources, including forests, in the form of

policies and operational rules.

8. Recognition of community-based natural resource use and management as part of development policy that recognizes, protects and respects the rights of local and indigenous peoples.
9. Establishment of grievance and dispute resolution mechanisms that have a strong legal basis, and are effective and easily accessible, with a credible implementing entity.
10. The existence of a map of the territory of local and indigenous peoples, and its integration with moratorium maps and regional and national spatial planning maps.

Meanwhile, governments of consumer countries including the EU, must work to reduce demand for palm oil, whose growth is predicted to multiply if steps are not taken to reduce consumption for all uses. One particular opportunity is the EU's unsustainable demand for palm oil bio-diesel, driven by biofuel targets and subsidies, and a carbon accounting system that does not take into account displaced deforestation and land grabs. The EU must cap and then phase out land based biofuels, and implement correct carbon accounting.

All actors across the palm oil supply chain, from investors and financiers, to traders and refiners, to retailers, consumers, and governments, bear responsibility for transforming the sector. It is only through the aforementioned sets of actions, with full involvement of civil society, that rainforests and rights will be rescued from the bulldozers.

References

- 1 Primary research for this report was provided by AidEnvironment and Profundo. Initial case study research (GIS analysis, field investigation and company analysis) was commissioned to AidEnvironment by Friends of the Earth (*et al*). Friends of the Earth (*et al*) ensured that a due hearing procedure with the primary affected parties was followed to verify AidEnvironment's study findings. Friends of the Earth (*et al*) have subsequently decided how to process respondents' comments and have conducted additional field and document research. Friends of the Earth (et al) takes full responsibility for the text presented here.
- 2 "Ghost estates" ("Kebun hantu" in Bahasa Indonesia) are estates that are operating without the necessary permissions.
- 3 http://www.foeeurope.org/sites/default/files/press_releases/iisd_eu_biofuel_policy_palm_oil_september2013.pdf
- 4 In communication between Bumitama and Friends of the Earth, the company alleges that "IOI's last purchase of Crude Palm Oil from Bumitama was in FY2009. These transactions were conducted on an arm's length basis as the value of the trades was based on the market price of CPO prevailing at the time of the transactions. There was no sale of CPO to IOI in FY2010, FY2011, and FY2012."
- 5 Map by head of the regional office of the national land agency West Kalimantan province (June 2011)
- 6 See: www.forbes.com/profile/lim-hariyanto-wijaya-sarwono
- 7 Bumitama Agri, 2012. Prospectus. http://files.shareholder.com/downloads/AMDA-WWON6/0x0x663207/8E4A2D0B-7CB0-4B7E-BD70-43C682510F24/Bumitama_Agri_Ltd_Prospectus.pdf
- 8 Bumitama Agri, 2012. Prospectus. p.28. http://files.shareholder.com/downloads/AMDA-WWON6/0x0x663207/8E4A2D0B-7CB0-4B7E-BD70-43C682510F24/Bumitama_Agri_Ltd_Prospectus.pdf
- 9 Bumitama Agri, 2012. Prospectus. p.39. http://files.shareholder.com/downloads/AMDA-WWON6/0x0x663207/8E4A2D0B-7CB0-4B7E-BD70-43C682510F24/Bumitama_Agri_Ltd_Prospectus.pdf
- 10 Bumitama Agri Ltd. Annual Report 2012. p.9 and 16. <http://ir.bumitama-agri.com/annuals.cfm>. Last accessed November 2013.
- 10A Profundo: The financing of Bumitama Agri. A research paper prepared for Friends of the Earth Europe. 17 October 2013
- 11 http://www.rspo.org/en/status_of_complaint&cpid=31
http://www.rspo.org/en/status_of_complaint&cpid=40
http://www.rspo.org/en/status_of_complaint&cpid=32
http://www.rspo.org/en/status_of_complaint&cpid=23
- 12 PT Ladang Sawit Mas was incorporated on 30th May 2005 as a 75-25% joint venture between the President commissioner of PT VS Mining Resource (a subsidiary of V.S. Industry Berhad from Malaysia) and Mr.Gusti Kamboja, the present head of the Ketapang district parliament.
- 13 V.S. Industry. Disposal of PT. GY Plantation Indonesia, a 53% Owned Subsidiary Company of V.S. Holdings (M) Ltd. Bursa-Malaysia announcement. 19 July 2011. Link [http://investor.net.my/pdf/6963_vsi_transactions.pdf].
- 14 Ladang Sawit Mas obtained permits as follows:

IUP: 551.31/350/Disbun dated 30 May 2006 for 9,300 ha;
Location permit: 422/2006, date 11 November 2006 for 8,300 ha;
EIA report: 2008; Environmental Permit: 2010.
- 15 Location permit: 422/2006, date 11 November 2006 for 8,300 ha
- 16 IUP: 551.31/350/Disbun dated 30 May 2006 for 9,300 ha
- 17 http://www.planvivo.org/wp-content/uploads/CFES-Indonesia_PIN_published.pdf
- 18 Flora Fauna International, 2010. Population, distribution and conservation status of orangutan (*Pongo pygmaeus wurmbii*) in Ketapang, West Kalimantan, Indonesia. Summary. Link: [http://primate-society.com/ips/public/ips_program/IPS10-608.pdf].
- 19 RSPO complaint http://www.rspo.org/en/status_of_complaint&cpid=31
- 20 FoE communication with IAR.11.28.13
- 21 IUCN Red List. Link [iucnredlist.org/details/39782/0].
- 22 http://www.rspo.org/file/PTLSM_Joint-statement_24Sept2013.pdf
- 23 Greenpeace. Certifying Destruction: Why consumer companies need to go beyond RSPO to stop forest destruction.2013. At <http://www.greenpeace.org/international/en/publications/Campaign-reports/Forests-Reports/Certifying-Destruction/>
- 24 <http://www.panap.net/en/fs/post/food-sovereignty-rspo/1417>
- 25 Op cit: Greenpeace. Certifying Destruction: Why consumer companies need to go beyond RSPO to stop forest destruction.2013. At <http://www.greenpeace.org/international/en/publications/Campaign-reports/Forests-Reports/Certifying-Destruction/>
- 26 http://awsassets.panda.org/downloads/wwf_statement_revised_rspo_principlescriteria_april_2013.pdf
- 27 Schouten, Greetje PhD, Tabling Sustainable Commodities through Private Governance, Processes of Legitimization in the Roundtables on Sustainable Palm Oil and Responsible Soy (2013) University of Utrecht
- 28 Several individual directors of the V.S. Industry Group owned 42% of the company's shares, with the remaining 5% held by PT Mandiri Sumberdaya Perkasa, a company associated with the Ketapang district government. See Link [www.vs-i.com].
- 29 Bumitama Agri, 2012. Prospectus.134. http://files.shareholder.com/downloads/AMDA-WWON6/0x0x663207/8E4A2D0B-7CB0-4B7E-BD70-43C682510F24/Bumitama_Agri_Ltd_Prospectus.pdf
- 30 ibid
- 31 In the list of the Ministry of Forests which lists all permits, GY Plantation does not appear.
- 32 Garap Sawit, PT GY Plantation Indonesia Investasi USD 50,5 Juta. Pontianak Post. 21 April 2004.
- 33 GY Plantation obtained permits as follows:
Location permit Nr. 205/2004, of 30 June 2004 for 18,300 ha;
Location permit revised and replaced by Permit Nr. 245/2009, date 19 June 2009 for 2,500 ha.
IUP (Nr. 551.31/1396/Disbun.C, of 18 June 2004 for 18,300 ha;
IUP revised and replaced by IUP Nr. 51.31/2299/Disbun.D,

date 25 August 2008 for 2.821 ha.

Note: GY Plantation's new permits were thus also issued in the wrong order, while the Location Permits is irregularly granted over a smaller area than the area under the IUP.

- 34 In the list of the Ministry of Forest which lists all permits, the GY plantation does not appear.
- 35 V.S. Industry. Annual Report 2012. p.104. http://vsi.investor.net.my/wp-content/uploads/2012/11/VS_AR12.pdf
- 36 V.S. Industry. Disposal of PT. GY Plantation Indonesia, a 53% Owned Subsidiary Company of V.S. Holdings (M) Ltd. Bursa Malaysia announcement. 19 July 2011. Link [http://investor.net.my/pdf/6963_vsi_transactions.pdf].
- 37 Bringezu, Stefan et al. "Towards sustainable production and use of resources: Assessing Biofuels." United Nations Environment Programme. 2009. <http://www.unep.org/resourcepanel/Publications/AssessingBiofuels/tabid/56055/Default.aspx>
- 38 Aidenvironment calculated with Google Maps Pro based on map by head of the regional office of the national land agency West Kalimantan province (June 2011)
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- 40 RHB Research Institute.V.S. Industry - Full Focus On EMS. 22 July 2011. http://vsi.investor.net.my/pdf%20files/VS_Plantation_RHB_110722.pdf
- 41 V.S. Industry. Annual Report 2012. p.86. http://vsi.investor.net.my/wp-content/uploads/2012/11/VS_AR12.pdf
- 42 Bumitama Agri, 2012. Prospectus. p.4. http://files.shareholder.com/downloads/AMDA-WWON6/0x0x663207/8E4A2D0B-7CB0-4B7E-BD70-43C682510F24/Bumitama_Agri_Ltd_Prospectus.pdf
- 43 Bumitama Agri, 2012. Prospectus. p.123 http://files.shareholder.com/downloads/AMDA-WWON6/0x0x663207/8E4A2D0B-7CB0-4B7E-BD70-43C682510F24/Bumitama_Agri_Ltd_Prospectus.pdf
- 44 Bumitama Agri, 2012. Prospectus. http://files.shareholder.com/downloads/AMDA-WWON6/0x0x663207/8E4A2D0B-7CB0-4B7E-BD70-43C682510F24/Bumitama_Agri_Ltd_Prospectus.pdf
- 45 Communication with Aid Environment.10.15.13
- 46 Based on field investigations and satellite imagery analysis by AidEnvironment in 2009, 2011 and 2013. All figures were measured with Google Earth Pro and on the basis of government maps by BPN. Cadastral maps were not used in this analysis (PT GMS's cadastral map is different from the Location Permit). Clearings were identified with Landsat imagery.
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- 51 Profundo: The Financing of Wilmar International. A research paper prepared for Friends of the Earth Europe. 16 October 2013.
- 52 <http://www.forbes.com/profile/lee-shin-cheng>
- 53 Profundo: The Financing of IOI Group. A report prepared for Milieudefensie. 16 September 2013.
- 54 Profundo: The Financing of IOI Group. A report prepared for Milieudefensie. 16 September 2013.
- 55 IOI Corporation - Bought some shares in Bumitama HOLD. Investor.com, 22 August 2013. Link [<http://klse.i3investor.com/servlets/ptres/17659.jsp>].
- 56 Bumitama Agri Ltd. Annual Report 2012. p.55. <http://ir.bumitama-agri.com/annuals.cfm>. Last accessed November 2013.
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- 59 Profundo. The Financing of IOI Group. A research paper prepared for Milieudefensie. 16 September 2013.
- 60 <http://www.regnskog.no/no/nyheter/nyhetsarkiv/asia/oljefondet-ut-av-palmeoljeleversting>
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