



April 2025

Was it produced legally?

Applying the legality
requirement in the EU
Deforestation Regulation
to palm oil from Indonesia

ClientEarth

April 2025

Lead authors: Michael Rice, Value Chains, Trade & Investment Lead, and Raphaëlle Godts, Law & Policy Advisor, Climate & Forests.

Editor: Helen Coen

Designer: SimonGilles.co.uk

Suggested reference: Rice, M., Godts, R. (2025), 'Was it produced legally? Applying the legality requirement in the EU Deforestation Regulation to palm oil from Indonesia', ClientEarth.

Icons designed by [Freepik.com](https://www.freepik.com)

Disclaimer

This document was written for general information purposes and does not constitute legal advice. Specialist advice should be taken in relation to specific circumstances. Action should not be taken based on the information in this document alone. ClientEarth endeavours to ensure that the information it provides is correct, but no warranty, express or implied, is given as to its accuracy, and ClientEarth does not accept responsibility for any decisions made in reliance on this document.

© 2025, ClientEarth. All rights reserved.

Contents

	Introduction	3
	Executive Summary	4
	Recommendations	5
	Background	6
1	Summary of the Indonesian legal framework	
	1.1 Indonesia's formal legal framework	7
	1.2 Indonesia's Indigenous laws	8
2	Key laws relevant to palm oil production in Indonesia	
	2.1 The Omnibus Law on Job Creation	9
	2.2 The Forestry Law	10
	2.3 The Indonesia Sustainable Palm Oil (ISPO) Regulation	10
	2.4 District Action Plans on Sustainable Palm Oil	11
3	Key considerations for assessing legal compliance risks	
	3.1 Absence of ISPO certification	12
	3.2 Licensing and administrative irregularities	14
	3.3 Land-grabbing, land conflicts and Indigenous land rights violations	14
	3.4 Environmental protections	15
	3.5 Corruption	16
	3.6 Child labour, forced labour, and abuse of plantation workers	17
4	Conclusion	18

Introduction

This case study is taken from a larger briefing published by ClientEarth¹ in April 2025.

That briefing provides a comprehensive examination the legality requirement under the EU Deforestation Regulation ("EUDR"), how it should be understood, and how due diligence on the legal compliance of commodity production should be approached by EU companies and EUDR competent authorities.²

This case study explores how the EUDR's legality requirement would apply to palm oil products produced in Indonesia. It provides an assessment of the 'relevant local laws' that would likely fall within the scope of the legality requirement and an analysis of levels of enforcement, implementation and compliance with those laws – as well as important risks and indicators of non-compliance – across the Indonesia palm oil sector.

Equivalent case studies examining cattle, cocoa and soy production in Brazil, Côte d'Ivoire and Ghana are also available.

The research on which this section is based was commissioned by ClientEarth and undertaken by AidEnvironment, with the support of a local partner organisation and local experts in Indonesia. That research focused on relevant national laws and examined relevant subnational laws in two provinces; West Kalimantan and Riau, and local districts in those provinces; Sintang and Pelalawan respectively. Conclusions regarding sub-national legal frameworks are drawn from research regarding these sub-national jurisdictions and should not be taken as an extensive or conclusive assessment of relevant sub-national laws across Indonesia.

¹ Available on the ClientEarth website.

² This analysis has been informed by an independent expert legal opinion from Sir Nicholas Forwood K.C., who served for 15 years as a Judge of the General Court of the Court of Justice of the European Union, including two terms as President of Chamber. This opinion is available on the ClientEarth website at <https://www.clientearth.org/latest/documents/expert-legal-opinion-on-the-eudr-legality-requirement/>.

Executive summary

The EU Deforestation Regulation (“**EUDR**”) requires that the commodities and products to which it applies have been produced in accordance with local laws – known as the '**legality requirement**'. EU companies must conduct due diligence on their supply chains to ensure that their products satisfy the legality requirement.

Understanding the legality requirement:

- The scope of the legality requirement is not entirely clear and requires interpretation to clarify its meaning. Interpreted according to the EUDR's objects and purpose, the legality requirement should be seen as including all laws applicable in the country of production that affect the legal status of activities undertaken to produce the relevant commodities and products.
- **This includes pre-production and post-production activities** necessary for commodity production and the commercialisation and trade of the resulting products. It also includes the **direct and indirect effects** of those activities on the relevant “plot of land” or “establishment” **and the surrounding “area of production” – the area directly or indirectly affected by the production activities**.
- The local laws that are included in the legality requirement will vary from jurisdiction to jurisdiction. However, those laws **must either relate in some way to the topics listed in the EUDR as being relevant or must contribute to the Regulation's objectives or purpose**.

Contextualising the legality requirement for each producer country:

- Understanding which laws fall within the scope of the legality requirement is fundamental to a company's ability to comply with the EUDR's due diligence procedure. This is necessary for assessing any risks that relevant products do not satisfy the legality requirement. It will be impossible to complete the due diligence process without first identifying the relevant laws applicable in the area of production and understanding how they may affect the legal status of production activities.
- Each producer country will have different laws and legal institutions. While there may be similarities across legal systems and commodity sectors, due diligence investigations will need to consider local political, legal, cultural and sectoral dynamics. Understanding these local dynamics will help determine the level of diligence that is 'due' in a particular case. This briefing explores the key legal and sectoral considerations in Brazil, Côte d'Ivoire, Ghana and Indonesia for cattle, cocoa, palm oil and soy production.

Due diligence on legal compliance:

- There are likely to be challenges to gathering the necessary information and investigating the legal compliance of specific production activities in most countries, both inside and outside the EU. **Companies should therefore anticipate common challenges and design their due diligence systems to overcome them.** Adapting due diligence procedures to overcome any practical challenges to investigating legal compliance as well as customising investigations to address contextual and supply chain-specific risk factors is necessary to complete the due diligence process.
- In addition to official sources of information, it will usually be necessary to consult with local legal experts and non-governmental stakeholders to identify the relevant local laws and to understand the 'reality on the ground' regarding their implementation and enforcement. **This should be regarded as standard practice for companies completing due diligence under the EUDR.**
- Due diligence on specific supply chains should be tailored to investigate whether general risks of legal non-compliance apply to specific production activities. **Understanding the dynamics of commodity production in the relevant jurisdiction will be necessary to verify information that gives an appearance of legal compliance.** Official documentation and third-party certificates should not simply be taken at face value – information must be verified and supported by evidence.

Recommendations

Several key recommendations for approaching due diligence when assessing commodity production activities against the EUDR legality requirement can be drawn from the research and analysis in this briefing.

- Invest in a comprehensive, independent and authoritative analysis of the applicable laws in the country of origin and how they apply to commodity production activities.
- Catalogue contextual information regarding levels of legal implementation, compliance and law enforcement, as well as trends in non-compliance and the reasons behind them.
- Consult local experts on both points above.
- Investigate the current and *historical* circumstances of commodity production activities, including advice from non-government local stakeholders.
- Do not rely on official records or third-party certification alone – consult a range of local stakeholders, especially where contextual information indicates general risks of legal non-compliance within the sector or raises concerns about the reliability of official data and records.
- Speak to locals: consult local community and civil society stakeholders (such as labour unions, workers' associations, community organisations and NGOs) to verify the reality 'on the ground', including whether any sectoral risks apply to the specific supply chain and whether local rights holders are being unlawfully impacted.
- Competent authorities should require companies to demonstrate that they have consulted appropriate experts and a variety of local stakeholders as described above to identify the full spectrum of applicable laws and their implementation – in general and in specific production areas.
- Competent authorities should require companies to convince them, by explaining the company's assessment of non-compliance risks, that the information they gathered is reliable and adequately conclusive that there is no reason to be concerned that their relevant products were not produced in compliance with all applicable legal requirements.

Background

Adopted on 31 May 2023, the EUDR aims to promote the use of deforestation-free products to reduce the EU's impact on the world's forests, thereby reducing the EU's contribution to global climate change and biodiversity loss.

The commodities and products covered by the law are: cattle, cocoa, coffee, oil palm, soy, rubber and wood – and specific products listed in Annex I of the EUDR that “contain, have been fed with or have been made using” these commodities – defined as “**relevant commodities**” and “**relevant products**” respectively.

It establishes two fundamental requirements that relevant commodities and relevant products must satisfy to be imported into, traded in, or exported from the EU:

- They must be “**deforestation-free**”; and
- They must have been **produced legally**.

To ensure these requirements are respected, the EUDR requires EU companies who import, trade and export relevant products to complete a mandatory “due diligence” process on their supply chains.

At the core of this process are requirements to:

- **Identify** the area where the product originated
- **Check** the land was not deforested after 2020; and
- **Ensure** the production of the product was conducted legally.

This “due diligence” process – and the information EU companies rely on to complete it – will be the primary mechanism for demonstrating, checking and verifying compliance with the law's requirements.

These new rules are a significant evolution of an existing EU law which prohibits trade in illegal timber – the EU Timber Regulation (“**EUTR**”) – which requires timber importers to trace supply chains to the point of origin and check the legal compliance of the timber harvesting activities.

In this regard, the EUDR's supply chain traceability and legal compliance requirements are not new. However, they have been extended to agricultural commodities and products derived from them.

Case study

1. Summary of the Indonesian legal framework



1.1 Indonesia's formal legal framework

Indonesia has a civil law system based on the Roman-Dutch model.³ It is structured hierarchically, with the 1945 Constitution of the Republic of Indonesia at the top, serving as the foundation for all laws.

Following major political changes at the end of the 20th century, the Constitution was amended to reflect far-reaching political reforms.

This included: decentralisation of the central government's legislative authority to provincial and regional governments; limitations on the power and term of office of the President; and the creation of additional state bodies such as the House of Regional Representatives (*Dewan Perwakilan Daerah*), Constitutional Court (*Mahkamah Konstitusi*), and Judicial Commission (*Komisi Yudisial*).

The decentralisation of legislative power to provincial and regional governments is particularly relevant in the context of land management and regulation of agricultural activities.

In terms of sources of relevant laws, Indonesia's legal hierarchy can be summarised as follows:

- **1945 Constitution of the Republic of Indonesia:** the foundational law of Indonesia's legal and political hierarchy, establishing and mandating the executive, legislative, and judicial branches of government, dictating state principles, the division of state powers, and establishing certain human rights guarantees.
- **Decrees of the People's Consultative Assembly** (*Majelis Permusyawaratan Rakyat* or **MPR**): formal decisions by the People's Consultative Assembly, which is a somewhat unique body that includes members of the two houses of the national parliament: the People's Representative Council (DPR), which is comparable to a lower house of parliament, and the Regional Representative Council (DPD), which is like an upper house of parliament or senate. The MPR can, amongst other things: amend the Constitution, inaugurate the president, and promote the Constitution and the principles for the governance of the state that it contains.
- **Laws and Government Regulations in Lieu of Law:** laws are jointly negotiated by the DPR and the President. In emergencies, the President can enact 'regulations in lieu of law' that must subsequently be ratified by the DPR. Once ratified, those Presidential regulations have the same level of legal authority as laws adopted by the DPR and President. However, both may be subject to review on constitutional grounds by the Constitutional Court.
- **Government Regulations:** issued by the President to implement laws adopted by the DPR and President without deviating from the substance of the relevant law.
- **Presidential Regulations (also known as Perpres):** issued by the President to carry out instructions included in higher laws, Government Regulations and to regulate technical aspects of internal government administration.
- **Regional Regulations:** issued by provincial and district/municipal governments to manage issues falling under their respective jurisdiction and competence.

³ For a helpful summary, see Reni, D.S. and Renaldi, J. (2019) The Indonesian Legal System and Legal research, GlobaLex, available at <https://www.nyulawglobal.org/globalex/indonesia1.html>.

The legislative hierarchy is reflected in an equivalent judicial hierarchy, which culminates at the Supreme Court and the Constitutional Court, both independent of each other.

The Supreme Court is the highest judicial institution and the final court of appeal in Indonesia with regard to criminal, civil, religious, military and state administrative courts. It has power of judicial review over the various kinds of regulations to determine their consistency with hierarchically higher laws.

The Constitutional Court has the power to determine the constitutionality of national laws and whether the President or Vice President has violated the law or Constitution.

1.2 Indonesia's Indigenous laws

Indonesia has a rich history and tradition of customary Indigenous law, often referred to as **Adat Law** (*hukum adat or adat recht*), that exists alongside its constitutional legal framework.

Adat Law is a body of local and traditional laws and dispute resolution systems which continue to be observed in many parts of Indonesia.

Accordingly, there is no codified, formalised or written Adat Law for the whole Indonesian people; its sources are unwritten laws evolving from and maintained by the customs, cultures, beliefs and practices of the specific Indigenous communities that observe it.

Adat Law is particularly important in several relevant areas such as agrarian law, land rights and inheritance law.



Tana Toraja, Indonesia

2. Key laws relevant to palm oil production in Indonesia

In the context of palm oil production, there are four key legal instruments that should form the basis of any legality due diligence exercise, tailored as appropriate to the sub-national jurisdiction under investigation.

2.1 The Omnibus Law on Job Creation

The Omnibus Law on Job Creation (*Law No. 11 of 2020* on Job Creation, also known as the Job Creation Law and the Omnibus Law) – and subsequent legal instruments adopted to implement it – amended 78 existing laws related to primary industries developments. It aimed to simplify the regulation of Indonesia's primary industries, purportedly to increase productivity and attract foreign investment during the Covid-19 pandemic.

It lowered existing standards regarding labour rights and environmental protections, and simplified approval processes for land acquisitions and operating permits.

Following public backlash, the Omnibus Law was deemed conditionally unconstitutional by the Constitutional Court in 2020 (Decision No. 91/PUU-XVII/2020), which ordered the government to make a series of improvements within certain timeframes up until 25 November 2023.

In contradiction to the Court's order, the Government adopted *Government Regulation in Lieu of Law on Job Creation No. 2 of 2022* on 30 December 2022 that revoked and replaced the Omnibus Law and affirmed that all regulations adopted to implement it remained valid.

This Government Regulation was ratified by the DPR on 31 March 2023 through *Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation to Become Law*, which formally revoked the Omnibus Law, replacing it with largely similar provisions and incorporating *Government Regulation in Lieu of Law on Job Creation Number 2 of 2022* into law. However, this replacement law has also been subject to a successful Constitutional Court challenge in which its reduction of labour rights protections were held invalid.⁴ The validity of the balance of the replacement law was not considered by the Court and a level of uncertainty remains about its validity given the inconsistency with the procedure ordered by the Court in 2020.

In relation to palm oil production, the Law No. 6 of 2023 includes a number of key requirements:

- **Plasma plantations:**⁵ plantation operators must develop plasma plantations covering at least 20% of their concession areas.
- **Penalties:** stronger enforcement of penalties for palm oil companies operating in forest areas without proper permits.
- **Forest release permits:** companies operating in forest areas without the proper permits must apply for a forest release permit by 2 November 2023.
- **Planting requirements:** companies must start planting their concession areas within two years of receiving a 'Right to Cultivate' permit.

4 Teresia, A. (2024), 'Indonesian court orders changes to some labour rules', *Reuters*, available at: <https://www.reuters.com/world/asia-pacific/indonesian-court-orders-changes-some-labour-rules-sought-by-unions-2024-10-31/>; International Trade Union Confederation (2024), 'Indonesia: Trade unions achieve milestone victory as Constitutional Court restricts controversial Omnibus Law', available at: <https://www.ituc-csi.org/indonesia-trade-unions-achieve-victory>.

5 Plasma are small plots of land that oil palm companies should allocate to smallholder farmers. In the 1980s, when the Indonesian palm oil industry experienced rapid growth, the government set up the Plasma Transmigration Program (*Perkebunan Inti Rakyat* or *PIR-Trans*) to ensure local communities would benefit from the large plantations near them. This program required that oil palm companies would be granted access to subsidised funding upon providing plasma to local communities within their plantation areas. In 2007, this scheme became law (known as the 'plasma obligation', originally defined in *Regulation of the Minister of Agriculture No. 26/Permentan/OT.140/2/2007*) which legally required oil palm companies holding plantation licenses to provide a fifth of their plantations as plasma to smallholder farmers.



Aerial photo of an oil palm plantation in Sukabumi, West Java, Indonesia

2.2 The Forestry Law

The Forestry Law (*Law No. 41 of 1999 on Forestry*) and *Government Regulation No. 23 of 2021 about Forestry Management* are the main laws regulating forest areas in Indonesia.

In general, the Forestry Law divides state land into two broad categories: forest zone and non-forest zone (*Area Penggunaan Lain* or **APL**). Forest zone is broken down further into several categories, while non-forest zone areas are available for public purposes such as settlements, agriculture and plantations.

■ Palm oil plantations can only lawfully exist in the non-forest zone.

However, there are many cases where plantation concessions are granted in forest zone areas – although this irregularity can be remedied through the process of “forest release” in which the area of the plantation is excised from the forest zone. This “forest release” procedure is governed under *Government Regulation No. 23 of 2021 about Forestry Management*.

2.3 The Indonesia Sustainable Palm Oil (ISPO) Regulation

Indonesia has had a regulatory scheme for the certification of ‘sustainable’ palm oil since 2011. This scheme was formalised in 2020 in the form of the **Indonesia Sustainable Palm Oil (ISPO) Regulation** (*Presidential Regulation No. 44 of 2020 on the Certification System for Sustainable Palm Oil Plantation in Indonesia*),⁶ enacted on 16 March 2020.

It was supplemented by Ministry of Agriculture Regulation (*Permentan*) No.38 of 2020,⁷ which became effective on 24 November 2020 and prescribes the detailed requirements for ISPO certification, referred to as the ‘ISPO criteria’.

Together, they establish overarching principles and technical criteria for the production of palm oil, certification procedures and administration of the ISPO scheme with the objective of ensuring the Indonesian palm oil industry is socially, economically and environmentally sustainable.

The 2020 ISPO Regulation became binding on palm oil businesses, including plantation companies, upon its enactment on 16 March 2020 (Article 27 ISPO Regulation). However, the detailed ISPO criteria did not become applicable until 25 November 2020.

This later date is often, mistakenly, taken as the effective date for palm oil businesses to start transitioning to the revised ISPO requirements.

6 Available at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC195054/>.

7 Available at <https://peraturan.bpk.go.id/Details/201269/permentan-no-38-tahun-2020>.

The ISPO requirements began applying to independent smallholders on 16 March 2025.

However, there are conflicting views that the requirements enter into force from 24 November 2025: five years after the ISPO criteria became applicable rather than five years after the enactment of the ISPO Regulation.

Palm oil businesses with ISPO certificates issued under the preceding 2011 scheme are required to transition their activities to comply with the 2020 ISPO criteria (Article 26(1) ISPO Regulation).

Uncertified oil palm businesses are required to undertake ISPO certification, which is initiated by the submission of an application for certification to an accredited ISPO certification institution (Articles 5 and 7 ISPO Regulation). Failure to do so can result in administrative sanctions (Article 6 ISPO Regulation).

In summary, the ISPO requirements concern:

- Compliance with all applicable laws and regulations, including in terms of land use and palm oil business approvals (e.g. location permits, plantation concessions, cultivation permits, business permits);
- Good plantation practices, such as plantation planning and appropriate technical application of cultivation, harvesting and processing techniques;
- Management of environmental impacts, natural resources and biodiversity in a way that minimises harm to the environment, conserves natural resources and protects biodiversity. This includes acquisition of and compliance with environmental permits, waste management obligations, fire and disaster control planning, greenhouse gas emissions reduction, and protection of natural forests and peatland areas;
- Workplace health and safety requirements and labour standards, including the prevention of child labour and employment discrimination;
- Social responsibility and community economic empowerment, including requirements around community engagement, Indigenous empowerment, and local business development;
- Transparency in palm fruit sourcing, fair and transparent pricing, transparent handling of grievances, anti-bribery commitments, and establishment of a supply chain traceability system;
- Sustainable business improvement, including guidance for appropriate monitoring systems for measuring social responsibility and community empowerment programmes.

2.4 District Action Plans on Sustainable Palm Oil

Many district governments in areas where palm oil production is prevalent have adopted district action plans for sustainable palm oil plantations, including the sub-national districts researched for this briefing – Sintang District in West Kalimantan and Pelalawan District in Riau.⁸

While these action plans do not impose direct legal obligations on oil palm companies, their successful implementation relies heavily on the cooperation of oil palm companies.

⁸ Sintang Regent Regulation No. 87 of 2018 on the Regional Action Plan for Sustainable Palm Oil Plantations which covers the period 2018 to 2023, proposed to be updated in 2024 – see Shahab, N. (2024) 'Context is key to securing sustainable palm oil, say Indonesia's regional reps', *Forests News*, 28 February 2025, available at: <https://forestsnews.cifor.org/86373/context-is-key-to-securing-sustainable-palm-oil-say-indonesias-regional-reps>; and Pelalawan Regent Decree No. 73 of 2020 on the District Action Plan for Sustainable Palm Oil which covered the period 2020 to 2024.

3. Key considerations for assessing legal compliance risks

This section outlines several systemic challenges to legal compliance for palm oil production in Indonesia and the associated risks of legal non-compliance.

3.1 Absence of ISPO certification

As noted above, ISPO certification under the 2020 ISPO scheme has been mandatory for plantation companies and palm oil businesses since 24 November 2020 (subject to transitional arrangements for businesses certified under the 2011 ISPO scheme). It will become mandatory for individual palm oil growers in 2025.⁹

Failure to seek and obtain ISPO certification can lead to administrative sanctions, for example formal warnings, fines, and temporary suspensions of non-compliant business activities (Article 7 ISPO Regulation).

Accordingly, ISPO certification is a legal requirement for palm oil businesses and growers. Although all palm oil businesses are legally obliged to seek certification under the 2020 ISPO scheme, public information suggests that relatively few plantation companies have obtained certification under either the 2011 or 2020 schemes.



Aerial view of an oil palm plantation in West Kalimantan, Indonesia

⁹ There are conflicting views as to whether this obligation applies to individual oil palm growers five years after the enactment of the ISPO Regulation on 16 March 2025, or five years after enactment of the ISPO criteria on 24 November 2025. ClientEarth prefers the former view given Article 27 of the ISPO Regulation clearly states it will begin applying to 'oil palm planters' five years after the enactment of the ISPO Regulation. Conversely, 24 November 2020 is taken as the effective date of the 2020 ISPO scheme because that is the date the detailed ISPO criteria, established by an implementing Ministerial regulation, became effective. The obligation on palm oil businesses to hold or seek ISPO certification applied from the date of enactment of the ISPO Regulation: 16 March 2020.

For example:

- a news report from August 2022 indicated that 55% of productive palm oil plantations were not covered by an ISPO certificate;¹⁰
- another report from October 2022 stated that only 895 ISPO certificates had been issued at that time, encompassing 5.1 million hectares of oil palm plantation¹¹ representing only 45% of the purported 12.6 million hectares of productive oil palm plantation (land planted with mature oil palm plantations);¹²
- similarly, a 2023 report by Transparency International Indonesia concluded that only seven of the top 50 palm oil companies in Indonesia held ISPO or RSPO certification (Roundtable for Sustainable Palm Oil, the international equivalent of ISPO) that covers not only the parent companies, but also all their subsidiaries and operations;¹³ and
- ISPO certificate data available from April 2023¹⁴ indicates that the number of valid ISPO certificates had *actually fallen* to 823, possibly as a result of ISPO certificates issued under the 2011 scheme expiring without being renewed under the 2020 ISPO scheme. There is no public information describing these figures as a percentage of the number of palm oil *businesses* that need to obtain ISPO certification.



These figures may understate the extent of ISPO non-compliance.

For example, in 2019 the Indonesian Government estimated the total national palm oil plantation cover at 16.37 million hectares.¹⁵

In contrast, in 2021 the Indonesian NGO Sawit Watch estimated this figure to be much higher, at 22.3 million hectares.¹⁶

While these figures include productive and non-productive plantation areas, the significant differences suggest there may be millions of hectares of oil palm plantations that are non-compliant with the ISPO requirements.

These reports, and others like them,¹⁷ indicate that non-compliance with the ISPO certification requirements is systemic. The figures referenced above **indicate that roughly half Indonesia's productive palm oil plantations lack ISPO-certification and are therefore not compliant with legal requirements.**

10 See Pahlevi, R. (2022), 'Only a few Indonesian palm oil fields are ISPO certified, here are the details', databooks, 19 August 2022, available at <https://databoks.katadata.co.id/agroindustri/statistik/d633eadd3dfe9e0/baru-sedikit-lahan-sawit-ri-yang-bersertifikat-ispo-ini-rinciannya>.

11 See (2022) 'ISPO creates regulatory compliance and corruption prevention', *Sawit Indonesia*, 18 October 2022, available at: <https://sawitindonesia.com/ispo-menciptakan-kepatuhan-regulasi-dan-pencegahan-korupsi/>.

12 See Arief, A.M. (2022), '55% of oil palm plantations are not yet ISPO certified, mandatory requirements starting in 2025', *Katadata.co.id*, 24 August 2022, available at: <https://katadata.co.id/berita/industri/6306001678958/55-kebun-sawit-belum-bersertifikat-ispo-jadi-syarat-wajib-mulai-2025>.

13 Jong, H. N. (2023), 'With little will to fight it, corruption is major risk for Indonesian palm oil', *Mongabay*, 1 May 2023, available at: <https://news.mongabay.com/2023/05/with-little-will-to-fight-it-corruption-is-major-risk-for-indonesian-palm-oil/>.

14 Available at <https://ditjenbun.pertanian.go.id/template/uploads/2023/05/Rekap-update-sertifikat-ISPO-per-April-2023.pdf>.

15 See Ministry of Agriculture Decree No.833 of 2019 regarding the Quotation of Palm Oil Cover in Indonesia.

16 Sawit Watch (2021), Annual Report: The Dynamics and Challenges in Actualising Improving Palm Oil Governance in Indonesia, 2021', at p.3. Available at: https://sawitwatch.or.id/wp-content/uploads/2023/07/Catatan-Akhir-Tahun-PSW-2021_EnglishVer.pdf.

17 See for example (2022) Creating clarity: An analysis of the challenges and opportunities in the new Indonesian Sustainable Palm Oil (ISPO) certification scheme, Environmental Investigation Agency and Kaoem Telapak, available at: <https://kaoemtelapak.org/wp-content/uploads/2023/06/20221222-ISPO-Creating-Clarity-Interactive-Version-EN-compressed.pdf>.

3.2 Licensing and administrative irregularities

Indonesia does not have a reliable system to ensure the absence of corruption or irregularities in the various permit and licensing processes required for commercial oil palm production.

In 2019 the National Audit Board (*Badan Pemeriksa Keuangan* or BPK) announced that **approximately 81% of oil palm plantations were non-compliant with applicable regulatory requirements**.¹⁸

The Audit Board had investigated industry compliance with various licensing, certification and sustainable plantation management requirements and concluded that most large plantations faced various issues of non-compliance.

These included:

- the absence of necessary business permits (known as Hak Guna Usaha or HGU);
- failures to develop minimum 'plasma' areas (informal smallholder farms within their concession areas);
- overlaps with mining concessions;
- plantations developed outside permit boundaries; and
- the establishment of plantations within protected areas, such as protected forests, conservation forests and peatlands.

While the audit report has not been made public, the BPK Commissioner is quoted as stating the audit identified regulatory non-compliance implicating "millions of hectares across the country... [and] all the big players". Based on the 2019 findings, **the Audit Board Commissioner called for the national police and attorney general to support a systematic clean-up of the industry**.¹⁹

Irregularities in other administrative requirements such as business taxes and reporting are highly correlated with the prevalence of irregularities in business licenses and land permits.

For example, a 2023 Government audit of Indonesia's palm oil industry found that:

About 57% of productive oil palm concession holders don't pay taxes on their plantation operations.²⁰

3.3 Land-grabbing, land conflicts and Indigenous land rights violations

Land conflict is a long-standing and systemic issue in the Indonesian palm oil sector,²¹ with land-grabbing being a primary cause of conflict between local communities and plantation companies. Disputes typically relate to disagreements about land-use rights or compensation for land used by plantation companies over which a local community, whether Indigenous or not, asserts some form of claim.

Land grabbing is fundamentally linked to the limitations on formal recognition of Indigenous and non-Indigenous community land rights, including the granting of plantation approvals without acknowledging – whether deliberately or unintentionally – the existence of local community rights and interests. These situations are typically left for the communities and companies to resolve between themselves, with different perceptions and expectations tending to increase the potential for long-lasting conflict.²²

18 Nugraha, I. and Jong, N. (2019), 'BPK audit finds many large oil palm plantations in trouble', *Mongabay*, 27 August 2019, available at: <https://www.mongabay.co.id/2019/08/27/audit-bpk-temukan-banyak-perkebunan-sawit-besar-bermasalah/>; Jong, H. N. (2019), '81% of Indonesia's oil palm plantations flouting regulations, audit finds', *Mongabay*, 25 August 2019, available at: <https://news.mongabay.com/2019/08/81-of-indonesias-oil-palm-plantations-flouting-regulations-audit-finds/>; Lingga, V. (2019) 'Auditors' findings weaken Indonesia's defense of palm oil industry', *Jakarta Post*, 28 August 2019, available at: <https://www.thejakartapost.com/academia/2019/08/28/auditors-findings-weaken-indonesias-defense-of-palm-oil-industry.html>.

19 Jong, H. N. (2019), '81% of Indonesia's oil palm plantations flouting regulations, audit finds', *Mongabay*, 25 August 2019, available at: <https://news.mongabay.com/2019/08/81-of-indonesias-oil-palm-plantations-flouting-regulations-audit-finds/>.

20 Jong, H. N. (2023), 'Millions in unpaid taxes amassed by Indonesian oil palm plantations', *Eco-Business*, 23 May 2023, available at: <https://www.eco-business.com/news/millions-in-unpaid-taxes-amassed-by-indonesian-oil-palm-plantations/>.

21 See for example Colchester, M., Anderson, P., and Chao, S. (2014), *Assault on the Commons: Deforestation and the denial of forest peoples' rights in Indonesia*, Forest Peoples Programme, Moreton-in-Marsh, United Kingdom. Available at: <https://www.forestpeoples.org/sites/fpp/files/publication/2014/12/assault-commons.pdf>.

22 See, for example, Suryadi (2022), 'Mendol Island forests and peatlands threatened by palm oil companies, residents are worried', *Mongabay*, 5 November 2022, available at: <https://www.mongabay.co.id/2022/11/05/hutan-dan-gambut-pulau-mendol-terancam-perusahaan-sawit-warga-pun-resah/>.

While some national laws officially recognise Indigenous Peoples' rights,²³ including the Indonesian Constitution and laws at the sub-national level,²⁴ the formal recognition of Indigenous rights over land is limited to certain access and use rights in forest areas, known as Customary Forest or *Hutan Adat*. However, there is a significant difference between the area of land over which customary tenure rights are claimed and the area over which some form of customary tenure rights has been recognised.

For example, as of 31 December 2023:

Only 221,648 hectares of Customary Forest had been recognised over areas claimed by 123 Indigenous communities,²⁵ whereas the national Customary Territory Registration Agency (BRWA) has identified 1,684 customary territories, totalling an area of *30.2 million hectares*.²⁶

The huge discrepancy between the area of identified customary territories and recognised customary land rights is indicative of the risk of land conflict where industrial activities are undertaken near local communities.

For example, AMAN, the national Indigenous Peoples representative organisation in Indonesia:


estimates that between 2017 and 2022, more than 8.5 million hectares of customary Indigenous territories had been stolen from Indigenous communities in more than 301 cases of land-grabbing.²⁷

3.4 Environmental protections

As noted above, **the unlawful clearing of forest and development of oil palm plantations in forest areas is a systemic issue across the Indonesian palm oil industry.**

For example:

- a) in May 2019** the National Corruption Eradication Commission (known as KPK) concluded there were more than one million hectares of unlawful oil palm plantation in forest areas in Riau province alone;²⁸
- b) in October 2019** a senior forestry management official at Indonesia's Coordinating Ministry for Economic Affairs reportedly announced that 3.1 million hectares of palm oil plantation – almost 20% of the official figure of 16.38 million hectares of oil palm plantations – were illegally located in forest areas without necessary permits; and
- c) in October 2019** the Ministry of Environment and Forestry announced it had identified an area of approximately nine million hectares of palm oil plantation – 54% of the official figure of 16.38 million hectares of oil palm plantations – in State forest areas.²⁹

20% 
of official oil palm plantations, were
illegally located in forest areas

9m 
hectares of palm oil plantation
in State forest areas

23 The third amendment to the Indonesian Constitution of 1945 recognises Indigenous Peoples' rights in Article 18b-2. In more recent legislation, there is implicit recognition of some Indigenous Peoples' rights, referred to as: *Masyarakat Adat* or *Masyarakat Hukum Adat*, including Act No. 5 of 1960 on Basic Agrarian Regulation, Act No. 39 of 1999 on Human Rights, and MPR Decree No. XI/2001 on Agrarian Reform. The Constitutional Court also affirmed the constitutional rights of Indigenous Peoples to their land and territories, including their collective rights to customary forests, in May 2013. See Ndoen, M. (2023), 'The Indigenous World 2023: Indonesia', IWGIA, 29 March 2023, available at: https://www.iwgia.org/en/indonesia/5120-iw-2023-indonesia.html#_edn1.

24 As of October 2022, 161 regional (provincial level) and local (district level) regulations had been enacted for the recognition and protection of Indigenous Peoples as legal subjects and their rights, including to their territories. See AMAN (2023), '2022 Notes of the Alliance of Indigenous Peoples of the Archipelago (AMAN)', p. 16, available at: <https://www.aman.or.id/publication-documentation/catatan-tahun-2022-aman-melawan-penundukan>.

25 AMAN (2024), 'Catatan Tahun 2023 Aliansi Masyarakat Adat Nusantara (AMAN)', p.4, available at: <https://www.aman.or.id/publication-documentation/239>.

26 BRWA (2024), Statistics, <https://brwa.or.id/stats>.

27 See Ndoen, M. (2023), 'The Indigenous World 2023: Indonesia', IWGIA, 29 March 2023, available at: https://www.iwgia.org/en/indonesia/5120-iw-2023-indonesia.html#_edn1.

28 Tanjung, C. A. (2019) 'KPK asks Riau Provincial Government to order 1 million hectares of illegal palm oil plantations', *detiknews*, 2 May 2019, available at: <https://news.detik.com/berita/d-4533368/kpk-minta-pemprov-riau-tertibkan-1-juta-hektare-kebun-sawit-illegal>.

29 Susanto, V. Y. (2019), 'The government says there are 16.38 million ha of land covered by oil palm plantations', *kontan.co.id*, 10 October 2019, available at: <https://nasional.kontan.co.id/news/pemerintah-sebut-ada-1638-juta-ha-luas-lahan-tutupan-kebun-sawit?page=2>.

3.5 Corruption

In 2016 the National Corruption Eradication Commission published a detailed report³⁰ on the prevalence of corruption in the palm oil sector, concluding that Indonesia did not have a credible or accountable system to prevent illegality and corruption in the palm oil industry.

The KPK found corruption was rampant in the permitting process for plantations, with many companies able to clear forests and plant oil palms in forest areas that were forbidden for oil palm cultivation, nevertheless securing formal approvals and documentation.³¹

In 2023, the Indonesian chapter of Transparency International,³² the world's leading transparency and anti-corruption watchdog, published an evaluation of the disclosure practices of the top 50 palm oil companies in Indonesia in relation to their anti-corruption programs, lobbying activities, company holdings, and key financial information.³³

This report concluded that **those companies and the oil palm industry at large are highly prone to corruption** due to a combination of weak anti-corruption policies, a lack of transparency, revolving-door politics, and the number of people involved in the industry who are also involved in politics.³⁴

Corruption is known to be a prevalent and systemic issue across the Indonesian palm oil industry, with numerous high-profile corruption, graft and tax avoidance cases making national headlines in recent years.³⁵ Indeed, in response to the Transparency International report, a director of one



30 Komisi Pemberantasan Korupsi (2016) 'Kajian Sistem Pengelolaan Komoditas Kelapa Sawit', KPK, available at: <https://www.mongabay.co.id/wp-content/uploads/2018/05/Kajian-KPK-soal-Tata-Kelola-Sawit-2016.pdf>.

31 Jong, H. N. (2019), '81% of Indonesia's oil palm plantations flouting regulations, audit finds', *Mongabay*, 25 August 2019, available at: <https://news.mongabay.com/2019/08/81-of-indonesias-oil-palm-plantations-flouting-regulations-audit-finds/>.

32 <https://ti.or.id/>.

33 Transparency International Indonesia (2023), Corruption and corporate capture in Indonesia's top 50 palm oil companies, available at: <https://ti.or.id/wp-content/uploads/2023/03/Laporan-TRAC-Sawit-.pdf>.

34 Jong, H. N. (2023), 'Corruption stokes malpractice in Indonesia's palm oil industry', *Eco-Business*, 5 May 2023, available at <https://www.eco-business.com/news/corruption-stokes-malpractice-in-indonesias-palm-oil-industry/>; Jong, H. N. (2023), 'With little will to fight it, corruption is major risk for Indonesian palm oil', *Mongabay*, 1 May 2023, available at: <https://news.mongabay.com/2023/05/with-little-will-to-fight-it-corruption-is-major-risk-for-indonesian-palm-oil/>.

35 See for example: Jong, H. N. (2023), 'Palm oil giants face corruption charges as Indonesia probe widens', *Mongabay*, 20 June 2023, available at: <https://news.mongabay.com/2023/06/palm-oil-giants-face-corruption-charges-as-indonesia-probe-widens/>; Jong, H. N. (2023), 'Indonesia prosecutors decry 'lenient' sentences in palm oil corruption case', *Mongabay*, 9 January 2023, available at: <https://news.mongabay.com/2023/01/jail-but-no-justice-for-perps-in-indonesian-palm-oil-corruption-case/>; Llewellyn, A. (2023), 'Indonesia's palm oil tycoon Darmadi gets 15 years for corruption', *Al Jazeera*, 24 February 2023, available at: <https://www.aljazeera.com/economy/2023/2/24/indonesias-palm-oil-tycoon-darmadi-gets-15-years-for-corruption/>; Jong, H. N., Nugraha, I. (2018), Palm oil executives arrested in bribery scandal in Indonesia', *Mongabay*, 30 October 2018, available at: <https://news.mongabay.com/2018/10/palm-oil-executives-arrested-in-bribery-scandal-in-indonesia/>; Perdana, Y. and Natahadibrata, N. (2014), 'Asian Agri set to lose assets', *Jakarta Post*, 10 January 2014, available at: <https://www.thejakartapost.com/news/2014/01/10/asian-agri-set-lose-assets.html>; Jong, H. N. (2022), 'Slick operator: Indonesian cooking oil probe may spread to biodiesel industry', *Mongabay*, 19 May 2022, available at: <https://news.mongabay.com/2022/05/slick-operator-indonesian-cooking-oil-probe-may-spread-to-biodiesel-industry/>; Jong, H. N. (2023) 'Millions in unpaid taxes amassed by Indonesian oil palm plantations', *Eco-Business*, 23 May 2023, available at: <https://www.eco-business.com/news/millions-in-unpaid-taxes-amassed-by-indonesian-oil-palm-plantations/>.

of the palm oil companies evaluated is quoted as acknowledging that the problem of corporate corruption plagues all industries in Indonesia. They claimed local officials see companies operating in their jurisdictions as prime targets for extortion, that corruption is the norm and if companies refuse to act corruptly they “will become an enemy of all stakeholders, from public officials to local communities”.³⁶

3.6 Child labour, forced labour, and abuse of plantation workers

Over the past decade there have been numerous reports of significant violations of the rights of plantation workers, ranging from child labour and forced labour to the sexual abuse of female plantation workers.

For example:

- NGOs have long reported on the dynamics of vulnerability, exploitation and dependency between rural communities and plantation companies – and the exploitative labour practices they use, such as: employing workers who are effectively permanent on a ‘casual’ basis; imposing unreasonable harvesting targets that require unpaid work from family members (usually workers’ wives); forcing workers to pay for personal protective equipment; failing to provide adequate occupational safety or personal protective equipment (including for spraying dangerous pesticides); systematic informal work; and denial of mandatory employment benefits, health benefits and job security.³⁷
- In 2016 Amnesty International published a report implicating Wilmar – the world’s biggest palm oil processing and trading company – in cases of the “worst forms of child labour”. This included conditions equivalent to forced labour, dangerous exposure to toxic chemicals, low wages and discrimination in its own operations and those of its suppliers.³⁸
- in September 2020, the Associated Press published a damning report describing widespread abuses of labour rights and human rights, including cases of human trafficking, slavery, child labour, harassment and discrimination, which implicated some of the biggest players in the plantation industry.³⁹
- In November 2020, the Associated Press published a report describing widespread gender and sexual violence, exploitation and rights violations in the Indonesian and Malaysian palm oil industries, including on plantations linked to the world’s best-known cosmetic brands.⁴⁰ That report detailed accounts of rape, threats and intimidation, exploitation, “brutal treatment” and dangerously unsafe working conditions faced by female workers on palm oil plantations across Indonesia and Malaysia, including at some of the largest plantation companies in the industry.
- the International Labour Organisation has partnered with the Indonesian Ministry for Labour Relations to hold annual events on International Women’s Day to highlight that female plantation workers continue to face discrimination in terms of wages, social protection guarantees, occupational safety and health protection, and are vulnerable to sexual harassment.⁴¹

36 Jong, H. N. (2023), ‘With little will to fight it, corruption is major risk for Indonesian palm oil’, *Mongabay*, 1 May 2023, available at: <https://news.mongabay.com/2023/05/with-little-will-to-fight-it-corruption-is-major-risk-for-indonesian-palm-oil/>.

37 See for example, Marti, S. (2008), ‘Losing Ground: The human rights impacts of oil palm plantation expansion in Indonesia’, Friends of the Earth, LifeMosaic and Sawit Watch, available at: <https://www.foei.org/wp-content/uploads/2020/12/losingground.pdf>; Zidane (2018), ‘Indonesia: Exploitation of women and violation of their rights in oil palm plantations’, World Rainforest Movement, 7 March 2018, available at: <https://www.wrm.org.uy/bulletin-articles/indonesia-exploitation-of-women-and-violation-of-their-rights-in-oil-palm-plantations>; Fair Labor Association (2018), Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia, p. 2. Available from: https://www.theconsumergoodsfoundation.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia_web.pdf; Nnoko-Mewanu, J. (2019), “When We Lost the Forest, We Lost Everything” Oil Palm Plantations and Rights Violations in Indonesia, Human Rights Watch, 22 September 2022, available at: <https://www.hrw.org/report/2019/09/23/when-we-lost-forest-we-lost-everything/oil-palm-plantations-and-rights-violations>.

38 Amnesty International (2016), ‘Palm Oil: Global brands profiting from child and forced labour’, 30 November 2016, available at: <https://www.amnesty.org/en/latest/news/2016/11/palm-oil-global-brands-profiting-from-child-and-forced-labour/>.

39 Mason, M. and McDowell, R. (2020), ‘Palm oil labor abuses linked to world’s top brands, banks’, *Associated Press*, 25 September 2020, available at: <https://apnews.com/article/virus-outbreak-only-on-ap-indonesia-financial-markets-malaysia-7b634596270cc6aa7578a062a30423bb>.


40 Mason, M. and McDowell, R. (2020), ‘Rape, abuses in palm oil fields linked to top beauty brands’, *Associated Press*, 2 November 2020, available at: <https://apnews.com/article/palm-oil-abuse-investigation-cosmetics-2a209d60c42bf0e8fcc6f8ea6daa11c7>. See also: (2020), ‘Indonesia & Malaysia: AP investigation reveals women face dangerous working conditions, widespread abuse & rape in palm oil supply chains of global cosmetics brands’, Business & Human Rights Resource Centre, 7 December 2020, available at: <https://www.business-humanrights.org/en/latest-news/indonesia-malaysia-ap-investigation-reveals-women-face-dangerous-working-conditions-widespread-abuse-rape-in-palm-oil-supply-chains-of-global-cosmetics-brands/>.

41 ILO (2024), ‘Eliminating the vulnerability of female workers to exploitation in the palm oil and fisheries sectors’, available at <https://www.ilo.org/resource/news/eliminating-vulnerability-female-workers-exploitation-palm-oil-and>.

5. Conclusion

Despite an abundance of laws regulating the palm oil industry, Indonesia's decentralised federal legal structure can sometimes mean that national laws are not implemented or enforced at sub-national levels, or that necessary sub-national laws to 'operationalise' national programmes are missing.

The involvement of national, provincial and district governments in palm oil sector governance can add to this confusion, particularly where those agencies act independently of each other and without rules to address inconsistencies or contradictory decisions. Likewise, the lack of official recognition of Indigenous communities and their land and resource rights, despite the formal recognition of those rights in the national constitution, adds to tensions at the local level where plantation approvals have been granted without consulting local communities – or even being aware of their existence.



This complex institutional framework has contributed to a high level of legal irregularities across the Indonesian palm oil industry, as well as the development of practices to circumvent applicable rules and avoid accountability.

Corruption has emerged as a systemic challenge in this context. To its credit, the Indonesian government has developed a detailed statutory framework to address the systemic social, environmental and regulatory issues plaguing the Indonesian palm oil industry – the ISPO certification framework – however compliance with this scheme, as well as its enforcement, is very weak.

Therefore, given the ongoing prevalence of legal non-compliance, corruption and social conflicts in Indonesia's palm oil sector, EU companies should make increased efforts to verify and corroborate assertions of legal compliance, even where official documentation or third-party certification has been supplied as evidence.

ClientEarth is a registered charity that uses the power of the law to protect people and the planet.

ClientEarth is funded by the generous support of philanthropic foundations, institutional donors and engaged individuals.



Beijing

1950 Sunflower Tower
No. 37 Maizidianjie
Chaoyang District
Beijing 100026
China

Berlin

Albrechtstraße 22
10117 Berlin
Germany

Brussels

60 Rue du Trône
(3ème étage)
Box 11, Ixelles, 1050 Bruxelles
Belgique

London

The Joinery
34 Drayton Park
London, N5 1PB
United Kingdom

Los Angeles

Santa Monica Blvd
Suite 510
Santa Monica
CA 90401, USA

Madrid

C/Principe de Vergara 109
1 izquierda
28002
Madrid, Spain

Tokyo

Toranomon Hills Business
Tower 15F 1-chôme-17-1
Toranomon, Minato City
Tōkyō-to 105-6415
Japan

Warsaw

ul. Mokotowska 33/35
00-560 Warszawa
Polska

ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a non-profit limited liability company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered foundation in Poland, Fundacja "ClientEarth Prawnicy dla Ziemi", KRS 0000364218, NIP 7010254208, a registered delegation in Spain, Fundación ClientEarth Delegación en España, NIF W0170741C, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836, a registered subsidiary in Japan, Ippan Shadan Hojin ClientEarth, corporate number 6010405022079, a registered subsidiary and company limited by guarantee in Australia, ClientEarth Oceania Limited, company number 664010655.