

9 September 2015

# Major step taken by Indonesian government to protect HCVF areas located on palm oil concessions



***Golden Agri-Resources has a significant  
legal opportunity to protect HCS forests on  
its palm oil plantation concessions***

Golden Agri's HCS forests in  
West Kalimantan  
(Google Earth / 2013)

# Background:

## Two letters issued by Minister of Environment and Forestry to protect HCVF areas

**Greenomics Indonesia would like to express its appreciation for the major step forward taken by the Minister of Environment and Forestry, Dr. Siti Nurbaya, who sent letters on 1 June 2015 to two ministers stressing the need to protect HCVF (High Conservation Value Forest) areas.**

The first letter was addressed to the Minister of Finance, requesting the Minister to remove land and building tax (PBB) from officially designated HCVF areas located on HGU plantation concessions. The proposal not only referred to HCVF areas located on oil palm plantations, but also those located on forestry plantation concessions and community and village-managed forests.

The second letter was sent to the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (BPN), requesting the Minister to issue a circular instructing Regents / Governors not to relinquish or de-designate HCVF areas located on palm oil plantation concessions.

The issuance of the two letters should be applauded, given that, on the ground, designated HCVF areas have often been treated as wasteland. As a consequence, Regents / Governors need to be reminded by the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (BPN) that HCVF areas, especially those located on oil palm concessions, do not constitute wasteland. In addition, HCVF areas also need to be provided with tax relief, such as exemption from PBB, as a sign of the government's commitment to preserving such areas, particularly on oil palm concessions.

In her letters, the Minister stated that since 2010, every permit issued by the Minister of Forestry relinquishing forest areas for the development of palm oil plantations included a clause requiring the companies to establish and protect HCVF areas on their concessions.



The Minister's letters should serve to strengthen the status of HCVF areas as areas that must be protected, rather than being treated as wasteland.

In Greenomics Indonesia's view, the letter to the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (BPN) should be seen as an attempt to ensure legal consistency in the protection of HCVF areas, in accordance with the requirement incorporated into every relinquishment permit issued by the Minister of Environment and Forestry that such areas must be protected by the oil palm plantation companies.

In addition, the letter may be seen as an effort to ensure that Regents / Governors no longer treat HCVF areas as wasteland or view the existence of HCVF areas as adversely affecting the economies of their regions due to the fact that such areas are not cultivated.

Further, it is clearly aimed at ensuring that Regents / Governors refrain from transferring HCVF areas to other companies and issuing them with palm oil plantation location permits. The letter is also intended to stop the BPN from de-designating HCVF areas located on the oil palm concessions for the purpose of issuing HGU rights.

**This report represents an expression of appreciation by Greenomics Indonesia for the major step forward taken by the Government of Indonesia in the protection of HCVF areas so that they will henceforth no longer be treated as wasteland.**

The report focuses solely on the response to the Minister of Environment and Forestry's letter to the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (BPN).

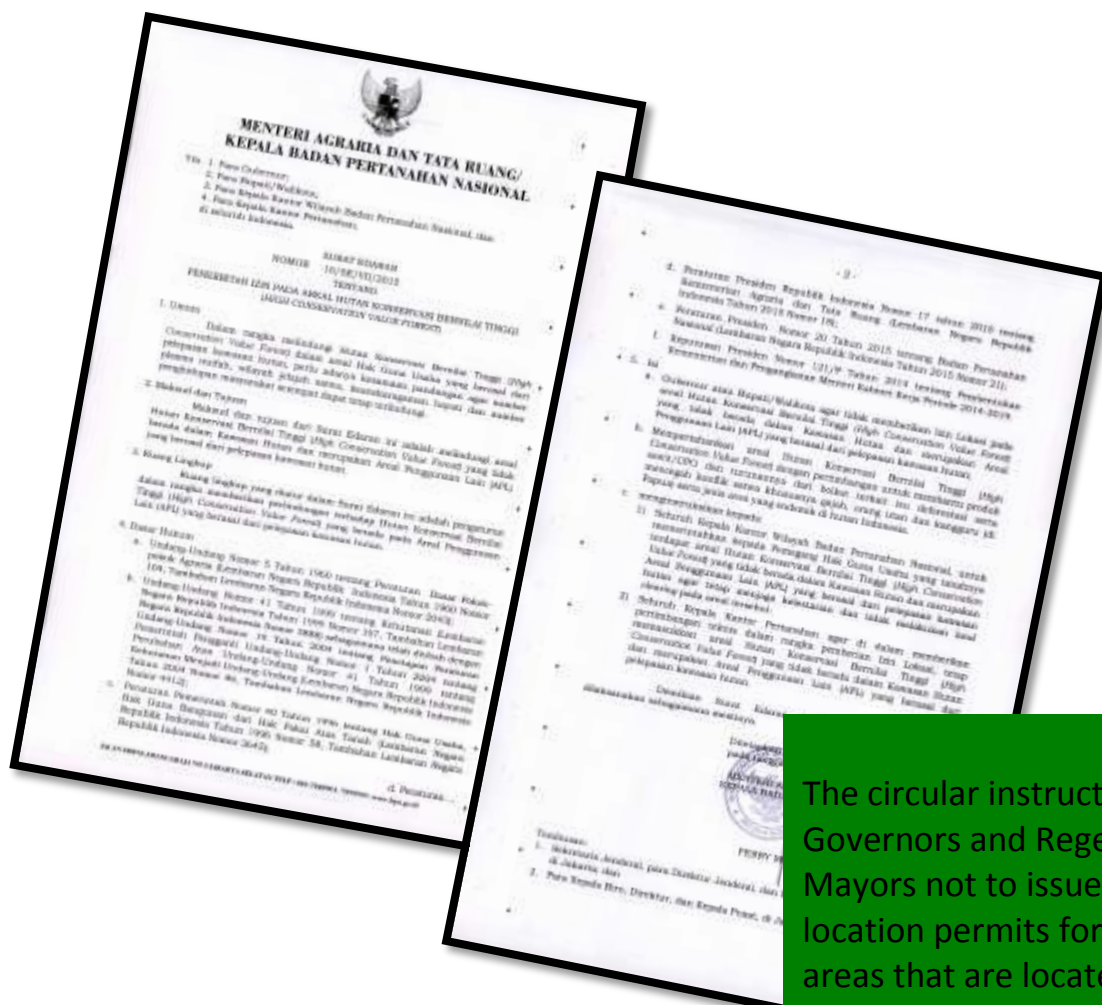
The report also discusses in general how Golden Agri-Resources (GAR) can benefit from the circular of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (BPN) to protect the HCS forest areas on its palm oil concessions – areas that the company is already committed to maintaining.

Greenomics Indonesia will publish a subsequent update on the response to the Minister of Environment and Forestry's letter to the Minister of Finance.



# Minister of Agrarian Affairs's response

Greenomics Indonesia would like to express its appreciation to the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (BPN), Ferry Mursyidan Baldan, who responded positively to the Minister of Environment and Forestry's letter by issuing a circular on 7 July 2015. The circular was addressed to Governors, Regents / Mayors and the heads of local BPN offices throughout Indonesia.



The circular instructed Governors and Regents / Mayors not to issue location permits for HCVA areas that are located outside of officially designated state forest areas, where such HCVA areas constitute APL (Other Use Areas) derived from the relinquishment of state forest areas.



ASTRA's palm oil concession in Aceh

24 May 2015

The circular answers a major concern expressed in the letter of the Minister of Environment and Forestry, namely, that Governors / Regents have the power to recommend that HCVF areas located on concessions, if maintained and not cleared, be excised from the relevant HGUs and transferred to other applicants.

In addition to Governors and Regents / Mayors, the circular also directs the heads of local BPN offices throughout Indonesia to instruct HGU holders not conduct land clearing operations in HCVF areas on their HGU concessions that are located outside of officially designated state forest areas, where such HCVF areas constitute APL (Other Use Areas) derived from the relinquishment of state forest areas. The BPN local office heads are also directed to continue to include HCVF areas in the technical considerations on which the issuance of location permits are based.

**With the issuance of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (BPN)'s circular, this concern has been dealt with. The holder of a HGU can use the circular to protect HCVF areas on its concession and should no longer have to worry that such HCVF areas will be excised from their concession, or that Location Permits for such areas will be granted to another applicant.**





HCS forests in three GAR palm oil concessions in West Kalimantan (*Google Earth / 2013*)

## CASE STUDY:

# How should Golden Agri-Resources respond to the circular?

On 21 October 2014, Greenomics Indonesia published a report entitled **“Golden Agri demonstrates real commitment to HCS forest conservation but legal threats lies ahead”**. During the process of preparing the report, Greenomics Indonesia provided significant technical input to the Ministry of Environment and Forestry, including a presentation of its final findings after the release of the report to senior officials at the ministry.

Although the Greenomics report discussed how GAR’s commitment to the protection of HCS (High Carbon Stock) forest areas required a strong legal basis, GAR’s Forest Conservation Policy now means that these HCS forest areas may be considered to be HCVF areas. Thus, GAR’s HCS forests may be categorized as HCVF areas. On that basis, the circular issued by the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (BPN) can be used by GAR as a means to maintain and protect such HCS forests.

Thanks to the issuing of the circular, GAR has a significant legal opportunity to protect the HCS forest areas on its palm oil plantation concessions.

The first thing that needs to be done by GAR is to re-designate its HCS forest areas as HCVF areas. The question that must be answered by GAR in this respect is the extent to which the HCS forest areas on its palm oil plantation concessions can be designated as HCVF areas in order to avail of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (BPN)'s circular so as to obtain legal protection?

We use the term “legal protection” here as the circular can be utilized by GAR as a means to ensure its HCS forest areas (including those that should be re-designated as HCVF areas) are set out on the maps used by its subsidiaries.

For those GAR palm oil subsidiaries that have not yet secured HGU rights, they can subsequently include HCVF areas (including HCS forest areas) on their maps. Thus, after the relevant HGUs have been issued, the status of their HCVF areas (including HCS areas whose status has been changed to HCVF) will be legally stronger and the land in question will no longer be vulnerable to being treated as wasteland.

For those GAR companies that already have HGUs, they need to submit a report at the end of the year to their local BPN office regarding the use of HGU land, as well as data on their HCVF areas (including HCS forest areas that have been converted to HCVF areas).

## **The second question that arises is whether such HCVF areas will be safe from third party objections?**

The answer is no. In the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (BPN)'s decree on the granting of HGUs to companies, there is a provision to the effect that if there are objections to a HGU from a third party subsequent to the HGU's issuance, it is the responsibility of the HGU grantee to resolve the issues involved in accordance with the provisions of the laws and regulations in effect.

Although GAR's HCVF areas (including HCS forest areas whose status have been changed to HCVF) remain vulnerable to third-party objections, at the very least, from the legal perspective, such HCVF areas can be safeguarded from categorization as wasteland. They will also be in a stronger position legally to be protected by GAR's subsidiaries.

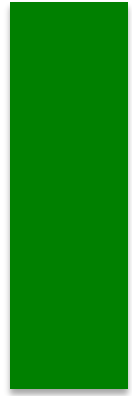


**GAR companies will continue to have to deal with objections from third parties to their HCVF areas – including HCS forest areas whose status has been converted to HCVF. Such objections can be raised during the HGU application process or even after the issuance of the HGU. This means that, based on such objections, some HCVF areas may have to be relinquished and their status changed to non-HCVF areas, for example, for use as smallholder plantations and so forth.**

## Conclusions

- The Letter from the Minister of Environment and Forestry and the circular issued by the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (BPN) appear to be an expression of real commitment on the part of the Indonesian government to supporting palm oil plantation companies in meeting their obligations to protect designated HCVF areas on their palm oil concessions.
- The circular issued by the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (BPN) can be used as a means by palm oil plantation companies for protecting HCVF areas on their palm oil concessions.
- The Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (BPN)'s circular can be utilized by GAR as a way to strengthen the legal protection status of its HCVF areas (including HCS forest areas whose status have been changed to HCVF). Notwithstanding this, the position of such HCVF areas remains vulnerable to objections from third parties, which must be resolved by GAR companies.

*There should no longer be any concerns that HCVF areas will be treated as wasteland by either local or central government. Accordingly, new palm oil plantation permits in respect of such areas will no longer be issued by local governments to other companies.*



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