

PUBLIC RESPONSE

January 21, 2013

”Golden Agri should withdraw press release as it flies in the face of the legal facts”

On May 24, 2012, Greenomics Indonesia published a report on its investigations into the operations of three palm companies owned by **Golden Agri Resources (GAR/Sinarmas Group)** that have their concessions in Kapuas Hulu, West Kalimantan. The three companies in question are PT. Kartika Prima Cipta (KPC), PT. Paramitra Internusa Pratama (PIP) and PT. Persada Graha Mandiri (PGM).

The purpose of the report was to set out our observations and findings on the implementation of the Forest Conservation Policy (FCP) by GAR’s subsidiaries in relation to land clearing operations in areas covered by secondary swamp forest. The GAR FCP was launched on February 9, 2011, and is backed by Greenpeace.

The Greenomics Indonesia report revealed four key findings, namely:

- ***It was evident that conservation efforts were being made in respect of natural forest in the development of oil palm plantations on the three concessions owned by the GAR subsidiaries.*** These efforts, among other things, could be seen from changes in the areas earmarked for clearing from areas that still had secondary swamp forest cover and which had Timber Clearing Permits (Izin Pemanfaatan Kayu/IPK) to areas that had relatively little natural forest cover and/or tracts of natural forest that were no longer intact over a sufficient area. ***Other facts*** revealed that the two GAR companies were still clearing land in some areas with secondary swamp forest in Timber Clearing Permit blocks. ***This shows that zero deforestation is impossible in the development of oil palm plantations in Indonesia.***
- ***There has been a significant decline in size of deforestation payments in the form of Reforestation Fund (DR) and Forest Royalty (PSDH) payments arising from the clearing of natural forest.*** This shows that there has been ***reduced deforestation*** since the launching of the FCP compared to the situation prior to the launching of the FCP.
- ***Natural forest has been cleared in blocks that were outside those subject to Timber Clearing Permits.*** This constitutes a violation of forestry regulation, which mandates the payment of a fine of 15 times the value of Forest Royalty owed, in addition to the making of Reforestation Fund and Forest Royalty payments based on the volume of timber harvested from the clearance of natural forest.
- ***The clearing of natural forest on the said three GAR concessions has resulted in the felling of 40,000 trees from commercial species, including protected tree species.***

On December 21, 2012, GAR and PT Smart Tbk (the GAR subsidiary that operates all palm plantation companies owned by GAR) issued a press release, which included clarifications and confirmations regarding the operations of the three GAR companies related to land clearing operations outside of Timber Clearing Permit blocks. **A number of significant matters emerged from the press release, namely:**

- *It was acknowledged that the clearance of an area of 2,449 hectares had been carried out without a Timber Clearing Permit. This, it was stated in the press release, occurred between January 2011 and May 2012. However, GAR claimed that the said area of 2,449 hectares did not have any commercial timber potential. Based on this consideration, it was decided to clear the land without submitting an application for a Timber Clearing Permit to the West Kalimantan Provincial Forestry Agency.*
- *In May 2012, it was realized that the clearing of land without a Timber Clearing Permit was wrong, and an application was then submitted to the West Kalimantan Provincial Forestry Agency, which, upon receiving the application, sent three teams to survey the 2,449 hectares. The surveys all concluded that there had been no commercial timber resources in the area at the time it was cleared, and that accordingly a Timber Clearing Permit was not required.*
- *It was stated that although the survey confirmed that a Timber Clearing Permit was not required, this was in no way meant to justify the clearing conducted by the three GAR palm companies. GAR also stated that it had made the mistake as the Timber Clearing Permit process and relevant company SOPs had not been complied with.*

In response to the GAR press release, and in particular the three points referred to above, Greenomics Indonesia adopts the following stance:

- 1) Greenomics Indonesia appreciates the acknowledgement by GAR that the three plantation companies have conducted land clearing on blocks that did not have Timber Clearing Permits, regardless of the GAR statement that the said blocks contained no commercial timber.
- 2) Greenomics Indonesia would like to clarify the GAR statement that there was no commercial timber on the 2,449 hectares that were cleared. **This "Public Response" can refute this claim by setting out the legal facts in relation to the three GAR palm companies.**
- 3) In relation to said legal facts, on January 10, 2013, Greenomics Indonesia was afforded the opportunity by GAR to make a presentation to GAR/PT Smart Tbk and The Forest Trust/TFT. This presentation described and proved the legal facts in question, and included spatial evidence of the clearance of natural forest outside of Timber Clearing Permit blocks by the three GAR palm companies.
- 4) Given that Greenomics Indonesia has already presented the legal facts to GAR/PT Smart Tbk and the TFT, in this "Public Response" we shall confine ourselves, for illustrative purposes, to a presentation of **the legal facts related to the operations of PT KPC.**

5) The legal facts as regards PT KPC operations may be summarized as follows:

- **As of the date of expiry of PT KPC's Timber Clearing Permit**, two of PT KPC's permitted blocks seemed to be fairly intact so that there appeared to have been no land clearing operations carried out during the period from January 2011-May 2012.
- However, **it is a legal fact that PT KPC made Reforestation Fund and Forest Royalty payments** on 23 November 2011. These payments were made in respect of the Letters Requesting Payment (Surat Perintah Pembayaran/SPP) of Reforestation Fund and Forest Royalty dated 3 November 2011, which were issued based on a PT KPC's Production Yield Summary Report (LHP) on natural forest clearing operations in the PT KPC concession.
- While the GAR press release acknowledged that the three GAR companies (including PT KPC) conducted clearing operations outside of Timber Clearing Permit blocks, it did not acknowledge the existence of commercial timber in the areas outside the Timber Clearing Permit blocks. Consequently, **this press release raises serious legal question marks**, given that the Letters Requesting Payment of Reforestation Fund and Forest Royalty were issued on November 3 2011, and payments made on 23 November 2011.
- **The above two legal facts provide legal proof** that PT KPC carried out natural forest clearing operations outside of the Timber Clearing Permit blocks, considering that, no land clearing operations were conducted on PT KPC's two Timber Clearing Permit blocks.
- If GAR does not acknowledge that it conducted clearance operations on land that contained commercial timber, why were the Letters Requesting Payment of Reforestation Fund and Forest Royalty issued? It should be noted that such a Payment Request Letter may only be issued based on a Production Yield Summary Report prepared by PT KPC. It should also be noted that the payments of Reforestation Fund and Forest Royalty without the prior submission of a Production Yield Summary Report is a violation of forestry regulation.
- On May 24, 2012, **another Letters Requesting Payment of Reforestation Fund and Forest Royalty were issued** in connection with the clearing of natural forest in the PT KPC concession. However, there still appeared to be no clearing operations conducted in PT KPC's two Timber Clearing Permit blocks, meaning that the said Letters Requesting Payment of Reforestation Fund and Forest Royalty were issued after the submission of the Production Yield Summary Report on the clearing of land containing commercial timber outside of PT KPC's two Timber Clearing Permit blocks.
- If GAR continues to refuse to recognize the existence of commercial timber in the blocks that are not covered by Timber Clearing Permits, **why were second Letters Requesting Payment of Reforestation Fund and Forest Royalty issued?** PT KPC made its Reforestation Fund and Forest Royalty payments based on the second Payment Request Letters on May 31, 2012.
- The clearing of natural forest by PT KPC in the first year of implementation of the FCP involved the logging of up to 17,000 trees belonging to commercial timber species. The spatial facts show that no land clearing occurred in PT KPC's two Timber Clearing Permit blocks. This means that PT KPC engaged in the felling of commercial timber in blocks that are not covered by Timber Clearing Permits, **as evidenced by the issuing of the Letters Requesting Payment of Reforestation Fund and Forest Royalty.**

- *The above description leads to the irrefutable conclusion that **the GAR press release is inconsistent with the legal facts arising from the actions undertaken by GAR's three palm companies themselves.***

For the purpose of further clarification, the details as regards the trees belonging to commercial timber species that were felled during the first year of implementation of the FCP (February 2011 - May 2012), both inside and outside the three GAR companies's Timber Clearing Permit blocks, are as follows:

- *In the Greenomics Indonesia report of May 24, 2012, it is stated that more than 40,000 commercial trees were felled by the three GAR palm companies during the first year of implementation of the FCP. This figure was calculated based on the first Reforestation Fund and Forest Royalty payments (on 23 November 2011) made in respect of natural forest clearance and resulting commercial timber production by the three GAR companies, **both inside and outside the Timber Clearing Permit blocks** (there was nothing to suggest that PT KPC cleared natural forest within its two Timber Clearing Permit blocks).*
- *After taking into account the second Reforestation Fund and Royalty payments by the three GAR companies on May 31, 2012, it may be concluded that **the number of trees belonging to commercial timber species that were harvested amounted in total to some 80,000 in the first year of implementation of the FCP by GAR.***

Atas dasar fakta-fakta hukum di atas dan mengacu pada hasil presentasi Greenomics Indonesia kepada pihak GAR/PT Smart Tbk dan TFT, maka Greenomics Indonesia meminta agar:

- 1) GAR withdraws its press release of December 21, 2012, considering **the substance of the press release is not in accordance with the legal facts.**
- 2) The TFT and Greenpeace, **which have acknowledged providing advice to the three GAR companies on what land should be cleared**, should also urge GAR to withdraw the press release.
- 3) Greenpeace should **withdraw its statement to the effect that the press release demonstrates transparency on the part of GAR** given that the GAR press release fails to reflect the legal facts.
- 4) GAR should support the **"One Billion Tree Planting Program"** by planting at least 80,000 trees of commercial species in Kalimantan (Indonesian Borneo), in line with the number of trees that were felled in the first year of implementation of the FCP.

For further information please contact:
Elfian Effendi, Executive Director of Greenomics Indonesia
 elfian@greenomics.org