



Internationaal

# Preliminary Report Baseline Research



## **Palm Oil** Collective Bargaining Agreement (CBA) Pilot

Mapping in West Kalimantan, Indonesia

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This report explains the activities that have been conducted in Indonesia in the framework of Project A of the “Palm Oil CBA Pilot Mapping in West Kalimantan, Indonesia”. The activities started in February 2020 and continued through July 2020. This report also provides context relevant to the projects, including the companies’ data, CBAs, company regulations, the actors, and the challenges involved with developing CBAs. In addition, this report provides basic information regarding the next steps and activities, such as benchmarking, capacity building, lobby and advocacy.

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## Summary

The Palm oil CBA agreement database project aims to make labour rights, as laid down in collective bargaining agreements in the Palm oil sector, transparent for banks, investors and other stakeholders. The survey first gives a brief overview of the project and of its stakeholders (project partners), objectives and management. The difficulties in data collection caused by the COVID-19 pandemic, and the changes in research methodology this required, are explained. During the project’s kick-off in Jakarta and Pontianak, discussions were held with all stakeholders. In addition, there was a lot of online collaboration with the parties and the local government to enable the compilation of all the information.

This first survey has mapped there are 421 palm oil companies and plantations on West Kalimantan, who have 12 collective labour agreements (2,9% of all companies). The non-existence of collective agreements (73,8%) or the presence of only personnel regulations (23,3% of the companies) also provide insight into the arrangements and the compliance with labour law, or the lack thereof, in this sector. The government indicates that having a regulation does not in itself guarantee compliance, because the authorities do not monitor compliance or quality.

Of the 421 companies, 27,55% of the companies are RSPO members, this means that 72,45% of the companies are without certification. Some of these companies are members in both networks. The low number of membership also gives implications to the lack of organisation within companies, which influences the awareness on the need and lack of CBAs. All survey subjects have been arranged by district, so that regional differences become clear.

It appears that few CBAs have been negotiated in West Kalimantan, despite all the intentions that have been expressed. The causes for this have been analysed, and were found in issues such as: bureaucracy in regulations on concluding and registering CBAs; lack of cohesion between trade unions; lack of knowledge in parties and lack of social dialogue between them; lack of monitoring on compliance. Finally, the report compares various existing CBAs on their conformity with legislation, international guidelines and the objectives of the RSPO. This comparison and a number of good examples form the basis for this project to be continued, in order to create a CBA database that also aims to benchmark the quality of and compliance with collective labour agreements.

## Project background

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In the framework of the *Dutch Banking Sector Agreement (DBA)*<sup>1</sup>, this multi-stakeholder project has been developed by the working group of the “Palm Oil Value Chain” to address the most severe labour risks in the palm oil sector. These risks include issues related to fair wages, decent income, and respect for labour rights. The partners in this DBA believe that transparency regarding respect for labour rights on palm oil plantations is the first step in supporting social dialogue and promoting freedom of association. These are needed to negotiate and achieve better working conditions for workers, and in the end, to direct investment in this sector towards transformational change. Therefore, the project aims to collect and map collective bargaining agreements (CBAs) on palm oil plantations in a participative way with local stakeholders, in order to set up a database on CBAs. These CBAs will be analysed and receive a rating. This rating will give an indication of the quality of the CBA, and therefore also indicate the quality of their agreements and their respect for labour rights, the level of social dialogue, and the presence of a bipartite structure. This will help traders and investors benchmark plantations for sustainability criteria and help unions with their negotiations.

For Indonesian workers in the palm oil sector, violation of labour rights is a widespread problem. Issues include health and safety problems, low wages, lack of contracts, and high production targets that require long working days. In addition, studies show a lack of freedom of association. It is complicated to establish an independent trade union and workers cannot easily join existing trade unions to protect their rights without fear of dismissal.

Palm oil buyers and investors who want to minimise the risk of labour rights violations and intend to buy or invest in sustainable palm oil, rely on certification standards such as RSPO<sup>2</sup>. However, several reports show that significant issues of non-compliance to labour agreements still remain unnoticed, even on RSPO certified plantations<sup>3,4,5</sup>. After audits take place, trade union rights continue to be abused. There are few opportunities for the unions to conduct ongoing social dialogue or to negotiate collective bargaining agreements (CBAs). Therefore, relying solely on the data from the audits may not provide investors with reliable insight into how labour rights are respected on these plantations.

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1 [www.imvoconvenanten.nl/en/banking](http://www.imvoconvenanten.nl/en/banking)

2 Round Table on Sustainable Palm Oil, [www.rspo.org](http://www.rspo.org)

3 SOMO/CNV Internationaal 2017: *Palming off responsibility Labour rights violations in the Indonesian palm oil sector*

4 Profundo 2018: *Study of labour compliance in RSPO certified oil palm plantations in Indonesia*

5 OPPUK, RAN, ILRF reports 2016 and 2017: *The human costs of conflicting palm oil*

In addition to mapping the existence of CBAs, the CBA mapping pilot project will analyse the quality of these CBAs based on national regulations, RSPO principles and criteria and relevant ILO conventions and international standards.

The database of CBAs developed within the framework of this project will provide the following benefits for various stakeholders:

1. For entrepreneurs and plantation management – improved working conditions, transparency, improved CBA quality and thus better access to markets and the financial sector. When the company is transparent, the ability to attract investors is increased.
2. For the financial sector – the database can be used for feasibility studies and risk analyses. The database will be accessible and be of benefit for all investors.
3. For trade unions- the database can be used to negotiate high quality CBAs. Negotiation is a skill that must be learned, but the foundation of knowledge, and therefore accurate data, is essential.

The CBA mapping pilot project will be conducted in West Kalimantan, Indonesia, one of the main locations of palm oil plantations with RSPO and GAPKI members<sup>6</sup> and active trade unions. West Kalimantan consists of 14 districts; 12 of these (excluding Pontianak and Singkawang) have palm oil plantations. This report will discuss project A, which covers the outcome of consultation meetings, a baseline study, stakeholders mapping, and the analyses of 8 collected CBAs for the development of a benchmarking database in palm oil.

Picture 1. Map of Indonesia



## Steering Committee

A Steering Committee (SC) has been present in the Netherlands since the start of the project. This SC consists of representatives of the Rabobank, the Dutch Banking Association, FNV, and CNV Internationaal. “During the Kick-Off meeting in Jakarta, a local Indonesian SC was established. This advisory group consists of representatives of CNV Internationaal, trade unions Hukatan, Serbundo and Kamiparho, trade union network Japbusi, and KBS<sup>7</sup>. Unfortunately, due to COVID-19, the SC in Indonesia has not yet been formalised.

GAPKI, the members of the Decent Rural Living Initiative<sup>8</sup> and the government are invited to play a role in this project, but we are still discussing their formal role in this project as well as their commitment. The role of RSPO has already been formalised in a letter of intent.

<sup>6</sup> Indonesian Palm Oil Association *Gabungan Pengusaha Kelapa Sawit Indonesia (GAPKI)*

<sup>7</sup> KBS: *Koalisi Buruh Sawit (Palm Oil Labour Coalition): coalition of Mondiaal FNV, NGOs and trade unions*

<sup>8</sup> An initiative of Cargill, Golden Agri-Resources (GAR), Musim Mas, Sime Darby Plantations and Wilmar who agreed to embark on a pre-competitive collaboration to collectively address systemic labour rights challenges within the sector



## Clarifying trade union concepts

- **Company regulation:** Based on Indonesian Labour Law, company regulation is written by the company itself. The content is directly related to the work requirements and code of conduct.
- **Collective Bargaining Agreement (CBA):** A CBA is an agreement which is the result of various types of negotiations. They can be with one trade/labour union or they can be between several trade unions/labour unions that are registered in the agency responsible for the negotiation on labour conditions with the employer. They can also be agreements between several employers or business associations. CBAs contain terms of employment, as well as the rights and obligations of both parties.

Two types of trade unions can be established at the company level:

- One is the **affiliated trade union**. This means they have or belong to a trade union structure at district, provincial, and national level. Some even have an affiliation at the international level.
- The second type is a **non-affiliate trade union**, or plant-level unions. These are not affiliated to any federation or confederation. In Indonesia they are called SPTP (Serikat Pekerja Tingkat Perusahaan / Company Level Trade Union)<sup>9</sup>. Recently, SPTP have often been seen as “non-independent” because they are not established from the grassroots, but instead by the company to fulfil administration requirements for government inspections or audits.

## Data Collection Method

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The method of collecting data in Project A consists of three main activities. *First*, secondary data collection at Provincial Level and District Level from the Manpower Office, Investment Agency and One-Stop Integrated Service Office (DPMPTSP)<sup>10</sup>, Plantation Office, GAPKI and RSPO. *Secondly*, consultations with relevant stakeholders from trade unions, business associations, companies, government, and standard setting organisations. *Thirdly*, in-depth interviews with District Manpower Officers and representatives and members of plantation-level trade unions. Due to the COVID-19 pandemic that started in March 2020, data collection is now also being conducted through online meetings and discussions with stakeholders.

## Challenges

Several different challenges have been encountered during Project A. These include: 1) Delays caused by the strict administration required by governments in regard to collecting secondary data. 2) Delays and complications caused by the pandemic. Governmental institutions are not operating full time and there are restrictions around travelling, visiting, and interviewing in-person. 3) Staff changes in certain District Manpower Offices have caused a gap in the availability of data on CBAs and company regulations. Therefore, the data collection process took more time 4) Travel costs to invite trade unions were higher than predicted due the remoteness and long distances of plantations from urban areas 5) No single source of data was available on the number of palm oil plantations in West Kalimantan. Therefore, researchers had to cross-check the available data from multiple sources 6) A Letter of Intent (LoI) between the stakeholders in this

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<sup>9</sup> SPTP was regulated in the Ministry of Manpower Decree No.1/1994, as a response from the Government of Indonesia to international pressures on freedom of association issue in Indonesia at that time. Before 1994, the government had only allowed 1 union to exist, called All-Indonesian Trade Union (SPSI). Through this Decree, workers were allowed to form a union outside SPSI but only on company level, not as federation or confederation.

<sup>10</sup> DPMPTSP and Politics and Public Administration Office (Kesbangpol) is the government institution who have mandate to issue the research permit

project, GAPKI, and the companies from the Decent Rural Living Initiative<sup>11</sup> has not yet been signed as there are still many topics to discuss and concerns of all stakeholders will need to be addressed. The discussions have also been delayed due to the effects of the COVID-19 pandemic 7) Non-affiliated trade unions often don't have a representative in Pontianak or in the district, so it has been a challenge to get in contact with them.

The good news is that the companies and the representatives (GAPKI) are committed to the project and have joined forces in this data collection phase. Another success is the cooperation with RPSO. We have a signed Lol with RPSO (signed on 1 July 2020) and we will be actively cooperating with the online RPSO training for members of companies. The training will focus on labour topics like Gender, Living Wage, Occupational Safety and Health, Trade Union Organisation and Negotiation. We will also make sure the Manpower Office at district level is familiar with online meeting applications, so we can communicate, despite restrictions caused by COVID-19.

## Consultation Meetings

### Kick-Off meetings

The Kick-Off meetings of the project took place in Jakarta (11 March 2020) and Pontianak (16 March 2020). Participants included representatives from the Ministry of Manpower, trade unions, NGOs, RPSO, growers, and the project coordinator and steering group from the Netherlands. In preparation for these kick-off meetings, smaller meetings first took place to develop strategies. The aim of the kick-off meeting was to invite participants to share their experiences and thoughts on social dialogue, CBAs, and other diverse relevant labour topics, including freedom of association and the availability of CBA data.

During this meeting in Jakarta, the majority of the participants chose employment status/contract and child labour as the main issues of concern. On the other hand, the participants in Pontianak preferred to prioritise salary level/wage, employment status/contracts, and lack of social compliance.

Unfortunately, few women were present at the consultation meeting because the presidents/chairs of the trade unions in this sector are predominantly male. However, based on the research done by GAPKI and Hukatan in 2019<sup>12</sup>, half of all palm oil plantation workers are women. Most of them are daily workers doing maintenance, including spraying pesticides, pruning, and applying fertilizers. The women daily workers are rarely involved in trade union activities for a variety of reasons. First of all, they are worried about losing their work. They also think that only permanent workers can be trade union members. Further, there is the challenge of trade unions organizing members to give information about labour rights and this is difficult due to the large size of plantations and time limitations. Socialisation can only be done after working hours and women daily workers still have their domestic work at home after their plantation working hours. It remains an important challenge for trade unions to reach out to these women to make sure they have a voice and that their specific needs and rights are also included in the CBAs.



<sup>11</sup> The Decent Rural Living Wage Initiative is an agreement to collaborate in order to improve the rural living conditions in the palm oil sector, by Sime Darby, Wilmar, Golden Agri Resources, Musim Mas and Cargill.

<sup>12</sup> Internal report "Condition of Women Workers on Palm Oil Plantations; case study in Lampung, Indonesia", GAPKI/Hukatan 2019.

Table 1. List of consultation meetings

| Consultation meetings       | Male | Female | Government | Trade Union & NGO | Company | MSI | Business Association |
|-----------------------------|------|--------|------------|-------------------|---------|-----|----------------------|
| Pontianak<br>2 March 2020   | 17   | 0      | 0          | 17                | 0       | 0   | 0                    |
| Jakarta<br>10 March 2020    | 8    | 3      | 0          | 11                | 0       | 0   | 0                    |
| Jakarta<br>11 March 2020    | 16   | 5      | 1          | 13                | 5       | 1   | 1                    |
| Pontianak<br>13 March 2020  | 13   | 1      | 0          | 14                | 0       | 0   | 0                    |
| Pontianak<br>16 March 2020  | 36   | 5      | 3          | 31                | 5       | 0   | 2                    |
| Kubu Raya<br>20 March 2020  | 24   | 1      | 0          | 25                | 0       | 0   | 0                    |
| Google meet,<br>4 June 2020 | 12   | 3      | 15         | 0                 | 0       | 0   | 0                    |
| Total                       | 126  | 18     | 19         | 111               | 10      | 1   | 3                    |

Before collecting data began in the various districts, another online kick-off meeting was held 4 June 2020. Representatives from the Manpower Offices at Provincial and District levels were invited. The results were positive. The local governments expressed interest in the CBA database, stating that it will be useful to them, since it is their agenda to have as many CBAs in their districts. They are willing to support the project by disclosing the data to the researchers<sup>13</sup>.

Picture 2. Multi-Stakeholders Consultation Meeting in Pontianak, 16 March 2020



During the meetings, the stakeholders were asked: “When would you consider this project a success?”. According to the stakeholders, they would consider the project successful when the agreements reached in the CBAs were even better than national regulations. Examples include the regulation of non-normative matters like bonuses, leave for workers’ needs, leave for worship, periodic wage increases, recreation, and the provision of welfare benefits for workers. In general, the project would be considered a success if it had a positive impact on workers and companies. More concretely, it would be successful if it strengthened awareness and capacity, and if it increased the number of trade unions active on plantations, bipartite committees, and CBAs. Governments hold an interest in the quality of the CBAs and their function in reducing disputes. They would also like this project to provide advice and recommendations. According to the government, in the end, all parties have a responsibility to socialise the law and make sure the rule of law related to CBAs is applied.

<sup>13</sup> This meeting was attended by Provincial Manpower Office and District from Bengkayang, Kapuas Hulu, Kayong Utara, Kubu Raya, Landak, Melawi, Mempawah, Sambas, Sanggau, Sintang and Sekadau

## Number of companies and collective bargaining agreement (CBA)

### National Companies in Kalimantan

According to the Ministry of Manpower, in 2018, 14,423 companies had a CBA (all sectors). This was 7,21% of the companies in Indonesia. The number of companies with company regulations was 68,192 or 19%.<sup>14</sup>

In December 2019, 12,893 companies (all sectors) were registered in West Kalimantan. These included 1000 large companies, 1691 medium-sized companies, and 10,202 small companies. The total workforce consisted of 948,328 people (632,755 male workers and 315,462 female workers). Of the 2,887 large and medium-sized companies, 982 companies, or 34%, had Company Regulations (Peraturan Perusahaan or "PP"). The number of Collective Bargaining Agreements recorded in West Kalimantan Province (all sectors) is 345 (12%), which is very low compared to the total number of companies. However, this number is higher than the national percentage.

### Palm Oil Companies in West-Kalimantan

Palm oil is one of the leading commodities in West Kalimantan. According to the data from the West Kalimantan Plantation Office Plantation Business Permit (IUP), the total area of oil palm plantations in 2018 was 3,906,431.29 hectares. There is no unambiguous data about the exact number of palm oil companies in West Kalimantan. The data has been cross-checked across institutions<sup>15</sup>. Researchers have found that 421 palm oil companies are registered in 12 of the 14 districts. Fifty-five companies are members of GAPKI (13.06%) and 116 companies are members of RSPO (27.55%)<sup>16</sup>.



However, there appear to be data differences between the Agency of Investment and Integrated One Door Service (DPMPTSP), Plantation Offices, and the Manpower Office regarding the number of palm oil companies in West Kalimantan. Among the 453 companies registered, 421 are actively operated<sup>17</sup>. The differences between the data in the DPMPTSP and the District Manpower Office occur for the following reasons: 1) Some companies did not continue to operate due to land disputes, lack of capital, and other business-level challenges 2) Some companies are registered in DPMPTSP but not at the District Manpower Office 3) Companies have closed or gone bankrupt 4) Companies have merged and the registration is only under one name in DPMPTSP 5) Companies are registered in Jakarta because they are operating in multiple provinces, not just West Kalimantan.

<sup>14</sup> Only 30% of companies in Indonesia have a CBA, *Bisnis.com*, 5 February 2019

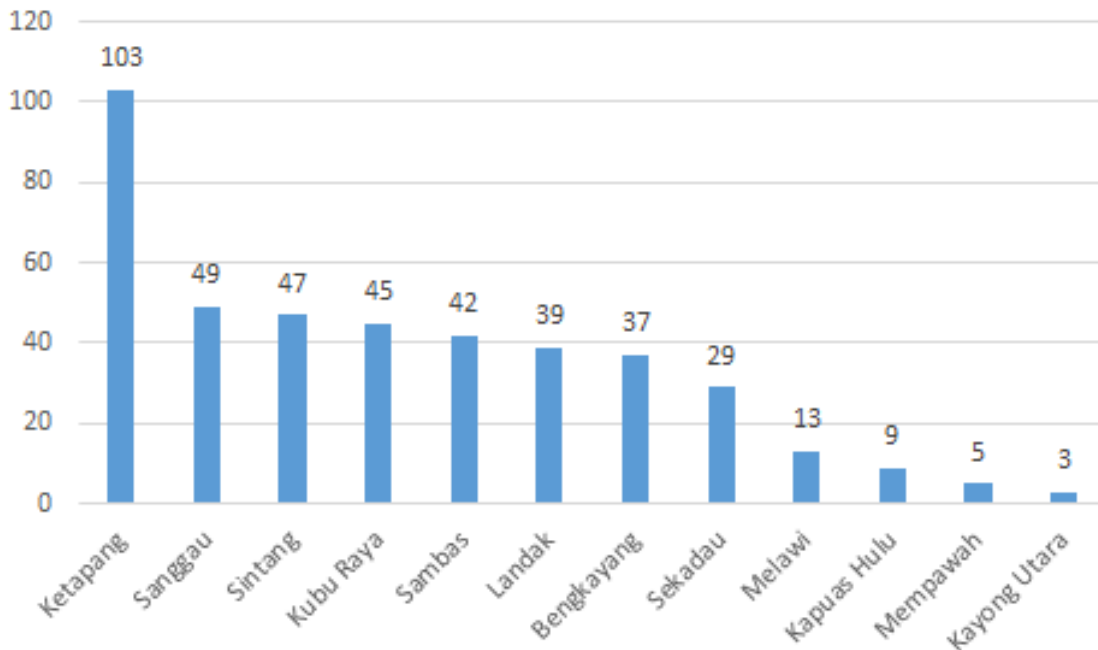
<sup>15</sup> Researchers have cross-checked the data in One-Stop Integrated Service Office (PTSP), GAPKI, RSPO and Manpower Office either at province or district level.

<sup>16</sup> There is overlap of members between GAPKI and RSPO but the membership approach is different. GAPKI membership can be either at holding or subsidiary level. While RSPO membership can only take place at holding company level.

<sup>17</sup> Data of DPMPTSP and Office Plantation compare to Manpower Office



Figure 1. Number of Registered Palm Oil Plantation and Mills in West Kalimantan by District



Source: DPMPTSP, Plantation Office, Manpower Office and other sources

The number of registered CBAs in the palm oil sector is 12, or 2.9% of the total number of palm oil companies (plantation and mills). The number of registered company regulations is 98, or 23.28%. Based on the 8 collected CBAs, 5 of them have been negotiated by non-affiliated plant-level unions (SPTP). In many cases, such unions were likely established by companies to fulfil governmental administration requirements or rules created by standard setting organisations such as RSPO and ISPO. Therefore, it would be interesting to compare the content of the CBAs created by affiliated and non-affiliated unions. According to trade union Hukatan, trade unions do not have the tools to assess the quality of CBAs on their own.

The Provincial Manpower Office has admitted that they have not checked the quality of the CBAs. Therefore, they see this CBA mapping pilot as a valuable project which can be useful to them as a reference tool for developing new policies. Data collection for this project has already encouraged the District Manpower Office to improve their documentation of CBAs and company regulations. Some of them have started tracking and have asked companies to send both documents. However, the level of transparency and data quality varies across the districts. For example, Ketapang Manpower Office did not want to share the data because they said it is confidential. Kubu Raya did not have the data due to staff changes. There are some examples of good practices though. In Sanggau, the Manpower Office has implemented a reporting app to collect data from companies.



The Manpower Office has also said that since the central government focuses on infrastructure, the budget for training is very limited. Also, the local government has a very limited budget for capacity building. The Manpower Office itself does not have a specific programme to improve CBA capacities. Their focus is more on improving skills for job seekers. Furthermore, the current priority is to handle the COVID-19 pandemic.

According to the Provincial Manpower Office, the main challenges for CBAs include finding ways to get companies to:

- increase the number and scope of company regulations
- upgrade company regulations to become CBAs
- increase the number of companies and create a wage scale structure<sup>18</sup> (based on Government Regulation Number 78/2015)
- form bipartite committees
- encourage companies to organise labour unions
- provide social security

*Table 2. Number of active palm oil companies, registered CBAs and Company Regulation in West Kalimantan*

| District     | # of palm oil companies in operation | # of registered CBAs | # of registered company regulations | # of CBAs collected | # of company regulations collected |
|--------------|--------------------------------------|----------------------|-------------------------------------|---------------------|------------------------------------|
| Total        | 421                                  | 12                   | 98                                  | 8                   | 22                                 |
| Mempawah     | 5                                    | 0                    | 2                                   | 0                   | 0                                  |
| Kayong Utara | 3                                    | 0                    | 3                                   | 0                   | 3                                  |
| Bengkayang   | 37                                   | 0                    | 4                                   | 0                   | 4                                  |
| Melawi       | 13                                   | 0                    | 12                                  | 0                   | 3                                  |
| Landak       | 39                                   | 0                    | 27                                  | 0                   | 3                                  |
| Sekadau      | 29                                   | 0                    | 3                                   | 0                   | 3                                  |
| Kapuas Hulu  | 9                                    | 3                    | 1                                   | 3                   | 1                                  |
| Kubu Raya    | 45                                   | NA                   | NA                                  | 1                   | 0                                  |
| Sambas       | 42                                   | 3                    | 17                                  | 3                   | 3                                  |
| Sintang      | 47                                   | 0                    | 0                                   | 0                   | 0                                  |
| Sanggau      | 49                                   | 5                    | 29                                  | 1                   | 2                                  |
| Ketapang     | 103                                  | NA                   | NA                                  | 0                   | 0                                  |

Note: the data for CBAs and company regulations have been gathered from the government and trade unions. No company consultation has taken place yet.

<sup>18</sup> A wage scale structure is a wage structure prepared by the employer taking into account category, position, years of service, education, and competence

## Map of Trade Unions

Based on the data from trade unions, as well as the District Manpower Office, we have developed the map of trade unions. This map will be useful for project benchmarks while we are planning to do consultation, capacity building, and other project related activities.

The Manpower Office has a total of 83 trade unions registered in the palm oil sector in West Kalimantan. However, after collecting information from the trade unions, the total number of company-level trade unions in palm oil in the province appears to be 131 (See **Table 3**).

Out of this number, 39% are non-affiliated plant-level unions. Within the affiliated plant-level unions, Hukatan has the highest number of member trade unions in the confederation, which is 32 unions (24%).

If we compare this figure to the number of companies, the union percentage is 31% of the number of companies. There are only 2 districts that have relatively dense numbers (more than 50%), These 2 districts are Kayong Utara (100%) and Landak (59%). This means that in those districts, at least 1 union has been established in every 2 palm oil companies. Meanwhile, in 6 other districts more than 33% of all companies have a registered union, namely District of Mempawah (40%), Sekadau (34%), Kapuas Hulu (44%), Kubu Raya (42%), Sambas (48%), and Sanggau (41%). Although the overall percentage is still limited, it is much higher than the overall density of unions at the national level, which is only around 3%, according to the Ministry of Manpower's 2018 data.



Table 3. Company-level trade unions

| District Trade Unions | Total | Non-affiliated TU/SPTP | GSBI | Hukatan | Kamiparho | FSP PP KSPSI | Federasi P4K – Sarbumusi | FPPK - (K)SBSI |
|-----------------------|-------|------------------------|------|---------|-----------|--------------|--------------------------|----------------|
| Total                 | 131   | 51                     |      | 32      | 17        | 8            | 3                        | 20             |
| Mempawah              | 2     | 1                      |      |         | 1         |              |                          |                |
| Kayong Utara          | 3     | 2                      |      |         |           |              |                          | 1              |
| Bengkayang            | 11    |                        | ✓    | 10      | 1         |              |                          |                |
| Melawi                | 6     | 1                      |      | 5       |           |              |                          |                |
| Landak                | 23    | 3                      |      | 3       | 15        | 2            |                          |                |
| Sekadau               | 10    | 10                     |      |         |           |              |                          |                |
| Kapuas Hulu           | 4     | 4                      |      |         |           |              |                          |                |
| Kubu Raya             | 19    |                        |      | 6       |           | 5            | 3                        | 5              |
| Sambas                | 20    | 5                      |      | 5       |           | 1            |                          | 9              |
| Sintang               | 8     | 5                      |      | 3       |           |              |                          |                |
| Sanggau               | 20    |                        |      |         |           |              |                          | 5              |
| Ketapang              | NA    |                        | ✓    |         |           |              |                          |                |

Since a CBA is negotiated between a company and a union, it is interesting to compare the number of companies, unions, and registered CBAs. As seen in **Table 4**, CBAs can only be found in 3 out of 12 districts in West Kalimantan, namely the Districts of Kapuas Hulu, Sambas, and Sanggau. Thus, there are major gaps among the districts.

Kapuas Hulu is the only district where the percentage of CBAs is significant. Three out of 4 unions in this district have signed a CBA with their companies (75%). The other 2 districts have relatively lower percentages of 25% (District of Sanggau) and 15% (District of Sambas). This means that the presence of unions does not necessarily mean that CBAs actually exist in the palm oil companies in West Kalimantan. There are various challenges to developing CBAs, as will be discussed in the next section.

*Table 4. Comparison of Company, Union and CBA*

| District     | Company | Union | CBA |
|--------------|---------|-------|-----|
| Mempawah     | 5       | 2     | 0   |
| Kayong Utara | 3       | 3     | 0   |
| Bengkayang   | 37      | 11    | 0   |
| Melawi       | 13      | 6     | 0   |
| Landak       | 39      | 23    | 0   |
| Sekadau      | 29      | 10    | 0   |
| Kapuas Hulu  | 9       | 4     | 3   |
| Kubu Raya    | 45      | 19    | 1   |
| Sambas       | 42      | 20    | 3   |
| Sintang      | 47      | 8     | 0   |
| Sanggau      | 49      | 20    | 5   |
| Ketapang     | 103     | N/A   | N/A |



## Challenges to developing CBAs

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We need to look at the enabling environments of palm oil plantations if we're going to accurately discuss the challenges related to developing CBAs as they have been identified during consultations and data gathering.

### Bureaucratic and administrative challenges

#### 1. *Non-independent trade unions*

Not all companies have an independent trade union. Independent trade unions are affiliated or belong to a trade union structure at district, provincial, and national level. Some of them have affiliations and membership with international trade union federations. Data shows that 39% of the palm oil companies have non-affiliated trade unions, known as SPTP (Serikat Pekerja Tingkat Perusahaan / Company Level Trade Union) or yellow union. SPTP are often seen as "non-independent" because they are not established from the grassroots, but instead are established by the company or government in order to fulfil administration (from auditors or buyers) or legislation regulations. SPTP are not affiliated to a sectoral or regional union (federation) or national confederation of trade unions, making it difficult for them to bring issues to a higher level, or cooperate with other trade unions and (inter)national stakeholders. Often the SPTP will negotiate in favour of the company and not represent the workers interests.

#### 2. *Few trade unions are eligible to negotiate CBAs*

Trade unions which have not achieved a membership of 50%+1 of the workers in the company are not entitled to negotiate a CBA with the management. This challenge is also related to the high number of workers and the extensive areas covered by the palm oil plantations (which can be thousands of hectares). By law, only 10 workers are needed to establish a trade union at company level. In cases where there is only one trade union (with 50% + 1 members), this union can propose to negotiate a CBA. When multiple trade unions are present within a single company, the CBA negotiations can be done jointly by the three largest trade unions. These must represent a minimum of 10% of the total number of workers.

Research shows that the official data given by the number of companies and trade unions is not consistent with reality. For instance, 12 companies in Kubu Raya have trade unions that are not registered with either the District Manpower Office or the DPMPTSP. At least three things could cause this. *First*, the trade unions are newly established and not yet registered. *Secondly*, a trade union used to be in the company but is not active anymore. This can be due to various reasons, such as intimidation, lack of resources, or because of high (travelling) costs. *Thirdly*, the company has merged or been sold.

#### 3. *Umbrella CBAs*

Sometimes large companies only negotiate with one national level federation and not with plantation level trade unions. This national level CBA is known as an "Umbrella CBA". This practice has put the level of involvement of workers representatives and credibility of the CBA into question, because the members of that federation are not engaged in the process. And even worse, umbrella CBAs undermine the existence of other unions which are not members of the federation in the companies. Therefore, at the present time, the Ministry of Manpower refuses to acknowledge and register such umbrella CBAs. In order for Umbrella CBAs to work, they must include a representation of independent trade unions and make room for trade union and workers consultation in the different plantations covered by the Umbrella CBA.

Picture 3. Multi-Stakeholders Consultation in Jakarta, 11 March 2020



## Capacity and cohesion of trade unions

### *4. Multiple trade unions have united*

During the consultation meetings, companies expressed challenges regarding how to deal with multiple trade unions at the CBA negotiation table. Due to the competitive dynamics among trade unions, these negotiations are often far from easy. One of the company representatives revealed that the trade unions often argue among themselves, in front of company management. From a management point of view, trade unions should be in agreement before coming to the negotiation table. Trade unions have confirmed the difficulties of not sharing a common vision and mission, which complicates negotiations within the trade unions themselves. The competition to obtain more members (also by trade unions outside the sector) can also complicate relationships among the members of the trade unions. In Indonesia, there are no strict criteria for recruiting new members. For example, mining trade unions can have members from palm oil plantations.

### *5. Inadequate awareness of trade unions and workers about labour rights and the importance of being organised*

Trade unions have indicated that workers on plantations merely focus on working, accepting their working conditions as a fact which they are not able to change. Most are not aware of the possibility of being active in trade unions to defend their rights and improve their labour conditions.

### *6. Insufficient communication and negotiation skills among trade unions*

The capacity building of trade unions at plantation level is far from adequate. Trade union members lack understanding about their rights and have virtually no negotiation skills. They also lack communication skills, as well as knowledge about labour legislation. For instance, trade unions are not trained to build trust with management. Being able to build trust is a key skill for creating constructive social dialogue, which in turn, is necessary to negotiate a successful CBA.

## Quality of social dialogue

### *7. Too little access to information*

It appears that most plantation level trade union leaders have little to no knowledge about the company regulations or do not even know if the company even has regulations. This is an issue of management transparency. Trade unions have alleged that companies intentionally do not disclose the company regulations and will use this to sanction workers who infringe these regulations. Company regulations can

be “immediately” shared in industrial relation court (PHI). Trade unions state that they are afraid to ask for company regulation because the company will see them as “provokers”. They are afraid management will retaliate with intimidation.

#### *8. Lack of awareness of the benefits of social dialogue and CBAs*

Even companies that already have trade unions can lack awareness and capacity on the importance of having a Collective Bargaining Agreement. Therefore, continuous socialisation is needed to encourage CBA negotiations. CBAs are beneficial to workers and companies. CBAs can reduce the chances of dispute escalation since the parties can stipulate clear obligations and rights, as well as rewards and punishments. They give workers a voice in the company, making them feel more responsible as part of the company and its wellbeing. The companies gain more access to financial institutions by showing how a good social dialogue can lead to a good quality CBAs. Awareness of the benefits of CBAs is, however, lacking among companies. Support from RSPO, GAPKI, the market, and investors to push CBA development is important to make sure that labour conditions are improved.

Trade unions have revealed that companies seldom share a copy of their CBA with their workers. Companies feel that trade unions should be responsible for this task, even though they have a very limited budget.

*Picture 4. Meeting with Head of West Kalimantan Manpower Office*



#### *9. Inaccurate perceptions*

Trade unions have said that many palm oil companies see trade unions as “troublemakers” who demand unreasonable things and just want to go on strike. Such labelling inhibits trust between companies and trade unions and prevents good social dialogue, both of which are prerequisites for a quality CBA. Trade unions have a responsibility to raise member awareness about the importance of CBAs for the protection of their rights. But they also need to help change the ways that companies view trade unions. In addition, trade unions at higher levels (district, province and national level) need to be proactive in initiating constructive dialogue with the companies and make sure that the freedom of association and social dialogue at plantation level are respected for the benefit of all.

#### *10. Lack of knowledge on starting CBA negotiations*

Companies and trade unions sometimes lack knowledge about how to start CBA negotiations. According to the Provincial Manpower Office, if companies already have a company regulation, then a discussion on a new CBA can start from there. The content of the Collective Bargaining Agreement should be more elaborate than the company regulations. National regulations are general and sometimes can be multi-interpretable. Through a CBA, this should be elegantly negotiated between the company and the union.

#### *11. Low Level of Social Dialogue*

In general, social dialogue practices in companies are artificial. It is mostly limited to the exchange of information or consultation, and does not extend to negotiation or consensus building. This is reflected by the fact that most companies only have company regulations -documents which are drafted exclusively by management - and not CBAs - documents which result from agreements between companies and unions. If there is an independent trade union and a CBA, this means that negotiations and/or social dialogue is already in place.

According to trade unions, companies sometimes try to delay the dialogue, for example, by saying that they are still waiting for a decision from headquarters. Or companies tend to share bad news, such as the decreasing Crude Palm Oil (CPO) price, as a reason for not including improvements for the workers in CBAs. Another issue is the validity of the CBAs in Indonesia, this is only 2 years and extendable for 1 year. Therefore, having a quick decision-making process is crucial. However, in practice, the process to develop a CBA can be time consuming and sometimes take more than a year. It took Hukatan in Kubu Raya, for example, 4 years (from 2013-2016) to achieve a CBA. However, the process can be expedited with the support of Hukatan in Jakarta, who can lobby with the higher level management.

Another example of artificial social dialogue practices can be seen in the high number of cases submitted to the Manpower Office. This shows the weakness of social dialogue and the ineffectiveness of the bipartite committees. According to the District Manpower Office, ideally, all disputes at company level can be settled by a bipartite committee because the most prevalent cause for dispute over the last three years has been about dismissal, severance payment, and wages, or normative issues. These are issues which can be prevented and settled internally.

## Monitoring and Evaluation

### 12. Documentation and monitoring in the District Manpower Office

The District Manpower Office has admitted that the implementation and enforcement of CBAs is lacking. Companies who do not register their CBA and company regulation are not sanctioned. Files tend to go missing due to staff changes. In addition, monitoring is difficult because labour inspectors operate at the province level (Pontianak) rather than at district levels.

The Provincial Manpower Office is preparing an e-registration system for CBAs to enable companies and trade unions to register the CBA without a physical visit. However, this project is still in the developmental phase. If realised, the project could focus on the districts regarded as the Green Zone.<sup>19</sup>



### 13. No rewards and sanctions from Labour Inspectors

CBAs have a legal foundation in the Indonesian Labour Law Number 13/2003 Article 1 (21) as an agreement which is the result of negotiations between a trade union or several trade unions registered at a government agency responsible for labour affairs and an employer or several employers/business associations. This law contains terms of employment, as well as the rights and obligations of both parties. This means that the roles of the Indonesian Manpower Offices focus on administration tasks, such as the registration of the CBAs. When it comes to the implementation or the quality of CBAs, no clear monitoring and/or sanction mechanisms against the companies exist.

### 14. CBA in the context of compliance

CBAs are also mentioned in RSPO Principles and Criteria 2018 according to the following criteria:

- 6.2.1: Applicable labour laws, union and/or other collective agreements, and documentation of pay and conditions must be available to the workers in national languages and explained to them in a language they understand.
- 6.3.1: A published statement recognising freedom of association and the right to collective bargaining must be available in national languages and explained to all workers in languages that they understand, and is demonstrably implemented.

<sup>19</sup> According to information from the Manpower Office of West Kalimantan, with regard to labour issues, the Office divides the districts in West Kalimantan into 3 zones: Green (comply with labour law and administration), Yellow (partly comply with labour law and administration) and Red (mostly not comply with labour law and administration). The districts in Green Zone are: Mempawah, Sintang, Sanggau and Kubu Raya.



However, based on the auditor's checklist, the auditor is not obligated to check the process and quality of CBAs. Trade union members have said that very few of them have ever been interviewed by an RSPO auditor. For instance, in the meeting we conducted with unions in Kubu Raya, only 2 of the 5 unions from companies affiliated with RSPO, have ever been interviewed by RSPO.

## CBAs for Remediation

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Until now, CBAs have not been seen as an achievement or a tool to resolve labour disputes. But they can be very useful in dialogue between independent trade unions and the employer. The fact that many Manpower Offices at district level do not have adequate resources to handle labour disputes shows how the need for CBAs is growing. Staff at the Manpower Office have often been assigned from outside institutions that have little or no experience in labour-related issues or mediation. Even worse, in some districts, there is no mediator present at the Manpower Office. This is the case in the Districts of Kayong Utara and Melawi. In these places, if a dispute is not settled internally, the case is forwarded to the Manpower Office at the Province level. Those offices are located in the capital cities, very far from the districts.<sup>20</sup> Therefore, having good CBAs is crucial.

## CBA analysis in West Kalimantan

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Of the 12 CBAs in West Kalimantan, 8 have been collected and analysed in this project. The finding of show a need to provide more information and training on how to establish good CBAs, for both Trade Unions and employers. In all the CBAs we found stipulations that were against Indonesian Law, ILO conventions, or RSPO standards.

In addition, we can conclude that having an independent trade union present at the negotiation would provide a CBA with agreements on topics like secondary benefits, women's rights, annual leave, inclusion of daily and contract workers, and a place for complaints and remedy procedures.

### *In summary:*

- The right to work (or right to reject overtime requests) is not stipulated in any CBA. The sanction for not reaching the target or not complying with overtime requests by wage reduction is stipulated in 2 CBAs.
- Workers also do not have the right to refuse relocation and/or demotion in all CBAs. This practice is often used to punish trade union members if they try to organise workers.
- There is a serious issue with regard to freedom of association because all of the CBAs stipulate that the employers only recognise or admit the unions who are a signatory party of the CBAs. Therefore, if there are other unions that do not participate in the CBA negotiation due to insufficient number of members, they are not recognised or admitted by the employers. Likewise, workers are then discouraged to form or join unions other than the recognised or admitted ones.
- There is also the problem of non-affiliated unions. If the company or government admits a trade union

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*20 According to the Act No.2 / 2004 on the Industrial Relations Dispute Settlement, if disputes are not able to be settled internally, each party (company or union) can submit the case to the Manpower Office for mediation. If mediation fails, each party can bring the case to the Industrial Relations Court or arbitration. However, the arbitration mechanism has not been established yet, so labour disputes are still being brought to the Industrial Relations Court.*

which is the only union recognised in the company, this union is not independent. It will represent the company or government perspective. There is no independent representation of workers and workers' rights. Moreover, non-affiliated unions can hinder or eliminate the possibility of ever achieving independent unionisation.

- There is the implication that stipulations laid out in CBAs are only valid for the recognised/admitted unions. These are the stipulations related to union's rights, i.e. right to represent workers, right to collective bargaining, freedom to carry out their position, and freedom to join a federation/confederation. Non recognised/admitted unions cannot have access to the rights from the stipulations.
- The right to strike is neglected. One CBA even explicitly stipulates that the company has rights to prohibit strike by means of demonstration in the work area and to file criminal and civil charges due to the company's loss caused by the strike.
- Most CBAs stipulate a non-discrimination policy. However, there is no awareness raising or capacity building to make sure that non-discrimination can be implemented.
- Indonesia has not ratified ILO Convention 190 and they do not have specific law on sexual harassment. Therefore, some CBAs include the issue "violence and harassment" against women as it has been stipulated in Penal Code. However, there is no awareness raising or capacity building to make sure that non-harassment can be implemented.
- The CBAs do not regulate wage bargaining. With the current Job Creation Bill, the government has endorsed low minimum wage and low pay increases. This puts bargaining at the company level and it is an opportunity to negotiate the increment based on the wage scale. Other aspects related to wages (i.e. procedure for payment, freedom to use income and wage reduction in view of getting or keeping jobs) are not negotiated in these CBAs.
- Plantation workers work 6 days a week with 1 rest day. They get paid for 40 hours of work. However, the actual working time is some 54 hours per week because workers have to attend morning briefings which are not acknowledged or paid as work time.
- All the CBAs follow national regulation for annual leave time, which is 12 days a year. This is less than the 15 days stipulated in ILO Convention 110. In 3 CBAs, days for sick leave are even deducted from annual leave. This practice violates National Law. Some employers give additional leave for marriage, childbirth, or illness.
- There appear to be many issues regarding personal protective equipment (PPE). The workers explain that companies are not providing this and that the PPE is often missing or damaged.
- None of the CBAs stipulate procedures for working under extreme and/or hazardous conditions, such as forest fires or haze disasters. This is critical. Almost every year, Indonesia has to deal with forest fires and haze on or nearby palm plantations. Workers often have to finish their work in unpaid overtime and without adequate protection.



- Most CBAs include a woman's right to 12 weeks of maternity leave, based on national regulation. But this is lower than ILO convention 183 which stipulate a maternity leave of 14 weeks. While Indonesia labour law provides 2 days of paternity leave, we found only half of the CBAs provide for paternity leave as regulated under the law; the other 4 CBAs did not.
- Most CBA include menstruation leave in their CBA, but require a doctor's prescription for women workers to take the menstruation leave. This is a burden on the doctor and a cost for women to do every month. It is also a violation of her privacy.
- All the CBAs except for one have no clear monitoring system for preventing child labour. Only 3 CBAs mention the minimum working age of 18 years. Child labour is common on plantations, mainly due to the piece rate work given to women. They need extra hands to reach the targets.
- All CBAs stipulate that management include workers in the mandatory social security scheme (BPJS), both the 4 schemes of work social security and health social security. For health security they even provide other services, such as clinics and medical reimbursements which workers and their families can access.
- Social security is only provided for permanent workers, not for contract and daily workers. Based on the Ministry of Manpower Decision Number 150/1999, social security has to be provided to all workers who work more than 3 months, including the seasonal, contract and daily workers.
- Five of the CBAs include stipulations about the provision of housing facilities. Considering the remoteness of most palm plantations and the number of workers recruited from outside the area, the absence of housing facilities in three CBAs is a problem. Further, quality of the housing is not mentioned in any CBA.
- All the CBAs have complaint procedures that are relatively simple and involve unions to represent workers in a bipartite mechanism. However, none of the CBAs stipulate procedures for remedy, reparation, restitution, or compensation for workers whose rights are proven to be violated.
- All the CBAs stipulate procedures as regulated in the law, such as warning letters, suspension and dismissal. There is one CBA that contradicts the law regarding suspension. It stipulates that management will cut the salary of suspended workers.



## Best Practices

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At present, Serbundo has succeeded in developing 7 CBAs at Wilmar plantations in Sumatra. The first two CBAs were signed on December 2015 for two plantations: PT. Milano Sei Daun in South Labuhanbatu and PT. Daya Labuhan Indah in Labuhan Batu Induk. The negotiations took one month.

Hukatan has tried a “multi-level” lobby and advocacy strategy to develop an agreement with PT Patiware in Bengkayang. The lobby started in December 2019. PT Patiware is a subsidiary of KPN Corps (formerly Gama Plantation). It consists of three subsidiaries: PT Patiware 1, PT Patiware 2, and the mill. Hukatan in Jakarta pushed the process through KPN management. On 18 June 2020, the agreement between Hukatan from 3 companies and the management of PT Patiware was signed. Both parties agreed to establish a bipartite committee and will continue to have regular meetings. Establishing a bipartite committee is the first step in starting negotiations for a CBA.

The District Manpower Office in Sanggau has used IT to collect data from companies and CBAs. Compared with 11 other districts, Sanggau has the most complete data.

The elements of good CBA negotiation are trust, good will, commitment, transparency, no hidden agenda, and similar levels of knowledge for both parties. The existence of an independent trade union is also key. Before negotiations begin, there must be a ground rule. A large international palm oil trader shared one rule that can avoid deadlock; “the deadlock matters will be discussed in a bipartite meeting after the CBA negotiation meetings are finished”. Through this rule delay tactics are not applicable, since all delay matters will be discussed after an agreement has been made. Also a clear schedule and substance that will be discussed is helpful to keep negotiations efficient.

## What's next?

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We will work on the following points when this report has been completed:

1. Collect data from the companies via RSPO and GAPKI West Kalimantan. The researchers expect more data and CBAs.
2. Finalise the benchmark based on Indonesian law and international / RSPO standards.
3. Develop and publish all CBAs in an open palm oil database with benchmark.



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