

Verification Report

*On The Grievance Letter of LSM Matahari
Regarding the Resolutions of Land Dispute
between PT Arara Abadi and the Adat
Community of Mandau*

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Background

On March 12th, 2018, LSM Matahari as the power of attorney of Masyarakat Adat Mandau Persukuan Olak (an indigenous / Adat community) has submitted a grievance letter to Asia Pulp & Paper (APP). In the letter, Persukuan Olak highlights that PT Arara Abadi has illegally included 25,450 hectares of Persukuan Olak's adat land, which is reserved for the Mixed Crops Plantation (Hak Pengusahaan Hutan Tanaman Campuran / HPHTC), into its concession areas (HPHTI).

Based on the letter and the submitted evidences, the APP's grievance verification team has conducted meetings with LSM Matahari as well as verification process, including verification on the legal aspect. This verification report is the conclusion of the overall process.

Verification of Legal Aspect: Claim of Overlapping areal Between HPHTC and HPHTI, Adat Community, and The Adat Forest

The letter states that Rimba Bertuah Cooperative (KORIB) together with Persukuan Olak applied for HPHTC license in 2000. However, to date the HPHTC applied by KORIB has not been approved by the Ministry of Forestry as the main authority that issues forest management license in Indonesia. Further, in 2011 the government of Indonesia revoked the regulation of HPHTC.

Due to the lack of legal basis for the HPHTC claim, we are unable to conduct further discussion about HPHTC.

On May 15th, 2018 APP has sent verification report to LSM Matahari to explain about legal status of HPHTC as explained above.

APP respects the rights of indigenous people and local communities, including recognition of customary land rights. Therefore, APP has tried to explore whether there is a legal recognition by the local government on adat community and adat land located within PT Arara Abadi's concession areas. We checked regulations on Adat aspect, and we found that there are no regulations in Bengkalis District nor in Riau Province that regulate the Adat Area, Adat Forest, nor Adat Community of Persukuan Olak. Whereas, based on the government regulations, the determination of Forest Area for Adat Community should be conducted by the government. We further cross checked with the Adat Land Database (Badan Registrasi Wilayah Adat / BRWA) managed by National Alliance of Adat Communities (Aliansi Masyarakat Adat National / AMAN) and were unable to find Persukuan Olak registered.

The legal aspects supporting the above information are as follows:

1. The Constitutional Court Decree no. 35/PUU-X/2012, where one of the decisions is to change Law no 41 Year 1999 article 5 clause 3, which states that: "The government determined the forest status as mentioned in clause (1); and the adat forest can be determined as long as the fact shows that the Indigenous Community (masyarakat adat) and its law still exists and is being recognized";
2. In the Letter of Minister of Forestry no. 1 year 2013 on the Implementation of Constitutional Court Decision no. 35/PUU-X/2012, clearly stated that the authority to determine the Adat Forest belongs to the Ministry of Environment and Forestry, after it has been regulated by the regional regulations based on a study conducted by a team, as mentioned in the Article 67 of Law no. 41/1999, which has then been changed to Law no. 18/2004.

Verification of Legal Aspect: Permits of PT Arara Abadi

Currently PT Arara Abadi holds operating license stated by the Decree SK IUPHHK-HTI No. 703/Menhut-II/2013, and in its operations, PT Arara Abadi has been working based on the Annual Working Plan that approved by the Ministry of Environment and Forestry.

Conclusion

Based on the above verification, our conclusions are as follows:

1. We respect the existence of Persukuan Olak, and acknowledge them as a part of the communities living in and around the area of PT Arara Abadi;
2. PT Arara Abadi will always obey decision of Ministry of Environment and Forestry and working in the legal concession. The existence of customary land must be determined by the authorities based on the law and regulations of the Government of Indonesia;
3. As a part of PT Arara Abadi commitment to local communities in livelihood area, we have been conducting community development program through Desa Makmur Peduli Api scheme in Tasik Betung, Tasik Serai Timur and Melibur – all of which are villages with presence of Persukuan Olak.