

Shifting the burden of proof in the Astra Agro Lestari investigation

Major shortcomings in AAL and Eco Nusantara's investigation into environmental and human rights violations in Central and West Sulawesi

In March 2022, WALHI and Friends of the Earth US published a [report](#) detailing how AAL subsidiaries PT Agro Nusa Abadi (ANA), PT Lestari Tani Teladan (LTT), and PT Mamuang were responsible for widespread environmental and human rights violations in Central and West Sulawesi, Indonesia. The report documented land grabbing, environmental degradation and pollution of water sources, permitting irregularities, and the criminalization of environmental human rights defenders linked to AAL subsidiaries' palm oil operations. Specifically, the report revealed:

- **Land grabbing:** Several communities impacted by AAL's operations have indicated that the company forcibly took their lands without their free, prior, informed consent, including communities' traditional lands and lands for which farmers' have legal certificates. PT LTT's HGU certificate in Rio Pakava district includes 1,505 hectares of community-owned land under Land Registration Certificates (SKPT). Farmers from Rio Mukti village claim that PT Mamuang seized 128 hectares of land. In certain instances, communities say that AAL subsidiaries abetted by Indonesian paramilitary forces violently seized their land.
- **Permitting irregularities:** PT ANA does not have an HGU certificate, the legal permit to cultivate land. A permit provided to PT ANA was reissued in 2014 to an area of land only one-third of its original concession size, raising questions about the legality of ongoing operations. Furthermore, there are questions whether all three AAL subsidiaries received each of the permits required to legally operate in the proper order as stipulated by Indonesian laws and regulations.
- **Criminalization of environmental human rights defenders:** Numerous cases of violence, intimidation, and criminalization of community leaders and environmental human rights defenders have been documented linked to AAL's operations (see March 2022 [report](#) *No Consent: Astra Agro Lestari's land grab in Central and West Sulawesi*).
- **Environmental degradation and pollution:** PT ANA built embankments on the Mintai River resulting in high water levels, preventing communities from harvesting their crops and potentially contributing to agrochemical contamination of community water sources. PT LTT cleared land and planted oil palm trees on the banks of the Lariang River, widening the river and increasing the threat of flooding and polluted soil, air, and water sources in Towiora Village.

Since the publication of the March 2022 report, there has been increasing international scrutiny on AAL from international civil society, media, and the private sector. Following the publication of the report, Eco Nusantara was hired to conduct an investigation into the allegations. In August 2022, Eco Nusantara released a [verification report](#) that broadly affirmed many of the violations documented by WALHI and Friends of the Earth US. This included affirming community members' rights to land being claimed by PT Mamuang, instances of "violence perpetrated by the security forces against communities," and the absence of an FPIC process by PT LTT. In September 2022, over 50 international civil society organizations issued an [open letter](#) calling for accountability for AAL's violations.

To date, nine consumer goods companies (Colgate-Palmolive, Danone, Friesland Campina, Hersheys, L'Oreal, Mondelez, Nestle, PepsiCo., Procter & Gamble) have suspended palm oil sourcing from AAL entirely or from its Sulawesi subsidiaries. At least one financier has divested from AAL due to



environmental and human rights violations in Sulawesi. In April 2023, BlackRock – the world’s largest asset manager – [voted against the election of AAL’s board of directors and commissioners](#) at the company’s annual shareholder meeting due to “adverse impacts associated with their palm oil operations such as allegations that AAL had seized land from local farmers, operated with poor environmental standards, and was implicated in human rights abuses...” In 2022, BlackRock voted against directors and commissioners at AAL’s parent company, Astra International due to AAL’s violations.

From the perspective of impacted communities and civil society, the published reports, water tests, community testimonies, court hearings related to criminalization of community leaders, and farmers’ certificates of land ownership provide ample justification for AAL to take concrete steps to redress grievances and remedy harm. Indeed, this evidence has been sufficient to prompt action from some of the world’s largest companies and investors. At the same time, there is a lack of trust from communities that have faced sustained violations at the hands of AAL. There is significant skepticism regarding whether AAL will comply with international and national laws and take the necessary steps to resolve conflicts, redress grievances, and remedy harm it has caused.

Impacted communities continue to call on AAL to return land back to communities taken without their consent, provide compensation for loss of lands and livelihoods, clear the names of community leaders and environmental human rights defenders that have been criminalized, and issue a public apology for violations committed.

In March 2023 – one year after WALHI and Friends of the Earth US published its report – Astra Agro Lestari commissioned Eco Nusantara to further investigate environmental and human rights violations committed by its three subsidiaries in Central and West Sulawesi. Neither WALHI nor Friends of the Earth US – the complainants in the case – were consulted prior to the finalization of the terms of reference of the investigation.

Since March 2023, WALHI and Friends of the Earth US have repeatedly shared numerous concerns regarding the substance and process of the proposed investigation, which was framed to investigate communities’ legal rights rather than AAL’s legal standing and social license to operate. The TOR for the investigation included no input from impacted communities or civil society. The TOR suggested that communities must prove their rights to the land using ‘positive law,’ forcing the community to prove all claims with legal evidence, regardless of their customary claims and rights to the land. This ignores the complicated reality of land rights recognition in Indonesia. Furthermore, the TOR stated that communities need to request land, implying that communities want land that is owned by AAL, which incorrectly cements the notion that AAL has the right to the land and would consider ‘giving’ some of its land in partnership to communities. The implication is that communities were previously landless and want land owned by AAL, when in reality, the land in question is claimed by communities and in several instances was forcibly taken from communities without their Free, Prior, Informed Consent.

Despite the mounting evidence in the public record of environmental and human rights violations by AAL and its subsidiaries, and the subsequent decisions of numerous companies and investors to suspend business with AAL based on this evidence, the terms of reference of the investigation seek to place the burden of proof on communities that have suffered years of abuse. At this juncture, the onus should be on AAL to:

- provide evidence that it received the free, prior, informed consent of communities on contested lands,
- provide evidence of all legal permits in accordance with Indonesian law,
- investigate and meaningfully address documentation of environmental degradation and water contamination, and
- meaningfully address allegations of its use of violence, intimidation, and criminalization of community leaders and environmental human rights defenders.

In light of these concerns and the one-way nature of the unfolding investigation, WALHI decided it would be irresponsible to attend a kick-off meeting for the investigation scheduled for May 25, 2023. Yet, despite the numerous concerns shared about the unilateral nature of the investigation and significant gaps in its framing and focus, AAL and Eco Nusantara have decided to continue forward with the investigation, presumably under the existing TOR.

While WALHI maintains that the overwhelming evidence in the public domain is enough for AAL to take meaningful steps toward providing remedy along the lines of what communities are asking, for the current AAL and Eco Nusantara investigation to be useful it should:

- 1) Ensure community inputs:
 - a. Prior to the commencement of the investigation, the terms of reference should be shared with impacted communities in Bahasa Indonesian. Communities should be given the opportunity to provide inputs into the direction, focus, and framing of the investigation.
 - b. All impacted communities should be identified prior to the commencement of the investigation and given the opportunity to decide if they want to participate in the investigation as it is framed.
 - c. If communities reject the investigation or do not want to participate in it, this should be accounted for (and potentially viewed in the context of communities' having not provided their free, prior, informed consent to AAL to operate on their lands).
 - d. Communities should be accurately referred to as rightsholders in the TOR and framing of the investigation.
- 2) Examine AAL's permitting irregularities:
 - a. Confirm through legal evidence that each AAL subsidiary has received required permits: Izin Lokasi (location permit), Izin Lingkungan (environment permit), IUP (plantation business permit), SK Pelepasan Kawasan Hutan (state forest release letter), HGU (right to cultivate land), Izin Pemanfaatan Kayu (timber utilization permit) and received permits in the proper legal order.
 - b. Examine why a permit provided to PT ANA was reissued in 2014 for an area of land only one-third of its original concession size.
 - c. Examine how PT ANA has been operating without a HGU for over a decade, despite claims that this permit is "in process."
- 3) Seek evidence from AAL that it received FPIC from impacted communities:
 - a. Documentation and proof from AAL that it received the free, prior, informed consent from communities to operate on their customary lands as well as lands where farmers hold legal certificates.

- b. Notably, FPIC is intended to be an ongoing process throughout the term of a concession agreement. Examine whether AAL and its subsidiaries ever conducted a proper FPIC process.
- 4) Examine the potential role of AAL in violence and criminalization:
 - a. Communities have shared numerous testimonies of violence, intimidation, and criminalization tied to AAL's operations. An investigation is needed to examine AAL's role in, and ties to local authorities as it pertains to, these cases.
 - b. This should include examining cases documented in the March 2022 report, as well as multiple cases of intimidation and criminalization that have been raised following the publication of the March 2022 report.
- 5) Respect communities' customary land rights:
 - a. Understanding the Indonesian national context is essential for proper independent environmental and human rights due diligence and investigation. There are significant gaps in Indonesia regarding the recognition of Indigenous Peoples' rights to land and customary territories, which are exacerbated when those same lands are claimed by corporations (in this case by AAL). In many areas in Indonesia, communities lack formal legal ownership over their customary lands in the form of certificates. In these cases, the only evidence communities have is the plants, trees, and crops they have grown from generation to generation, customary land acknowledgement from village leaders, and historical land tenure records passed down through generations. Customary land rights and claims should be respected and treated with the same integrity as statutory land rights and claims.
- 6) Examine environmental impacts:
 - a. Examine PT ANA's embankments on the Mintai River and impacts on communities' livelihoods.
 - b. Examine impacts of PT ANA's palm oil waste disposal in and around Mintai River estuary.
 - c. Examine agrochemical contamination and impacts on communities' crops around the mouth of the Mohoni River.
 - d. Examine PT LTT's clearance of land and establishment of plantations on the banks of Lariang River and impacts on erosion and communities' flood risks.
 - e. Examine disposal of palm oil waste in Towiora Village and impacts on communities' water sources.
- 7) Prior to the commencement of the investigation AAL should publicly commit to remedying harm:
 - a. If land is found to be taken without communities/farmers' free, prior, informed consent, AAL should commit to returning this land and engaging in a process to determine compensation for loss of lands and livelihoods.
 - b. AAL should commit to working with communities to restore environmentally degraded sites, including destruction to rivers and community water sources.
 - c. AAL should see these steps as necessary prerequisites for resolving ongoing land conflicts, fulfilling its legal and sustainability obligations, and remedying loss and damage experienced by impacted communities.