

# Strengthening Law Enforcement in Forest Management; REDD+ Readiness Phase

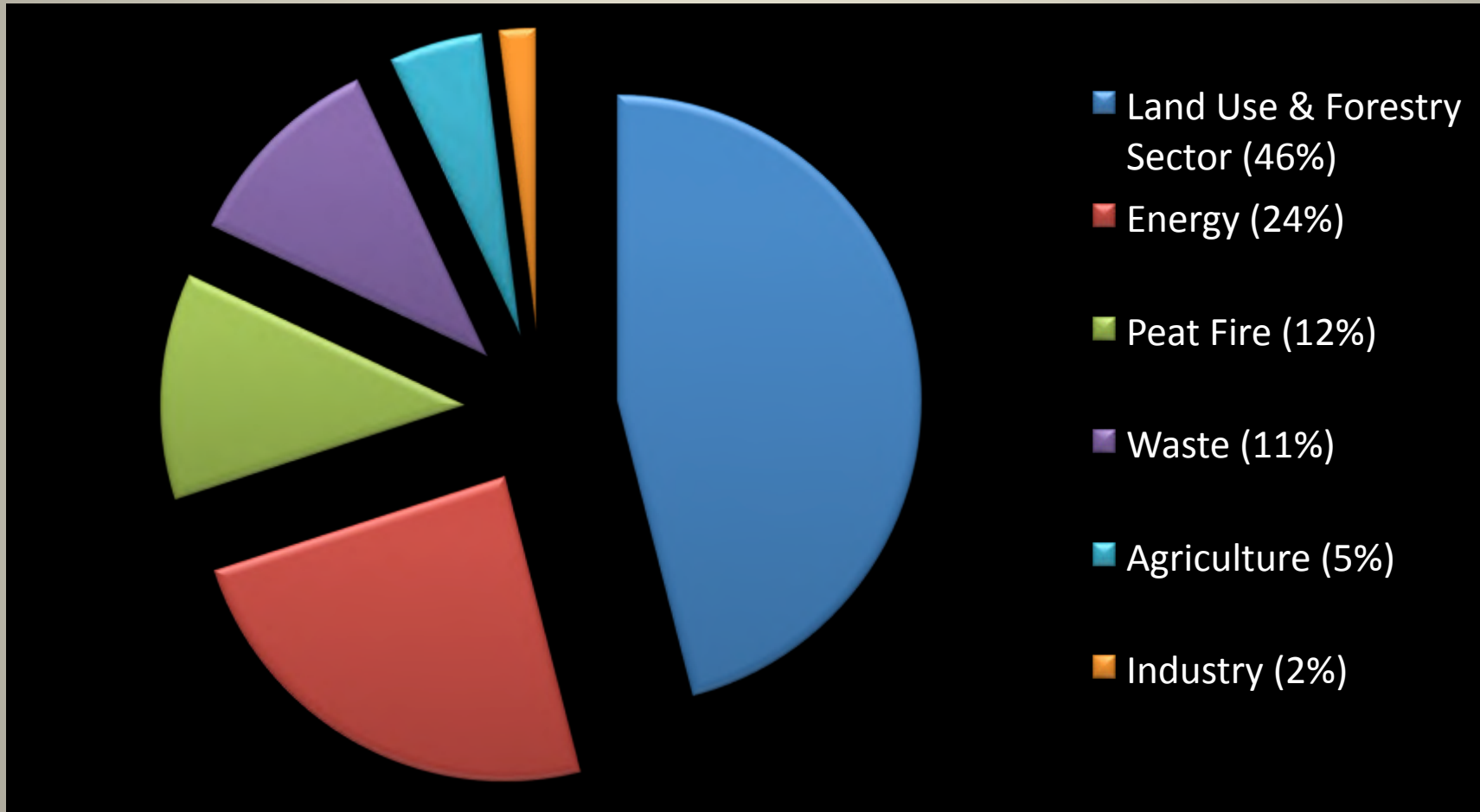
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Presidential Taskforce to Eradicate Corruption in the Legal System  
/Indonesian Center for Environmental Law

**BACKGROUND**

# Source of Indonesian Emission

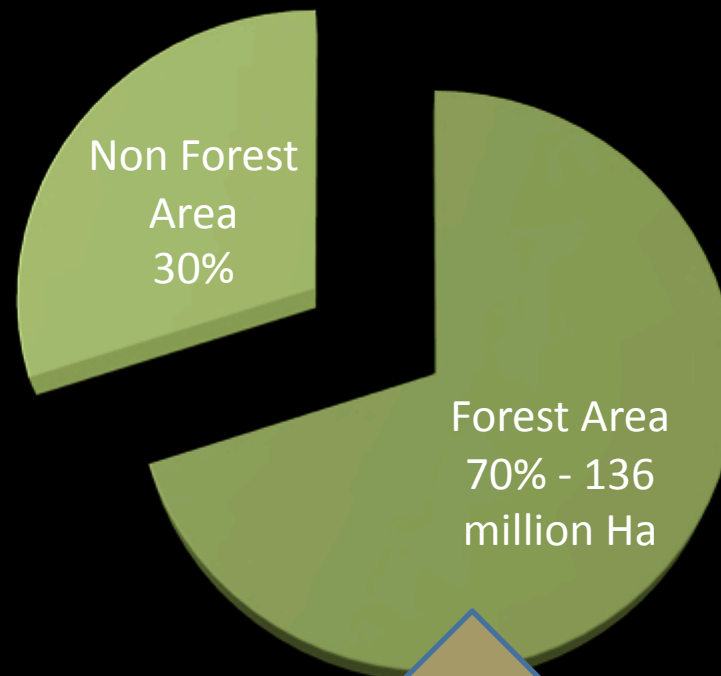
National Action Plan Reduction of Green House Gas Emission, draft per August 2010



# Indonesian Government Pledge

Reducing **26%** (w/ national budget)  
to **41%** (w/ help from international)  
of GHGs from Business As  
Usual, in 2020

# Indonesian Forest Condition



Deforestation rate  $\pm$  1 million ha/y.

# Source of Deforestation and Forest Degradation

## Planned Conversion

- Plantation
- Farming
- Mining
- Infrastructure
- Transmigration
- Etc

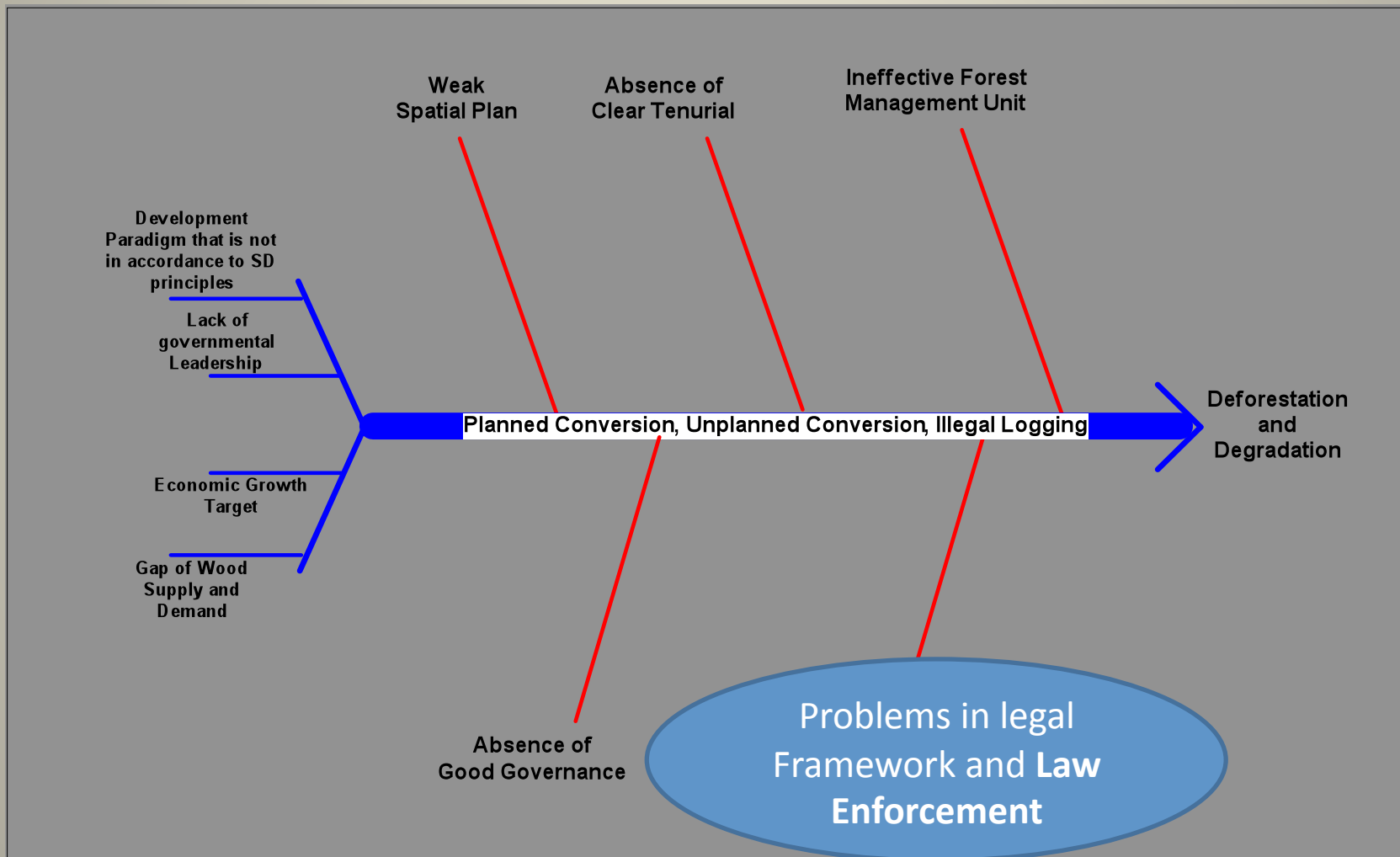
## Unplanned Conversion

- Illegal activities (encroachment)
- Forest & land fires

## Illegal Logging

- Harvesting wood without any license
- Harvesting wood beyond concession area

# Root of Causes of D&D



Draft of National Strategy on REDD+, September 2011

# National Strategy of REDD+ (draft)

Short/mid term programs (2011 – 2014) aim:

- **improve governance of forest management**
- provide basic institution for REDD+ activities (REDD+ institution, MRV mechanism/institution, etc)



# Working Group of MoF and Satgas PMH

- In September 2010, Presidential Taskforce to Eradicate Corruption in the Legal System in cooperation with Ministry of Forestry establishes a Working Group, with three main tasks:
  - a. conducting study of the root of the problems of law enforcement in forestry sector;
  - b. providing recommendations to the problems;  
and
  - c. suggesting priority cases.

Non direct  
Law  
Enforcement  
Issue

Direct Law  
Enforcement  
Issue

Problems in  
Law  
Enforcement

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graph TD; A[Non direct Law Enforcement Issue] --> C((Problems in Law Enforcement)); B[Direct Law Enforcement Issue] --> C;
```

# WG Study; Central Kalimantan

- As a pilot project, WG decided to conduct study in **Central Kalimantan** due to data availability.
- The study focused on the non-procedural activity in forest area by **plantation** and **mining** activities.
- WG has established **conclusion and recommendation**.

# **FINDINGS**

# Case Study; Background

- Forestry Act of 41/99 is giving criminal/ administrative sanction for conducting activities without proper permit in **Forest Area**;
- There are two different documents that are referred by different people in defining Central Kalimantan Forest Area, namely **Spatial Plan** (RTRWP of Central Kalimantan of 2003 and Designated Forest Area by the **Ministry of Agriculture Decree** of 1982 (based on agreement of different stakeholders on Forest Area)).

## 2 Different Basis of Forest Area

Function of Forest	MoA Decree (TGHK)	Spatial Plan (Local Govt Decision)
<b>Permanent Forest</b>		
Protected Forest	800 thousands Ha	750 thousands Ha
Conservation Area	700 thousands Ha	1.5 million Ha
Limited Production Forest	3.4 million Ha	3.8 million Ha
Production Forest	6 million Ha	4.2 million Ha
<b>Total Permanent Forest</b>	<b>11 million Ha</b>	<b>10.3 million Ha</b>
Conversion Production Forest and Non Forest Area (APL)	<b>4.3 million Ha</b>	<b>5 million Ha*</b>
<b>Total</b>	<b>15.3 million Ha</b>	

\* Not included Conversion Forest

# Plantation & Mining Permit in Forest Areas

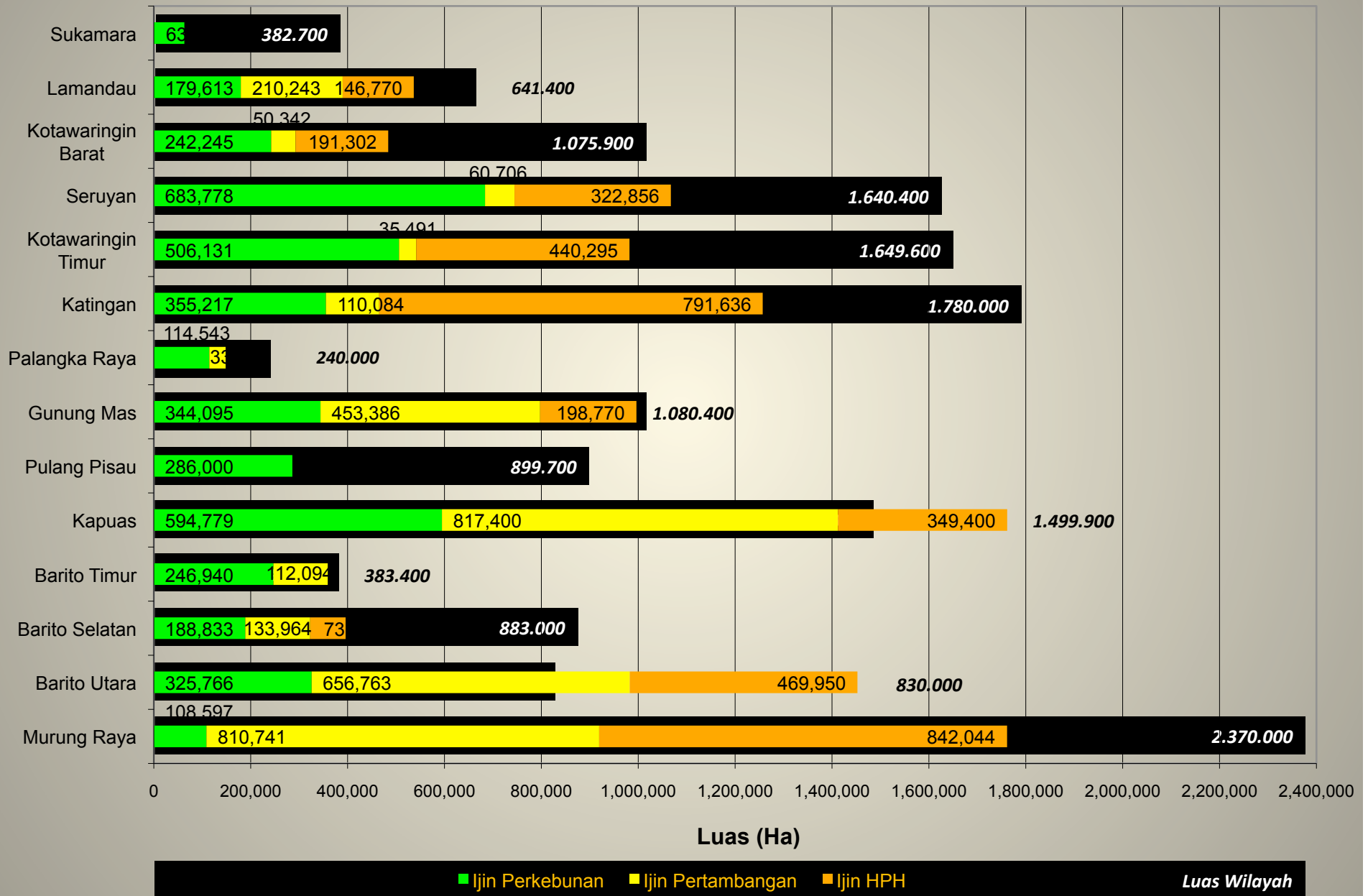
## Mining

- Total mining permit **615** unit (**± 3.7 million Ha**);
- License to use forest area for other purposes (for mining activities) **9 Units (30 thousands Ha)**

## Plantation

- Total Permit around **350** unit (**± 4.5 million Ha**);
- Given on Forest Area (based on RTRW/TGHK) (**230 Unit, 3.3 million Ha**);
- Active: **143** unit (**2 million Ha**);
- License to release forest area for other purpose (for plantation): **67 Unit (800 thousands Ha)**.

# Central Kalimantan Friends of the Earth Data, 2011





# Note

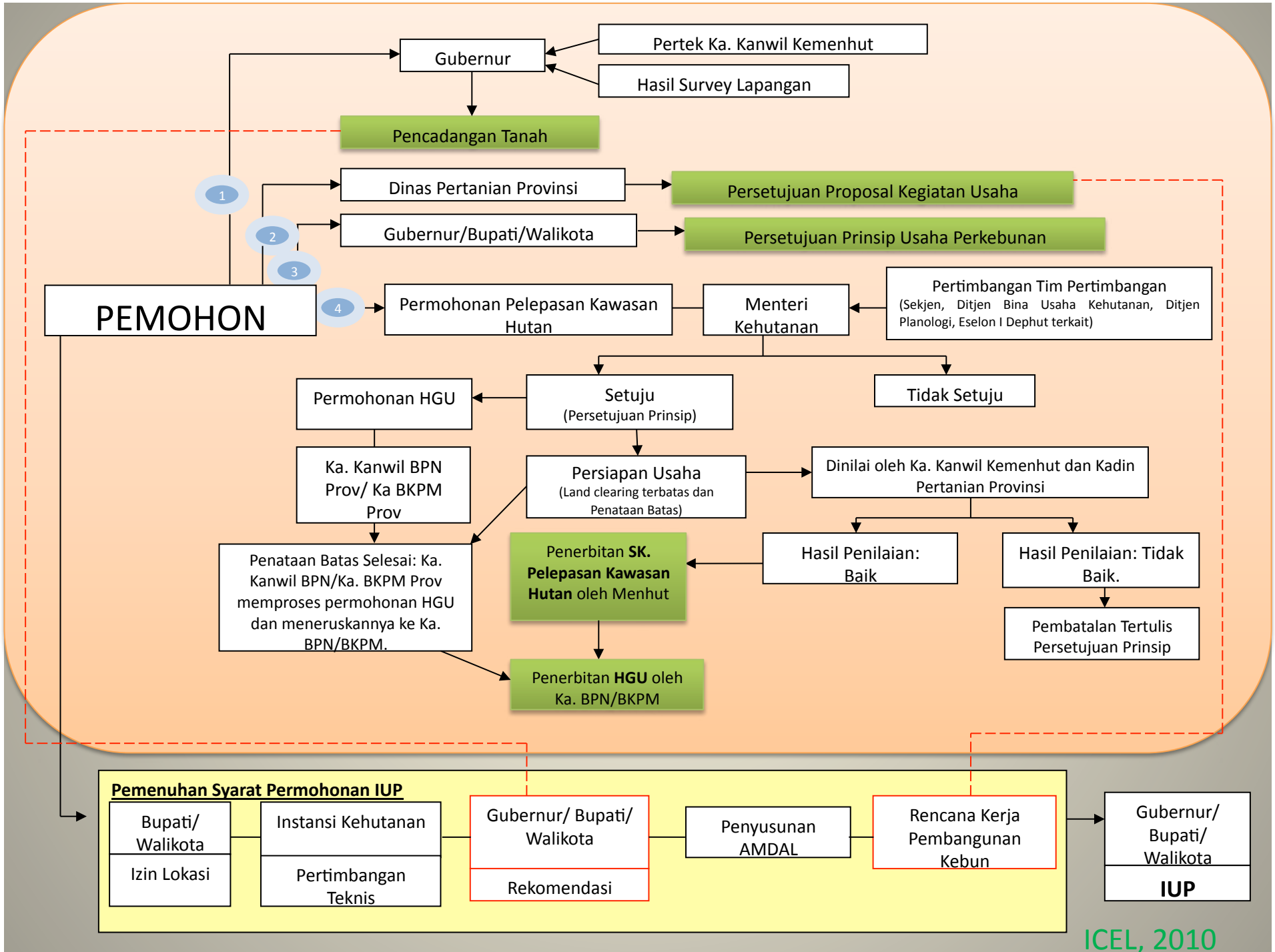
- Giving license in forest area is not necessarily a crime or administratively incorrect;
- Conducting activities without proper license (or obtaining license with bribery) is a crime, which can be hold liable under different laws, e.g.:
  - a. Forestry Act of 41/1999;
  - b. Spatial Management Act of 26/2007;
  - c. Mining Act of 4/2009;
  - d. Environmental Management Act of 32/2009;
  - e. Anti Corruption Act of 31/1999;
  - f. Money Laundering Act of 8/2010.
- Based on obvious breach of law and the scale of activities, 63 cases are prioritized.

# Typology of Offences

1. Mining or plantation activity without any license/inappropriate license (e.g. only based on recommendation of local government, or plantation w/out right to use land, expired permit);
2. Mining/plantation activity without Permit from MoF;
3. Cutting log without license (IPK);
4. Using area or giving license for mining/plantation activity against the Spatial Plan;
5. Open pit mining in protected forest/Mining activities inside conservation forest;
6. Conducting activity beyond permitted area;
7. Overlapping permit/activities;
8. Obtaining permit without proper procedure, e.g.:
  - a. Recommendation from head of local government to the MoF is not accompanied by map of the recommended activity;
  - b. Issuing right to use land without MoF release of the forest area.
  - c. Issuing Plantation Permit without location permit (Izin Lokasi).
  - d. Issuing Plantation Permit without EIA; and/or
  - e. Issuing plantation license when location license has been expired.

# Root of The Problems; generic

- The **current licensing legal framework** make it unfeasible for MoF or any other agency to have list of all licenses issued by different agencies (national and/or local) in forest area – thus conducting proper administrative supervision;
- There are three conditions that make the condition worse:
  - a. Disputes on legality of Forest Area designation;
  - b. Only 11% of Forest Area has completed the required process (including having proper sign as Forest Area);
  - c. Lack of manpower to supervise all forest areas.



# Root of The Problems; law enforcement

- Despite all institutional and policy problems, a basic analysis of the documents shows that there are cases that are clear of breaching both documents but not legally enforced (54 plantation and 9 mining in designated forest area in Central Kalimantan).
- In addition there are many public complaint concerning obvious breach of law that are not being enforced.
- In this aspect, come into view the problems of problem in the law enforcement stage.

# Law Enforcement Issues

- Lack of capacity to use alternative and robust approaches to combat illegal logging/illegal activities in forest area (i.e through utilization of anti-corruption follow with asset forfeiture and/or money laundering law);
- No clear understanding of who should conduct supervision in Forest Area between National and Local Government;
- Problems of resources for effective and comprehensive law enforcement (e.g there are only 1700 civil servant investigator in forestry area); and/or
- Corrupt law enforcement process.

**RECOMMENDATION**

# SPECIFIC RECOMMENDATION

Typology	Legal Recommendation	Policy Recommendation
1. Mining or plantation activity in forest area without any license/ inappropriate license from sector	Criminally liable based on Plantation Act, Mining Act, Environmental Management Act (EMA), & Forestry Act (FA)	-Strengthening supervision in Forest Area -Finalizing Forest Area and ensure existence of Forest Management Unit (FMU)
2. Plantation/mining activities w/out permit from MoF	Criminally liable based on FA & EMA	Finalize Forest Area and Make it harmonious/compatible to Spatial Plan
3. Cutting log w/out license	Criminally liable based on FA, EMA, Corruption Law.	Revise related laws that ensure integrated and transparent licensing process (SKB dan Permenhut No. P.58/Menhut-II/2009)
4. Conducting activities/ issuing permit against Spatial Plan	Criminally/administratively liable based on Spatial Management Act	Finalize all Spatial Plan



# SPECIFIC RECOMMENDATION; 2

Typology	Legal Recommendation	Policy Recommendation
5. Open pit mining in protected forest/ Mining activities inside conservation forest	Criminally liable based on FA, strict liability in EMA	-Strengthening supervision in Forest Area -Finalizing Forest Area and ensure existence of Forest Management Unit (FMU)
6. Conducting activity beyond permitted area	Criminally liable based on FA, strict liability in EMA	-Strengthening supervision in Forest Area -Finalizing Forest Area and ensure existence of Forest Management Unit (FMU)
7. Overlapping license	Administrative, criminal and civil liability approach	-Revise law so that permit can only be given upon clean and clear land. - Revise law to ensure integrated and transparent licensing process.
8. obtaining permit without proper procedure	Administrative sanction, criminally liable under corruption law.	1. Revise law to ensure integrated and transparent licensing process; 2. Finalizing Government Regulation on Environmental License.

# Generic Recommendation

- Suspension of all new licenses in forest area (INPRES 10/2011);
- Finalizing the process of designate forest area, establishing FMU/KPH and creating one map that is factually accurate and legally acceptable;
- Reviewing all laws and regulations that contributing to the problems;
- Developing an integrated and uncomplicated licensing process between sectors in local and national level;

# Generic Recommendation; Law Enforcement

- Strengthening law enforcement through:
  - a. Strengthening coordination between law enforcer and enrich law enforcement options;
  - b. Giving deterrent effect by legally enforcing obvious breach of law (priority cases);
  - c. Developing intact framework to conduct holistic review of the current permits and licenses in Forest Area, considering *intention, level of offences* and the *future plan* of forest function in particular area. The use of *alternative approaches* should also be considered in determining action e.g. Land swap, etc
  - d. Systematic improvement of law enforcer – **KPK, Satgas PMH, INPRES 9/2011 and Bureaucracy Reform Agenda.**

Thank You