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SUSTAINABLE DEVELOPMENT GOALS TO STRENGTHEN INDONESIAN PALM OIL DEVELOPMENT THROUGH INDONESIAN SUSTAINABLE PALM OIL (ISPO)

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Abstract: The palm oil development provides many advantages for Indonesia. One of which is that the development of Indonesian palm oil came fast and contributed a lot to the country's economic sectors. There are also other organic oil-based, such as jatropha, camelina, soybean and rapeseed. However, compared the palm oil to the other base of the organic oil materials, palm oil price outperforms the others oil-based because of the stability of the palm oil price. Palm oil benefits the Indonesian economy and the triple bottom line of John Elkington: people, planet, and profit. However, there is a critical issue with palm oil production. Its production is believed not to apply sustainability principles. Thus, it can damage and ruin the natural environment in Indonesia; for example, it damaged the area where the Sumatran tiger, Sumatran Orang Utan, and Borneo Orang Utan lived. Through the ministry of agriculture, the government established Indonesian Sustainable Palm Oil (ISPO) to answer this critical issue and recover the sustainability aspect of Indonesian palm oil.

Keywords: Indonesia, ISPO, Palm Oil Development, Sustainability, Triple Bottom Line

Abstrak: Indonesia beruntung karena dapat menikmati berbagai manfaat dari pembangunan kelapa sawit yang merupakan salah satu ciri dan keuntungan tersendiri yang Indonesia miliki, pembangunan kelapa sawit Indonesia sangat cepat dan pesat serta memberikan kontribusi yang tinggi terhadap negara melalui sektor ekonomi, jika dibandingkan dengan minyak nabati lainnya seperti : jathropa, camelina, soy bean dan rapeseed, kelapa sawit lebih unggul dari segi ekonomi yang mana dari segi harga lebih stabil jika dibandingkan minyak nabati dengan bahan baku lainnya. Minyak kelapa sawit memberikan berbagai manfaat bagi Indonesia selain daripada ekonomi juga terhadap triple bottom line sebagaimana dikemukakan oleh John Elkongton yakni people, planet dan profit sehingga dalam pemanfaatannya memberikan dampak yang baik meski begitu tetap saja dihadapkan dengan berbagai critical issue mengenai kelapa sawit. Dalam kegiatan produksi kelapa sawit diyakini bahwa belum mengedepankan aspek keberlanjutan yang kemudian berdampak terhadap kerusakan lingkungan di Indonesia. Area yang terdampak meliputi area dimana Harimau Sumatera dan Orang Utan Kalimantan dan Sumatera

tinggal dan untuk itu berkenaan dengan ketidakpastian dan keberlanjutan dalam kelapa sawit Indonesia pemerintah melalui kementerian pertanian menginisiasikan Indonesian Sustainable Palm Oil (ISPO) sebagai jawaban atas critical issue sekaligus regulasi mengenai minyak kelapa sawit Indonesia dan aspek lingkungan didalamnya sehingga menjadikannya komoditas utama yang mengedepankan lingkungan dan aspek keberlanjutan.

Kata Kunci: Indonesia, ISPO, Pembangunan Kelapa Sawit, Aspek Keberlanjutan, Triple Bottom Line

Introduction

Indonesia benefits from palm oil development with its various rich ingredients and its processings. The rapid growth of Indonesian palm oil certainly contributes to the Indonesian economy as palm oil is the most efficient oil industry compared to other types of vegetable oil. Palm oil price is more competitive than other vegetable oils' prices. Moreover, the palm oil industry can absorb and provide many job employments because of the large land planted with oil palm.¹

Currently, the development of the palm oil business in Indonesia is advancing rapidly. This is supported by the development of various kinds of derivative products from palm oil. The derivative products are in the oil form and various daily needs, including household necessities, beauty products, and various other needs.² In line with Indonesian palm oil development, the growth rate and expansion of palm oil plantations have also increased from what was originally only on Sumatra Island, now extends to Papua Island. Therefore, the Indonesian people must be proud of their natural resources include palm oil. The development of Indonesian palm oil has aspired since the first issuance of regulations on the palm oil certification system.³

On the other hand, several shortcomings and problems had risen because a system that can certify palm oil into a more sustainable system has not yet been implemented. Palm oil development from planting to processing activities so far has not been carried out sustainably. Sustainable development can improve various life aspects, including economic, socio-cultural, and environmental aspects, even though the economic aspect is the most prominent in palm oil development. The triple bottom line concept consists of three elements: people, planet and profit, highlighted that social and environmental aspects must be prioritized in addition to the economic aspect itself. If this concept is appropriately implemented in a balanced manner, the development of Indonesian palm oil will be sustainable.

The government's seriousness in developing Indonesian palm oil was realized by maximizing and further regulating the palm oil certification system. The latest Indonesian Sustainable Palm Oil (ISPO) regulation issued was the Republic of Indonesia Presidential Regulation Number 44 on 2020 regarding the Indonesian Sustainable Palm Oil Plantation Certification System. This presidential regulation was issued as a follow-up to various critical issues in the Indonesian palm oil sector related to understanding and policies on sustainability in Indonesia. The risen issues include; the institutional mechanism

1 Ermanto Fahamsyah, *Hukum Perkebunan Jenis Dan Bentuk Perjanjian Dalam Pola Perusahaan Inti Rakyat Perkebunan Kelapa Sawit* (Laksbang Justisia 2018), 7; See also Ozy, 'Legal Perspective on the Trade Facilitation Agreement (TFA): Indonesia Case Studies' (2016) 1 *Petita : Jurnal Kajian Ilmu Hukum dan Syariah*; Ozy Diva Ersya, 'Private Actor Rights Derived From The WTO TFA' (2019) 4 *Petita : Jurnal Kajian Ilmu Hukum dan Syariah*.

2 Gabungan Pengusaha Kelapa Sawit Indonesia, 'Perkembangan Mutakhir Industri Kelapa Sawit Indonesia' (2017) <<https://gapki.id/news/3971/perkembangan-mutakhir-industri-minyak-sawit-indonesia>>.

3 *ibid.*

for implementing ISPO certification is not transparent, the substance of the criteria and indicators of the ISPO certification system is non-transparent. Therefore, a newer regulation with a higher hierarchy, the Presidential Regulation on ISPO, was issued to address these problems.⁴

Efforts to advance and sustain the Indonesian palm oil development are represented in Article 4 paragraph 2 of the Republic of Indonesia Presidential Regulation Number 44 of 2020 on the Indonesian Sustainable Palm Oil Plantation Certification System. This ISPO Certification, as referred to in paragraph (1) carried out by applying the principles set out below, includes a. compliance with laws and regulations; b. application of good plantation practices; c. management of the environment, natural resources, and biodiversity; d. labour responsibilities; e. social responsibility and community economic empowerment; f. application of transparency; and g. improvement in business sustainability.⁵

Research objectives

1. To investigate the application of SDGs in ISPO.
2. To better understand whether ISPO in the Presidential Regulation 44/2020 has fulfilled the SDGs to strengthen Indonesia's palm oil development.
3. To figure out how the future regulations regarding ISPO will meet the SDGs.

Method

The method used in this study was the statutory research method (statute approach) and conceptual research method (conceptual approach) by linking the applicable laws and regulations with the conception of the Sustainable Development Goals, Indonesian palm oil development, the Indonesian Sustainable Palm Oil (ISPO), and Indonesian Sustainable Palm Oil (ISPO) certification.

Results and Discussion

Sustainable Development Goals in Indonesian Sustainable Palm Oil

The Sustainable Development Goals have 17 pillars that contain the aspirations of all countries and world society levels to create a better and more sustainable future.⁶ As a member country of the United Nations, Indonesia has ratified the United Nations Sustainable Development Goals through Presidential Regulation Number 59 of 2017 on Indonesia's implementation of Sustainable Development Goals.⁷ The United Nations Sustainable Development Goals ratification is in line with the Sustainable Development Goals as stated in the document *Transforming Our World: The 2030 Agenda for Sustainable Development* to fulfil the government's commitment to implement the Sustainable Development Goals.

Presidential Regulation Number 59 of 2017 on the Implementation of Sustainable Development Goals is not the only policy document to implement the United Nations Sustainable Development Goals. The government also took serious steps to implement the United Nations Sustainable Development Goals through several policies, including:

4 Ermanto Fahamsyah (n 1).

5 Pasal 4 ayat 2 Peraturan Presiden Republik Indonesia Nomor 44 Tahun 2020 Tentang Sistem Sertifikasi Perkebunan Kelapa Sawit Berkelanjutan Indonesia.

6 Ronald Holzhaecker and Dafri Agussalim, *Sustainable Development Goals in Southeast Asia and ASEAN, National and Regional Approaches* (Brill 2019); Rachael Mulheron, 'England's Unique Approach To The Self-Regulation of Third Party Funding: A Critical Analysis Of Recent Developments' (2014) 73 *The Cambridge Law Journal* 570; Zamir Akram, 'Chapter 1 Relationship between the Human Right to Development and Core Elements of the Sustainable Development Goals' (Brill | Nijhoff 2019).

7 Peraturan Presiden Republik Indonesia 59 Tahun 2017 Tentang Pelaksanaan Pencapaian Tujuan Pembangunan Berkelanjutan. Lembaran Negara Republik Indonesia Tahun 2017 Nomor 136.

- a. Law No. 32 of 2009 concerning Environmental Protection and Management so that sustainable development goals will be achieved. The goals encompass the use of natural resources must be in harmony and balance with environmental functions. Consequently, development policies, plans, and programs must be imbued with the obligation to preserve the environment and realize sustainable development goals.⁸;
- b. Presidential Regulation Number 2 of 2015 on the 2015-2019 National Medium-Term Development Plan⁹;
- c. The Ministry of National Development Planning/ National Development Planning Agency made the Roadmap of SGS's Indonesia Towards 2030. The 2030 development agenda roadmap is a plan document that contains strategic policies in the form of stages in achieving 2017 to 2030 TPB align with national development goals. The roadmap contains steps and targets to be accomplished by Indonesia in achieving the Sustainable Development Goals by 2030.¹⁰

Thus, the Presidential Regulation Number 59 of 2017 on the Implementation of the Sustainable Development Goals, Law Number 32 of 2009 on Environmental Protection and Management, Presidential Regulation Number 2 of 2015 on the 2015-2019 National Medium-Term Development Plan, and Roadmap of SGS's Indonesia Towards 2030 are a unified policy. These Policies aimed to maintain; a sustainable improvement in the community economic welfare, the sustainability of the community social life, the quality of the environment, inclusive development and the implementation of governance that can improve life quality from one generation to the next.

Indonesian Sustainable Palm Oil (ISPO) is a policy made by the Government of Indonesia through the Ministry of Agriculture to increase the competitiveness of Indonesian palm oil in the world market. This policy also fulfils the President of the Republic of Indonesia commitment to reduce greenhouse gases and pay attention to environmental problem.¹¹ The Indonesian Sustainable Palm Oil (ISPO) implementation is expected to support Indonesian palm oil development through various regulations and policies, especially related to various aspects of the Triple Bottom Line, including people, planet, and profit. The policies are not only profit-oriented but also prioritizing environmental and social aspects. This is because the problems that often arise related to the development of Indonesian palm oil are related to environmental and social issues.

Indonesian Sustainable Palm Oil (ISPO) is regulated in the Republic of Indonesia Presidential Regulation Number 44 of 2020 on the Indonesian Sustainable Palm Oil Plantation Certification System (hereinafter referred to as Presidential Regulation 44). Presidential Regulation 44 is a manifestation of the Indonesian Sustainable Palm Oil (ISPO) policy application by considering that Indonesian palm oil plantations absorb many workforces and contribute to foreign exchange reserves for the country. For this reason, Indonesia needs effective, efficient, fair, and sustainable palm oil plantation management to support national economic development and as an effort to strengthen Indonesian palm oil development.

ISPO is implemented to ensure that palm oil plantations are socially, economically and

8 Pasal 3 Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup.

9 Peraturan Presiden Nomor 2 Tahun 2015 Tentang Rencana Pembangunan Jangka Menengah Nasional Tahun 2015- 2019.

10 Kementerian Perencanaan Pembangunan Nasional/Badan Perencanaan Pembangunan Nasional, *Peta Jalan SGS's Indonesia Menuju Tahun 2030* (Kementerian Perencanaan Pembangunan Nasional/ Badan Perencanaan Pembangunan Nasional) 2019).

11 <<http://www.ispo-org.or.id/index.php?lang=ina>. >.

environmentally appropriate under applicable laws and regulations. The previous Indonesian Sustainable Palm Oil Plantation Certification System need to be improved because it is no longer in line with international developments and legal needs. The new ISPO Plantation Certification System based on a Presidential Regulation will be still carrying the ISPO's main objectives, which are to: a). certainly and improving the management and development of palm oil plantations in line with the ISPO principles and criteria; b). improving acceptance and competitiveness of the Indonesian palm oil plantation products in the national and international market; c). increasing the programs to accelerate the reduction of glasshouse gas emissions¹² to Sustainable Development Goals principles. This regulation is addressed to relevant parties in strengthening oil palm development in Indonesia, including palm oil planters, companies, and other related parties. The efforts as a manifestation of government seriousness in responding to and tackling critical issues against Indonesian palm oil include the following:¹³

Improving ISPO Certification governance by opening up space for participation, accountability, and transparency. ISPO Certification is currently being refined with the issuance of further regulations regarding procedures and ISPO provision. This revision is listed on the Republic of Indonesia Presidential Regulation Number 44 of 2020 and The Minister of Agriculture of the Republic of Indonesia Regulation Number 38 of 2020. Both regulations are simultaneously making new arrangements that improve the previous ISPO Certification;

Reorganizing the ISPO Commission in terms of membership, duties, functions, and integrity. Previously, the ISPO commission has not been implemented its membership mechanism, duties and functions adequately. Therefore, it needs improvement to promote the ISPO Commission's integrity by functioning the National Accreditation Committee (KAN) in the ISPO Certification system. The National Accreditation Committee (KAN) is an institution that has functions and duties related to accreditation;

KAN's role is to improve ISPO certification standards and requirements. The ISPO Certification Body can issue ISPO Certificates directly without the approval of the ISPO Committee so that the ISPO certification process can now become more independent in increasing attention to deforestation, peatland conversion, and greenhouse gas emission issues. Respond to these critical issues in line with the efforts to strengthen Indonesian palm oil development, especially in addressing environmental challenges risen by Indonesian palm oil and establishing a more credible and independent monitoring mechanism. An independent and credible monitoring mechanism will positively impact the efforts to strengthen Indonesian palm oil development.

The principles in point a to g will be further described in the ISPO criteria as stipulated in Article 4 Paragraph 3. ISPO principles and criteria are regulated in Presidential Regulation of the Republic of Indonesia Number 44 of 2020 on Indonesian Sustainable Palm Oil Plantation Certification Systems and the Minister of Agriculture of the Republic of Indonesia Regulation Number 38 of 2020 on the Implementation of Indonesian Sustainable Palm Oil Plantation Certification.

Standardization is essential to be applied both to human or animals life and health and those of plants. The Indonesian National Standard (SNI) will create a standard for a product or service with the same standard for all Indonesian people and the world community

12 *adheres*

13 Ermanto Fahamsyah (n 1).

who consume or use domestic products and services. SNI is the only and main national-based standard in every product and service in Indonesia.

A standardization system based on the *WTO code of good* is adopted as a national standard of the upstream to downstream palm oil process. It is determined that the palm oil plantation business in ISPO standard is a business that is economically viable, socio-cultural and environmentally friendly, and following the laws and regulations. Accordingly, if ISPO certification is enforced on a mandatory basis and adequately applied, all the problems and challenges related to implementing sustainable Indonesian palm oil will be addressed as mentioned in Presidential Decree Number 59 of 2017 on the Application of SDGs.

Comprehensive ISPO certification has a positive impact on the efforts to strengthen Indonesian palm oil development. ISPO certification regulated in the Presidential Regulation of the Republic of Indonesia Number 44 of 2020 on the Indonesian Sustainable Palm Oil Plantation Certification System is a “Mandatory no longer Voluntary”. This is confirmed with application instructions in the Minister of Agriculture of the Republic of Indonesia Regulation Number 38 of 2020 concerning the Implementation of Indonesian Sustainable Palm Oil Plantation Certification (the ISPO certification system).¹⁴

Thus, the implementation of Sustainable Development Goals in Indonesian Sustainable Palm Oil (ISPO) is by establishing a newer regulation that adopts the Sustainable Development Goals that prioritizes sustainability principles. This regulation will become ISPO regulation after the issuance of Presidential Regulation Number 44 of 2020 on Indonesian Sustainable Palm Oil Plantation Certification Systems and Minister of Agriculture Regulation Number 38 of 2020 on Indonesia Sustainable Palm Oil Plantation Certification. Adaptation and implementation of Sustainable Development Goals values in various ISPO certification activities are part of strengthening Indonesian palm oil development.

Presidential Regulation Number 44 of 2020; the Fulfillment of Sustainable Development Goals in the Efforts to Strengthen Indonesian Palm Oil Development

Indonesian Sustainable Palm Oil (ISPO) is a palm oil-plantation business system that is economically viable, socio-culturally appropriate, and environmentally friendly based on laws and regulations.¹⁵ ISPO is a policy regulated by the Government of Indonesia, especially the Ministry of Agriculture, aimed to increase the competitiveness of Indonesian palm oil in the world market and fulfil the President commitment to reduce greenhouse gases and pay attention to environmental and critical issues related to ISPO.

Indonesian Sustainable Palm Oil (ISPO) in the Republic of Indonesia Presidential Decree Number 44 of 2020 aimed to be economically, socio-culturally feasible, and environmentally friendly in its implementation. This is as a manifestation of government firmness in providing regulations to strengthen Indonesian palm oil development, which aims are as follows:¹⁶

- a. Ensuring and improving the management and development of Palm Oil Plantations following ISPO principles and criteria;
- b. Increasing the acceptability and competitiveness of Indonesian palm oil plantation products in national and international markets;
- c. Step up efforts to accelerate the reduction of greenhouse gas emissions;

14 Pasal 4 ayat 1 Peraturan Presiden Republik Indonesia Nomor 44 Tahun 2020 Tentang Sistem Sertifikasi Perkebunan Kelapa Sawit Berkelanjutan Indonesia (n 5).

15 ibid, Pasal 1 angka 3.

16 ibid, Pasal 3.

In utilizing biofuels, Indonesia benefits from the enormous potential of existing palm oil and positive impacts on the environment. Based on research, the exhaust gases produced from burning biofuels are lower or even zero when compared to fossil fuels which mean biofuels are less harmful, environmentally friendly and renewable. This fuel is made from palm oil which can be renewed, unlike non-renewable fossil fuels. In biofuel processing, Indonesia also benefits through Pertamina, a state-owned enterprise. This national energy company engaged in the oil has facilities and infrastructure in processing and distributing processed biofuels from palm oil as raw material.¹⁷

Concerning the ISPO Principles and Criteria, as stated in the Presidential Regulation of the Republic of Indonesia Number 44 of 2020, ISPO Certification has fundamental principles and criteria in addressing the environmental and Sustainable Development Goals issues. ISPO principles and criteria were set to address various critical issues and protect Indonesia's biodiversity. Palm oil business activities are often faced with human-animal conflicts, leading to lives threatened of animals and humans involved. It is unfortunate, especially if the conflict involves rare or endangered animals. Thus, protection steps need to be taken to overcome these problems.

Efforts to protect Indonesia's biodiversity are carried out with the implementation of the ISPO Certification System. It is hoped that the ISPO Certification System can protect Indonesia's biodiversity, considering that palm oil plantations are often areas of conflict between humans and wild animals. Orang Utan (*Pongo Pygmeaus*) and Sumatran Tiger (*Panthera Tigris Sumatrae*) are two types of biodiversity that are currently threatened with extinction because their habitat is also a place where palm oil plantations are located. This condition forces both wild animals and humans to live side by side, although often involved in the conflict.¹⁸

As efforts to reduce and avoid excessive land clearing, which significantly impacts biodiversity and the environment, the ISPO has several principles and criteria as regulated further through Presidential Regulation of the Republic of Indonesia Number 44 of 2020 concerning the Indonesian Sustainable Palm Oil Plantation Certification System, as follows :¹⁹ *"Article 4 in paragraph (1) To ensure sustainable Indonesian Palm Oil Plantations, ISPO Certification is carried out. And in paragraph (2), the ISPO certification, as referred to in paragraph (1), is implemented by applying the principles: a. compliance with laws and regulations; b. application of good agriculture practices; c. management of the environment, natural resources, and biodiversity; d. labour responsibilities; e. social responsibility and community economic empowerment; f. application of transparency; and g. improvement in business sustainability."*

The ISPO principles and criteria, as referred to in the Republic of Indonesia Presidential Regulation Number 44 of 2020 concerning the Indonesian Sustainable Palm Oil Plantation Certification System, are appropriate and contribute to the Sustainable Development Goals or TPB. The ISPO contributes 12 goals out of 17 SDGs goals in total, described as follows:²⁰

Compliance with Laws and Regulations

The first ISPO principles and criteria are compliance with laws and regulations, including

- 17 'Program Pengembangan Dan Pemanfaatan Bahan Bakar Nabati' <<https://www.bdpd.or.id/program-pengembangan-dan-pemanfaatan-bahan-bakar-nabati.>>
- 18 'Oil Palm Plantation and The Wildlife 2012' <<http://www.ispo-org.or.id/images/Wildlife2012.pdf>>.
- 19 Peraturan Presiden Republik Indonesia Nomor 44 Tahun 2020 Tentang Sistem Sertifikasi Perkebunan Kelapa Sawit Berkelanjutan Indonesia (n 5).
- 20 Kasdi Subagyo, 'Peraturan Pelaksanaan Dan Perpres No. 44/2020 Tata Cara Sertifikasi ISPO Dan Prinsip Serta Kriteria ISPO' (2020).

licensing for Indonesian palm oil plantations. This first ISPO principle and criterion is in line with the SDGs' goals 1, 8, 10, 12, 15 and 16, which is compliance with the laws and regulations. ISPO complies with the Indonesian laws and regulations.

Implementation of Good Plantation Practices

The second ISPO principle and criterion is regarding implementing good plantation practices, which contain reasonable gardening procedures following ISPO provisions for Indonesian palm oil plantations and the SDGs' goals 6, 8, 12, 13, 15 and 16.

Management of the Environment, Natural Resources, and Biodiversity

The third ISPO principle and criterion is related to the environment, natural resources, and biodiversity management. ISPO organizes the implementation and management of the environment along with natural resources and biodiversity for Indonesian palm oil plantations. This criterion aligns with the SDGs' goals 6, 7, 12, 13, 15 and 16.

Labour Responsibilities

The fourth ISPO principle and criterion-related to labour responsibilities include implementing responsibilities to workers in the Indonesian palm oil plantations corridor, which aligns with the SDGs' goals 1, 5, 8, and 10. This ISPO principle provides provisions and regulations for workers in Indonesian palm oil plantations.

Social Responsibility and Community Economic Empowerment

The fifth ISPO principle and criterion is regarding social responsibility and community economic empowerment in implementing Indonesian oil palm business activities. Therefore, ISPO provisions for Indonesian oil palm plantations align with SDGs number 3, 4, 8 and 16.

Implementation of Transparency

The sixth ISPO principle and criterion is implementing transparency in terms of Indonesian palm oil sources and prices. This principle aligns with ISPO provisions for Indonesian palm oil plantations and the SDGs goals 10, 12 and 16. Besides providing provisions and regulations regarding transparency of palm oil sources and prices, this regulation also minimizes corruption in the Indonesian oil palm plantation business.

Sustainable Business Improvement

The seventh ISPO principle and criterion regarding sustainable business improvement of Indonesian palm oil following ISPO provisions for Indonesian palm oil plantations and the SDGs goal 12. Sustainably, ISPO provides provisions and regulations and systems to ensure sustainable business improvement, which will impact community economic empowerment in the Indonesian palm oil plantation business.

Future Indonesian Sustainable Palm Oil Regulations to Achieve Sustainable Development Goals

Republic of Indonesia Presidential Regulation Number 44 of 2020 is a new regulation related to the ISPO certification system based on the reasoning of the drafting of a presidential regulation on the ISPO certification system, which is based on philosophical, juridical and sociological foundations, as follows:²¹

a. Based on the philosophical foundation

The philosophical foundation in drafting Presidential Regulation Number 44 of 2020 is to provide legal certainty in implementing the ISPO Certification System by strengthening

21 Ermanto Fahamsyah (n 1). Dosen Tetap Fakultas Hukum Universitas Jember Sekretaris Jendral Forum Pengembangan Perkebunan Strategis Berkelanjutan (FP2SB).

its legal basis.

b. Based on juridical basis

The juridical basis in drafting the Republic of Indonesia Presidential Regulation Number 44 of 2020 is that the ISPO Certification System was only regulated through the Minister of Agriculture Regulation until the issuance of this Presidential Regulation. Therefore, it should be improved to a Presidential Decree considering that the ISPO implementation is related to statutory regulations enforced and run by cross-ministerial or non-ministerial government agencies.

c. Based on the sociological basis

The sociological basis in drafting The Republic of Indonesia Presidential Regulation Number 44 of 2020 addressed several obstacles, problems, challenges, and essential demands in implementing the ISPO Certification System. It is hoped that the formulation of the Republic of Indonesia Presidential Regulation Number 44 of 2020 will be able to answer all questions, challenges and demands in the sustainable development of Indonesian palm oil. Hence, the development is more legal certainty, fair, beneficial, and at the end in line with the mandate of Article 33 of the 1945 Constitution of the Republic of Indonesia and other related laws and regulations.²² The scope of Article 2 of Presidential Regulation Number 44 of 2020 concerning the Indonesian Sustainable Palm Oil Plantation Certification System shall cover:

- a. ISPO certification;
- b. institutional;
- c. acceptance, market competitiveness, and participation;
- d. guidance and supervision; and
- e. penalty

Based on the basis and through the issuance of a presidential regulation regarding ISPO, there were problems in the ISPO regulation draft that is not appropriate and have drawn criticism. The first criticism is regarding the ISPO committee, which the inclusion of the two institutions, namely the Association of Indonesian Palm Oil Farmers Forum and the Indonesian Ecolabelling Institute to the ISPO committee is not following applicable policies and Minister of Economy Regulation Number 257 of 2020 concerning the Indonesian Sustainable Palm Oil Plantation Committee. The ISPO Committee is also not under Republic of Indonesia Presidential Regulation Number 44 of 2020 on the Indonesian Sustainable Palm Oil Plantation Certification System, as stated in article 20;

(1) The ISPO Committee, as referred to in Article 19, is chaired by the Minister and consists of government elements, business associations, academicians, and independent observers.

(2) The ISPO Committee membership element from the government, as referred to in paragraph (1), shall be ex officio.

(3) Membership of the ISPO Committee from independent observers as referred to in paragraph (1) shall be non-governmental organizations being an Indonesian corporate body or Indonesian citizens being plantation observers who care about social, economic and environmental concerns.²³

Article 20 states that the membership element of the ISPO Committee originating from

²² ibid

²³ Pasal 20 Peraturan Presiden Republik Indonesia Nomor 44 Tahun 2020 Tentang Sistem Sertifikasi Perkebunan Kelapa Sawit Berkelanjutan Indonesia (n 5).

independent observers must be an Indonesian corporate body and Indonesian citizens being plantation observers who have concerns in the social, economic and environmental fields. This point does not comprehensively explain the criteria and the parties referred to as 'plantation observers'.

The second criticism regarding the ISPO institution is related to the mechanism and criteria for independent institutions or individuals/academicians appointed as members of the ISPO Committee. There is no official and transparent information regarding the ISPO Committee selection mechanism based on Article 19 of Presidential Regulation Number 44 of 2020 on Indonesian Sustainable Palm Oil Plantation Certification Systems.

(1) To implement the coordination of the management and organization of ISPO, the Committee for ISPO shall be established.

(2) The ISPO Committee, as referred to in paragraph (1), has the following duties:

- a. to elaborate general policies on management and administration of ISPO that have been established by ISPO Directing Board into operational policies;*
- b. to formulate and develop ISPO principles and criteria;*
- c. to formulate assessment standards for each level of fulfilment of ISPO principles and criteria;*
- d. to formulate ISPO Certification requirements and schemes;*
- e. to evaluate the implementation of the ISPO Certification system to maintain good plantation governance;*
- f. to build ISPO Certification information systems; and*
- g. to coordinate with the ministries, institutions, Local Governments, and other parties deemed necessary for management and administration of ISPO Certification.*

(3) The Committee for ISPO shall establish and develop the ISPO Certification information system as referred to in paragraph (2) item f and implements a data-sharing system and a single online system to provide simple service to Business Actors to obtain ISPO certificates”²⁴

The third criticism regarding the Presidential Regulation of the Republic of Indonesia Number 44 of 2020 concerning the Indonesian Sustainable Palm Oil Plantation Certification System is related to this Presidential Regulation Number 44 of 2020. This promulgation is considered to violate the Republic of Indonesia Law Number 39 of 2014 on Plantations as Article 62 paragraph 3 states that further provisions regarding the development of sustainable plantations are regulated in a Government Regulation.²⁵

Supporting ISPO development is proven through a Presidential Regulation and not through a Government Regulation. Thus, Article 62 Paragraph 3 of the Republic of Indonesia Law Number 39 of 2014 on Plantations mandates further regulatory provisions in the form of government regulations. Recently there is no government regulations have been issued for ISPO implementation. However, in practice, an ISPO regulation has been made in a presidential regulation, namely Presidential Regulation Number 44 of 2020 on the Indonesian Sustainable Palm Oil Plantation Certification System. With the promulgation of Presidential Regulation Number 44 of 2020 concerning the Indonesian Sustainable Palm Oil Plantation Certification System, the Presidential Regulation itself violates the governance system mandated by the Plantation Law. Considering that the Presidential Regulation is not based on the law mandatory or higher legislation in its formation and is not accompanied by government regulations regarding sustainable plantation development, makes the Presidential Regulation a clear violation of governance and is not following the mandate of the Plantation Law.

²⁴ *ibid.*

²⁵ Pasal 62 ayat 3 Undang-undang Republik Indonesia Nomor 39 Tahun 2014 Tentang Perkebunan.

The fourth criticism is that smallholder plantations are required to be ISPO certified. This requirement creates new problems because almost 90 % of oil palm plantations owned by smallholders do not or have not adhered to ISPO certification. Consequently, smallholders will have difficulty fulfilling ISPO requirements, especially plantation legality, as regulated in article 5 of the Republic of Indonesia Presidential Regulation of Number 44 of 2020 on the Indonesian Sustainable Palm Oil Plantation Certification System as follow:

(1) ISPO Certification as referred to in Article 4 shall be made to Palm Oil Plantation Businesses.

(2) Palm Oil Plantation Business as referred to in paragraph (1) shall consist of: a. Palm Oil Plantation plant cultivation business; b. Palm Oil Plantations processing business; and c. integration of Palm Oil Plantation cultivation and processing Palm Oil Plantation products.

(3) Application for ISPO certification as referred to in paragraph (1) shall be submitted by Business Actors that include: a. Plantation company; and/or b. Planters.

(4) Application for ISPO Certification submitted by Planters as referred to in paragraph (3) letter b may be made individually or in groups.

(5) Group as referred to in paragraph (4) may be in the form of Planters group, the association of Planters group or cooperatives.”²⁶

Through a regulation that requires palm oil business actors, including palm oil planters, to have ISPO certification, there is a possibility that ISPO-certified palm oil mills do not accept smallholders' palm fruit. As a consequence, palm oil planters can be eliminated by ISPO regulations.

Thus, it is necessary to make improvements and future arrangements related to Indonesian Sustainable Palm Oil (ISPO) regulations to strengthen Indonesian palm oil development. The improvement is made on the two latest ISPO regulations; Presidential Regulation of the Republic of Indonesia Number 44 of 2020 on the Indonesian Sustainable Oil Palm Plantation Certification System and the Republic of Indonesia Minister of Agriculture Regulation Number 38 of 2020 on the Implementation of Indonesian Sustainable Palm Oil Plantation Certification.

Conclusion

This Presidential Decree strengthens the Indonesian palm oil development by bringing the sustainability goals regulated by the Republic of Indonesia Presidential Regulation Number 59 of 2017 on the application of Sustainable Development Goals. The application of the Sustainable Development Goals in Indonesian Sustainable Palm Oil (ISPO) is through establishing new regulations regarding the Indonesian Sustainable Palm Oil Plantation Certification system. The regulation is a manifestation of the management and application of sustainable oil palm plantations through the ISPO policy that adheres to the principles and objectives of the United Nations Sustainability Development Goals. Consequently, Indonesian Palm Oil acceptance increase and various critical issues of Indonesian palm oil are addressed.

The manifestation of Sustainable Development Goals achievement in the Republic of Indonesia Presidential Regulation Number 44 of 2020 on the Indonesian Sustainable Palm Oil Plantation Certification System is adequately strengthening Indonesian palm oil development aligned with SDGs' values translated into ISPO.

26 Pasal 5 Peraturan Presiden Republik Indonesia Nomor 44 Tahun 2020 Tentang Sistem Sertifikasi Perkebunan Kelapa Sawit Berkelanjutan Indonesia (n 5).

The future regulation arrangements regarding ISPO that are following and adopt the values and objectives of the Sustainable Development Goals are through harmonization of regulations and policies regarding the Indonesian palm oil certification system. This harmonization is needed to realize efforts to strengthen Indonesian palm oil development by prioritizing sustainability patterns.

Strengthening and harmonizing regulations related to the development and supervision of ISPO certification were needed to better meet the Sustainable Development Goals and ensure the welfare of the community and business actors involved in the Indonesian oil palm plantation business. ISPO now has been adapted to the international community needs. Further harmonization of ISPO policies and regulations are needed to create a better certification system by considering the ISPO criteria and principles.

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Pasal 4 ayat 2 Peraturan Presiden Republik Indonesia Nomor 44 Tahun 2020 Tentang Sistem Sertifikasi Perkebunan Kelapa Sawit Berkelanjutan Indonesia

Pasal 62 ayat 3 Undang-undang Republik Indonesia Nomor 39 Tahun 2014 Tentang Perkebunan

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