Highlights

• Presidential Regulation No. 44/2020 on the Certification System for Sustainable Palm Oil Plantation in Indonesia aims to improve and strengthen the implementation of a certification system for sustainable palm oil plantations, increase the acceptance of palm oil products, and contribute to reducing greenhouse gas emissions.

• The ISPO principles set out in this new regulation are not much different from the previous principles. The principle of protecting primary forest and peatland has been removed and replaced with the principle of transparency. The elimination of the principle of protecting primary forests and peatlands and the exclusion of respect for human rights (HAM) has raised concerns that the ISPO Presidential Decree is not in line with global initiatives such as the Paris Agreement on Climate Change, Deforestation-Free Palm Oil, the 2030 Sustainable Development Goals (SDGs 2030), and the European Union Action Plan to protect and restore the world’s forests.

• The most prominent change in Presidential Regulation 44/2020 is the mandatory application of ISPO for all plantation business actors, including independent smallholders. This expansion is believed to facilitate traceability of palm oil supply to the mill, thereby increasing the acceptability and competitiveness of Indonesian palm oil products in the national and international markets.

• Instead of increasing the number of ISPO certified plantations, the mandatory application of ISPO will actually exclude (discriminate against) independent smallholders because they are still not ready and face many obstacles, especially meeting aspects of legality of land status, business permits and funding. The role of the government, plantation companies, and civil society organizations is very important to prepare independent smallholder groups to apply the principles of sustainability.

Introduction

Palm oil is the world’s most traded vegetable oil and Indonesia is by far the world’s largest palm oil producers. Oil palm covers an estimated 16 million hectares in Indonesia and the crop has become a cornerstone of its economy. The oil palm acreage has had an average expansion rate of 7.9% from 2014 to 2018 and provides an estimated 4.2 million direct jobs, an additional 12 million indirect jobs [2]. With export earning totalling more than 18 billion USD in 2018, palm oil is a key source of foreign exchange for Indonesia [1]. Given its importance for economic development, the Government of Indonesia (GoI) is committed to support and expand the oil palm sector. However, besides economic benefits, the sector is also frequently associated with environmental and social controversy. Expanding oil palm plantations are, amongst others, linked with bio-diversity loss, land conflict and reduced well-being for forest dependent communities. These undesirable consequences tarnish the reputation of palm oil, especially amongst Northern consumers.

In 2004, these concerns led NGOs and leading private sector actors to establish the Roundtable for Sustainable Palm Oil (RSPO), arguably the most stringent and successful international sustainability certification standard present in the oil palm sector. Answering the call for improving environmental and social sustainability concerns, and the initiative in shaping sustainability discussions, the Indonesian government established its own sustainable palm oil certification scheme. In 2011 the Ministry of Agriculture issued regulation No.19/Permentan /OT.140/3/2011, which founded the Indonesian Sustainable Palm Oil (ISPO) certification scheme, a regulation that was superseded by Ministry of Agriculture regulation No.11/Permentan/OT.140/3/2015 in 2015. Whereas RSPO certification is voluntary, the 2011 and 2015 regulations state that ISPO is mandatory for oil palm companies and voluntary for smallholders. Until the end of June 2020, 621 ISPO certificates have been issued, covering 5,450,329 ha, equivalent to 38% of Indonesia’s oil palm acreage [6].

However, in spite of this achievement, ISPO experiences considerable difficulties in safeguarding proper implementation and credibility, especially in the international arena. Recognizing the weaknesses of ISPO and acknowledging the call from civil society organizations, in 2016 the GoI commenced another round of strengthening ISPO[8]. This process led to Presidential Instruction No.44/2020 on the certification system of the Indonesian Sustainable Palm Oil (ISPO) plantations, which was issued in March 2020.
This Info brief compares the previous ISPO regulations with the most recent update. It provides an analysis to what extend the new regulation may improve the performance of the Indonesian oil palm sector and whether it is likely to increase the credibility and acceptance of ISPO in global markets. Indonesia is committed to honour its commitments on the Sustainable Development Goals and greenhouse gas emission targets set at the Paris treaty on Climate Change and supply the world, including Europe, with a versatile, affordable and sustainable vegetable oil. A credible, mandatory sustainability standard appears indispensable for this and credible new ISPO regulations may well do so.

Key differences of ISPO before and after the Presidential Instruction No. 44/2020

The new Presidential Instruction is clearly based on the previous ISPO principles. However, there are some notable differences. Whereas the earlier ISPO regulations were issued by the Ministry of Agriculture, the latest ISPO regulations were issued as a presidential instruction. This provides more legal and political weight to the regulation. Article 4 in the new regulation states that the renewed principles and criteria of ISPO are to include suggestions and feedback from civil society organizations, academics, business interests and other relevant stakeholder groups. The Ministry of Agriculture is no longer solely responsible for the development and implementation of the ISPO principles and criteria. However, whereas transparency has been added as a principle in the new regulation, there remains much uncertainty and scepticism. These pertain primarily to the transparency in decision making, the process of developing new principles and criteria and the exact influence stakeholders beyond the Ministry of Agriculture can exert.

The new regulation states that the actual issuing of certificates is conducted by the ISPO Institute for Certification and thereby becomes more independent of the Government. Before the ISPO Commission was issuing the ISPO certificates and consisted of government officials only. The new regulations state however that the ISPO Commission is still chaired by the Ministry of Agriculture, but besides government officials also involves business entities, academia and independent monitors.

An important change happened in principle 3, on protecting primary forests and land peats. This principle has been changed to ‘environmental management, natural resources and biodiversity’. However, there are concerns that regulation 44/2020 is still insufficient to halt deforestation, and safeguard that oil palm value chains are deforestation free. The moratorium on the use of primary forest and land peat were applied already since 2011 and even the 2018 moratorium on the issuing oil palm licences has not halted the expansion of oil palm, as exemplified by an average 7.89% annual expansion rate of the oil palm acreage from 2014-2018. This expansion mainly took place in Riau, Central Kalimantan, and Papua provinces, where massive areas that used to be classified before as forests have recently been reclassified as non-forest land1. Although care should be given that some of these forest lands might not have been covered with trees anymore, it is clear that the rapid expansion of oil palm appears to create a considerable ‘carbon debt’. This is at odds with government commitments on the National Determined Contributions (NDC) that are part of the Paris Climate Change agreements.

Oil palm related greenhouse gas emissions are usually associated with land clearing, fertilizer use, fuel and electricity used during plantation establishment and operation, and the production of liquid waste (POME) in the milling process. By explicitly stating a desire of reducing GHG emissions, it can be expected plantations and mills palm oil contributes to the achievement of the target of reduction of emission of greenhouse gases. According to Rusolono (2018), oil palm has the potential to uptake of carbon amounted to 105.90 million tons CO2e / year for a 11.67 million hectare plantation area, and the potential reduction in emissions of GHG NDC up to 21.3% of the target of 497 million tons CO2e / year (target 29% sector forestry).

The new regulation also states that all oil palm plantations require ISPO certification, meaning the vast smallholder sector needs to be certified as well. Smallholders have five years from the publication of the regulation to achieve certification. There will be the allocation of State Budget (APBN), Regional Budget (APBD) and other relevant sources to finance the certification ISPO for smallholders.

Besides the differences between the old and the new regulation, there is also an objectionable similarity; the absence of a principle on human rights, including the rights of people of indigenous communities to Free, Prior and Informed Consent. Whereas during ISPO development meetings it was repeatedly argued by civil society organizations that this principle needed to be added, in the end it was not included, highlighting the concerns of true inclusiveness in determining the new principles and criteria. Besides FPIC, other relevant human rights issues not dealt with are labour exploitation and discrimination, specifically against women. This appears a missed opportunity in working towards achieving the Sustainable Development Goals, and the common “No one left behind “ adagio.

1. Riau, 1.56 million hectares; Central Kalimantan 1.17 million hectares; Papua 1.1 million hectares.
**Table 1. Comparison of New and Old ISPO**

<table>
<thead>
<tr>
<th>Stated objectives</th>
<th>Presidential Instruction No.44 / 2020 (New ISPO)</th>
<th>Ministry of Agriculture Regulation No.11 / 2015 (Old ISPO)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assure and improve management and development of oil palm plantations according to ISPO principles and criteria</td>
<td>Ensuring palm oil companies apply the laws and regulations in Indonesia.</td>
<td></td>
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<tr>
<td>Improve acceptance and competitiveness of Indonesian oil palm plantations products in national and international market.</td>
<td>Contribute to the reducing greenhouse gas emissions.</td>
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<tr>
<td>Accelerated efforts to reduce greenhouse gas emissions.</td>
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**Principles**

1. Compliance with rules and regulations
2. Application of good plantation practices
3. Environmental management, natural resources and biodiversity
4. Responsibilities for workers
5. Social responsibilities and community economic empowerment
6. Application of transparency
7. Enhancement of business sustainability

1. Plantation legality
2. Plantation management
3. Protection of natural primary forests and peatlands
4. Environmental management and monitoring
5. Responsibilities for workers
6. Social responsibilities and community economic empowerment
7. Enhancement of business sustainability

**Institutional**

The ISPO committee is chaired by a Ministry of Agriculture official, but members include government officials, business leaders, academics, civil society organizations and independent observers;

Decision making on certification carried out by the Institute for Certification of ISPO (thus decreasing dependency on government bureaucracy).

The ISPO commission only consists of government officials. Decision making on ISPO certification is carried out by the ISPO Commission (thus fully dependent on the government).

**Obligation to have ISPO certification**

All growers; companies and smallholders. Smallholders are required to have a certificate of ISPO within 5 years after this regulation is published. Only companies are required to hold ISPO certificate. For smallholders ISPO certification is only voluntary.

**Penalty**

Given by the Minister in the form of reprimand written, fines, freezing certificate ISPO and / or revocation of the ISPO certificate, revocation of business licence of plantation, Provided by the Governor or Regent as written warnings, a downgrading of plantation class and eventually revocation of business licenses.

**Financing**

For companies, charged to the applicant. For smallholders, funds are available through the State Budget (APBN), Regional Budgets (APBD) and other legitimate sources.

Charged to the applicant (only companies).

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**ISPO Certification Barriers**

By strengthening ISPO and making it mandatory for all producers, the Indonesian government wants to increase the value and acceptance of ISPO as a leading sustainability standard. However, implementation of the ISPO proves difficult. Some key challenges are identified below.

**(i) Land status**

ISPO Article 8, paragraph 3, states the requirement of holding land rights. However, land rights are often contested and many smallholders and companies, developed their plantations with incomplete legal land ownership. There are estimates that more than 4 million hectares, meaning 70% of the total 5.8 million hectare of smallholder plantations, do not yet have complete land titles [14]. With such vast numbers not meeting this legal requirement, the implementation of ISPO certification will face considerable difficulties.

Through Presidential Instruction No. 8/2018, on the delay and the Evaluation and Licensing Plantation Palm Oil and Increasing Productivity of Palm Oil Plantations and commonly referred to as the Palm Oil Moratorium, the Government has been taking steps to resolve overlapping land rights of palm oil companies on forest lands, which are estimated to cover approximately 3.4 million hectares. But until now these problems have not been solved because of the complexity of the issue and the many interests involved in finding suitable settlements.

In addition to overlapping land rights issues on forest, many oil palm growers are unwilling to fully legalize all the land they cultivate as this will require them to pay for proper land administration, land and building tax (Pajak Bumi dan Bangunan) and pay certificates for all land. The primary concern for growers is selling their produce at a reasonable price, without paying much attention to procedures and costs over land rights or ISPO certificates.

**(ii) Traceability**

Whereas the new regulation added the principle of transparency, it remains unclear what this entails exactly and to what extent traceability of produce will be part of the new regulations. If full traceability and ISPO certification is required, this may well lead to exclusion of smallholders as these hardly own ISPO certificates and their supply chains are complex. To date there are only 1.4 ISPO certificates for smallholders, covering 12,270 hectares, or 0.21% of the 5.8 million hectares of smallholder oil palm plantations in Indonesia.

**(iii) Smallholder inclusiveness**

Land legality, seed legality and smallholder knowledge on environmental management are major obstacles for small-scale oil palm farmers to achieve ISPO certification [16]. Their plantations are often located in forest domain and therefore they cannot obtain land certificates (Surat Hak Milik, SHM) or licences to operate an oil palm plantation (Surat Tanda Daftar Usaha Perkebunan Untuk Budidaya, or STD-B) [17]. It is estimated that
only 40% of seedlings are bought from legitimate sources, which means the majority uses illegitimate seeds which often lead to a low oil yield potential [19]. Also, farmers generally do not know the principles of environmental management according to ISPO standards. For example, to clear land, some smallholders clear land by burning or use pesticides at doses that do not comply with the predetermined standards. Most of the independent oil palm farmers think that good and correct environmental management is not an urgent issue. These conditions highlight that independent smallholders are still not ready to carry out the ISPO certification process. It is clear that this regulation may well lead to smallholder exclusion from the oil palm sector if proper support is not supplied.

(iv) Public Participation

A key issue in the current lack of credibility of ISPO in the international sustainability arena is transparency and public involvement in the implementation of ISPO certification. Even though Perpres 44/2020 has listed transparency as one of the ISPO principles, the absence of independent monitors as public representatives in the implementation of ISPO certification limit the level of trust in ISPO. Independent monitoring is fundamental to a credible certification scheme and the government needs to build a dialogue involving all parties, including civil society groups, to correct any shortcomings and overseeing the implementation of ISPO.

Options for overcoming ISPO Barriers

(i) Streamlining licensing procedures

Land legality issues and business licensing procedures have been considerable barriers for oil palm growers in being eligible for ISPO certification. However, currently there are new legal instruments to resolve tenurial conflicts and resolving “the old issues”, as for example Perpres 88/2017, Perpres 86/2018, and Presidential Instruction 8/2018. In addition, the Government has also implemented the Online Single Submission (OSS) system, which electronically integrates all business licensing services under the authority of Ministers / Heads of Institutions, Governors, or Regents / Mayors. Thus, legality and licensing should no longer be an obstacle as long as there is a strong political commitment from bureaucrats, both at the central and regional levels, to implement existing regulations.

This political commitment needs to be pursued by each relevant agency in a policy that is “breakthrough”, not “business as usual” in order to simplify the licensing process. For example, according to the mandate of Presidential Instruction 8/2018, the Ministry of Environment and Forestry immediately needs to establish a policy and take steps to resolve “overdone” and overlapping oil palm plantations in forest areas and thereby provide a legal foundation for many smallholder oil palm plantations. Furthermore, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency can accelerate the issuance of land rights for these smallholder oil palm plantations. Regarding business licensing, especially for independent smallholders, local governments need to be proactive in registering independent plantations and free issuance of STD-B’s.

(ii) Step-wise ISPO certification for smallholders

Seeing the current level of readiness of the smallholders, the implementation of a credible ISPO certification without exceptions in the next five years will be difficult, if not impossible, to achieve. A more logical step is to implement ISPO certification for smallholders in stages, where each stage applies the principles and criteria that match the capabilities of the independent smallholders. Within the five-year deadline, problems related to legalization and the capacity of smallholder oil palm farmers will be resolved. During this transitional period, the government will increase the capacity of farmers, among whom farmers will be provided with training to be able to fully implement and fulfill the ISPO principles and criteria.

The roles of Stakeholders

(i) Government

The government is very instrumental in accelerating the process of licensing that is required by those that need to meet ISPO standards. For example, Presidential Decree 88/2017’s scope can be expanded to resolve overlapping oil palm plantations in forest areas. Likewise, the implementation of Presidential Instruction 8/2018 needs to be accelerated to provide legal certainty for smallholder oil palm plantations, whose land status is often still unclear. In addition, and as mentioned earlier, local authorities need to actively register and issue STD-B’s.

Getting independent smallholders ISPO certified will require considerable investments, not only for direct certification costs but also for increasing the capacity of independent smallholders and mobilizing them in organizations. In this regard, the role of the Government is very important to ensure that national (APBN) as well as regional (APBD) allocations materialize, as well as transferring funds from various other sources, such as the Oil Palm Plantation Fund Management Agency (BPDP-KS). The government can also play a role in providing access to capital through People's Business Credit (KUR), and assisting in making available superior seeds, fertilizers, and other production tools.

The application of ISPO certification also requires knowledge and management skills. Here especially progress can be made in the independent smallholder sector. The Government can play an important role in developing the capacity and institutionalization of smallholders through training and developing a well-funded and capable extension service. The government must also encourage and facilitate the formation of independent smallholder institutions. Again, a well-functioning extension services appears indispensable.

Currently these capacity building activities are carried out by local civil society organizations. The Government can also take on a role in monitoring and supervising those who carry out capacity building for small farmers. The government needs to set the standards and quality assurance, so that the capacity building provided can answer the problem of the weak capacity of small-scale farmers.

(ii) Private Sector

The transformation process towards more sustainable oil palm plantations is not only in the interests of the government but also the private sector itself as it may improve Indonesian palm oil’s reputation globally and reduce inefficiencies. Oil palm companies
also play a role in fostering and increasing the capacity of smallholders, as well as helping to develop and strengthen smallholder organizations.

In the nucleus-plasma partnership scheme, the company has a strong direct interest in ISPO certification of its smallholders as it is directly part of its supply chain. In the absence of a partnership, the company has corporate social responsibility for the surrounding community, including independent smallholders. Companies can facilitate institutional development, training on ISPO, capacity building and others, so that more and more independent plantations will get ISPO certificates.

Outside oil palm companies, financial institutions play an important role in providing financial assistance on a non-collateral basis. An important role can also be played by the Oil Palm Plantation Fund Management Agency (BPDPKS) to facilitate funding for independent smallholders to obtain ISPO certification.

(iii) Civil Society

Civil Society Organizations (CSOs) have an important role in developing and facilitating ISPO certification. They are strategic partners for the Government to provide input to the development of strong principles and criteria, report violations related to the implementation of ISPO certification, and build public trust. These are fundamental to increasing the acceptance of ISPO as a respected sustainability standard, and thereby the competitiveness of Indonesian palm oil and its derivatives. The existence of CSOs is very much needed by the Government and plantation companies to help educate stakeholders and report on practices in the field.

CSOs also play an important role in the certification of independent smallholders. They advocate for changes in governance towards sustainable management, and act as community facilitators. These roles as agents of change in a transformation towards a more sustainable palm oil sector should be fostered. They are more familiar with the characteristics and real needs of the smallholders, well embedded and can disseminate knowledge on ISPO requirements and facilitate smallholders in achieving them.

Recommendations

(i) The implementing regulations for the ISPO Perpres, which are currently being drafted by the Ministry of Agriculture, need to consider and adjust various relevant laws and regulations relating to environmental protection, including peat ecosystems and natural forests, and human rights.

(ii) In the preparation of ISPO Criteria and Indicators, it is necessary to include a prohibition on conversion of natural forest and deep peat land for oil palm plantations, as well as the obligation to protect natural forests. In addition, it is necessary to consider the structure of the supply chain, including all actors, their conditions and capacities. The application of the principles and criteria can be carried out in stages where legal compliance becomes the minimum element of compliance for each actor as a prerequisite for sustainable practice.

(iii) The government, oil palm plantation companies and civil society organizations all need to assist and facilitate independent smallholders to apply the sustainability principles stipulated in the ISPO certification. Assistance is not only limited to capacity building and institutional development, but also improving access to capital and other production prerequisites, guarantee reasonable prices, and assistance during the certification process. In addition, a breakthrough government policy is needed to resolve the obstacles faced by smallholders in implementing ISPO.

(iv) The ISPO standard must better acknowledge the interests of indigenous peoples, smallholders and village communities, and accommodate plantation workers and women’s rights. These stakeholders are part and parcel of a fair checks and balances, and necessary to develop global trust in ISPO.
References


