



A False Hope?

An analysis of the new draft Indonesia Sustainable Palm Oil (ISPO) regulations



Overview

Analysis of new draft regulations on the Indonesia Sustainable Palm Oil (ISPO) certification scheme, including draft Principles and Criteria, reveal they still have gaps and loopholes which do not support improved sustainability in Indonesia's palm oil sector as proposed by the Government.

The revision of the ISPO certification scheme, ongoing since 2016, had been seen as a key chance for the Government to raise the standard of oil palm plantations across the whole of the country. Indonesia has 16.38 million hectares covered by oil palm plantations¹ – the largest of any country in the world and an area equivalent to nearly half the size of Malaysia. Millions more hectares are allocated for palm oil but not yet planted, including 1.44 million hectares in natural forests.² Indonesia looks set to imminently pass these new, yet still weak, ISPO regulations into law and miss a significant opportunity to improve the sustainability and credibility of its palm oil.

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Introduction to ISPO

Environmental and social issues are inherent in oil palm plantations. Between 1995 and 2000, 54 per cent of palm oil plantations in Indonesia were established at the expense of forests and the people who rely on them.³ In order to maintain the quality and competitiveness of its palm oil in the international market, the Indonesian Government created a national standardised certification scheme called the Indonesian Sustainable Palm Oil (ISPO) certification system in 2011.

ISPO guarantees that oil palm plantations which have ISPO certification adhere to the scheme's Principles and Criteria (P&C). These P&C are based on the laws and regulations of Indonesia and ISPO certification has been mandatory for palm oil plantation companies since 2011. As of January 2020, 621 ISPO certificates have been issued covering 5.45 million hectares of palm oil plantations in Indonesia.⁴

Unfortunately, the high issuance of ISPO certification has not been followed by improvements in governance nor has it effectively addressed the negative impacts of the palm oil industry, both in environmental and social terms, resulting in the low credibility and accountability of the ISPO system.⁵ Failings in the ISPO scheme were notably shared by Forest Watch Indonesia (FWI) in its study 6 Years of

ISPO, which raised various concerns including that ISPO certification had failed to safeguard forests that should have protected and resolve conflicts with local communities.⁶ From this study, it was understood that ISPO certification is not strong enough to be an instrument to ensure palm oil production in Indonesia is environmentally friendly and upholds social safeguards, including the rights of indigenous peoples and local communities, and it was deemed too limited to receive recognition of its “sustainability” on the international market.

As a result, the Government started a process to strengthen ISPO in 2016, seeking to improve the poor credibility of ISPO certification. In addition, improving governance has often been touted as the main objective of this ISPO revision. This process sought to make a comprehensive overhaul of the ISPO certification system, with the expected outcome of improving the acceptability and competitiveness of Indonesian palm oil products in the global market.

Nearly four years later, the review process is still ongoing. However, the current proposals do not significantly strengthen ISPO.

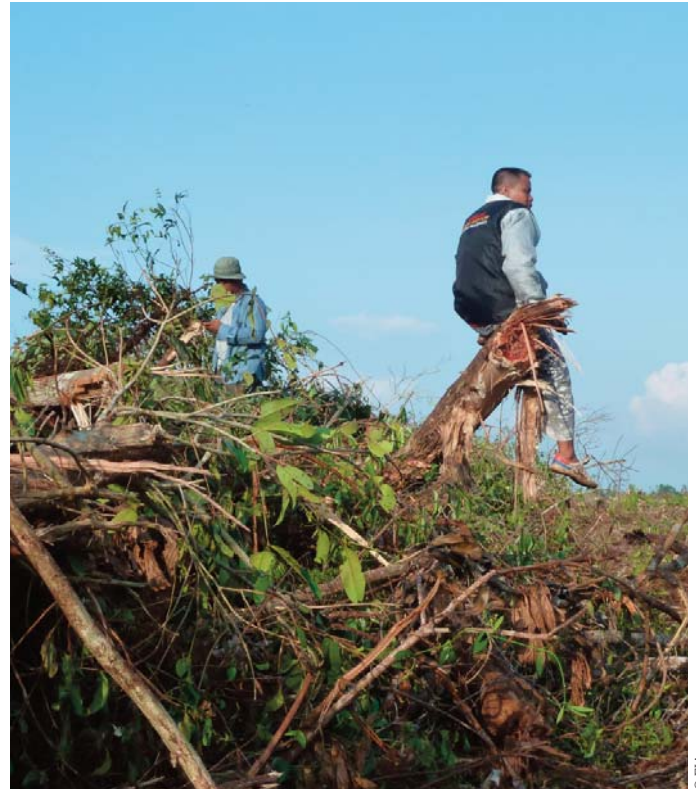
Latest developments in ISPO revision process

In March 2020, a long-awaited new Presidential regulation on ISPO (Perpres No. 44/2020) was issued.⁷ This set out the new high-level principles for ISPO, which remain nearly the same as before (Table 1). The key changes made were the addition of a new principle on transparency, while the principle on the protection of primary forests and peatlands was removed.⁸

Another change is that ISPO is now regulated under a Presidential Regulation (Perpres 44/2020), which has a higher status than the Ministry of Agriculture Regulation (Permentan 11/2015) it replaces. ISPO will now be applied to all oil palm plantation businesses, including smallholders which are required to become ISPO-certified within five years.⁹ Previously, ISPO was voluntary for smallholders and only 12,270 hectares had been certified.¹⁰

In addition, the ISPO certification decision-making which was previously carried out by the ISPO Commission, comprising different Government ministries, is now carried out by ISPO Certification Bodies, giving more independence from the Government.¹¹

But, as expected, this Presidential Regulation falls far short of meeting expectations and ensuring palm oil in Indonesia is sustainable. This includes a failure to include a new principle on human rights which had previously been agreed in a multi-stakeholder process as part of the ISPO-strengthening discussions.¹²



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History of ISPO revision

June 2016: Process to strengthen ISPO begins. Indonesian Coordinating Ministry for Economic Affairs forms ISPO Strengthening Team.

2017: Four regional consultations carried out. Strengthening Team agrees two new principles to be added, on human rights and on traceability and transparency, for independent monitoring to be conducted on certification implementation and for certification to be made mandatory for smallholders.

End of 2017, 2018: The agreed human rights principle is dropped from the new draft ISPO by the Government. The drafting of the new ISPO is closed to stakeholder input and increasingly untransparent.

September 2018: Kaoem Telapak writes to the Indonesian President, asking him not to sign off on the new ISPO as it considers it too weak.¹⁴

2019: The ISPO drafting process continues behind closed doors. National elections in Indonesia occur.

March 2020: A new Presidential Regulation on ISPO is signed at the height of the coronavirus pandemic. It fails to include the principles of human rights and traceability and an independent monitoring system, as previously agreed.

May 2020: The government holds limited consultation on the new draft P&C and implementing regulations. The drafts appear to not make any fundamental changes to ISPO.

Table 1: **New vs Old ISPO Principles**

New ISPO Principles (Perpres 14/2020)	Old ISPO Principles
<ol style="list-style-type: none"> 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 	<ol style="list-style-type: none"> 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

The Presidential Regulation set out that it would be followed by further implementing regulations from the Ministry of Agriculture and Coordinating Ministry of Economic Affairs – scheduled to be issued within 30 days (by 16 April) – giving the details of how ISPO is to be implemented. This short timescale led to concerns being raised from civil society and was subsequently delayed.¹³

In May 2020, civil society organisations in Indonesia received the draft ISPO Principles and Criteria (P&C) and the draft implementing regulations from the Ministry of Agriculture. Kaoem Telapak, together with a coalition of civil society organisations, held discussions and provided analysis and input on the two documents.

These drafts are expected to be finalised by the Government shortly, given that it originally planned to issue them on 16 April. The revision of ISPO will then be completed. If the current proposals become law, the opportunity to strengthen ISPO will be lost.

Analysis of the P&C and implementing regulations drafts

The P&C have an important role in implementing ISPO certification as they are the foundation of how ISPO certification will guarantee sustainability aspects. Sadly, the proposed P&C are still not fit for purpose.

Most of the draft P&C remains the same as in the current ISPO and therefore provide very limited strengthening. The main difference is a new P&C on transparency, which requires that the sources of fresh fruit bunches (FFB) are known, FFB prices to be fair and transparent and companies to have a commitment to a code of ethics, including no bribery. In addition, explicit reference is now made in the P&C to the need to identify and maintain High Conservation Value (HCV) areas, although based on national laws and regulations, which do not make it mandatory to conduct HCV assessments.

Consultations in the ISPO process

The ISPO strengthening process was initially designed to be participatory and transparent. Civil society participated in multiple meetings and in regional public consultations during 2016-17.¹⁵ These included four regional consultations that occurred in Central Kalimantan, Riau, Sulawesi and West Papua, attended by regional and central government representatives, palm oil businesses, regional civil society organisations, independent smallholders, academics and donor agencies. A draft ISPO presidential regulation was agreed in September 2017. However, since late 2017 the process has become increasingly opaque and closed.

The Government has held closed meetings to discuss the draft ISPO presidential regulation and standards (P&C) that resulted in the omission of two previously agreed principles on human rights and on transparency and traceability and a watered-down version of the draft regulation. In addition, a national-level public consultation which was meant to happen has not taken place.

Civil society responded by issuing joint statements criticising the development of ISPO strengthening process and calling on the Government to improve the draft regulation and deliberative process.¹⁶ However, the Presidential Regulation (Perpres No. 44/2020) issued in March 2020 shows little consideration has been given to civil society concerns, both in the content and process leading to the issuance of the regulation.

Furthermore, the ongoing process leading to the issuance of the ISPO implementing regulations and P&C seems to be following the same pattern, with no consultations prior to May 2020. When a public hearing was finally conducted on 18 May 2020, only a few organisations were invited. Prior to this hearing, Indonesian civil society received two different versions of the draft implementation regulations within a week, resulting in confusion. Further, only a very short timescale was given for CSOs to submit written feedback on the draft regulations and standards.

The P&C still do not accommodate human rights aspects, including the right of indigenous peoples and local communities to Free, Prior and Informed Consent (FPIC). Human rights need to be included as a principle as human rights violations related to the seizure of indigenous peoples' and communities' lands are a significant problem.¹⁷

In addition, natural forests (both primary and secondary) are not protected – only primary forests are clearly protected. In obtaining a permit, it is also not explained that this must be in accordance with Indonesia's moratorium on oil palm permits and the moratorium on primary forests and peatlands – key Indonesian policy instruments that have not been strictly enforced to date.¹⁸

The draft implementing regulations also suffer from deficiencies, namely the lack of definitions and clear guidelines. In particular, although independent monitors are mentioned in the Presidential Regulation (Perpres 44/2020), there is no independent monitoring function set out in the Perpres or the implementing regulations. It is therefore unclear if

there will be independent monitoring of ISPO certification itself. This has been a key ask and would be similar to the system under Indonesia's timber legality certification system (System Verifikasi Legalitas Kayu, or SVLK), which provides credibility and oversight to the system.¹⁹

Additionally, the complaint mechanism and procedures are unclear, as is the way in which complaints will be made public. There is no requirement for audit results to be publicly published either. This will result in low transparency and therefore reduce trust in the system. The process on the drafting of the ISPO regulations and standards, and how stakeholder input will be incorporated, is also still far from transparent and open.

The Government is yet to share any details on the ISPO Committee tasked with the continual development of ISPO's P&C, policies and evaluation, among others. This is expected to be in a separate regulation from the Coordinating Ministry on Economic Affairs, a draft of which has yet to be shared, making it difficult to assess the overall governance of ISPO.

Key Issues with the draft implementing regulations

- The ISPO Committee is not defined. This is crucial because the ISPO Committee is very important in the coordination of the management and implementation of ISPO certification. A separate regulation on the ISPO Committee is also expected, but a draft has not been shared.
- There is no independent monitoring function. Although independent monitors are mentioned, it is not stated if their role includes independent monitoring of ISPO certification itself.
- The procedure for submitting a complaint is not explained in detail and it is not specified where complaints can be publicly accessed.
- There are no clear accompanying guidelines, which are needed on conducting audits, complaints and appeals, dispute resolution, public information disclosure and on monitoring.
- There is no transparency on the certification process; for example, a public summary of the audit result or whether the certificate is revoked is not required to be published.
- There is no provision that ensures legal enforcement of non-compliance beyond the effect on certification status. Non-compliance cases must be followed up accordingly, including through legal proceedings, either administrative or criminal.
- The process of drafting the regulation is not transparent and has been conducted behind closed doors. A public hearing in May 2020 was limited to certain institutions. The drafting process should be open to the public and not limited to specific institutions.

Key issues with the draft ISPO P&C

- Human rights principles are still not accommodated in the draft P&C, including no criteria and indicators regarding Free, Prior and Informed Consent (FPIC).
- In the criteria for land disputes there are no guidelines governing disputes where companies are required to respect the rights of people who are trying protect their land and rights.
- The P&C do not clearly regulate the protection of all natural forests (both primary and secondary) – only primary forests are clearly protected.
- Existing legal frameworks, such as the palm oil permit moratorium and primary forests and peatlands moratorium, are not referenced.
- There are no provisions for plasma smallholders in the draft P&C – the P&C have only been developed for companies and independent smallholders. It is unclear if companies are responsible for applying the P&C to their plasma smallholders.
- The assessment norms need to be improved because they are inadequate and are not a clear reference for auditors. Each verifier must have clear assessment norms, making it easier for auditors to assess the compliance of the verifier. Guidance must be provided to ensure consistency in conducting assessments.



Conclusions and recommendations

There are still many gaps in the ISPO that do not support aspects of environmental sustainability. If the standards are already bad, how will implementation fare? Furthermore, a weak ISPO and unsustainable oil palm production will likely result in reduced international market access.

The Ministry of Agriculture, as the regulator, needs to seriously revise the draft ISPO standards, both the implementing regulations and P&C because, if not, this will not only repeat the same mistakes but will further aggravate the implementation of ISPO certification. We believe the Government still has the time and good will to improve the drafts and make a stronger and credible certification system which will advance palm oil sustainability in Indonesia and boost the ISPO's competitiveness in international markets, as mandated by the Presidential Regulation No. 44/2020.

On this basis, we call on the Government to:

- Take up the comments and suggestions made by civil society on the draft P&C and implementing regulations
- Fully incorporate human rights aspects into ISPO, including the requirement to ensure Free, Prior and Informed Consent (FPIC)
- Allow for independent monitoring of ISPO certification by civil society
- Ensure the protection of all natural forests, not just primary forests
- Formulate guidelines that accompany the P&C and implementing regulations, including guidelines on conducting audits, monitoring, information disclosure, complaints and dispute resolution
- Make the ISPO drafting process participatory and open to the public, including the draft regulation on the ISPO Steering Council and ISPO Committee
- Delay the issuance of the ISPO regulations until stakeholder input has been incorporated and addressed

The Omnibus Bill – what effect on ISPO?

Indonesia is currently debating an Omnibus Bill which would result in serious deregulation and have negative consequences for the environment and people.²⁰

Conceived as a way to combine changes to different laws and regulations under one umbrella law, omnibus bills have occurred in other countries. But as more details have emerged about Indonesia's Omnibus Bill, it is clear the amount of legislation it would change is unprecedented. The draft Omnibus Bill on job creation would change 79 laws and thousands of articles within those laws.

The Omnibus Bill in its current form all but scraps the need for environmental impact assessments (EIAs, or AMDALs in Indonesian) that are integral to the planning process in countries around the world. EIAs would only be required in areas deemed high risk and even in this scenario companies could obtain business permits before conducting an EIA.

Indigenous peoples and local communities would potentially be affected by the Omnibus Bill coming into force. This includes the fact they would no longer be involved in the Government's designation of forest areas, risking the loss of their land rights.²¹

Equally, labour unions have been angered by the proposed changes to workers' rights that include lower minimum wages, decreased severance pay and which make it easier for companies to dismiss employees, among other alterations.

As the ISPO is based on the laws and regulations in Indonesia, any weakening of Indonesia's laws by the Omnibus Bill would result in a weakened ISPO standard and further cement the irrelevance of ISPO.



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