

Conservation and Development Balance of the Palm Oil Industry Through Sustainability Regulation

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Abstract- ISPO Certificate as provided under the Minister of Agriculture Regulation Number 19/Permentan/OT.140/3/2011 it impose that not later than 2014 all ventures which had obtained Plantation Business Permit (IUP) shall obtained ISPO Certificate, the result is that at the end of 2014 there was only 5% (five percent) of the total IUP holders in compliance to the ISPO Certificate requirements. Following after, the Minister of Agriculture issued new regulation Regulation Number 11/Permentan/OT.140/3/2015 which stricken out some requirements under the previous regulation Regulation Number 19/Permentan/OT.140/3/2011, the new regulation require all ventures to only apply for ISPO Certificate. Then, in 2017, the Government announced that it will issue a bill on ISPO Certificate to refine its administration, but much to dismay it failed. Such government failure created dissatisfaction among international buyers because ISPO Certificate is only formality without any practical value, therefore international buyers prefer the RSPO to certified their CPO and CPO products in order to keep their price at premium. The problem is such RSPO Certificate as of 2018 require Land Use Certificate (HGU) and posed with many related technical licenses requirements for the growers (ventures) who applies for RSPO Certificate. Whilst, the RSPO focused more on conservation than on development. In this matter, Indonesian growers find it is difficult to obtain Land Use Certificate (HGU) and technical licenses requirements if the process is prolonged and expensive.

Keywords- *Sustainability, Governance, Regulation, Technical Licenses, ISPO Certificate*

I. INTRODUCTION

Crude Palm Oil (CPO) constitute the largest contribution to the state revenue. Thus, better administration is necessary to create conducive environment for the CPO industry. CPO is produce by processing the fruit of palm oil which is cultivated by many palm oil plantations. Indonesia is by far the largest producer of palm oil. Despite economic growth from CPO exports, palm oil production is in fact posed some negative impacts to the environment.

The trend of Green Growth Economic model is marked by the Stockholm Declaration 1972. Green Growth Economic viewed as a mitigation measure to close the gap between the conservationist and developmentalists perspectives with respect to the development in palm oil industry [1].

Point 13 Stockholm Declaration stated *“In order to achieve a more rational management of resources and thus to improve the environment, states should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve the human environment for the benefit of their population”*.

The issue faced by Indonesia is lack of regulation which capable to balance the interest on the side of palm oil and CPO industry growth and the interest on environment conservation. At its beginning the Indonesia Sustainable Palm Oil (ISPO) was created to balance the two interests by a model on sustainable palm oil development. But, the Government then changed the ISPO provisions several times, firstly by the Minister of Agriculture Regulation Number 19/Permentan/OT.140/3/2011 and the most recent change is issued under the Minister of Agriculture Regulation Number 11/Permentan/OT.140/3/2015 without any provisions on compulsory requirement for all IUP Holders to obtain ISPO Certificate.

Such compulsory requirement to obtain ISPO Certificate faced with the issue of it is virtually very difficult procedure and inefficient to obtain license on palm oil related business in compliance to green growth economic. The underlying problem on ISPO Certificate is that it depend on the prerequisites such as business license on palm oil plantation and processing plant which procedure to obtain it is prolonged, exaggeratedly bureaucratic, and corrupt. On the other hand, recently the Government had issued a bill number 8 of 2018 on License Suspension and Evaluation and Improvement of Palm Oil Production.

Contradictive regulations eventually created many problems on efforts which focus on Green Growth Economic in relation to palm oil and CPO industry [2]. In the end, all of this has commercial impacts, in view of that the buyers of CPO from Indonesia are mostly based in foreign countries, and to realize that the ISPO cannot guarantee the environment to the maximum, thus the buyers require international certification on environmental issue, and the certificate is RSPO (Round Sustainable Palm Oil) in order to be eligible for a premium price.

II. RESEARCH METHOD

The method used in this paper is a normative juridical research method with a focus on conducting juridical studies. To achieve the above purpose, literature study is used, which uses legal material to answer the problem formulation. In this case laws, doctrines and supporting literature are used which are divided into primary, secondary and tertiary legal materials.

This paper uses a normative legal research approach by doing an abstraction of the process of deduction from the prevailing positive legal norms, namely examining the law as a positive norm using deductive thinking and based on coherent truth, where the truth in this study has been declared credible without having to go through a process testing or verification.

The data intended in this study are materials or facts or can also be interpreted as a source of information. While the legal material intended in this study consists of primary legal material and secondary legal material. Primary legal material is an authoritative legal material which means that it has legal regulatory authority, minutes or official records, and court decisions. Whereas what is meant by secondary legal materials are books (expert opinions), journals, and everything that can provide guidance for researchers.

III. FINDINGS AND DISCUSSION

1. *Harmonization of Regulations toward Green Growth Economic*

What currently need to be done concerning certification toward environmental sustainability is to simplify the license on palm oil industry and CPO products. Regulations harmonization issue to maintain the balance between development interests and environmental conservation interests toward green growth economic is necessary and it shall be carried out by simplification of licenses, in term of their number and its bureaucracy.

License simplification shall be directed to enable entry for investment with respect to environmental issue. Means that conservation aspects shall be accommodated without forgetting or slowing down investment growth on palm oil industry. All stakeholders shall tak part in the formulation of palm oil industry platform which constitute as the largest contributor to the state income. Such platform shall accommodate environment conservation aspects by depiction as a road map for everybody's reference.

Such road map shall be enforced by laws and regulations. Such road map shall enable the summit which shared by pro developmentalists who seeks to open more lands and working toward industrial development and by pro environmentalist who deeply care about conservation.

Such road map shall accommodate those two interest, the road map shall be able to present sensitivity of economic analysis of law, and well equipped with risk mitigation against any negative impact on land clearing and palm oil industry development [3]. Such conformity is the solution in consideration of that the main issue of certification is dichotomy of laws and regulations which divide attention to one side to accommodate pro investment perspective or to another side to fully accommodate pro conservation notwithstanding to any conflict with developmental interest.

The example of such conflict at laws and regulations level is their inconsistency on peatland development which creates chaotic situation as a result of uncertainty what standard to use by peatland developer. Developing a palm oil road map which converge developmentalists who pro investment and pro environmentalists who oriented on conservation would require participation of all stakeholders, including the government at central and regional level, in view of that as of regional autonomous policy is passed, any technical licenses is assigned to the head of regional government [4]. This can be used to create a uniformed licensing, in consideration of that currently such licensing is different from region to region.

It is an irony that technical licenses which require as the basis of plantation development and palm oil processing currently does not have any fixed standard, for example is Land Clearing License, the license is not applies by all regalities. These kind of issues is the cause of ineffective certification on environment sustainability. Regulation issues on sustainable plantation is not supported by sufficient legal ground. Certification on environment sustainability such as ISPO shows that it is not effective to guarantee palm oil plantation and processing plant development.

“At the end of semester I (as of June) 2019, palm oil plantation which has obtained Plantation Business Permit and ISPO Certificate is only 20 percent. From the number of ventures which applies for ISPO Certificate, more than 70 percent of them face difficulties due to different licensing by the regional governments and also by central government, whereas ISPO Certificate is oriented to result not the process” [5].

From the above data and issues, ISPO Certificate would remain a unique issue, and in the end the existence of ISPO Certificate will conflicting with its spirit which intended to promote competitive edge for palm oil plantation and processing plant development. In fact, ISPO Certificate is the problem instead of the solution, in view of the buyers will only paid at premium price for palm oil producers which has obtained an international RSPO Certificate, but to obtain RSPO Certificate, the applicant shall be categorized as a plantation with Land Use Certificate [6].

RSPO Certificate requirement by the buyers at international market will always be a problem, because to obtain Land Use Certificate a venture is faced with prolonged technical verification and it become hectic that in reality any venture which applies for technical licenses shall already obtained Land Use Certificate and any venture which applies for Land Use Certificate shall already obtained technical licenses.

Palm oil plantation and processing plant, especially CPO, it rely on international market demands which posed strong concern on environmental issues [7]. If the government failed to find solution on ISPO Certificate to gain the world trust, or at least find solution on Land Use Certificate administration, such ISPO Certificate is creating damage to the Indonesian economic, not to mention that CPO contribution to the state income is the largest.

The solution is, firstly, develop a roadmap which accommodate concern that palm oil plantation and processing plant is a national strategic industry which growth shall be secured. On the other hand, such roadmap shall mitigate any negative impacts to the people such as fire in the forests and lands.

Any threat to the environment shall be formulated as a conservation policy to save the people from any negative impacts arising from palm oil plantation. The concept to be built into such roadmap is to place the benefit of palm oil plantation and processing plant over the people in general pursuant to Article 33 1945 Constitution. On the other hand, the people shall be saved and eliminated from any negative impacts of palm oil plantation.

The Road Map as the conformity point of all stakeholders shall be describe in laws and regulations, currently the opportunities to remedy the issues is to immediately revise the applicable laws and regulations on plantation therefore any other laws and regulations will become an umbrella to accommodate developmentalist interest and sustainability based environment conservation [8]. Any law and regulation which rank is below act shall refer to such Act on Plantation. In addition, the revision shall simplify and reduce exaggeration in bureaucracy on technical license at central and regional level in reference to such Act on Plantation.

With regulations harmonization, especially regulations on technical licenses, the requirements as provided under the guidelines and criteria of ISPO certification will be more accessible. If such condition exist, the ISPO will be accepted by international market as an environmental certification and thereby the ISPO bring more values to Indonesian palm oil products, instead of becoming a burden.

To place palm oil industry as a national strategic industry platform is more lucrative if the ISPO is used,

instead of RSPO, in view of that the RSPO does not oriented to national economic growth, on the other hand the ISPO shall create competitive edge therefore provide more benefit to Indonesia when the ISPO is accepted as an international standard.

2. *Evaluation on President Instruction Number 8 of 2018*

The spirit of President Instruction Number 8 of 2018 on License Suspension and Evaluation and Improvement of Palm Oil Production is to provide solution on licensing overlaps in palm oil industry. The background of President Instruction Number 8 of 2018 is used as the basis of moratorium for palm oil plantation related licensing and until the present time the concern is about palm on plantation will not be maximized and a great number of abandoned lands [9].

From the background of the President Instruction Number 8 of 2018, beside license moratorium for further administration, it also concern with plantation productivity therefore the initial expectation is license administration that all palm oil plantation will be productive. This objective pursuant to Article 33 1945 Constitution in consideration of that each venture shall include smallholders in the care of cooperatives which shares shall be at least 20 percent of the total concession size.

In this matter, it is important to acknowledged that small holders productivity is depend to the corporate plantation therefore moratorium will cause more trouble to the corporates in their position which shall nurture small holders in the care of cooperative. The problem of the President Instruction Number 8 of 2018 is that it only stated moratorium on palm oil plantation, without specifying what licenses are subject to it, therefore such moratorium creating new problems.

Palm oil plantation require many licenses and each license is condition precedent. From the basic licenses to Land Use Certificate, all of these require many other licenses and all of them is restricted by due date. The President Instruction Number 8 of 2018 in addition to without description on the licenses subject to moratorium, it also missed the point on license extension therefore it creating uncertainty to palm oil industry.

Ideally, the period of license moratorium for palm oil license is for short-tem. Such period shall be used by the government to synchronize the road map of palm oil industry with licensing. In addition to simplify licensing process, it is necessary to harmonize each focus of technical licenses. Focus on harmony means creating balance between technical licenses which oriented to land development and those license which oriented to conservation.

The perspective of environment conservation which shall be developed is by licenses to enable the continuity of palm oil plantation and processing plant development whilst creating sustainable environment development [10]. Sustainability of palm oil plantation and processing plant will be secured if necessary licenses capable to accommodate both aspects. Following such moratorium is evaluation on licensing, at such licensing evaluation stage, ideally the government involve all stakeholders to simplify technical licenses requirements and make some adjustments to industrial road map, which is palm oil industry road map [11].

Equipped with such road map as reference, the government will be able to develop technical licensing which based on green growth economic which can be used as the guideline to refine the principles and criteria of the ISPO as an environmental certification. Post-moratorium licensing shall be treated as a way to develop national strategic industry, in view of the issue that all this time such technical licenses is the source of uncertainties in the development of sustainable palm oil industry.

The Government shall develop new paradigm on technical licenses, in view of that such technical licenses deemed as business interruption. The Government shall develop such new paradigm by placing technical licensing as a way to improve industrial competitive edge as well as to provide incentive for national strategic industry.

Technical licenses will provide incentive which create improvement on palm oil industry as a national strategic industry if technical licenses can balance the development objectives with conservation objectives therefore the principles and criteria under the ISPO Certificate can be fulfilled by national palm oil industry [12]. Ideally, technical licenses administration during moratorium period shall be supported by revision to the Minister of Agriculture Regulation Number 11/Permentan/OT.140/3/2015 on ISPO.

Such revision on the Minister of Agriculture Number 11/Permentan/OT.140/3/2015 ideally shall be taken immediately to present the buyer with guarantee, especially to seize international market by the guarantee of CPO environmentally friendly certification. The problem is that if the Minister of Agriculture Regulation Number 11/Permentan/OT.140/3/2015 were not revised then there will be no obligation to obtain ISPO Certificate as an environmental certification, because in addition to international rejection over Indonesian palm oil products, the ISPO certification is also rejected by the international market.

Since the beginning of 2018, together with the issue of President Instruction Number 8 of 2018, the government plan to issue President Instruction on ISPO. This means that the government had realized that the Minister of Agriculture Regulation Number 11/Permentan/OT.140/3/2015 need to be revised, but

what's ironic is that until now such President Instruction on ISPO is not issued. The condition which must be ended is that there are overlaps on technical licenses and conflicting technical licenses. The conflict between orientation on development and orientation on environmental conservation [13]. Without any sufficient regulation on environment add more technical problems on palm oil industry as a national strategic industry.

In consideration of palm oil industry as the largest contributor to the state revenue, ideally the moratorium as provided under the Presiden Instruction Number 8 of 2018 shall be rescinded. Such rescindment shall be followed by technical licenses administration which capable to balance the needs of industrial development and also the conservation needs which oriented to environmental sustainability to mitigate the negative impacts of the industry. Meanwhile, the Government shall revise the Minister of Agriculture Regulation Number 11/Permentan/OT.140/3/2015 both by the same rank regulation (Minister Regulation) or by higher rank regulation.

Ideally, when the post-moratorium period is ended there should be a balanced technical licenses composition which accommodate economical and investment aspects including palm oil industry development and conservation aspects which oriented to environmental sustainability. This means that when a balanced and accessible licensing is available, the licensing standard can be used as reference when revising the Minister of Agriculture Regulation Number 11/Permentan/ OT.140/3/2015.

In moratorium context, its causality need to be analyzed with point of view that the substance, licensing focus and accessibility is the causal factors and the sustainability of environment is the result. Ideally, such causality analysis is stated in the revision to the Minister of Agriculture Regulation Number 11/Permentan/OT.140/3/2015 as the guidelines for ISPO as an environmental certification, therefore international market will consider the ISPO as a credible certificate to benchmark environmental sustainability.

3. National Movement on Natural Resources Conservation

Actually, the government had established a strategic forum which focus on technical licenses administration in relation to palm oil industry, namely National Movement on Natural Resources Conservation (GNPSDA). The GNPSDA forum led by the Corruption Eradication Committee (KPK) as the leading sector which had been formalized by the government on 19 March 2015, under the Memorandum of Understanding between the KPK and 29 ministries and 12 provinces. The objectives of GNPSDA is to guarantee investment viability without degradation to the environment. Tis means that the GNPSDA mission and vision is aligned towards the green growth economic model.

After 4 years, the GNPSDA failed to establish a fixed road map, the GNPSDA Team is limited to investigating any misuse of technical licenses. The spirit of GNPSDA is shifted from environmental conservation to focus on investigating corruptive technical licensing.

The concept of GNPSDA actually is not to determine restriction or reduce investment opportunity on palm oil, however the GNPSDA act more as a shared institution which focus on the prevention of any negative impacts on environment from palm oil plantation investment which might create damage to the people in general. The GNPSDA should be able to assume more responsibilities on just finding any violation, but from such finding the GNPSDA it shall be able to formulate recommendation to formulate regulation which provide solution on technical licensing for palm oil industry.

The GNPSDA recommendation is expected after environmental risk mitigation is carried out based on any violation found on technical licensing. Environmental damage which caused by misuse and improper technical licensing shall be documented as a reference to improve technical licensing, therefore negative impacts against the environment in relation to technical licensing can be prevented to better support the palm oil industry [14]. Therefore, in addition to investigating corruption on technical licensing aspects, the GNPSDA shall also be able to contribute more on sustainable environment.

In consideration of the initial spirit of its establishment, the GNPSDA shall be able to provide concrete description on environmental degradation and any negative impacts which might affect the people in general as a result of any violation on technical licensing. In view of that in this matter each violation on technical licensing pose different impact over environmental conservation, thereby the GNPSDA shall find the correlation of each technical licensing violation on each environmental degradation.

The recommendation on such environmental impact in addition to legalistic approach it shall also use environment technical approach together with environment parameter and environment technical analysis to find any concrete potential of damage as a result of licensing violation, and such analysis can be used to refine technical licensing regulation of palm oil industry which create balance between the investment interests and environment conservation interests [15].

Pursuant to Article 33 1945 Constitution, in this matter the GNPSDA shall be able to ensure that the people gain benefit from palm oil plantation and processing plant as a national strategic industry. On the other hand, with the right reorientation the GNPSDA can prevent the people from any negative impacts of palm oil industry. In this matter, the GNPSDA shall be able to secure the existence of palm oil industry as a national

strategic industry as the largest contributor to the state revenue by regulation administration in correlation to better environment quality.

Therefore, the analysis results of GNPSDA in turn can be used as a feedback to development sustainability standard, which is sustainable palm oil industry without any environment degradation. The revision to the Minister of Agriculture Regulation Number 11/Permentan/OT.140/3/2015 on ISPO Certificate is important to accommodate the findings and recommendation by the GNPSDA Team. Sustainable environment standard of the palm oil industry shall consider the recommendation by the GNPSDA because the GNPSDA Team is able to conduct in-depth analysis on technical licensing, palm oil industry practices in correlation to the environmental impact analysis results of such national strategic industry.

When the GNPSDA Team analysis results is accommodated in the revision to the ISPO, it is expected that it will prevent the ISPO to become an industrial barrier. On the other hand, with a credible standard the ISPO Certificate will be accepted by the international market and in turn it will have positive commercial impacts on the palm oil products, especially the CPO products if the ISPO Certificate is capable to secure premium price for Indonesian products, as proved from premium price for the producers with international certification (RSPO).

The GNPSDA shall be used as a strategy to support the palm oil industry competitive edge through participation in the improvement of certification system. It is expected that by ISPO as a credible certification system of sustainable environment and accepted by the international it will create positive impact in the form of premium price as a compensation of sustainable environment and eventually it will create larger contribution to the state revenue from the palm oil industry.

Ideally, the GNPSDA analysis results is used both by the license moratorium team and the revision team of the Minister of Agriculture Regulation Number 11/Permentan/OT.140/3/2015 on ISPO respectively. This means that by using the analysis results and study of the GNPSDA Team, the moratorium team in accordance to the President Instruction Number 8 of 2018 can end the moratorium by formulation of proper and simplified technical licensing for the palm oil industry. Thereby, the technical licensing will then be used productively and support the small holders.

Ideally, the ISPO revision as certification system, as stated under the Minister of Agriculture Regulation Number 11/Permentan/OT.140/3/2015 is implemented after the President Instruction Number 8 of 2018 on license moratorium in the palm oil industry is rescinded. Because if the revision to the Minister of Agriculture Regulation on ISPO is carried out first, whereas the

moratorium is not rescinded, the revision to the ISPO Certificate will have potential to conflicting with the evaluation results on the President instruction on moratorium. If it happened, in the end the ISPO as a certification on sustainable environment in the palm oil industry will fail to support the competitive edge in view of that the international market will consider that the uncertainty of ISPO Certificate is high.

Ideally, to fix the certification system on sustainable environment which support the competitive edge of Indonesian products in international market shall begin with analysis and follow up by the GNPSDA Team as an input for the evaluation on the moratorium team performance which in charge of licensing moratorium in the palm oil industry. When the correlation of technical licensing and land productivity is formulated as an output of evaluation on the moratorium team performance as referred to in the President Instruction Number 8 of 2018 and the moratorium is rescinded, the revision to the ISPO Certificate shall be the last revision. The certification system of sustainable environment may be carried out by making some adjustment to the recommendation by the GNPSDA and the recommendation and follow up by the licensing moratorium team in the palm oil industry.

IV. CONCLUSION

Currently there is no other way to develop technical licensing as well as to fix the environment quality from negative impacts of palm oil industry. The paradigm which shall be ended is the narrow scope of palm oil industry in relation to negative environmental impacts. On the other hand, the paradigm shall be shifted to if there is a negative environmental impacts then the solution is not imposing some restrictions on the industry but carry out remedy to the environmental degradation by compulsory actions as stated in the laws and regulations and technical licensing. Thereby, restoration to the environmental quality will have legal enforcement without imposing restriction on the palm oil industry. It is obvious that the palm oil industry is a strategic industry as the largest contributor to the state revenue and capable to massively drive the national economy, therefore the option which impose some restrictions on the palm oil will create damage to the Indonesian interests.

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