

## **MADANI'S UPDATE**

**PRESIDENTIAL REGULATION NO. 44 YEAR 2020  
ON INDONESIAN SUSTAINABLE PALM OIL (ISPO) CERTIFICATION SYSTEM**

MARCH 2020

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#### Summary

On 13 March 2020 (enacted on 16 March 2020), President Joko Widodo signed the long-awaited Presidential Regulation No. 44 Year 2020 on Indonesian Sustainable Palm Oil (ISPO) Certification System (Perpres 44/2020). Aside from increasing market acceptance and competitiveness of Indonesia's palm oil products, the new ISPO Certification System is also geared towards reducing GHG emissions, making it a part of Indonesia's climate policy. The Regulation determines who are obligated to obtain ISPO Certificate, procedure for ISPO Certification, the institutional setting, which includes ISPO Certification Body, ISPO Committee, and ISPO Steering Council, and outlines the new 7 ISPO Principles, which will be operationalized into criteria and indicators in a Ministerial Regulation set to be completed on 16 April 2020 (at the latest).

The most marked change in the new ISPO Certification System is that Certification Bodies can now issue ISPO Certificates directly without the approval of ISPO Committee, which makes the certification process more independent in theory. Progressive elements have been added such as inclusion of independent monitoring ("*Pemantau Independen*") in the ISPO Committee, addition of transparency as a new Principle, and the mention of public participation in ISPO Certification. The new ISPO is also stronger in terms of its mandatoriness because it is now obligatory for all palm oil plantation business actors, including companies and farmers/individual growers as well as plantations producing renewable energy (previously, ISPO was voluntary for the last two). However, there is a 5-year "grace period" for farmers to comply with the mandatory ISPO Certification.

In terms of standard, it is too early to assess the strength or weakness of the new ISPO without elaboration of the Principles into Criteria, Indicators, and verifiers (if any). However, respect for human rights and traceability principles proposed by civil society have failed to be incorporated into the new ISPO Principles so that most of the Principles are quite similar to the previous. Whether or not the new system can address civil society concerns regarding deforestation, peatland destruction, violation of indigenous people and local community's rights, and workers' rights, among others, cannot yet be ascertained until all the operational regulations are issued, especially the Ministerial Regulation regarding ISPO Principles, Criteria, and Indicators (PCI). With extremely limited time window (less than 30 days) and amidst the limitations on mobility imposed due to COVID-19 pandemic, the prospect of inclusive civil society participation in the formulation of ISPO Criteria and Indicators looks grim unless special measures are taken by the government, namely: **(i) immediately publish draft ministerial regulation on ISPO PCI and give sufficient time for public comment, (ii) actively seek out civil society inputs through existing CSO-government communication forum(s), and (iii) make ISPO PCI open for continuous improvements in the future.**

## Highlights of Presidential Regulation No. 44/2020

- **Actors mandated to obtain ISPO Certificate.**
  - ISPO Certification is now mandatory for all “Palm Oil Plantation Business”<sup>1</sup> and “Individual Growers/Farmers.” Previously, ISPO was voluntary for palm oil plantation companies producing renewable energy that met certain criteria and farmers. However, the Presidential Regulation grants a “grace period” for farmers in which ISPO mandatory provision applies only five years after the Perpres is issued, which means that farmers can operate without ISPO Certificate until 16 March 2025.
  - Farmers and plantation companies that fail to obtain ISPO Certificate will be given administrative sanctions from the Minister of Agriculture, i.e. written warning, fine, temporary business suspension, suspension of ISPO Certificate, and/or revocation of ISPO Certificate (which will be governed further in a Ministerial Regulation).
- **ISPO Principles.** The Regulation determines 7 principles of ISPO, almost all of them except transparency are similar to the previous set of principles. The 7 ISPO Principles are:
  1. **Compliance with the prevailing laws and regulations (same as previous)** – previously including criteria regarding the legality of land acquisition, compliance with spatial plan, and conflict resolution (among others);
  2. **Implementation of good agricultural practices (same as previous)** – previously including criteria regarding land clearing, cultivation on peatland, and information disclosure, among others;
  3. **Management of the environment, natural resources, and biodiversity (different wordings).** Previously, the protection of primary forests and peatland (moratorium policy) was a stand-alone Principle but now presumably subsumed under this Principle. This Principle previously included fire prevention and suppression, HCV, emission GHG reduction, and biodiversity management. Biodiversity protection is now more explicit. The previous criteria had not included provisions of Peatland Regulation (Government Regulation No. 57/2016), for example regarding Protection Peatland (FLEG) and water management.

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<sup>1</sup> Consisting of palm oil cultivation business (plantations only), palm oil processing business (mills only), and palm oil integrated cultivation and processing business (both plantations and mills).

4. **Responsibility towards workers (same as previous);**
  5. **Social responsibility and economic empowerment (same as previous)** – previously including child labor provisions and empowerment of indigenous people;
  6. **Implementation of transparency (new principle);**
  7. **Sustainable business improvement (same as previous);**
- **Institutional setting** – who has the authority to do what.
    - **ISPO Certification Body** has the authority to conduct ISPO certification and annual surveillance, issue, suspend, and revoke ISPO Certificate, and follow-up complaints and appeals regarding the implementation of ISPO Certification. ISPO Certification Body must be accredited by the National Accreditation Committee (KAN) and registered in the Ministry of Agriculture.
    - **ISPO Committee** has the authority to coordinate ISPO management and implementation: (i) Translate general policies issued by ISPO Steering Council into operational policies, (ii) Formulate and develop ISPO Principles and Criteria, (iii) Formulate assessment standard for every Principle and Criterion, (iv) Formulate requirements and scheme for ISPO Certification, (v) Evaluate the implementation of ISPO Certification, (vi) Develop ISPO Certification information system, and (vii) Coordinate with other ministries/institutions, Regional Government institutions, and other parties. Members of ISPO Committee are Minister of Agriculture (Chair), government institutions, business actors' associations, academicians, and **independent monitor groups, i.e. NGOs or individuals.**
    - **ISPO Steering Council** has the authority to issue policy directions for the implementation of ISPO Committee's tasks. The Council consists of the Coordinating Minister of Economic Affairs (Chair), Minister of Agriculture (Daily Chair), and Minister of Environment and Forestry, Minister of Agrarian and Spatial Planning, Minister of Trade, Minister of Industry, Minister of Home Affairs, and Head of National Accreditation Committee (KAN) as members. The Foreign Minister is not listed as a member.
  - **Public participation.** Communities, business actors, and stakeholders can participate in ISPO Certification management and implementation by proposing and providing inputs on ISPO Certification management and implementation, requesting for information regarding ISPO Certification, reporting abuses on ISPO Certification management and implementation to the government, the ISPO Committee, KAN, and/or ISPO Certification Body, and promoting ISPO acceptance and palm oil products at the national and international level.

## ISPO Certification System: Now and then

- **Mandatoriness.** ISPO is now mandatory for all palm oil Plantation Companies, including those that produce palm oil for renewable energy (in the 2015 Regulation, ISPO was voluntary for such companies). ISPO is also mandatory now for palm oil farmers/individual growers (previously it was voluntary). However, there is a "grace period" for five years for farmers before ISPO Certification fully applies.
- **Sanctions.** Regarding sanctions, those who fail to obtain ISPO Certificate will receive sanctions including temporary business suspension without further elaboration. Previously, revocation of Plantation Business License by governors/heads of districts was stated explicitly (Regulation of Minister of Agriculture No. 11/2015)

- **The power to approve the issuance of ISPO certificate.** Previously, ISPO Committee had the power to approve or not approve issuance of ISPO Certificates by the Certification Body. Now ISPO Certification Body can issue ISPO Certificates directly, which gives them more independence in conducting audits and issuing reports. With this reform, ISPO Certification is now similar to SVLK (Timber Legality Verification System) and RSPO certification system.
- **The power to settle complaints.** Previously, complaints regarding ISPO Certification were directed to ISPO Committee and settled by a Grievance Mechanism Committee formed under the Committee<sup>2</sup>. Now, at least with regards to the implementation of ISPO Certification, the complaints shall be directed directly to ISPO Certification Body. For other abuses and deviations, the public can report to the government, KAN, and the ISPO Committee.
- **ISPO PnC.** The only addition to the new ISPO Principles is transparency. The other principles are the same as previous. Protection of primary forests and peatland is now presumably subsumed to Principle No. 3 Management of the environment, natural resources, and biodiversity. Comparison of criteria and indicators cannot yet be done until Ministerial Regulation on ISPO PCI is issued.

## Civil society concerns

- **Criticism on the previous ISPO implementation.** According to Forest Watch Indonesia's study regarding 6 years of ISPO implementation, ISPO PnC has not been able to halt deforestation, peatland destruction, forest and land fire, and resolve land conflicts in palm oil permits and therefore has not been able to improve palm oil sustainability in general. This is due to weaknesses in ISPO criteria especially with regards to licensing governance, weakness in supervision, policy inconsistencies, lack of transparency, and general lack of law enforcement of Indonesia's own laws and regulations.<sup>3</sup> Institutionally, too much power was placed on the ISPO Committee, making it prone to power abuse and corruption.<sup>4</sup> Other concerns include difficulty in ensuring traceability, lack of public participation in ISPO Certification, especially in monitoring process and result – no mechanism for independent public monitoring -, no clear mechanism for obligatory public consultation in each certification stage, lack of information for public regarding ISPO Certification itself - such as summary of assessment result, basis for decision, etc.-, lack of detailed verification standard in assessing ISPO PnC leading to multi-interpretations by auditors, lack of independence in complaint handling, and general lack of information disclosure regarding palm oil plantation licenses despite license documents, policies, budget, and Environmental Assessment (AMDAL) having been classified as public document based on Public Information Disclosure Act (Law 14/2008).<sup>5</sup> Concerns regarding ISPO Certification independence have now been addressed by the new ISPO Certification System while assessment of other concerns must wait for ISPO Criteria and Indicators to be issued.

<sup>2</sup> Soelthon Gussetya Nanggara et al., *6 Tahun ISPO*, published by Forest Watch Indonesia, 2017, p. 18.

<sup>3</sup> Ibid.

<sup>4</sup> Aside from determining which companies can obtain ISPO Certificate, the Committee also settled complaints and determined which Certification Body, Compliance Assessment Body, and Consultancy Agencies that can participate in ISPO Certification.

<sup>5</sup> Greenpeace. 2014. Media Briefing: Rahasia Kotor Procter and Gamble dalam Soelthon Gussetya Nanggara et al. *6 Tahun ISPO*, published by Forest Watch Indonesia, 2017 p. 37.

- **ISPO and natural forests.** The 2015 ISPO standard had no strong safeguards for natural forests except for the moratorium policy, which only halts issuance of *new* palm oil permits in primary forests and peatland (with the exception for permit proposals that have obtained a principle approval from the Ministry of Forestry before May 2011). According to Indonesia's regulations, as long as the proper permits have been obtained,<sup>6</sup> natural forests inside a palm oil permit can still be deforested.

The size of natural forests remaining in palm oil permit areas is massive, which indicates land banking modus. Based on data from Directorate General of Climate Change of the Minister of Environment and Forestry, 1.4 million hectares of natural forests exist in HGU (palm oil land use title), half of which (759,462 hectares) located in protection areas that are not supposed to be converted.<sup>7</sup> Data from the Coordinating Minister of Economic Affairs says that out of 5.8 million hectares of forest area that has been released for palm oil plantations, 1.4 million hectares are still forested.<sup>8</sup> If we include natural forests that exist in other stages of palm oil permits (including Location Permit and Plantation Business License), the size of natural forests that need to be saved reaches 3.4 million hectares in 2018.<sup>9</sup> If these forests are deforested, Indonesia will have exceeded its deforestation quota to meet the NDC target, which is only 3.25 million hectares from 2020 to 2030.

In 2018, the President issued the palm oil moratorium policy, which halts new palm oil permits from forest area. But this policy is valid for only 3 years. If it is lifted in 2021, palm oil can expand further to forest area and there will be no safeguards for natural forests classified as secondary forests. The new ISPO PnC must rectify this weakness if ISPO is to be an instrument for sustainability, not just legality. This can be done by explicitly stating that no palm oil plantations shall be built from conversion of natural forests and that all remaining natural forests inside palm oil permit areas must be saved or swapped with more suitable area such as degraded land or other unforested land.

- **ISPO and peatland.** The 2015 ISPO standard had not integrated new legal provisions regarding peatland protection and management as stipulated in the revised Government Regulation on Peatland Protection and Management (PP 57/2016), such as provision regarding water level management in peatland for cultivation (40 cm versus 60-80 cm in ISPO standard) and provisions regarding protection peatland in palm oil areas.
- **ISPO and IP and local community rights.** The most crucial provision regarding indigenous people and local community rights still missing in the 2015 ISPO standard is robust Free, Prior, and Informed Consent (FPIC) mechanism during land acquisition and palm oil plantation development. In the 2015 ISPO standard, acquisition of ulayat or indigenous land is only required to be preceded by *musyawarah* or deliberation, which proof can easily be manipulated. Furthermore, because indigenous land/rights refer to the prevailing laws and regulations, it is extremely difficult for indigenous people that are still struggling for

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<sup>6</sup> Among others are forest area release, timber extraction permit.

<sup>7</sup> Director General of Climate Change, "Unfolding First NDC: Roadmap NDC Mitigasi," presentation in Festival Iklim 3 October 2019

<sup>8</sup> Coordinating Minister of Economic Affairs, "Pencapaian Inpres No. 8 Tahun 2018 tentang Penundaan dan Evaluasi Perizinan Perkebunan Kelapa Sawit dan Peningkatan Produktivitas Perkebunan Kelapa Sawit," Jakarta 9 October 2019.

<sup>9</sup> Madani's Spatial Analysis, 2019.

recognition from the state to assert their rights especially during conflict with palm oil companies.

## ISPO vs RSPO

The following is several differences between ISPO and RSPO regarding primary forests, peatland, and FPIC.

- RSPO requires primary forests and area with at least one HCV to be conserved by plantation companies to ensure that they are maintained and/or enhanced.<sup>10</sup> ISPO does not require primary forests in permit area to be preserved or maintained as long as such forests have been released from forest area and proper permits have been obtained.
- RSPO has introduced an NPP (New Planting Procedure) for plantations developed after November 2005 (perceived as new planting). All planting done after 1 January 2010 must adhere to the procedure. In the new planting procedure, primary forests and HCV areas are not allowed to be developed into palm oil plantations. The NPP includes identification of HCV, social impact assessment (SIA), identification of primary forests, identification of community lands, identification of marginal lands, and high carbon stock. Meanwhile, the 2015 ISPO PnC requires compliance with laws and regulations in opening plantations, including Environmental Impact Assessment (AMDAL), which includes environmental and social aspects. ISPO PnC also mentions no issuance of new permits on primary forests and peatland as delineated in the Indicative Moratorium Map. However, the concerns are as follows: (i) “primary forests” definition adopted by the government of Indonesia is much more restricted than the international definition. Many natural forests defined internationally as primary forests are legally classified by the government of Indonesia as secondary forests and therefore unprotected.<sup>11</sup> Natural forests, even primary forests, inside palm oil permit area can still be deforested if proper permits have been obtained because the moratorium only applies to *new permits* and even excludes permit requests that have obtained a principle approval from the Ministry of Forestry before May 2011 as well as many other exemptions,<sup>12</sup> (ii) there is no explicit instruction to conduct HCS identification in ISPO unless it is the same with “inventory and mitigation of GHG emissions,” which includes inventory of GHG emissions sources and mitigation strategy. With the coming Omnibus Law (RUU Cipta Kerja), the mandatory environmental license and AMDAL may even be removed if palm oil business is not classified as high-risk business activity.<sup>13</sup>
- RSPO requires Free Prior and Informed Consent (FPIC) as adopted and modified from UNDRIP. It requires a participatory mapping that involves all impacted parties and the authorities. Should there be a conflict, the development of palm oil plantations can be postponed until

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<sup>10</sup> Rosediana Suharto et al., *Studi Bersama Persamaan dan Perbedaan Sistem Sertifikasi ISPO dan RSPO*, published jointly by the Ministry of Agriculture of Republic of Indonesia (ISPO Secretariat) and Roundtable on Sustainable Palm Oil (Jakarta: 2015), p. 10.

<sup>11</sup> See Madani' Update Report, “Unraveling Calculation of Deforestation in Indonesia,” July 2018.

<sup>12</sup> See Madani, “Catatan Kritis Inpres No. 5 Tahun 2019 tentang Penghentian Pemberian Izin Baru dan Penyempurnaan Tata Kelola Hutan Alam Primer dan Lahan Gambut,” 2019.

<sup>13</sup> See ICEL, “Catatan atas RUU Cipta Kerja,” 13 February 2020.

there is an agreement.<sup>14</sup> There is no term “FPIC” or Padiatapa (in Indonesian) in the 2015 ISPO PnC although Indonesia has ratified UNDRIP. The 2015 ISPO PnC does say that a company is required to settle land disputes in its permit area including development of a map of the disputed land (but it does not explicitly say “participatory”) and provision of a proof of dispute settlement agreement. During the settlement process, the disputed land shall stay in status quo<sup>15</sup> but there is no further explanation about what status quo means. This vagueness may lead to multi interpretations on the ground during land conflicts. According to ISPO-RSPO Joint Study, there must be a participatory mapping involving all stakeholders involved and local the Land Service during a dispute. During conflict, the land can be enclaved while palm oil plantation development continues.<sup>16</sup>

## Recommendations

To ensure that the new ISPO Certification System is an improvement from the previous system and can contribute to reducing GHG emissions in Indonesia, the urgent things to do are as follows:

- (i) In ISPO Criteria and Indicators, explicitly state that no palm oil plantations shall be built from conversion of natural forests and that the remaining natural forests inside palm oil permit areas must be conserved and/or swapped with more suitable area such as degraded land or other unforested land.
- (ii) Integrate peatland protection measures stipulated in Government Regulation on Peatland Protection and Management in ISPO Criteria and Indicators and remove existing policy inconsistencies regarding peatland protection.
- (iii) To ensure the legitimacy of the new ISPO standard:
  - a. Immediately publish draft ministerial regulation on ISPO Criteria and Indicators and give sufficient time for public comment
  - b. Actively seek out civil society inputs through existing CSO-government communication forum(s), and
  - c. Make ISPO PCI open for continuous improvements in the future.

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<sup>14</sup> Rosediana Suharto et al., *Studi Bersama Persamaan dan Perbedaan Sistem Sertifikasi ISPO dan RSPO*, published jointly by the Ministry of Agriculture of Republic of Indonesia (ISPO Secretariat) and Roundtable on Sustainable Palm Oil (Jakarta: 2015)

<sup>15</sup> Regulation of Minister of Agriculture No. 11/Premontane/OT.140/3/2015 on Indonesian Sustainable Palm Oil Certification System/ISPO).

<sup>16</sup> Ibid.



## References

### Book

Nanggara, Soelthon Gussetya. 2017. *6 Tahun ISPO*. Bogor: Forest Watch Indonesia.

Suharto, Rosediana et al. 2015. *Studi Bersama Persamaan dan Perbedaan Sistem Sertifikasi ISPO dan RSPO*. Jakarta: Ministry of Agriculture of Republic of Indonesia (ISPO Secretariat) and Roundtable on Sustainable Palm Oil.

### Policy paper

ICEL. 2020. "Catatan atas RUU Cipta Kerja," updated 19 February 2020.

Madani. 2018. Madani's Update Report, "Unraveling Calculation of Deforestation in Indonesia."

Madani. 2019. "Catatan Kritis Inpres No. 5 Tahun 2019 tentang Penghentian Pemberian Izin Baru dan Penyempurnaan Tata Kelola Hutan Alam Primer dan Lahan Gambut."

### Regulations

Regulation of Minister of Agriculture No. 11/Premontane/OT.140/3/2015 on Indonesian Sustainable Palm Oil Certification System/ISPO).

### Others

Coordinating Minister of Economic Affairs. 2019. "Pencapaian Inpres No. 8 Tahun 2018 tentang Penundaan dan Evaluasi Perizinan Perkebunan Kelapa Sawit dan Peningkatan Produktivitas Perkebunan Kelapa Sawit." Presentation given in Jakarta on 9 October 2019.

Director General of Climate Change. 2019. "Unfolding First NDC: Roadmap NDC Mitigasi." Presentation given at Festival Iklim held on 3 October 2019.



Yayasan Madani Berkelanjutan is a non-profit institution that has bridged relationships between stakeholders (government, private sector, and civil society) to achieve innovative solutions related to forest and land governance.

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