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Environmental standard of Indonesian palm oil post omnibus law ratification

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Abstract. A dismemberment of various regulations in Indonesia with the issuance of the Omnibus Law and its derivative regulations aims to facilitate investment. It is also included in the palm oil plantation sectors that obtain various conveniences hence ease its investment procedure. This article is intended to analyze the various norms that weaken the environmental standards of the palm oil sector post the issuance of the Omnibus Law. The principle of the Roundtable on Sustainable Palm Oil, which became an international consensus related to the management of sustainable palm oil was used in this study. The findings show that various norms in the Omnibus Law and its derivative regulations are weakening the environmental standards as stated in the principles of the Roundtable on Sustainable Palm Oil. They are also considered threatening the Indonesian forests which will be converted to oil palm plantations. The increase in land-use conversion will be in line with the increase of carbon emissions, which will accelerate and worsen the climate change effects. Unplanning the sustainability of palm oil plantations indicates a step backward of Indonesian law in managing a sustainable palm oil plantations.

1. Introduction

In 2019, the European Union ratified the Renewable Energy Directive (RED II) policy which greatly affects Indonesian palm oil. In RED II, palm oil is classified as a high-risk plant based on the concept of Indirect Land-Use Change (ILUC). Therefore, starting on December 31st, 2023, there will be a gradual reduction in imports of palm oil to the European Union, until 2030 the use of palm oil for energy will be totally prohibited [1]. This policy is considered by the Indonesian government as a discriminatory policy. This is based on the argument that, of some vegetable oil crops, only oil palm is categorized as a high-risk crop [2]. Meanwhile, compared to other vegetable oil-producing crops, oil palm is a more efficient crop. Based on data from the Palm Oil Alliance, with a land area of only 7.4% of the land area used for vegetable oil, palm oil is able to meet 39.6% of the world's palm oil needs [3]. According to the World Wild Fund for Nature (WWF), compared to other vegetable crops, such as soybeans or coconut, it takes 4 to 10 times the size of the land area to produce vegetable oil in the same amount as palm oil [4].

However, the Indonesian government cannot ignore the fact that the expansion of oil palm plantations is closely related to primary forest areas, or areas that have high carbon stocks. Based on the analysis of Chain Reaction Research in 2020, the area of deforestation that has turned into oil palm reaches 38 thousand hectares, which occurred in Indonesia, Malaysia, and Papua New Guinea [5]. From 2001 to



2016, based on research conducted by Austin et.al. [6], the area of deforestation in Indonesia reached 9.1 million hectares, where 23% (approx. 2.1 million ha) were converted into oil palm plantations [6].

Amid these conditions, the Government of Indonesia continues to strive to improve the image of palm oil in the international forums. One of them is by issuing a Presidential Instruction policy related to the Palm Oil Moratorium and the National Action Plan on Sustainable Palm Oil to renew the principles and norms in Indonesian Sustainable Palm Oil. In the midst of efforts to improve governance in oil palm plantations, the government approved Law Number 11 of 2020 on Job Creation and commonly called as the Omnibus Law, which changes 86 laws consisting of various sectors, including the environmental, forestry, and environmental sectors. No less than 40 civil society organizations, which are members of the Indonesian People's Faction (FRI) coalition, have stated firmly against this regulation because they are considered to have a colonial character and threaten environmental sustainability, which specifically affects the commitment to improve governance of Indonesian oil palm plantations [7].

This article aims to examine the principles of environmental protection in Indonesian oil palm plantations after the passage of the Job Creation Law. This article will consist of three parts, namely the first part will describe the principles of environmental protection in oil palm plantations using the Roundtable Sustainable Palm Oil (RSPO) standard. Furthermore, the second part is an elaboration on the principles of environmental protection in oil palm plantations after the enactment of the Job Creation Law. The third part is an analysis of the impact on the passage of the Job Creation Law toward the potential for increased land-use change in the oil palm plantation sector and its impact on Indonesia's contribution to reduce global carbon emissions.

2. Research methods

This research is a normative study that correlates the coherence and consistency between the norms of various laws and regulations in the field of oil palm plantations, especially after the existence of the Job Creation Law prevails. All existing norms are then analyzed qualitatively to reveal the problems being studied completely and accurately.

3. Results and discussion

3.1. Environmental protection principle of roundtable on sustainable palm oil

As a plant that produces vegetable oil to meet various daily human needs, palm oil continues to make improvements in its management to ensure the sustainability of its production. The revision of the Principles and Criteria in Roundtable Sustainable Palm Oil (RSPO) in 2018 is an effort to improve RSPO governance. The revision of the 2018 RSPO principles and criteria, emphasizes some norms that must be followed. First, the "No Deforestation" norm, which is stipulated in criterion 7.12 that regulates the emphasis of land clearing does not cause deforestation, or damage to any area required to protect and enhance areas with High Conservation Value (HCV) or High Carbon Stocks (HCS) status. Instead of turning them into oil palm plantations, these HCV and HCS areas must be identified, managed, protected and enhanced [8].

Furthermore, the "No Planting on Peat" norm stipulated in criterion 7.7 emphasizes no new planting on peatlands and affirms that all peatlands are managed on a peat basis. This norm is very vital because peat is a space that stores enormous carbon emissions, thus it is very important to be protected and managed responsibly [9]. Furthermore, the "Fire Prevention" norm, which is stipulated in criterion 7.11 relates to the prohibition of using fire for land clearing, and its use on managed land. This provision is very important to reduce carbon emissions from burning land. The last norm is the norm for reducing Greenhouse Gas (GHG) emissions. This norm is regulated in criterion 7.10 which clearly states, "*Plans to reduce pollution and emissions, including Greenhouse Gases, are developed, implemented, and monitored and new developments are designed to minimize GHG emissions*" [8].

It is important to comply with the RSPO Principles and Criteria and their specified requirements that these elements are mandatory requirements for obtaining the certificates. The compliance must be

proven toward the normative portion of the Principles, Criteria, and Indicators. With the fulfillment of these three elements, the RSPO Theory of Change which is the roadmap as the direction for RSPO to realize its vision of making sustainable palm oil as a norm which can be actualized effectively. In essence, the RSPO emphasizes key strategies and activities to transform the palm oil sector holistically. The existence of a roadmap that is based on the fulfillment of the RSPO Principles and Criteria can have an impact on the preservation of the planet and its resources, especially in the context of the environment and communities that can live side by side in harmony [10].

3.2. Environmental protection principle on palm oil sector after the enactment of the omnibus law

The enactment of the Job Creation Law or the Omnibus Law caused tremendous polemics, especially on the controversial impacts on the environment. In general, this regulation aims to facilitate investment by cutting various regulations that are considered to hinder investment. Environmental principles and standards which aim to provide environmental protection are considered as inhibiting instruments in this case, thus some of these environmental protection principles have been revised.

There are several important points that become challenges which need to be observed from changes in environmental protection norms. The first is the elimination of the forest area minimum limit in each province is 30%. This provision was originally explicitly regulated in Article 18 section 2 of the Forestry Law, but after the enactment of the Job Creation Law, this provision was revised and eliminated the minimum requirement of 30% of the forest area that must be maintained. The norm implies that the potential for land-use change will be even more massive. The elimination of the provisions to protect the forest cover of each area of at least 30% in the Job Creation Law, can increase the potential for massive land conversion for economic purposes that are tailored to national strategic projects [11].

The second is flexibility in spatial planning, where there was a norm for establishing a Regional Spatial Plan for each region in the previous Spatial Planning Law. The determination of the Regional Spatial Plan was certainly made through a long and complex study process to realize the goals of spatial planning, one of which was made by using the Strategic Environmental Assessment (SEA). Normatively, in Article 20 section 5 of the Spatial Planning Law in certain conditions, for example, related to natural disasters, or changes in state territorial boundaries, the Regional Spatial Plan can be revised more than once in five years. After the enactment of the Job Creation Law, the requirements for changing the Regional Spatial Plan are added if there is a change in the national strategic policy. The implication of the change can weaken the function of spatial planning in ensuring a harmonious relationship between humans and the environment [12].

The third is the change of environmental permit norms to environmental approval. An environmental permit is an instrument of supervision (control) in the protection and management of the environment. This provision was previously regulated in Article 36 of the Protection and Management of the Environment Law. This norm is very important to ensure that every business implementation, whether carried out by individuals or business entities, remains in line with environmental sustainability and does not pollute the environment. In contrast to environmental approval which is more discretionary towards authority, thus it has different legal implications. According to the analysis of the policy paper issued by the Faculty of Law University of Gadjah Mada, this provision can eliminate the public's right to sue because of the issuance of environmental agreements [13].

The fourth is the elimination of the Environmental Impact Assessment (EIA) for plantation business. In the Plantation Law, Article 67 section 1 stipulates the obligations of every business actor to maintain the function of environmental preservation. Furthermore, Article 67 section 3 stipulates the obligation to make an EIA as a requirement for the issuance of a plantation business permit. However, after the enactment of the Job Creation Law, this article was revised by removing the provisions of Article 67 section 3 and 4, thereby eliminating the EIA provisions as the requirement for granting plantation business permits. Normatively, this provision ignores various environmental impacts in the plantation sector which often occur as a result of land conversion. The existence of EIA is very important to reduce environmental impacts that occur, normatively EIA is a commitment of business actors to ensure the environmental protection of their activities. Regarding the RSPO in the oil palm sector, the provisions

of the EIA in the plantation business are also an indicator of the protection of areas with high HCV and HCS [14].

Fundamentally, the Job Creation Law should be able to harmonize the benefits in the economic, social, and cultural aspects which are implemented based on the principles of precaution, environmental democracy, decentralization, as well as recognition and respect for local and environmental wisdom. However, the principles of environmental protection appear to be threatened when viewed empirically and seeing that the existence of the Job Creation Law has actually strengthened the concentration of land on the owners of capital (investors) not for equal distribution of land tenure which is the goal of agrarian reform. At this time, it appears that the government's political will puts investors as the priority in the very first place.

Any attempt of land conversions arbitrarily to massive deforestation, of course, can result in an escalation in emissions of carbon dioxide gas (CO₂) in the air. For each hectare of converted forest land to oil palm plantations eliminates 174 tons of carbon and release to the air [15]. In fact, according to research, the new oil palm plantations produce more carbon gas than the old ones [16]. Plus there are other impacts on the environment such as water and soil pollution, soil erosion, and climate change [17].

In addition, this deforestation phenomenon is certainly contrary to the next RSPO principles, which are related to the plantation management as well as environmental management and monitoring. The green area, which actually becomes the life foundation of the nation and the world, has to experience a stroke of bad luck because of the "wild" activity against it, no matter how it happens for the sake of sustainable development and is based on law.

3.3. The Impacts of Omnibus Law toward Indonesia's Carbon Emission Escalation in Palm Plantations' Sector

In simple terms, regulations that aim to open up investment taps as widely as possible, and cut all regulations that are deemed to hinder investment, including in the environmental sector, directly pose a real threat to primary forests in Indonesia. What cannot be avoided is that the expansion of oil palm plantations is provided with general ease of doing business, thus that the elimination of the EIA requirements for plantation business is a warning to not encroach on forests. Historically, there are traces of the development of oil palm plantations in Indonesia which are located in forest areas. Based on the results of a study by the Kehati Foundation, out of the 16.8 million hectares of Indonesian palm oil cover, there are 3.4 million hectares or 20.2% of the plantation area located in forest areas [18].

Normatively, the Job Creation Law then whitens the legal violations that occur, namely oil palm plantations that are developed in forest areas without the process of releasing forest areas or exchanging forest areas. In the provisions of the Prevention and Eradication of Forest Destruction Law, an additional norm is made, namely in Article 110 A which provides opportunities for business actors who have carried out business and have business licenses but have not completed the requirements required in the Forestry Law, then 3 years are given to complete the administrative process. In Forest Digest's records, there are 7 million hectares of businesses, including plantations, mining, and other businesses in forest areas whose crimes are bleached through this regulation [11]. Of course, this deviates the law enforcement process that should be carried out and injures the sense of justice of the surrounding community whose forests have been damaged by business actors.

Forest destruction is one of the dominant factors in the contribution of Indonesia's GHG emissions. Indonesia's first "Nationally Determined Contribution" (NDC), emphasizes two main sectors that are targets for reducing Indonesia's GHG emissions, namely the forestry sector and the energy sector. In the forestry sector by 2030, the government targets to reduce GHG emissions to reach 217 mega ton CO₂e or 17.2% by own efforts, and/or 64 Mton CO₂e or 23% with an international cooperation scheme. Of course, this is a very ambitious target, by reducing the rate of deforestation that occurs in the period 2021 to 2030 to reach 325 thousand hectares per year [19].

Indonesia itself already has the Low Carbon Development (LCD) scheme from the National Development Planning Agency which is integrated into the National Long Term Development Plan. In this scheme, four scenarios can be carried out in realizing the Indonesian LCD which maintains the

growth rate of Gross Domestic Product (GDP) of up to 6% per year between 2019 and 2045. One of the highest scenarios is the “LCD Plus” which in the forestry sector, emphasizes the importance of full enforcement of moratoriums on forests, oil palms, mines, and peatlands. By 2045, this scenario expects Indonesia to retain 42.2 million hectares of primary forest including 15 million hectares of peatland. Protection of primary forests in Kalimantan and Papua is the key to make this scenario work [20].

Based on the analysis from the Indonesia Monitoring Coalition, there is an upward trend in deforestation in Papua. In the last two decades, deforestation in Papua has reached 663,443 hectares, of which the highest deforestation occurred in 2015, reaching 89,881 hectares. In 2019, deforestation reached 38,335 hectares. It is interesting to look at the process of releasing forest areas in Papua from 1992 to 2019 covering an area of 1,549,205 hectares. As much as 84% of the release of this forest area was intended for 1,307,780 hectares for oil palm plantations [21].

4. Conclusion

The ease of investment will increase the massive land-use change which will directly increase Indonesia's GHG emissions. Norms in the Job Creation Law clearly regard strict environmental standards as a barrier to investment. Various changes to related norms in the Job Creation Law can be an indicator of a step backward from the principle of environmental protection in Indonesia. Removing the minimum limit of 30% of forest area, flexibility in spatial planning, changing environmental permits to environmental approvals, eliminating EIA requirements for plantation businesses, could be seen as systematic environmental degradation efforts. This of course will be in line with the escalation of Indonesia's GHG emissions, which is contrary to Indonesia's commitment to reduce GHG emissions, even up to the expectation of net-zero emissions in 2070.

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