

June, 2021

POLICY BRIEF

Coalition of Palm Oil Moratorium

The Urgency of Extending Palm Oil Moratorium to Accelerate Indonesia's Palm Oil Governance Reform

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Key Points:

1. Extending the Presidential Instruction No.8 year 2019 about the Postponement and Palm Oil Permit Evaluation and Increasing Productivity of Palm Oil known as palm oil moratorium is a logical move for the government. This will create positive impact to global market support, trigger land productivity, resolve land overlaps, and contribute to the achievement of climate commitments.

2. Not extending the palm oil moratorium will delay measures for improving palm oil governance that the government have initiated thus far. Government Regulations issued since the Job Creation Law was passed still cannot accommodate the drive to fully improve palm oil governance without first completing the palm oil moratorium mandate.

Signatories:

Madani · Sawit Watch · ELSAM · Kaoem Telapak · Link-AR Borneo · JPIK · FWI · PUSAKA · For Institute Ecosoc Rights · Elpagar · Jaringan Kerja Pelayanan Kristen di Indonesia · Greenpeace · Pusaka Papua · Kemitraan Partnership

Introduction

It is undeniable that the palm oil industry plays a strategic role in the national economy. In 2020, Statistics Indonesia recorded that volume of palm oil product exported reached 34 million tonnes. In addition, the industry also provides jobs and livelihoods for millions of smallholder families. However, it needs to be understood that the various challenges faced by the industry is, among others, low levels of prosperity among smallholders, the numerous underdeveloped villages around plantations, the gap between central and local incomes, low tax payment, to ecological problems and the rampant social conflicts, which in turn reduces palm oil product competitiveness in global markets.

One of the currently available instruments to untangle the problems of palm oil governance is Presidential Instruction No. 8 of 2018 on Moratorium on and Evaluation of the Licensing of Palm Oil Plantations and Productivity Increases for Palm Oil Plantations. Nevertheless, this moratorium ends on September 2021. The policy is conceptually strategic, but not yet optimally implemented and therefore the policy needs to be extended to resolve and accelerate Indonesia's palm oil governance reform for the future.

In response to this condition, the civil society coalition publishes this policy paper to explain the strategic opportunities that Indonesia will gain from extending the palm oil moratorium, as well as spotlighting the challenges faced if the moratorium is not extended and implementation of the Job Creation Law in the palm oil sector, as well as tactical recommendations for the government to optimise this policy.

Portrait of the 2.5 Years Palm Oil Moratorium Implementation

The palm oil moratorium implementation is nearing its end. The policy has led to commendable achievements, among others, the central government consolidating data and completing palm oil plantation area calculations as stipulated in Decision of Minister of Agriculture No. 833/KPTS/SR.020/M/12/2019.

Then at the regional level, although not directly produced by the palm oil moratorium working group, one of the steps that needs to be appreciated is the initiative of the West Papua Government and the Corruption Eradication Commission (KPK) who have been reviewing the permits of 30 oil palm plantation companies in the last two years. As a result, the revocation of 14 palm oil companies permits by district leader (Bupati) and plans to revoke four companies in this province which is known as conservation province. Totalling about 267,856.86 hectares of concession permits have been revoked and 43,689.93 hectares are still in the process of being revoked.

The locations of the companies that were revoked were in South Sorong, four companies, Sorong (4), Teluk Bintuni (2), and one company permit each in Teluk Wondama and Fakfak. The Bupati's decision is the process of evaluating permits for oil palm plantations in West Papua. This evaluation has been ongoing since July 2018 under the coordination of the West Papua Food Crops, Horticulture and Plantation Service. Multi stakeholders were involved including the district government in West Papua. The evaluation report will be published in February 2021. The Palm Oil Moratorium is used as the legal basis in this regard.

Although there is no clear steps about the post revocation of the permit, one thing that is sure based on the report saying that land originating from customary land will be managed back by indigenous peoples. These lessons need to be interpreted that the Palm Oil Moratorium should be maximized to achieve corrective action into real one, by doing so it can have an impact on communities around the area such as local

indigenous communities (Koalisi Moratorium, 2021).

Poor achievement in policy implementation is caused by a number of hindering factors, as detailed below.

No	Aspect	Factors Encumbering Palm Oil Moratorium Policy Implementation
1	Policy scale and objectives	• Presidential instruction does not contain specific targets (productivity or license review targets) • Lack of policy implementation road map • Lack of clear monitoring and evaluation mechanism • Lack of procedural or technical guidelines for sub-national governments
2	Resources	• No specifically allocated budget and human resources in sub-national agencies • There's no dedicated team at the national level who is publishing the achievement of the palm oil moratorium
3	Communications among implementors	• Poor policy socialisation to sub-national governments • Failure to promote data transparency principles • Ongoing sectoral ego • Changing positions/offices during policy implementation
4	Economic, Social, and Political Situations	• Job Creation Law issuance potentially weakens motivation for palm oil governance reform

Strategic Opportunities for Extending Palm Oil Moratorium

Toward the end of the palm oil moratorium, the civil society coalition carried out an assessment to understand the strategic opportunities gained from a policy extension and consequences of policy termination. The assessment included strategic aspects in palm oil governance that the government is focusing on: market acceptance, global response, climate commitments, overlapping licenses, and productivity projections. The assessment findings are as follows.

First, Indonesia has the potential to absorb future international market's demand for sustainable CPO. The global community's trust in Indonesia's sustainable palm oil commodity is the most important thing to maintain and promote, noting that annually 19% of the total global CPO consumption and demand comes from sustainable certified palm oil (RSPO, 2021). The 2018 palm oil moratorium policy actually received positive response from the global market. This is worth continuing to respond to market challenges for the sustainability of Indonesia's CPO. The following is an diagram showing certified CPO sales, especially RSPO certified CPO.

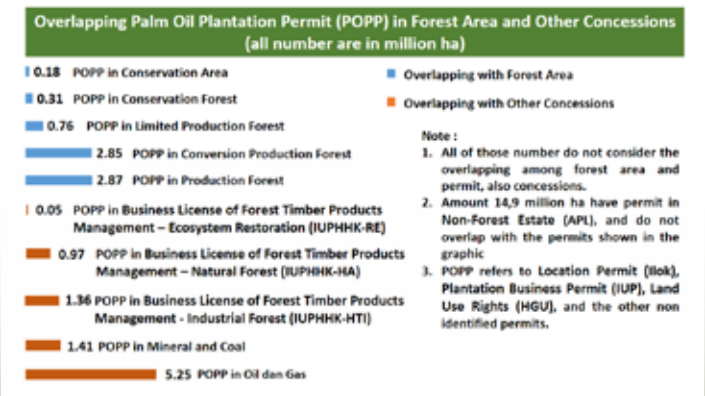


Source : RSPO, 2021, *Projection

The above graph illustrates that the demand for sustainable palm oil shows an increasing trend. It is estimated that global palm oil markets will grow by 9% from 2019 to 2026 (Facts and Factors, 2021). In 2025, total sales of RPO-certified CPO are projected to increase to 9.5 million tonnes. Global market demands will continue to grow because of the push from global markets for using only sustainable palm oil, for example in Europe through EU policies. Moreover, to meet these global demands, this palm oil moratorium extension momentum is strategic to maximise the existing palm oil area to accelerate ISPO certification without expansion.

Second, the potential to increase international credibility of Indonesia's palm oil. The main idea of market acceptance for Indonesia's palm oil in global markets is improving sustainable palm oil governance, which is expected to be achieved through palm oil moratorium extension by the Indonesian Government. This policy received positive response from Indonesia's trade partner countries, such as countries joined under the European Free Trade Association (EFTA). Results of the Switzerland referendum on 7 March 2021 stated that 51.6% of the people of Switzerland initially approved the agreement to import Indonesia's palm oil Indonesia-EFTA Comprehensive Economic Partnership Agreement (IE-CEPA) (Kontan, 2021). This trade market openness is a momentum for the Indonesian government to continue to improve sustainability aspects of its national palm oil industry and increase the credibility of palm oil products to meet requirements of national trade agreement clauses. .

Third, the potential to create a conducive business climate by resolving overlaps between palm oil licenses with other concessions or forest areas. One of the fundamental issues in Indonesia's palm oil governance is licenses overlapping with other concessions or forest areas. Our analysis shows that from 27.4 million ha palm oil licenses recorded, 8.98 of them overlaps with other concessions*. In addition, 6.97 ha palm oil licenses overlap with forest areas. Detailed analysis results are provided in the graph below.



If we delve further, only 14.9 million palm oil plantation licences do not overlap with other concessions or forest areas. In fact, clear land status without overlap is a critical requirement for creating conducive business climate and address agrarian conflict. Palm oil moratorium can be a concrete step to resolve these issues.

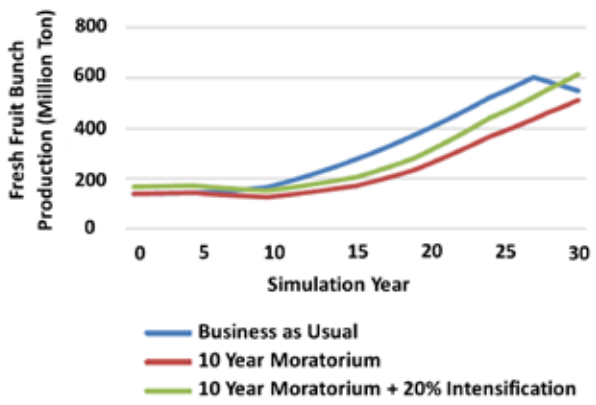
Four, the potential to contribute to Indonesia's climate commitments (NDC). Indonesia is committed to reduce emission by 29% on its own to 41% with international support. The greatest ambition of this emission reduction comes from the forestry sector with 17.2% to 38% emission reduction target by 2030. To respond to these challenges, the palm oil moratorium contributes to achieving this ambition.

Our analysis found that there is at least 24.2 million ha peat ecosystem in Indonesia, and 6.2 million ha of which is located inside palm oil concessions, specifically 3.8 million ha peatland. The existing license evaluation and review in the moratorium can save these peat areas. These peatlands must literally be protected and restored since 99.3% of Indonesia's peatland experiences drought and is extremely vulnerable to fires in the dry season. Our calculations found that restoring 3.8 million hectares peat land to its natural functions can avoid emissions by 11.5 million tonnes carbon per year from fires or land conversion (Agus et al., 2011) which will surely contribute to Indonesia's climate commitments.

In addition to peat, the area of natural forest located in palm oil plantation licenses is also significant. According to 2019 land cover, 3,577.496 ha natural forest is located inside palm oil concessions. From this figure, approximately 1,427.467 ha is recorded to originate from the release of forest areas that are licence evaluation objects in the palm oil moratorium. Palm oil moratorium provides hope that the existing natural forests inside palm oil concessions will be evaluated

and may be converted back into forest areas. Natural forests inside palm oil concession are becoming increasingly threatened after the Job Creation Law was passed due to requirements that after two years after rights to land is granted, the entire palm oil plantation must be developed, otherwise undeveloped areas must be returned to the State.

Five, the opportunity to boost smallholders' land productivity. Our analysis found that there have been no significant changes in CPO productivity** during the moratorium period (1.34% pre-moratorium and 2.62% during moratorium). Moreover, community plantation productivity is still far below major state-owned or private plantations. This means that this policy target is not yet achieved, and therefore extension and innovation is needed to reach the target.



Palm oil moratorium extension can be a logical alternative as shown in the above diagram. Through a value chain dynamic approach, a ten-year palm oil moratorium scenario will reduce FFB production compared to normal conditions but a 20% productivity increase will restore the FFB production loss. This scenario makes sense because of the low productivity of Indonesia's palm oil plantations, especially smallholders (Purnomo et al., 2020). To accelerate productivity increase measures, a commitment is needed in the moratorium period to resolve the issues faced by smallholders such as legality, palm oil fund optimisation, replanting, and K index change that will favour smallholders.

Consequences to Ending Palm Oil Moratorium

In addition to the strategic benefits to be gained, there are consequences to ending the palm oil moratorium as a strategic instrument to improve palm oil governance. Moreover, the Job Creation Law issuance is still unable to comprehensively accommodate the motivation to improving future palm oil governance. Our analysis results on these consequences are as follows.

First, the mandatory ISPO certification target for 2025 will be difficult to accomplish. The government has targeted all smallholders to be ISPO certified by 2025 as stipulated in Presidential Regulation No. 44 of 2020 concerning Indonesia's Sustainable Palm Oil Plantation Certification System. Currently, smallholders ISPO certification rate is at a minimum, with 12,270 ha or 0.21% of the total 5,807 ha smallholders' plantation area (Agrofarm, 2020). The primary reason for the low ISPO certification achievement is smallholders' land legality issues that are still unresolved to this day. Without the palm oil moratorium extension mandating license evaluation, smallholders land legality issues will continue to exist and therefore ISPO certification targets difficult to attain.

Second, continued non-tax state revenue losses from palm oil growing provinces. As of 2021, recorded palm oil plantation area is 27.4 million ha distributed in 26 provinces. Meanwhile, planted palm oil land cover as of 2021 is recorded at 19.7 million ha in 25 provinces. However, if the licenses types are classified, only 28.6% have Land Use Rights (HGU). Regulations stipulate that that palm oil plantations can only be developed after land legality is obtained through HGU, not just Location Permit or Plantation Business Permit (IUP). Palm oil plantation operations prior to obtaining HGU

will lead to suboptimum non-tax state revenues income. Our results from Riau and West Kalimantan identified 1.4 million ha palm oil plantations in West Kalimantan and 280,000 ha palm oil plantations in Riau without HGU. Our calculations indicate state non-tax revenue losses in reaching IDR 191 billion in Riau and IDR 660 billion in West Kalimantan. The state's non-tax revenue losses, which should have gone into the state treasury, will continue to be lost from the two provinces as well as other provinces if the palm oil moratorium mandating license inventory and review is not extended.

Third, private sector also suffers losses. License overlaps are detrimental not only to local and indigenous peoples, but local palm oil companies as well. Based on the monitoring data produced by the coalition showed about 180 plantation cases are doing an activity within the forest area (Koalisi Moratorium, 2019). A study from the Indonesia Business Council for Sustainable Development (2016) shows that tangible costs borne by companies from agrarian conflicts reach USD 70,000-2,500,000. Meanwhile, intangible costs incurred on companies reach USD 600,000-9,000,000. Therefore, palm oil plantation governance reform through Presidential Instruction on Moratorium can help companies increase operational cost efficiency and effectiveness and contribute to stabilise business climate.

Four, Job Creation Law increasingly threatens forest area protection and does not resolve agrarian conflicts in the palm oil industry. The issuance of the Job Creation Law in late 2020 followed by 11 implementing Government Regulations for this law in early 2021 also affect regulations related to palm oil governance. The Job Creation Law can potentially lead to more palm oil plantation permits being granted that will convert natural forest and peatland landscapes. A number of clauses facilitate palm oil plantation permits, especially if they are included as a National Strategic Project. These facilities include spatial adjustments (Article 8 (2) of Government Regulation No. 42 of 2021) to expediting licensing process (Article 5(2) Government Regulation No. 42 of 2021) for activities categorised as high risk or of significant impact to the environment (Article 8 of Government Regulation No. 22 of 2021). This is especially true with the current biodiesel programme that can potentially require larger land areas. A study from LPEM FEB UI (2020) indicates that with various scenarios (B20, B30, to B50), by 2025 it is estimated that there will be a need for land expansion for palm oil. By 2025, the B20 scenario will need approximately 338,000 ha new land, while the B30 scenario will require approximately 5.2 million ha, and the B50 scenario will require the largest land area of approximately 9.2 million ha. Additionally, there is a plan to build Energy Estates in Papua covering 12 million ha to provide supply and price certainty for the Green Fuel Refinery, according to the Agency for the Assessment and Application of Technology (BPPT). This may potentially be included as a National Strategic Project.

In addition to easing investment and palm oil plantation business expansion, the Job Creation Law also provides exemptions to forest degradation violations linked to existing palm oil plantation development in forest areas prior to the Job Creation Law implementation as long as requirements for license and administrative fine payment to the government are completed. Exemptions directly grant legitimacy to plantation development in forest areas and land control of forest areas, including over customary forests within forest areas.

Policy Recommendations

1. Extending the validity period and increasing the Presidential Instruction on Palm Oil Moratorium into a form of regulation that is stronger and has legal force that binds all parties.

2. Strengthening the Presidential Instruction on

the Palm Oil Moratorium accompanied by specific targets such as a target for increasing productivity with a clear size (tons/ha), optimizing farmer assistance targets (number of farmer extension workers per district/city), target area of evaluated oil palm plantation permits (ha/year) ; and the target area for settlement of oil palm land in the forest area (ha/year), as well as the target for returning natural forest cover remaining in the permit to be returned as forest area or designated as HCV (ha/year).

3. Increase and ensure the disclosure of information on the results of the implementation of the Palm Oil Moratorium Instruction to the public, especially related to the process and results of delays and evaluation of oil palm plantation licensing and other targets such as targets for increasing productivity to optimizing targets for farmer assistance

4. Provide direct support to Regional Apparatus Organizations (OPD) at the provincial and district/city levels by the Central Government such as providing budget allocations for Regional Apparatus Organizations to implement the Palm Oil Moratorium Instructions effectively to providing implementing instructions and technical guidelines for OPDs in implementing the policy;
5. Support regional heads and OPDs who have reviewed permits and dare to take corrective actions and ensure that corrective steps taken by regional heads can have a real impact on indigenous peoples or communities around the area.

Data and Analysis Disclaimer

*Area obtained without considering overlapping concessions. On the other hand, with overlaps, area is 8.35 million ha (data analysed from various sources).

**Productivity data calculated based on CPO production divided by area of Productive Palm Oil Plantations. Productivity rate calculated based on the productivity difference divided by productivity from previous year. Productivity rate data is normal, homogenous, and followed by Independent T-test with 5% alpha. Productivity data is available in the Directorate General of Estates' website, and 2021 data is temporary.

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