Synchronization of Indonesian regulation in sustainable palm oil management to reduce greenhouse gas emissions

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Abstract. The sustainable management of palm oil can be achieved through a regulatory approach. Indonesia as one of the largest palm oils producing countries in the world is committed to achieving sustainable palm oil management in order to reduce greenhouse gas emissions as an effort to combat climate change impact. The concretization of this commitment is to require the Presidential Instruction Number 8 of 2018 concerning Palm Moratorium. However, the Presidential Instruction Number 8 of 2018 has limitations in its authority to be implemented. Therefore, it requires synchronization with relevant regulations to provide a strong legal position for the implementation of the Presidential Instruction Number 8 of 2018. Therefore, the purpose of this study is to analyze the synchronization between the Presidential Instruction Number 8 of 2018 and other relevant regulations. To achieve this goal, the author employed a normative approach in the form of an analysis of the contents of the regulation that needs to be synchronized. The results of this study indicated that there are fundamental problems at the level of regulation regarding the sustainable palm oil management that are contradictory to each other, making it difficult for Indonesia to fulfill its commitment to reduce the emission of greenhouse gases to combat climate change as part of its effort to combat climate change.

1. Introduction

Increasing numbers of concentrations of greenhouse gases (GHG) such as water vapor, carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), ozone (O₃), and chlorofluorocarbons (CFCs) in atmosphere resulted in increasing temperatures and geothermal energy [1, 2]. It means the temperature and geothermal increase caused less radiation to enter outer space, which gradually increases the lower atmospheric temperature and the earth’s surface [1]. This situation is commonly known as global warming.

In regard with global warming, land conversion e.g. deforestation and fossil fuel combustion are becoming the main sources of anthropogenic as stipulated in the 4th Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) [1, 3]. In the 5th Assessment Report of IPCC in 2014, the IPCC stated that “the evidence for human influence on the climate system has grown since the Fourth Assessment Report (AR4). It is extremely likely that more than half of the observed increase in
global average surface temperature from 1951 to 2010 was caused by the anthropogenic increase in greenhouse gas concentrations and another anthropogenic forcing together” [4]. To show the earth condition, it can be seen in Figure 1.

In the context of forestry and land use, planting oil palm has become a serious debate amongst the countries [5]. Some experts state that the planting of oil palm contributes to GHG emissions through land use change (LUC), in particular from land conversion including forest conversion [6, 7, 8]. Therefore, the idea of sustainable management of oil palm must be committed against the issue of deforestation as stated in some European countries [9]. Indonesia as one of the largest palm oil-producing countries in the world has its commitment to achieving sustainable palm oil management in order to reduce the GHG concentrations. One of its commitment is to enact the Presidential Instruction Number 8 of 2018 concerning Palm Moratorium, but the Presidential Instruction Number 8 of 2018 itself has limitations in its authority to be implemented. So, the synchronization between the Presidential Instruction and other relevant regulation is needed to maintain and protect the environmental preservation including to reduce the GHG. The focus of this paper then is to discuss how those regulations are synchronized and synergized in order to reduce the GHG.

2. Methods of research
The research is normative legal research involving law as an object of the study. The collected data is qualified as primary, secondary, and tertiary data such as some relevant regulation and laws whose has a strong connection to the issue of sustainable management of palm oil. To validate them, all the data are synchronized one to another to guarantee that they do not conflict amongst them. The data then
analyzed qualitatively. In this methodology, the researcher keeps close contact with research problems to understand the issue comprehensively.

3. Results and discussion
The results will be discussed in two sections. In the first section, the author will discuss the reason and the contents of the Presidential Instruction Number 8 of 2018 should be enacted by the Government. In the second section, the author will describe and analyze some regulation whose have a strong connection to the sustainable management of palm oil as stipulated to the Presidential Instruction Number 8 of 2018. It will also discuss how the Presidential Instruction Number 8 of 2018 and some regulations are able to be synchronized.

3.1 The presidential instruction number 8 of 2018
According to Civil Society for Reforming Indonesian Justice of Palm Oil Plantation, some problematic issues of the development of oil palm plantations in Indonesia can be classified into (1) deforestation due to land clearing activities by clear-cutting; (2) overlapping land concession permits; (3) depriving people's land (customary law communities) due to lack of FPIC mechanism (free prior informed consent); (4) plantation businesses that “hit” policies such as spatial planning; (5) difficulty in information disclosure; (6) silent expansion by smallholders; (7) there is no mechanism for handling land conflicts; (8) oil palm plantations already exist in forest areas; and (9) Illegal oil palm plantation businesses [7].

Those issues became the reason for the Government to commit moratorium in the area of palm oil. The President of Indonesia, Jokowi, signed then the Presidential Instruction Number 8 of 2018 concerning Cancellation and Evaluation of Licensing of Oil Palm Plantations and Improvement of Oil Palm Plantations. It is commonly called the palm oil moratorium. The idea of the moratorium was conducted by the Government to create not only the sustainable management of palm oil in Indonesia, but also the legal certainty and maintaining of the environmental preservation.

The contents of the Presidential Instruction Number 8 of 2018 are covered, as followings: (1) cancellation of licenses and investments for new permits or the addition of oil palm plantation areas whose areas are within forest areas; (2) Evaluation of licenses for oil palm plantations as well as business use rights (HGU) for oil palm plantations in the area existing ones, the area of which is inside or originating from a forest area; (3) Allocation and distribution of land originating from the release of forested oil palm plantations for the community; and (4) Increased productivity of oil palm plantations through compliance with ISPO instruments and farmer institutional strengthening [10].

3.2 Synchronization between the presidential instruction number 8 of 2018 and other regulations
The Presidential Instruction Number 8 of 2018 has limitations in its authorization to be implemented. To be implemented effectively, therefore, it must be harmonized with other regulation both Indonesian central and regional government authorities. based on some legal framework issues. Those regulations basically have a strong legal position and possibility to cover the Presidential Instruction Number 8 of 2018. Those issues are:

3.2.1. Land issue. State control of land become one of the big issues related to the sustainable management of palm oil. Those regulations are; (1) Law No. 5/1960 concerning the Basic Agrarian Law (BAL). BAL basically strengthens state predominance in land matters. It also changes most of the traditional rights recognized under Dutch colonial law into a series of new (and weaker) legal certificates that make indigenous land ownership lower than they should. It also gives authority to the government to recognize customary land ownership and thus determine the situation in which the community is legally entitled to retain the right to use their customary land (customary rights) to the State or company licensed by the State [11]. In regard to palm oil, the significant improvements have been made in recent years, such as (i) the idea of plantations to provide meaningful development benefits to indigenous communities; and (ii) the possibilities of the indigenous communities to accept or reject some direct
It offers coming from the companies. It means that the company should pay attention to the usage rights of the indigenous community [11]. (2) The Presidential Decree No. 88/2017 concerning Settlement Land Ownership in Forest Areas. The Central Government creates a team to accelerate the settlement of land tenure in forest areas. The team must be synergized with the team formed by the Presidential Instruction Number 8 of 2018. (3) The Presidential Decree No. 86/2018 concerning Agrarian Reform. It has two potential outputs from the evaluation process of oil palm plantations. First, land assignment for the object of agrarian reform (TORA) from former HGU land that was not extended/revoked. Second, the allocation both in the form of giving 20 percent of the forest area released to oil palm plantations to the community, and 20 percent of the HGU that can be cultivated as community plantations. (4) The Constitutional Court Decision No. 35/2012. In the recent significant of the Constitutional Court Decision No. 35/2013, the court ruled that Indigenous Forest claims could be demonstrated by the indigenous communities and the rights to the forest would be given to the indigenous communities, and will no longer be considered as state land.

3.2.2. Issue of public information disclosure on business use rights (HGU) and HGU maps. The public information disclosure can be seen in some regulations such as the Law No. 14/2008 on Public Information Disclosure, the Law No. 41/1999 on Forestry, the Law No. 26/2007 on Spatial Law, the Law No. 32/2009 on Protection and Management Environment, and the Law No. 39/2014 on Plantations. In practice, it is difficult to obtain public information disclosure on business use rights (HGU) and HGU maps even though it is compulsory to provide the information based on the court’s decision [12].

3.2.3. The distribution of power between Central and Regional Government issue. The balance of power both central and regional government regarding oil palm has been stated in the Law No. 22/1999 on Regional Government and the Law No. 39/2014 concerning Plantations. The Law No. 22/1999 itself has been replaced 2 (two) times, namely the Law No. 32/2004 and the Law No. 23/2014. The distribution of authority covers proposals for spatial planning; licensing decision; evaluation and approval of Environmental Impact Assessment (EIA); performance monitoring and evaluation; verification of legal compliance; conflict resolution between company and community; issuance of fines; and corrective actions requirements for non-legal compliance. Under regional autonomy, local authorities have significant authority, both de facto and de jure to implement guidelines while central authorities set national laws and regulations governing oil palm. Furthermore, regional authorities have the authority to supplement national laws with regional regulations so long as they do not contradict or weaken the aforementioned national laws [11].

3.2.4. Issue of intended nationally determined contribution. One of the purposes of enacting the Presidential Instruction Number 8 of 2018 is to reduce GHGs as part of dealing with deforestation and forest degradation (REDD+). The Presidential Instruction Number 8 of 2018 must be in line with Roundtable Sustainable Palm Oil (RSPO) and Indonesian Sustainable Palm Oil (ISPO) as mandatory certification based on the Minister of Agriculture Decree No. 11/Permentan/OT.140/3/2015.

3.2.5. Corruption issue. The Corruption Eradication Commission (KPK) underlines three potential problems on oil palm: (1) monitoring of unaccountable oil palm plantation permits; (2) implementing ineffective CPO export revenues; and (3) non-optimal tax collection in the oil palm plantation sector. As stated the Indonesian palm plantation area reaches 22.2 hectares and 30 % of it is owned by the palm’s farmers [13]. KPK spokesperson Febri Diansyah stated that the organization has found out that there are 4.69 million hectares of HGU are overlapping one to another. Therefore, the Central Government must be cooperation with KPK to create the sustainable management of palm oil, including the evaluation process of palm oil permit and its law enforcement.
Identification of nature and the contents of the Presidential Instruction Number 8 of 2018 and some relevant regulation on palm oil will be the key factors to harmonize those regulations in order to reduce the GHGs. This implies that if the harmonizing and synergizing of the Presidential Instruction Number 8 of 2018 and some relevant regulation on palm oil are not fulfilled, it will be hard for Indonesia to fulfill its commitment to diminish the emission of GHGs in its ongoing effort to combat climate change.

4. Conclusion
Synchronizing the Presidential Instruction Number 8 of 2018 and some relevant regulation on palm oil must be conducted to reduce the GHGs which are shown to relate strongly to climate change and merits our utmost attention. Some regulations are the Agrarian Law, the Law No. 14/2008 on Public Information Disclosure, the Forestry Law, the Spatial Law, the Environmental Law, the Plantations Law, the Regional Autonomy Law, the Presidential Decree No. 88/2017 concerning Settlement Land Ownership in Forest Areas, The Presidential Decree No. 86/2018 concerning Agrarian Reform, the Minister of Agriculture Decree No. 11/Permentan/OT.140/3/2015, and the Decision of the Constitutional Court No. 35/2013.

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