

Principles of Human Rights (HAM) in Indonesian Sustainable Palm Oil (ISPO)

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Abstract: *Palm oil is Indonesia's leading commodity that is able to compete in the international market. However, there are often accusations that Indonesian palm oil is unsustainable due to problems of deforestation, corruption and human rights violations against land grabbing of indigenous and local communities. So that they lose their homes and find it difficult to meet their needs because they depend on the forest. In response to this, the government has updated the ISPO regulations through Presidential Regulation Number 44 of 2020 concerning the Indonesian Sustainable Palm Oil plantation certification system. The formulation of the problem from this research is whether ISPO is in accordance with human rights principles and what is the future conception so that ISPO is more in line with human rights principles. This research is included in normative legal research using a legal and conceptual approach. Based on the research results, it is known that ISPO has complied with several human rights principles, such as universal principles and non-discrimination. ISPO principles and criteria should be adjusted to the capacity of independent smallholders, so that there is equality in efforts to increase oil palm production.*

Keywords: *Indonesian Sustainable Palm Oil (ISPO), human rights principles, land grabbing, deforestation*

Abstrak: Minyak kelapa sawit merupakan komoditi unggulan Indonesia yang mampu bersaing di pasar Internasional. Kendati demikian, kerap kali ada tuduhan bahwa kelapa sawit Indonesia tidak berkelanjutan dikarenakan masalah deforestasi, korupsi dan pelanggaran HAM terhadap perampasan tanah masyarakat adat dan lokal. Sehingga mereka kehilangan tempat tinggal dan sulit memenuhi kebutuhan karena bergantung pada hutan. *Menyikapi* hal tersebut pemerintah melakukan pemberharuan peraturan ISPO melalui Peraturan Presiden Nomor 44 Tahun 2020 tentang sistem sertifikasi perkebunan kelapa sawit berkelanjutan Indonesia. Rumusan masalah dari penelitian ini adalah apakah ISPO telah sesuai dengan prinsip HAM dan bagaimana konsepsi ke depan agar ISPO lebih sesuai dengan prinsip HAM. Penelitian ini termasuk dalam penelitian hukum normatif dengan menggunakan pendekatan undang-undang dan konseptual. Berdasarkan hasil penelitian diketahui bahwa ISPO telah sesuai dengan beberapa prinsip HAM, seperti prinsip universal dan non diskriminasi. Prinsip dan kriteria ISPO seharusnya disesuaikan dengan kapasitas pekebun swadaya, agar ada kesetaraan dalam usaha meningkatkan produksi kelapa sawit.

Kata Kunci: *Indonesian Sustainable Palm Oil (ISPO), Prinsip Hak Asasi Manusia, perampasan tanah, perusakan hutan*

Introduction

The natural riches of oil palm in Indonesia are a gift from God for which the country should be grateful since the potential for development is extremely big. The adaptability and potential of Indonesia's land and climate for the growth of oil palm farms demonstrates this. Based on data from the Agricultural Research and Development Agency, the Ministry of

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Agriculture will reach 15.08 million hectares in 2021. The plantation area increased by 1.5% compared to the previous year which was 1.48 million ha. Of the 15.08 million ha, the majority are owned by private large plantations (PBS), which are 8.42 million ha (55.8%). Then, People's Plantations (PR) cover an area of 6.08 million ha (40.34%) and Large State Plantations (PBN) cover an area of 579.6 thousand ha (3.84%). The Ministry of Agriculture also noted that national palm oil production will be 49.7 million tons in 2021. This figure is up 2.9% from the previous year which amounted to 48.3 million tons.¹

Palm oil plays a crucial role for national interests, including as a source of income and employment, a means of overcoming and reducing poverty, palm oil is also one of Indonesia's leading export commodities, a source of food and energy in the form of cooking oil and biofuels, and there are few economic activities, particularly at the commodity level, that can make such a large contribution, are inclusive, broad, and competitive as oil palm. Among its many important roles and advantages, Indonesian palm oil also has serious weaknesses and challenges if not addressed quickly and appropriately. Negative issues and real threats to the national palm oil industry such as: palm oil is rumored as unhealthy vegetable oil, as a cause of environmental damage, forests, peatlands and deforestation, causes of carbon gas emissions, corruption, loss of indigenous peoples' land, including also the issue of oil palm which is considered to have committed human rights violations.²

Overall public awareness of human rights continues to increase and strengthen, especially since the era of reform in 2000. Openness of information and the development of mass media and information technology have opened up every social and regional corner in Indonesia, so that nothing can be hidden if there are violations of human rights. According to data from the Indonesian National Human Rights Commission in 2017³ shows that the link between national palm oil centers and human rights cases is very weak. Because the areas where many complaints of human rights violations are made are mostly not the main national oil palm plantation areas. Human rights in the context of plantation activities in Indonesia, including oil palm, have actually received legal recognition and/or protection. This is evidenced by the existence of arrangements in various laws and regulations, including in the 1945 Constitution of the Republic of Indonesia.

However, in order to address the negative issues of palm oil, the Government in this case continues to make legal reforms, provide legal recognition and or protection of human rights for parties involved in oil palm plantation activities in Indonesia as stated in Presidential Regulation Number 44 of 2007. 2020 concerning the Indonesian Sustainable Palm Oil Plantation Certification System or commonly known as ISPO. The ISPO policy is not new, ISPO was first regulated through the Regulation of the Minister of Agriculture (*Permentan*) Number 19 of 2019 concerning Guidelines for Sustainable Indonesian Palm Oil Plantation. These regulations were then updated through Minister of Agriculture Regulation Number 11 of 2015 concerning the Indonesian Sustainable Palm Oil Certification System. Then it was strengthened by the Minister of Agriculture Number 38 of 2020 concerning the Implementation of Certification of Indonesian Sustainable Palm Oil Plantations which has been running side by side with Presidential Regulation Number 44 of 2020 concerning the Certification System for Indonesian Sustainable Palm Oil Plantations.

This assertion is supported by the existence of a regulation stating that the development of sustainable oil palm plantations is a requirement imposed by the Indonesian

¹<https://databoks.katadata.co.id/datapublish/2022/01/31/luas-perkebunan-minyak-kelapa-sawit-nasional-capai-1508-juta-ha-pada-2021>. diakses pada 23 September 2022, 10.31.

² Ermanto Fahamsyah, *Hukum Perkebunan Dinamika Dan Perkembangannya Di Indonesia*, (Depok: PT Rajagrafindo Persada), 79.

³<https://www.komnasham.go.id/index.php/data-pengaduan/> diakses pada 24 September 2022, 11.25.

government in order to protect the environment, increase economic and social activities, and enforce Indonesian laws and regulations in the palm oil matter.⁴ Based on this context, the authors pose the first issue: Is Indonesian Sustainable Palm Oil in accordance with human rights principles? Second, what is the long-term vision for Indonesian Sustainable Palm Oil to be more in line with human rights principles? The advantages and objectives of this research are to determine whether or not Indonesian Sustainable Palm Oil is compatible with human rights standards.

There have been several previous studies that can support differences in the author's discussion, including a journal written by Pardomuan Gulton with the title juridical analysis of the obligation to fulfill human rights in oil palm plantation business practices in North Sumatra, which discusses the conflicts that always accompany the development of oil palm plantations, as long as the interests of all stakeholders, particularly the social stakeholders, are not accommodated in laws and regulations. Furthermore, the people's desire for maximum prosperity will almost certainly not be realized, Jakarta, National University of Jakarta.

The study by Muhammad Aljabbar Putra, with the title implementation of human rights due diligence on corporations in the oil palm plantation sector in Sumatra and Kalimantan, the results of this discussion are that the implementation of human rights due diligence currently needs to be made various improvements because the current mechanism does not accommodate the principle of transparency, there is the super power of authority from the ISPO commission, the creation of the dependence from the internal of ISPO, Jakarta, UIN Syarif Hidayatullah. According to Cicilia Anggi Sholina's study, "fulfilling the human rights of children of Indonesian workers on oil palm plantations in the Tawau region, Sabah, Malaysia," several constructive initiatives have been made by enterprises and KRI in Tawau to satisfy children's rights to education, health, and basic requirements in their lives and growth. However, parental awareness, particularly in terms of fulfilling children's rights to education, remains low, thus there are still youngsters who must collaborate with their parents. In actuality, educational facilities and infrastructure in the form of a Community Learning Center (CLC) are still being constructed, beginning with the instructors and progressing to the curriculum. Another difficulty is the unwillingness of PMI who arrive illegally to report themselves and their families, which means that outreach initiatives to PMI children are still ineffective, Jakarta, University of Indonesia.

Research by Patricia Rinwigati Waagstein, with the title Corporations as bearers of human rights obligations: a search for legitimacy in international law, the result of this discussion is to study human rights in relation to corporations as non-state actors who have obligations to fulfill human rights theoretically, but have not yet researched this relationship at a practical level, Jakarta, Journal of Law and Development. Randy Pradtyo's study, titled legal politics, plantation management based on human rights principles, emphasizes human rights-based plantation management in the context of legal politics, and also examines the application of human rights principles in plantation management from a legal policy perspective, Jurnal Bhumi, Jakarta. There are certainly differences in the discussion that the author will examine from several previous studies that have been explained above, namely in the legal substance which will focus on fulfilling human rights principles in a regulation stipulated by the President in the form of Presidential Decree Number 4 of 2020 or better known as Indonesian Sustainable Palm Oil (ISPO).

Method

⁴ Ermanto Fahamsyah, *Hukum Perkebunan Dinamika Dan Perkembangannya Di Indonesia*, 114.

This research employed normative juridical research with a statutory approach and a conceptual approach. The legal materials used are primary legal materials in the form of statutory regulations and secondary legal materials in the form of all publications about similar laws. As well as using the deductive method to obtain the results of the analysis

Results and Discussion

Indonesian Sustainable Palm Oil (ISPO)

ISPO is an Indonesian government initiative that puts forward a system that regulates and directs the development of Indonesian palm oil in a sustainable manner which aimed at increasing the competitiveness of Indonesian palm oil in the world market and also participates in fulfilling the President's commitment to reduce greenhouse gases and pay attention to environmental issues. The definition of ISPO certification is a series of conformity assessment activities for oil palm plantation businesses related to providing written guarantees that the products and management of these oil palm plantations meet the ISPO principles and criteria.⁵

The implementation of the Indonesian Sustainable Palm Oil (ISPO) certification system aims to:⁶

1. Ensure and improve the management and development of Palm Oil Plantations in accordance with ISPO principles and criteria
2. Improve acceptance and competitiveness of palm oil plantations in the national and global markets
3. Increase efforts to accelerate the reduction of greenhouse gas emissions

ISPO certification as referred to in paragraph (1) is carried out by applying the principle that includes:⁷

1. Compliance with laws and regulations
2. Implementation of good plantation practices
3. Management of the environment, natural resources and biodiversity
4. Employment responsibilities
5. Social responsibility and community economic empowerment
6. Implementation of transparency
7. Continuous business improvement

Human Rights Principles

Human rights are one thing that is often associated with certain issues. Human Rights are terminologically known by four terms in English, namely (a) *human rights*; (b) *fundamental rights*; (c) *citizens' rights*; and (d) *collective rights*. Human rights is considered the most adequate and most comprehensive terminology, which can accommodate both international and national aspects of human rights. Among these four terms, the term human rights is translated into Indonesian as "hak asasi manusia", because this term is considered the most comprehensive and adequate terminology and is the most widely used in practice.⁸ Human rights are the rights that humans possess solely because they are human. Every individual has

⁵ Pasal 1 angka 4 Peraturan Presiden Republik Indonesia Nomor 44 Tahun 2020 Sistem Sertifikasi Perkebunan Kelapa Sawit Berkelanjutan Indonesia.

⁶ Pasal 3 Peraturan Presiden Republik Indonesia Nomor 44 Tahun 2020 Sistem Sertifikasi Perkebunan Kelapa Sawit Berkelanjutan Indonesia.

⁷ Pasal 4 Peraturan Presiden Republik Indonesia Nomor 44 Tahun 2020 Sistem Sertifikasi Perkebunan Kelapa Sawit Berkelanjutan Indonesia.

⁸ Mujaid Kumkelo, *Moh. Anas Kholish dan Fiqh Vredian Aulia Ali, Fiqh HAM: Ortodoksi dan Liberalisme Hak Asasi Manusia dalam Islam*, (Malang: Setara Press, 2015), 28-29.

rights not because they are granted by society or based on positive law, but based on their dignity as human beings.⁹

Discussing on human rights is inextricably linked to the ideals underlying them. International human rights are animated by various principles. Almost all of these ideas are enshrined in international treaties and then applied to broader rights. Human rights, according to Manfred Nowark, have four principles: they are *universal, indivisible, interdependent, and interrelated*. According to some, the principles of indivisibility, interdependence, and interconnectedness are all descendants of the universal principle. In this context, the principle of indivisibility is read as "all human rights are equally important, and thus it is not permissible to exclude certain rights or categories of rights from their parts." The concepts of universality and indivisibility are regarded as the two most significant sacred principles. They both became the key slogans for the 50th anniversary of the Universal Declaration of Human Rights, namely "all human rights for all human beings."¹⁰

Rhona K.M. Smith added other principles, namely equality, non-discrimination, and positive obligations for every country which are used to protect particular rights. Equality is considered a very fundamental principle of human rights. Equality is interpreted as equal treatment, in which the same situation must be treated equally, and in which different situations with a little debate are treated differently. Equality is considered as an absolute prerequisite in a democracy. Equality before the law, equality of opportunity, equality of access to education, equality of access to a fair trial and others which are important matters in human rights.¹¹

Prohibition against discrimination or non-discrimination is one part of the principle of equality. If everyone has an equal position then there should be no discriminatory treatment. In effect, discrimination is a gap in treatment differences from treatment that should be equal. Discrimination is divided into two forms, namely (a) direct discrimination, namely when a person is either directly or indirectly treated differently from others, while (b) indirect discrimination, namely when the practical impact of laws and/or policies is a form of discrimination.¹² Characteristics of international human rights law have broadened the reasons for discrimination. The Universal Declaration of Human Rights mentions several reasons for discrimination, including race, skin color, gender, language, religion, political opinion or other opinion, national or national origin, ownership of an object, birth status or other status. There are also more and more instruments that expand the reasons for discrimination including sexual orientation, age, and disability.¹³

One last principle highlighted by Rhona K.M. Smith is that certain rights must be actively protected. States cannot knowingly disregard rights and freedoms, according to international human rights law. On the other hand, the state is thought to have a positive obligation to actively safeguard and ensure the fulfillment of every individual's rights and freedoms. In terms of freedom of expression, the state may give it by imposing a few limits. The only constraints are what are known legally as limitations.¹⁴

Indonesian Sustainable Palm Oil that meets human right principle

⁹ Rhona K. M. Smith, dkk, *Hukum Hak Asasi Manusia*, (Yogyakarta: PUSHAM UII, 2008), 11.

¹⁰ Eko Riyadi, dkk, *Vulnerable Groups: Kajian dan Mekanisme Perlindungannya*, (Yogyakarta: PUSHAM UII, 2012), 17.

¹¹ Eko Riyadi, dkk, *Vulnerable Groups: Kajian dan Mekanisme Perlindungannya*, 15.

¹² Eko Riyadi, dkk, *Vulnerable Groups: Kajian dan Mekanisme Perlindungannya*, 39-40.

¹³ Deklarasi Universal Hak Asasi Manusia.

¹⁴ Rhona K. M. Smith, dkk, *Hukum Hak Asasi Manusia*, 40-41.

The Indonesian oil palm plantation business cannot be separated from various issues, one of which is the issue of human rights (HAM). Land-related conflicts are often linked to oil palm plantations. Indonesia has around 14 million hectares of land planted with oil palm. There are no clear estimates of the number of existing land disputes, nor the number of households displaced or losing access to their forests and customary lands, including agricultural land, due to the expansion of oil palm plantations into their villages. The Consortium for Agrarian Reform (KPA), a non-governmental organization, documented more than 650 land-related conflicts that affected more than 650,000 households in 2017—the most recent year for which publicly available data was available. It is estimated that, on average, there were nearly two land-related conflicts occurring each day that year. Without the necessary government reforms, both from a legislative and supervisory perspective. Indigenous peoples will continue to bear the impact of oil palm plantations, and risk losing their true identity. Indigenous peoples have an intrinsic relationship with their environment. Their traditions, knowledge and cultural identity are closely related to the natural environment in which they live. Any disturbance to their environment, as in the case of the Dayak Iban and Suku Anak Dalam, affects their unique culture, language, knowledge and traditions.

Human rights in the context of plantation activities in Indonesia have actually received legal recognition/or protection. This is proven by the existence of regulations in various laws and regulations including the 1945 Constitution of the Republic of Indonesia which specifically regulates human rights in Chapter XA, Articles 28A-28I and the Human Rights Law itself. Law Number 39 of 2014 concerning Plantations also regulates the recognition/or protection of human rights in plantation businesses, both implicitly and explicitly. Among other things, the section considering letter b states that "plantations play an important role and have great potential in developing the national economy in order to realize prosperity and welfare of the people equally."¹⁵

Article 2 also stipulates that "plantations are managed based on the principles of sovereignty, independence, usefulness, sustainability, integration, togetherness, openness, efficiency, justice, local wisdom and preservation of environmental functions."¹⁶ Other material in the Plantation Law also regulates the recognition and protection of human rights of parties involved in plantation activities in Indonesia, including the human rights of business actors, communities around planters, customary law communities and others. The guaranteed human rights include rights related to the economy, environment and social culture. In Articles 11-18 which regulate land use, Article 11, Article 12, and Article 17 which regulate the protection of customary land rights of indigenous communities, Article 39 and Article 40 which regulate the empowerment of plantation businesses, Article 55 concerning prohibitions on actions specifically, Article 56 concerning the prohibition of clearing and/or cultivating land by burning, Articles 57-60 concerning plantation business partnerships, Article 62 concerning sustainable plantation development which determines that plantation development is carried out in a sustainable manner by paying attention to economic, socio-cultural and ecological aspects. Sustainable plantation development as intended must meet the principles and criteria of sustainable development, Articles 67-70 concerning preservation of environmental functions, Article 86 and Article 87 concerning data and information systems, Articles 88-92 concerning development of human resources in plantations, Article 100 concerning participation public.

Furthermore, Presidential Regulation Number 44 of 2020 concerning the Indonesian sustainable palm oil certification system has also provided legal recognition and/or protection for human rights for parties involved in oil palm plantation activities in Indonesia.

¹⁵ Bagian Menimbang Huruf b Undang -Undang Nomor 39 Tahun 2014 Tentang Perkebunan.

¹⁶ Pasal 2 Undang -Undang Nomor 39 Tahun 2014 Tentang Perkebunan.

This statement is proven by the existence of a regulation which states that the development of sustainable palm oil plantations is an obligation implemented by the Government in an effort to preserve the environment, increase economic and social activities and enforce Indonesian laws and regulations in the palm oil sector.¹⁷ Next, the basis for consideration of this ISPO Presidential Decree is that plantation development is carried out based on the principles of sovereignty, independence, togetherness, openness, usefulness, sustainability, integration, efficiency, justice, local wisdom and preservation of environmental functions. The basis for this consideration explicitly refers to the principles of plantation management in Article 2 of the Plantation Law. The ISPO Presidential Decree is based on 39 legal regulations, starting from the statutory level to ministerial decisions related to Indonesia's sustainable palm oil certification system. The ISPO Presidential Decree also regulates ISPO principles and criteria that must be implemented by plantation companies and also by planters. Paying attention to the ISPO principles and criteria shows that all Indonesian oil palm plantation operations must pay attention to legal, economic, socio-cultural and environmental aspects. Where all of these aspects are of course related to the human rights of the parties, both economic, environmental and socio-cultural rights.

Thus, human rights in the context of oil palm plantation activities in Indonesia have actually received legal recognition and/or protection, especially in preventive form. This is proven by the content of several laws and regulations related to oil palm plantations. The ISPO principles and criteria for companies as stated in Article 4 of Presidential Decree Number 44 of 2020 include:

1. Compliance with regulations and laws.
2. Implementation of good plantation practices
3. Management of the environment, natural resources and biodiversity
4. Responsibility towards workers
5. Social responsibility and economic empowerment of the community
6. Implementation of transparency
7. Increasing sustainable business

Meanwhile, the ISPO principles and criteria for planters as stated in Article 5 of Presidential Decree Number 44 of 2020 include:

1. Compliance with regulations and laws.
2. Implementation of good plantation practices
3. Management of the environment, natural resources and biodiversity
4. Implementation of transparency
5. Increasing sustainable business

Through a comprehensive framework of thinking from both indicators, the application of ISPO principles and criteria has been balanced for companies and growers. This reflects that the regulations contained in this Presidential Decree have considered and accommodated the principles of human rights which include the principles of universality, indivisibility, interdependence, interrelatedness, equality, and non-discrimination for companies and planters.

Future Conception for *Indonesian Sustainable Palm Oil* towards principle of human rights

Palm oil plantation activities in Indonesia cannot be separated from human rights, because there are many aspects involved in these activities. The presence of Indonesian

¹⁷ Ermanto Fahamsyah, *Hukum Perkebunan Dinamika Dan Perkembangannya Di Indonesia* (Depok: PT Rajagrafindo Persada), 79.

Sustainable Palm Oil (ISPO) is expected to protect the rights of palm oil entrepreneurs and farmers. Based on the previous explanation, it is known that ISPO has accommodated human rights principles. However, this has not been fully fulfilled, because there are obstacles in implementing ISPO. An obstacle that is often encountered is the difficulty of obtaining land rights, because oil palm plantations are located in forest areas. Forest areas used as oil palm land are not preceded by a decree on the release of forest areas issued by the Minister of Environment and Forestry. Thus, land rights cannot be granted, and this results in many oil palm plantations not having land rights certificates. Meanwhile, land rights are one of the requirements for submitting an ISPO certification application, as stated in Article 8 paragraph (3) of the ISPO Presidential Decree. As a result of these obstacles, the implementation of ISPO certification could not proceed according to the plan.

The government has actually taken action to resolve this problem, namely through Presidential Instruction No. 8 of 2018 concerning Postponement and Evaluation of Palm Oil Plantation Permits and Increasing Palm Oil Productivity. However, this problem remains unresolved, due to the complexity of the problem and the many stakeholders involved in the resolution process. Apart from that, the costs of obtaining land title certificates and Land and Building Tax (PBB) are also reasons why planters are reluctant to take care of land rights. Another obstacle in the ISPO certification process is the legality of the seeds, where some independent farmers buy oil palm seeds that do not have a certificate, so the origin of the seeds is unknown. Certified palm seeds are only used in no more than 40% of existing palm oil plantations.

Setelah kendala dari segi legalitas tanah dan benih, kendala selanjutnya yaitu kurangnya kesadaran petani terhadap pengelolaan lingkungan. Kurangnya kesadaran tersebut, dibuktikan dengan tindakan pembakaran lahan untuk membuka lahan kelapa sawit dan penggunaan pestisida yang berlebihan. Pembakaran lahan yang dilakukan petani dapat menyebabkan peningkatan emisi karbon yang berakibat pada meningkatnya intensitas efek gas rumah kaca pada atmosfer. Hal tersebut berakibat pada pemanasan global, dan jika terjadi secara terus menerus akan menyebabkan climate change. Sebagian petani kelapa sawit belum menyadari bahwa pengelolaan lingkungan yang tidak efektif akan berimbas pada tanaman kelapa sawit dan juga masyarakat umum. Fakta tersebut menunjukkan bahwa masih rendahnya kesiapan kelompok pekebun dalam proses sertifikasi ISPO. Kendala-kendala diatas tentunya menghambat tercapainya tujuan ISPO, dan ketika tujuan tersebut tidak terlaksana maka terdapat prinsip-prinsip HAM juga yang tidak terpenuhi. Sebagaimana dijelaskan bahwa ISPO pada dasarnya telah mengakomodir prinsip-prinsip HAM, namun karena ISPO belum bisa diterapkan dengan baik maka berpengaruh pula terhadap penerapan prinsip-prinsip HAM dalam ISPO.

Following the obstacles in terms of legality of land and seeds, the next obstacle is farmers' lack of awareness of environmental management. This lack of awareness is evidenced by the act of burning land to clear land for oil palm and excessive use of pesticides. Land burning by farmers can cause an increase in carbon emissions which results in an increase in the intensity of greenhouse gas effects in the atmosphere. This results in global warming, and if it occurs continuously it will cause climate change. Some oil palm farmers do not realize that ineffective environmental management will have an impact on oil palm plants and also the general public. This fact shows that the readiness of grower groups is still low in the ISPO certification process. The obstacles above certainly hinder the achievement of ISPO's objectives, and when these objectives are not achieved then human rights principles are also not fulfilled. As explained, ISPO has basically accommodated human rights principles, but because ISPO has not been implemented properly, this has also affected the application of human rights principles in ISPO.

Such as the universal principle, which if environmental management is not carried out effectively will disrupt the rights of the general public to a good and healthy living environment, as regulated in the 1945 Constitution. Then, growers who do not have an ISPO certificate are threatened with being eliminated from the palm oil supply chain. Indonesia, because palm oil mills ultimately only receive supplies from growers who have ISPO certificates. So there needs to be a solution to overcome these obstacles. The government can simplify the licensing procedures required for ISPO certification prerequisites. According to Presidential Instruction 8/2018, the Ministry of Environment and Forestry must adopt policies and make efforts to address "late" and overlapping oil palm plantations in forest areas, then immediately provide legal clarity on people's oil palm land. Furthermore, the Ministry of ATR/BPN can speed up the issuance of land title certificates. Once the certificate has been obtained, growers can complete business permits through the Online Single Submission (OSS) system which has been integrated electronically. Regional governments must also be proactive in registering independent plantations and issuing Plantation Business Registration Certificates for Cultivation in terms of business licensing, especially for independent smallholders (STD-B).

As has been discussed, oil palm farmers are less prepared to welcome ISPO certification. Consequently, the target of completing ISPO certification within five years will be difficult to achieve. So, it is necessary to implement ISPO certification in stages. Each stage of the ISPO certification process will apply principles and criteria that are in accordance with the farmers' abilities. Then, within a period of five years, it is targeted to resolve the problems that have been obstacles to the ISPO certification process. During the transition period, it can also be used to increase farmers' capacity through training, so that ISPO principles and criteria can be fully implemented and fulfilled. Furthermore, sustainability principles can be implemented gradually in line with the increasing management and institutional capacity of independent smallholders.

Conclusion

Plantation activities in Indonesia actually recognize the existence of human rights, this can be seen from various laws and regulations. It is clear that Law Number 39 of 2014 concerning Plantations regulates the recognition /or protection of human rights in plantation businesses, both implicitly and explicitly. Then, in Presidential Regulation Number 44 of 2020 concerning the Indonesian sustainable palm oil certification system, Indonesia has also provided legal recognition and/or protection for human rights for parties involved in oil palm plantation activities in Indonesia. The presence of the ISPO Presidential Decree also regulates ISPO principles and criteria which are related to the human rights of the parties, both rights related to the economy, the environment and social culture. Therefore, the ISPO principles and criteria were formed by considering and accommodating human rights principles which include universality, indivisibility, interdependence, interrelatedness, equality and non-discrimination for companies and planters.

Basically, human rights principles have been accommodated in the ISPO principles and criteria. However, because there are obstacles in the ISPO certification process, human rights principles cannot be implemented optimally. The obstacles to the ISPO certification process are in terms of the legality of seed land and farmers' awareness of environmental management. When environmental management is not carried out well, it can interfere with individual rights to a good and healthy environment. These barriers can be removed by simplifying the licensing process and gradually implementing ISPO certification.

Bibliography

- Ashri, Muhammad. 2018. *Hak Asasi Manusia Filosofi, Teori & Instrumen Dasar*. Makassar: CV Social Politic Genius.
- Deklarasi Universal Hak Asasi Manusia.
- Fahamsyah, Ermanto, *Hukum Perkebunan Dinamika Dan Perkembangannya Di Indonesia*. Depok: PT Rajagrafindo Persada, 2021.
- Fahamsyah, Ermanto. "System ISPO untuk menjawab tantangan dalam pembangunan kelapa sawit Indonesia yang berkelanjutan". *Jurnal Masyarakat Indonesia*. Vol. 43 No. 1. Juni. 2020.
- Fahamsyah, Ermanto. 2011. *Pengantar Hukum Lingkungan*. Surakarta: Cakra Books. 2011.
- Fahamsyah, Ermanto. Pemerintah seharusnya segera menerbitkan peraturan pelaksana dari Perpres Nomor 44 Tahun 2020 tentang system sertifikasi perkebunan kelapa sawit berkelanjutan Indonesia (ISPO). Universitas Jember. 2020
- Fahamsyah, Ermanto. Perpres Nomor 44 Tahun 2020 tentang system sertifikasi perkebunan kelapa sawit berkelanjutan Indonesia (ISPO). FP2SB. 2021
- Fahamsyah, Ermanto. System sertifikasi ISPO yang lebih berkepastian hukum, berkeadilan, dan bermanfaat melalui Perpres Nomor 44 Tahun 2020. FP2SB. 2020
- <https://databoks.katadata.co.id/datapublish/2022/01/31/luas-perkebunan-minyak-kelapa-sawit-nasional-capai-1508-juta-ha-pada-2021>. diakses pada 23 September 2022.
- <https://www.komnasham.go.id/index.php/data-pengaduan/> diakses pada 24 September 2022.
- Kosasih, Ahmad. 2003. *HAM dalam Perspektif Islam: Menyingkap Persamaan dan Perbedaan Antara Islam dan Barat*. Jakarta: Salemba Diniyah.
- Kumkelo, Mujaid, Moh. Anas Kholish dan Fiqh Vredian Aulia Ali. 2015. *Fiqh HAM: Ortodoksi dan Liberalisme Hak Asasi Manusia dalam Islam*. Malang: Setara Press, 2015.
- Peraturan Presiden Republik Indonesia Nomor 44 Tahun 2020 Sistem Sertifikasi Perkebunan Kelapa Sawit Berkelanjutan Indonesia
- Riyadi, Eko, dkk. 2012. *Vulnerable Groups: Kajian dan Mekanisme Perlindungannya*. Yogyakarta: PUSHAM UII.
- Smith, Rhona K. M., dkk. 2008. *Hukum Hak Asasi Manusi*. Yogyakarta: PUSHAM UII.
- Undang -Undang Nomor 39 Tahun 2014 Tentang Perkebunan
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945