DENTONS HPRP

Highlights on the New Indonesian Sustainable Palm-Oil Certification System

As one of the world's biggest palm oil producers, Indonesia needs to ensure that palm oil plantation businesses remain competitive in the international market. In order to achieve this, Indonesia must anticipate the latest industry trends, which means implementing practices that are in line with sustainable development.

Objectives

Factually, the ISPO provision are already well known in the palm oil industry as the government has previously addressed this issue in Minister of Agriculture Regulation Number 19/2011 as replaced by Minister of Agriculture Regulation Number 11/2015 ("**MR 11/2015**").

In order to improve the management and development of palm oil plantations and also increase the acceptance and competitiveness of Indonesian palm oil plantation products in domestic and international markets, the Government enacted President Regulation No. 44 of 2020 concerning Indonesian Sustainable Palm-Oil ("**ISPO**") Certification System ("**PR 44/2020**"), which, hopefully, will also help reduce greenhouse gas emissions.

ISPO Certification System

The Indonesian government now requires any palm oil plantation business practitioners including smallholders (*perkebun*), to certify their plantation businesses through ISPO Certification system. In practice, such certification process is conducted by an ISPO Certification Body.

For such purpose, the President has set out various principles of the ISPO certification system, which must be complied with by all of the stakeholders as reflected in this regulation, through amongst others: (i) compliance with laws and regulations; (ii) management of the environment, natural resources and biodiversity; (iii) social responsibility and social economic empowerment; (iv) transparency of implementation, etc.

Failure to comply with the abovementioned certification would lead to administrative sanctions against the relevant business practitioner as reflected in Article 6 of PR 44/2020. The sanctions may take the form of (i) written reprimand, (ii) fines; (iii) temporary suspension of the Palm Oil Plantation Business; (iv) suspension of ISPO certificates; and/or (v) ISPO certificate revocation.

ISPO Certification Body

The ISPO certification is conducted by ISPO certification body which must be accredited by National Accreditation Committee (*Komite Akreditasi Nasional*) as a non-structural institution that has duties and responsibilities in the field of accreditation of conformity assessment institutions and is registered with the ministry that carries out government affairs in the plantation sector.

Based on this regulation, the ISPO Certification Body has several obligations namely:

a. to carry out an assessment of conformity with ISPO principles and criteria for Business Actors;

b. to issue, temporarily suspend or revoke ISPO certificates for Palm Oil Plantation Businesses based on the results of the ISPO Certification activities;

c. to carry out annual surveillance of Palm Oil Plantation Businesses which have already secured an ISPO certificate; and

d. to follow up complaints and appeals related to the implementation of ISPO Certification.

Currently, there are several ISPO Certification Bodies which has been acknowledged and accredited by the committee is: (i) Sucofindo International Certification Services, (ii) PT SAI Global Indonesia, (iii) PT TUV Rheinland Indonesia, and (iv) PT SGS Indonesia.

Certification Requirements and Procedures

Below are the guidelines to be followed in order to be granted ISPO certification:

ISPO Certification Application Submission	**The plantation company must submit an application to be assessed for ISPO certification to the ISPO certification body in relation to its fulfilment of ISPO principles and criteria, attaching the following documents:** **a. plantation business license;** **b. land certificate;** **c. environmental permit; and** **d. determination of plantation business assessment from plantation business license issuer.**
	Smallholders must submit their application for ISPO Certification to the ISPO certification body by attaching the following documents: a. plantation business registration certificate (tanda daftar usaha perkebunan); b. land certificates. In addition to the above, we also note from Attachment II of MR 11/2015 that the principles and criteria for ISPO certification also cover (i) legality of the plantation business, (ii) plantation management, (iii) protection of the forestry area, (iv) employment issues, etc.
ISPO Certification Examination, Assessment and Issuance	The ISPO certification body will check the completeness of the application required documents.
	The ISPO certification body will conduct an assessment of the applicant's fulfilment of the ISPO principles and criteria.
	If the applicants has fulfilled the ISPO principles and criteria, the ISPO certification body shall issue an ISPO certificate.

After the issuance of the ISPO certificate, the ISPO certification body must submit a report to the ISPO committee. According to Article 13 of PR 44/2020, the ISPO certificate will remain valid for 5 (five) years. The business actor is required to apply for ISPO re-certification before the ISPO certificate expires.

Investigation

A palm oil plantation which has obtained ISPO certification must be regularly investigated by the ISPO certification body to check compliance with the ISPO principles and criteria. Detailed provisions about this will be regulated by the minister who carries out government affairs in the plantation sector. Under Article 16 of PR 44/2020, a palm oil plantation business which does not comply with ISPO principles and criteria will be subject to administrative sanctions in the form of suspension of ISPO certificate or ISPO certificate revocation.

ISPO Committee

PR 44/2020 also mandates the forming of an ISPO committee for implementing the coordination of the management and organization of ISPO which will be chaired by the Minister of Agriculture. In general, the ISPO committee has the obligations (i) to set general policies in managing and administering ISPO that have been established by the ISPO Directing Board into operational policies; (ii) to prepare assessment standards for each level of compliance with ISPO principles and criteria; and (iii) to evaluate the implementation of the ISPO certification system in order to maintain good plantation governance.

Transitional Provisions

ISPO certificates that have been issued before PR 44/2020 is enacted will remain effective until the expiration of the ISPO certificate. However, upon the enactment of PR 44/2020, the issued ISPO certificate must adjust to the following provisions:

a. business actors must make adjustments to application for ISPO based on the ISPO principles and criteria stipulated in this regulation, which will be carried out on the basis of the results of surveillance by the ISPO certification body.
b. based on the surveillance referred to in letter a of ISPO certification body, issues surveillance reports in accordance with the specified time period.
c. business actors must adjust the application for an ISPO based on the surveillance report referred to in letter a in accordance with the specified time period.

d. based on the surveillance report as referred to in letter b
   (i) if the business actors have implemented the ISPO principles and criteria, the ISPO certificate will be declared still valid; or
   (ii) if the business actors have not implemented the ISPO principles and criteria, the business actors will be asked to make adjustments by the next annual surveillance.
e. in the event that the business actors do not make the adjustment referred to in letter d (ii), the ISPO certificate that was issued before the regulation came into force will be revoked.

Conclusion

Generally, this PR 44/2020 can be considered a legal basis for any implementing (previous or future) regulations related to ISPO certification. Therefore, this regulation is expected to serve as a guideline for any ministries and stakeholders in this industry in certifying a palm oil plantation business.

Further, we note that compared with MR 11/2015, pending the issuance of new implementing regulations, there have been no significant changes on the general requirements, principles and criteria to acquire an ISPO certificate.

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