

RSPO

Roundtable on Sustainable Palm Oil

Defining the Legality of Fresh Fruit Bunches: Experiences from Indonesia

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Outline

- Definition of FFB legality in Indonesia
- FFB Legality:
 1. According to laws and regulations
 2. Perceptions of stakeholders: Riau and Central Kalimantan
 3. Towards a common definition: gaps and next steps
- Proposed scenario for developing a common definition of legality

Legality

- ❑ In civil law systems, legality is defined in legislation
- ❑ In the penal code, the umbrella principle for legality is "[There exists] no crime [and] no punishment without a pre-existing penal law [appertaining]"
 - ❖ *Lex scripta*: written law
 - ❖ Non-retroactivity: Cannot be applied to pre-written laws
 - ❖ *Lex certa*: criminality must be clear
 - ❖ No analogy
- ❑ Some good practices are currently driven by markets, not necessarily stipulated by laws and regulations. Eventually, market standards, such as timber certification standards, can be included in regulations.
- ❑ Common ground should be found between what is legal according to regulations and common business practices to avoid overlaps and overburdening producers.

Regulation Review of FFB Legality

- Review 38 laws and regulations [Laws/Statutes, Government Regulation, President Regulation, President Decree and Ministerial Regulation]
- There is no single definition for FFB legality in Indonesia. Legality indicators are defined for many sectors such as forestry, plantations, environment, labor and spatial planning. Rather than using these complex and fragmented laws, this review focuses on the supply chain to identify the key legality issues.
- Components of legality:
 1. Obtaining relevant permits
 2. Establishing Plantations
 3. Managing Plantations
 4. Transporting FFB
 5. FFB Trading

Category 1	No	Legality Indicators	Cp	Sh	Relevant Authority
Permit	1	Location permit (<i>Izin Lokasi</i>)	✓		Bupati/Mayor
	2a	≥ 25 ha need to have Plantation Permit (IUP)	✓		Bupati/Governor
	2b	≤ 25 ha need to have Plantation Registration Letter (STDB)		✓	Bupati/Mayor
	3a	Environmental Management Permit (EIA) for IUP	✓		Bupati/Mayor/ Governor
	3b	Letter of Environmental Impact Assessment for STDB		✓	Bupati/Mayor/
	4	Forest Relinquishment Decision (if the location is on forest area)	✓	✓	Forestry Ministry
	5	Wood utilization permit (IPK)	✓		Bupati/Mayor
	6	Letter confirming that plantation is not in protected area	✓		Bupati/Mayor
	7	Partnership agreement of plantation	✓		Village Head
	8	Letter of statement to distribute 20 % of concession to local people	✓		Bupati/Mayor
	9	Legal status for IUP applicant (operation license, tax identity number, etc)	✓		Ministry/ Bupati/ Gov
	10a	Business Use Rights (HGU)	✓		Ministry of Land
	10b	Letter of Land Ownership Evidence (SKT, SHM)		✓	Desa, Land Agency

Category 2: Establishing Plantations

Category 2	No	Legality Indicators	Cp	Sh	Relevant Authority
Plantation Establishment	1	Letter confirming no slash and burn and creation of fire management unit	✓	✓	Bupati/Mayor
	2	Letter confirming the plantation has passed evaluation	✓		Bupati/Mayor, Governor/ Plantation Dirjen
	3	Letter confirming the mill has passed the ISPO standard	✓		ISPO Commission

Category 3: Managing Plantations

Category 3	No	Legality Indicators	Cp	Sh	Relevant Authority
Plantation Management	1	Employment Agreement with Laborers	✓		Labor Agency
	2	Work plan to include safety standards	✓		Bupati/Mayor, Governor/ Plantation Directorate General
	3	Statement of not using child labor	✓		ISPO Commission Labor Agency
	4	SOP for managing plantation based on standards (not using chemical pesticides that are not listed in Pest Commission of Agriculture Ministry, managing waste, etc).	✓		Plantation Agency
	5	Letter confirming the mill has passed ISPO standards	✓		ISPO Commission
	6	Letter of annual internal audit by auditor certified by ISPO	✓		Independent Auditor Certified by ISPO

Category 4: Transporting FFB

Category 5	No	Legality Indicators	Cp	Sh	Relevant Authority
Transportation	1	License to drive	✓		Police
	2	Suitability of vehicle transport to the road category	✓		Transportation Agency
	3	The transport vehicle has passed the KIR test (KIR – <i>Kartu Izin Trayek</i> or Route Permit)	✓		Transportation Agency
	4	Building road for FFB transportation	✓		Plantation Agency

Category 5: FFB Trading

Category 4	No	Legality Indicators	Cp	Sh	Relevant Authority
FFB trading	1	Should not trade stolen FFB	✓		
	2	Should only sell certified FFB and not using forbidden pesticides, mixed with other chemicals	✓		

Stakeholder perceptions and practices (1)

	Local Government Perception	Practice of palm oil mills
Permit and plantation location	<p>Agreement:</p> <ul style="list-style-type: none"> FFB should not be produced in forest areas (<i>kawasan hutan</i>) <p>Disagreement:</p> <ul style="list-style-type: none"> FFB produced in plantations with IUP and located in land for other uses or <i>Areal Penggunaan Lain</i> (APL) is legal. ISPO requires a plantation possess a HGU to be considered legal Changes in spatial plan i.e. previously classified as non forests but designated as forest areas by a new spatial plan <p>Grey Areas:</p> <ul style="list-style-type: none"> Stakeholders (government officers) agree on the stages of the permitting process. However, there are no clear guidelines about what to do when a violation occurs Smallholders should obtain a registration letter or STDB for their plantation. However, the requirements for obtaining the letter are unclear and vary across districts (i.e. SHM vs. SKT) No clear guidelines whether Bupati could delegate the mandate to sign the STDB to head of Plantation Office 	<ul style="list-style-type: none"> Do not require evidence regarding where the FFB is planted when buying FFB

Stakeholder perceptions and practices (2)

	Local Government Perception	Practice of palm oil mills
Plantation establishment	<p>Agreement:</p> <ul style="list-style-type: none"> - No burning in clearing land - IPK for timber during land clearing - Protection of protected areas based on Presidential Decree 32/1990 - Regular environmental monitoring especially for smallholders <p>Disagreement:</p> <ul style="list-style-type: none"> - Workplan for safety standards <u>is not always</u> required, should depend on the context. Relevant district government agencies only give some advice to improve the safety standards - Who should carry out the monitoring? Districts have the mandate to carry out monitoring based on Permentan 98/2013, while the province has the mandate to monitor according to Provincial Regulation 5/2011 	<ul style="list-style-type: none"> • Do not require evidence that there was no burning during land clearing

Stakeholder perceptions and practices (3)

	Local Government Perception	Practice of palm oil mills
Managing plantation	<p>Agreement:</p> <p>Routine check and evaluation from plantation agency and environmental body only for the companies</p> <p>Disagreement:</p> <p>According to the Ministry of Environment and Forestry, those who have the environmental permit letter, including smallholders, should be audited regularly. However, there are no specific guidelines from the Ministry of Agriculture on how the audits should be conducted for smallholders. Relevant district government agencies perceive not obliged to supervise smallholder operations</p>	<ul style="list-style-type: none"> ▪ Not requirement imposed by mills, although companies demand a certain quality standard – which is usually a result of how farmers manage their plantation.
Transportation	<p>Agreement:</p> <ul style="list-style-type: none"> ▪ No specific regulation for transporting FFB, unlike timber ▪ The requirements for proving legality vary between districts (letter of fruit ownership/origin) 	<ul style="list-style-type: none"> ▪ Mills impose certain standards (i.e. off for Sunday, uploaded in mills before 5 PM)

Stakeholder perceptions and practices (4)

	Local Government Perception	Practice of palm oil mills
Trading	<p>No specific regulation stipulating the requirements for FFB trading. Local governments only recommend mechanisms for FFB trading (through cooperatives or farmer groups).</p> <p>How to avoid illegal FFB (including stolen FFB) entering the market? Local governments propose various mechanisms. Some agencies propose another administrative layer such as letter of ownership statement, letter of original source of fruit, etc. Others wish to avoid any proposals for creating another layer of administrative requirements. The reason is because another layer could trigger corruption that will affect the government and FFB's legality</p>	<ul style="list-style-type: none"> ▪ Require a certain fruit quality ▪ Physical check of the fruit quality (sometimes) ▪ Companies will buy from traders who have an agreement (or a delivery order) with the companies ▪ Traders only need a road permit to trade (in some places, traders are required to have a Surat Keterangan Asal Buah – Letter of Origin)

Enforceable Legal Criteria

Legal Criteria	Legal Indicators	
	Companies	Smallholder
Relevant Permits	Location permit, Environmental License, Plantation Permit, Forest Relinquishment Decision, Business Use Right	Letter of Environmental Protection, Forest Relinquishment Decision, Proof of Land Ownership Status, Plantation Registration Letter
Process of Establishing Plantations	Letter Confirming No Slash and Burn, ISPO standard	Letter Confirming No Slash and Burn
Managing plantations	Labor Agreement, Safety Standard and SOP for Plantation, Statement of Not Using Child Labor, Proposed Planning	Fruit Quality Control
Transporting FFB	Road Category, Road Permit, Road Establishment	Unclear
FFB Trading	Not available	Not available

Legal Definition: Existing Gaps and opportunities (1)

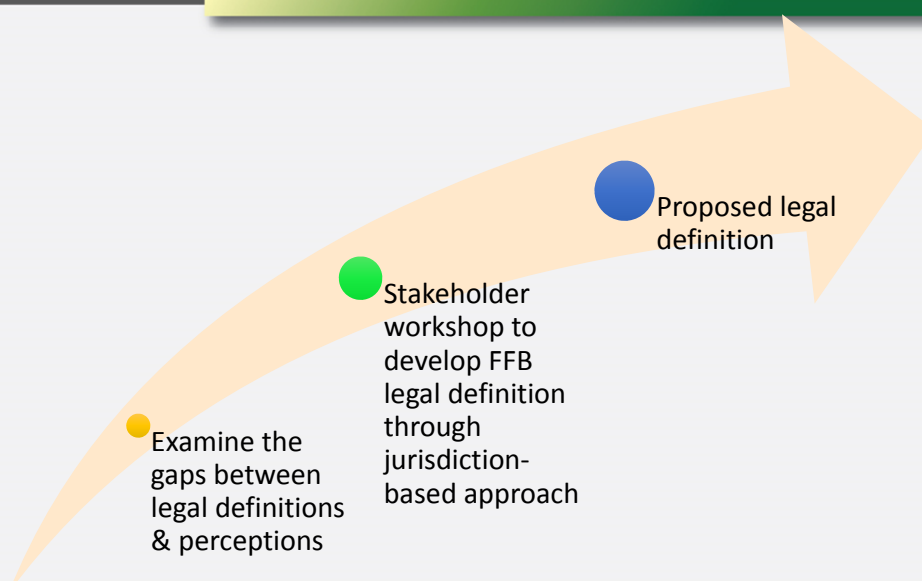
Legality	Gaps
<p>An area is defined as clean and clear based on:</p> <ul style="list-style-type: none"> whether it is located within state forest or not. whether it is located within protected area or not whether the company or farmer has the necessary permits 	<ul style="list-style-type: none"> The government should define whether IUP or HGU is required before operations commence. Currently only Permentan on ISPO mentions that a HGU is required. However, since other regulations state that an IUP is also a legal means to start operations, there needs to be greater legal clarity A legal statement is required to regulate that a location permit cannot be used as the basis of clearing the land for establishing a plantation Clear guidelines about solving conflicts between old and new regulations (grandfather clause in law should be selective)
<p>Smallholders should have a plantation registration letter (STDB)</p>	<ul style="list-style-type: none"> Ministry of Agriculture should also define the required documents for obtaining a registration letter or STDB (Hak Milik vs. SKTA/SKT) A registration letter (STDB) can be the legal proof for FFB, however, this should be regulated Ministry of Agriculture should define the delegation powers for signing the STDB from Bupati to Head of Plantation Agency or sub-district

Legal Definition: Existing Gaps and opportunities (1)

Legality	Gaps
<ul style="list-style-type: none"> Legality issues for transportation do not address the problem of ownership, but only the legal requirements for transporting goods 	<ul style="list-style-type: none"> Should we have a formal letter for transporting FFB? Should we rather register the trader? This should be properly defined to avoid overburdening smallholders and create another layer of bureaucracy
<ul style="list-style-type: none"> Fruit quality is not based on quality control from an authority but carried out by mills directly 	<ul style="list-style-type: none"> Who is responsible for checking the quality of fruits should be clarified. Which institutions should have that power?
<ul style="list-style-type: none"> Avoiding illegal FFB entering the supply chain 	<ul style="list-style-type: none"> Should we have a formal letter for transporting FFB? Should we rather register the trader? This should be properly defined to avoid overburdening smallholders and create another layer of bureaucracy
<ul style="list-style-type: none"> The status of transporters have not been regulated although they are quite powerful in terms of price control, transporting FFB and sometimes financial credit for smallholders 	<ul style="list-style-type: none"> Should have a regulation for transporters while avoiding more complex layers of FFB requirements

Next Steps

- Legal definition of FFB for smallholders should be simplified
- The definition should be stipulated by local regulations that refer to national regulations
- Scenarios for developing a local-based definition of FFB should be carried out together with stakeholders. A national workshop will be carried out in the first week of December in Jakarta
- Private sector should present their views on legality and practical experiences to consolidate their different perceptions of legality. The results will be used to propose an applied legal definition of FFB



Terima Kasih

